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November 3, 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. 050551

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint Nextel Corporation, LTD Holding Company, Sprint-Florida, Incorporated and Sprint Payphone Services, Inc. is Sprint's Motion to Dismiss CWA's Petition for a Formal Administrative Hearing.

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

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

Sincerely,

Susan S. Masterton

Enclosure

**CERTIFICATE OF SERVICE
DOCKET NO. 050551**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by *fax, electronic mail and U.S. mail this 3rd day of November, 2005 to the following:

Florida Public Service Commission
Jason Rojas
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Florida Public Service Commission
Kiwanis Curry
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Longwood, FL 32779



Susan S. Masterton
Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Joint application for approval of transfer of control of Sprint-Florida, Incorporated, holder of ILEC Certificate No. 22, and Sprint Payphone Services, Inc., holder of PATS Certificate No. 3822, from Sprint Nextel Corporation to LTD Holding Company, and for acknowledgment of transfer of control of Sprint Long Distance, Inc., holder of IXC Registration No. TK001, from Sprint Nextel Corporation to LTD Holding Company. | Docket No. 050551-TP Filed: November 3, 2005 |
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**MOTION OF SPRINT NEXTEL CORPORATION, LTD HOLDING COMPANY,
SPRINT-FLORIDA, INCORPORATED AND SPRINT PAYPHONE SERVICES, INC.
TO DISMISS THE PETITION OF COMMUNICATIONS WORKERS OF AMERICA
FOR A FORMAL ADMINSTRATIVE HEARING**

I. INTRODUCTION

Sprint Nextel Corporation (“Sprint Nextel”), LTD Holding Company, Sprint-Florida, Incorporated (“Sprint-Florida”) and Sprint Payphone Services, Inc. (“Sprint Payphone”) (collectively Movants) hereby submit this motion to dismiss the Petition of the Communications Workers of America (“CWA”) for a hearing on the Commission’s proposed order approving the transfer of control of Sprint-Florida and Sprint Payphone from Sprint-Nextel to LTD Holding Company (Order No. PSC-05-0985-PAA-TP) (“Proposed Order”). As demonstrated below, CWA has failed to meet its burden under Rule 25-22.029 of the Florida Administrative Code (“Rule 25-22.029”) of establishing that it has substantial interests that may or will be affected by adoption of the Proposed Order.

The purported injuries identified by CWA in its effort to establish standing are purely speculative and would, in any event, go beyond the scope of this proceeding or the jurisdiction of this Commission to provide remedies for these purported injuries. In addition, CWA’s Petition

should be dismissed because it fails to state a cause of action upon which relief can be granted and is procedurally deficient. Accordingly, the Commission should dismiss CWA's Petition and declare the Proposed Order to be final.

II. BACKGROUND AND LEGAL FRAMEWORK

On August 15, 2005, Movants submitted a joint application pursuant to Section 364.33, Florida Statutes, seeking Commission approval of the transfer of control of Sprint-Florida and Sprint Payphone from Sprint-Nextel to LTD Holding Company. In the Proposed Order, issued on October 13, 2005, the Commission found that the transfer of control is in the public interest and approved the joint application.

CWA has filed the present Petition for the stated purpose of requesting a hearing on the Proposed Order.¹ In its Petition, CWA identifies the following issues it claims are in dispute and which it maintains should be the subject of a hearing in this proceeding: (1) whether Sprint-Florida will be able to provide efficient and reliable service; (2) whether Sprint-Florida will be able to raise sufficient capital to maintain service quality; (3) whether LTD Holding Company will have sufficient financial resources to assist Sprint-Florida in providing quality service; and (4) whether Sprint-Florida will receive sufficient assets in the transaction.² CWA alleges that Sprint-Florida would be weakened financially by the transaction and less capable of providing quality service. For these reasons, CWA maintains that the Commission should reverse the Proposed Order.³

Under Rule 25-22.029, a party "whose substantial interests may or will be affected" by proposed Commission action may petition for a hearing on the matter. In order to demonstrate that it possesses a sufficiently "substantial" interest and thus has standing to pursue such a

¹ The CWA local that has filed this Petition went on strike against Sprint-Florida on October 10, 2005.

² CWA Petition at 2.

³ *Id.* at 3.

petition, a party must make two showings: (1) that it will suffer injury in fact which is of sufficient immediacy to entitle the party to a hearing; and (2) that the substantial injury is of a type or nature which the proceeding is designed to protect. *Agrico Chemical Co. v. Dep't of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 1982); see also, *In re: Emergency Joint Application for Approval of Assignment of Assets and Certificates from Winstar Wireless to Winstar Communications*, Order No. PSC-02-0744-FOF-TP at 4 (2002) (“Winstar/Verizon”). When the petitioner is an association, as is the case here, it must demonstrate that its members possess substantial interests that meet the foregoing tests, that the subject matter of the proceeding is within the association’s general scope of interest and activity and that the relief requested is appropriate for the association to receive on behalf of its members. *In re: Petition of Florida Power & Light for Modification of Duct System Testing and Repair Program*, Order No. PSC-98-0374-FOF-EG, 1998 WL 173389 at *2 (1998), citing *Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So. 2d 351, 353-354 (Fla. 1982) and *Florida Society of Ophthalmology v. State Board of Optometry*, 532 So. 2d 1279 (Fla. 1st DCA 1988).

The burden is on the party filing a Rule 25-22.029 petition to demonstrate that it has standing to participate in the case. *In re: Request for Approval of Transfer of Control of MCI Communications Corporation and MCI Telecommunications Corporation to TC Investments Corp.*, Order No. PSC-98-0702-FOF-TP, 1998 WL 479890 at *9 (1998). If the petitioner fails to make either showing under the *Agrico* test identified above, its petition fails. *In re: Joint Application of MCI WorldCom, Inc. and Sprint Corporation for Acknowledgement of Approval of Merger*, Order No. PSC-00-0421-PAA-TP, 2000 WL 305263 at 5 (2000) (“it is sufficient to deny standing for failing to meet one prong of the *Agrico* test”).

In its Petition, CWA does not formally request leave to intervene in this proceeding. In order to successfully file a protest of a proposed agency action order, nonetheless, an entity must meet the same test as required to intervene in a proceeding. That is, a party maintaining a protest must demonstrate that it is entitled to intervene as a matter of constitutional or statutory right or on the grounds that its substantial interests will be affected in the proceeding. *See Florida Administrative Code Sections 25-22.029, 25-22.039, 28-106.205.* CWA has not pointed to and cannot point to any constitutional or statutory right to intervene in this proceeding. As demonstrated below in the context of the Rule 25-22.029 and the standing analysis, CWA has no “substantial interests” in this proceeding. Accordingly, there is no basis for CWA’s intervention in this proceeding.

III. DISCUSSION

A. CWA Has Failed To Demonstrate The Two Elements Required For Standing.

1. CWA Cannot Demonstrate Any Injury In Fact.

CWA has cited no statutory provisions or issues that would support its standing to pursue a hearing on the Proposed Order. Rather, CWA seeks to establish standing by alleging that, as a customer of Sprint-Florida, CWA would be harmed by any degradation in service quality that results from the transaction. This allegation is not within the CWA’s general scope of interest and activity and is not appropriate for CWA to assert on behalf of its members. CWA also maintains that the transfer of control will result in a loss of jobs by CWA workers in Florida. However, this allegation is outside the scope of the Commission’s jurisdiction under section 364.33. In any event, both of these alleged injuries are entirely speculative and, therefore, insufficient to establish standing under Rule 25-22.029.

It is well-established that speculation regarding the possible future occurrence of such allegedly injurious events does not constitute sufficient injury in fact to establish standing. For example, in the *Winstar/Verizon* case cited above, Verizon sought a hearing on a proposed order approving the transfer of certain operating certificates to a new Winstar entity. Verizon argued that it had standing to pursue such relief because the new Winstar entity could default on payments owed Verizon under the parties' interconnection agreement. The Commission rejected Verizon's argument, holding that the injury was too speculative to support standing. The Commission ruled as follows:

Verizon has not alleged any injury that it will, in fact, incur . . . but instead argues that conditions should be imposed upon New Winstar in order to preclude possible future injury resulting from its dealings with the new company. Conjecture about future economic detriment is too remote to establish standing.

Winstar/Verizon at 4; see also, *Ameristeel Corp. v. Clark*, 691 So. 2d 473, 478 (Fla. 1997) (the fact that steel plant at some point may have switched to the lower cost utility was too speculative to give it standing to protest an agreement between two utilities limiting the plant's ability to switch after consummation of the agreement).

Similarly, CWA's baseless allegations that the transfer of control of Sprint-Florida may at some point result in diminished service quality or lead to workforce reductions are entirely speculative and do not confer standing. CWA has not alleged any facts whatsoever that the transfer of control will impair Sprint-Florida's ability to continue to comply with the Florida laws and Commission rules relating to service quality or with its statutory carrier of last resort obligations. As in the *Winstar/Verizon* case, CWA's allegations that Sprint-Florida will not be able to continue to provide quality service are mere conjecture and any such alleged future injury would be far too remote to give CWA standing to pursue its Petition. Indeed, in dismissing a CWA protest in another transfer of control proceeding, the Commission expressly held that

speculation regarding job losses is insufficient to confer standing. The Commission ruled as follows:

The only allegation raised by CWA of the impact that the merger will have on CWA and its members is that the merger may result in a decrease in jobs for CWA workers in Florida. CWA can, however, only speculate as to the long term effects the merger may have on the market, and, ultimately, on jobs for communications workers. Such conjecture regarding future economic harm or possible loss of jobs . . . is too remote to establish standing in a proceeding conducted pursuant to Section 364.33

In re: MCI Communications, Order No. PSC-98-0702-FOF-TP, 1998 WL 479890 at *13.

In a separate but equally meritless claim, CWA alleges purported injury to itself as a customer of Sprint-Florida. However, as an association, CWA is not empowered by its Constitution to represent its members regarding service quality issues or to litigate such matters before the Commission.⁴ The CWA Constitution does not authorize the CWA to represent before the Commission its purely commercial interests (i.e., its business location that houses its offices and is a Sprint customer). As set forth above, the standing of an association is based upon the interests of its *members* and those interests must be within the scope of the association's authority. Thus, even if speculation regarding diminished service quality constituted a sufficient injury in fact, CWA could not rely upon such purported injury to itself and it is not authorized to

⁴ Specifically, Article III of the CWA Constitution states as follows:

Article III – Objects

The objects of the Union shall be:

- (a) To unite the workers within its jurisdiction in a single cohesive labor union for the purpose of collective effort;
- (b) To improve the conditions of the workers with respect to wages, hours, working conditions and other conditions of employment;
- (c) To disseminate information among the workers respecting economic, social, political and other matters affecting their lives and welfare;
- (d) To advance the interests of the workers by advocating the enactment of laws beneficial to them and the defeat or repeal of laws detrimental to them;
- (e) To do all things which may be necessary or proper to secure for the workers enjoyment of their natural rights.

remedy any such purported injury experienced by its members as customers of Sprint. For this reason as well, CWA's allegations regarding service quality are insufficient to support its Petition.

2. Even If CWA's Allegations Had Merit, The Type Of Injuries Upon Which It Relies And The Issues It Seeks To Raise Are Beyond The Scope Of This Proceeding.

In addition to injury in fact, a party seeking to establish standing must demonstrate that the substantial injury asserted is of a type or nature which the proceeding is designed to protect. Here, even if CWA's allegations regarding service quality and possible job losses had merit and were not purely speculative, such issues would be beyond the scope of this proceeding to approve a transfer of control of Sprint-Florida and Sprint Payphone from one parent company to another.

The Commission has made clear that a Section 364.33 transfer of control proceeding is very narrow in scope. As the Commission has explained, Section 364.33 "gives us jurisdiction to approve the transfer of control of telecommunications facilities for the purpose of providing service to Florida consumers." *In re: MCI WorldCom, Inc.*, Order No. 00-0421-PAA-TP, 2000 WL 305263 at 6 (2000). Indeed, the Commission expressly recognizes that Section 364.33 is "not a merger review statute." *Id.* As a result, speculative claims of injury based upon impact on the market, competitors or employees are beyond the scope of such a proceeding.

For example, in the 1998 MCI/WorldCom merger proceeding, GTE Communications Corporation sought leave to intervene based upon the alleged injuries it would suffer as a wholesale customer due to the decrease in competition between MCI and WorldCom in the wholesale services market. As discussed above, CWA also asserted standing to intervene and protest the merger decision based upon possible employment reductions that would impact its members. In addition to finding that the asserted injuries of both GTE and CWA were too

speculative to confer standing, the Commission ruled that these injuries were beyond the scope of a Section 364.33 proceeding. The Commission held that Section 364.33 “does not give us the ability to protect the competitive interests asserted by GTE and CWA.” *In re: MCI Communications*, Order No. PSC-98-0702-FOF-TP, 1998 WL 479890 at *13.

Similarly, CWA’s allegations regarding job losses are beyond the scope of this proceeding in which the Commission will rule upon Movants’ joint application under Section 364.33. Indeed, the issues CWA identifies in its Petition simply are not within the Commission’s jurisdiction. For example, the labor/management and employment-related issues CWA identifies are beyond this Commission’s mandate. CWA also focuses a good deal of its concern on the capitalization and financial well-being of LTD Holding Company and, derivatively, Sprint-Florida after the transfer. However, in a price regulated environment, such issues are beyond the Commission’s purview.

In addition, CWA’s speculative allegations regarding service quality are not appropriately addressed in this parent company transfer of control proceeding. Rather than delay and obstruct this proceeding, CWA properly must pursue this alleged concern through other procedural vehicles specifically designed to address service quality issues. Sprint-Florida is an ILEC with carrier of last resort responsibilities whose service provision and service quality are comprehensively regulated by the Commission pursuant to statute and related rules.⁵ To the extent that a customer perceives that it is not receiving the level of service Sprint-Florida is required to provide, the customer may seek an action with the Commission to address these deficiencies. Indeed, the Office of the Public Counsel has not hesitated to pursue such actions on behalf of Florida citizens when it perceives it necessary to preserve service quality levels. In

⁵ See, e.g., sections 364.01 (4)(c), 364.025, 364.051, 364.15, and 364.185, Florida Statutes, and Rules 25-4.066-25.4.083, Florida Administrative Code.

addition, the Commission vigorously monitors and investigates compliance with its service rules (including service audits) and has the authority to initiate actions for violations on its own motion.⁶ CWA thus has not alleged a substantial injury of a type or nature which a proceeding under Section 364.33 is designed to protect.

B. CWA's Petition Fails to State a Cause of Action and Is Procedurally Improper

Even if CWA has standing to protest the Commission's Order, which Sprint believes it does not, CWA has failed to state a cause of action for which the Commission may grant relief, and, therefore, its Petition should be dismissed. The general standard for a Motion to Dismiss is whether the Petition alleges sufficient facts to state a cause of action as a matter of law. In disposing of a Motion to Dismiss the Commission must assume all of the factual allegations of the Petition are true. *Varnes v. Dawkins*, 624 So. 2d 349 (Fla. 1st DCA 1993). In addition, fundamentally, the Commission must have subject matter jurisdiction over the claims asserted in order to rule on a petition. *In the Matter of Petition by AT&T Communications of the Southern States, Inc., TCG South Florida, and MediaOne Florida Inc. for Structural Separation of BellSouth Telecommunications, Inc into Two Distinct Wholesale and Retail Corporate Subsidiaries*, Order No. PSC-01-2178-FOF-TP, 2001 WL 1591543. CWA fails to meet this standard in that it fails to allege the specific statutes or rules that require reversal or modification of the Commission's order as required by Rule 28-106.201, Florida Administrative Code. In addition, as discussed above, many of CWA's allegations involve issues over which the Commission clearly lacks subject matter jurisdiction.

⁶ See, e.g., Docket No. 991377-TL, *In re: Initiation of show cause against Sprint-Florida, Incorporated for violation of service standards*.

CWA identifies as a disputed issue “whether after the spin-off, Sprint-Florida will be able to provide efficient and reliable communications service.”⁷ In support of this issue, in its statement of ultimate facts, CWA alleges that CWA alleges that “[t]he quality of service provided by Sprint-Florida to its local exchange customers, including CWA, after the spin-off will suffer.”⁸ Yet, CWA fails to allege any statute or Commission rule regarding Sprint-Florida’s services or facilities with which Sprint-Florida will no longer be able to comply. The Commission has jurisdiction to enforce the specific requirements of these statutes or rules, but has no authority to address vague allegations of declines in service quality as alleged by CWA.

CWA’s remaining issues and factual allegations are clearly outside the scope of the Commission’s authority over a price-regulated ILEC’s financial decisions (i.e., the appropriateness of LTD Holding Company’s or Sprint-Florida’s investments, debt level and capital structure), and, again, CWA has failed to identify any statute or rule according the Commission authority over such issues. As a price-regulated ILEC, Sprint may charge only those rates authorized by section 364.051, Florida Statutes, and may make changes to its rates only in accordance with that statute. The statutory price regulation scheme gives the Commission no authority over Sprint-Florida’s or its parent company’s decisions regarding investments, debt, capital structure or rate of return, rather Sprint-Florida assumes the risks of these decisions within the confines of the price regulation statute. In its Petition, Sprint-Florida has committed that it will continue to comply with all of its service obligations and continue to operate within the existing price regulation statute after the transfer of control. CWA’s vague, speculative and nonspecific allegations about the possible effects of the spin are outside the Commission’s

⁷ CWA Petition at 2.

⁸ *Id.* at 3.

jurisdiction under section 364.33 and fail to state a cause of action upon which the Commission may grant relief.

Finally, in accordance with section 120.80(13)(b), Florida Statutes, CWA fails to specifically identify the findings or rulings of the Commission 's Order with which it disagrees, instead making a general plea for "reversal" of the Order. Subsection (13)(b) provides that a hearing on an objection to a Commission proposed agency action may address only the issues in dispute. Issues in the proposed action not in dispute are deemed stipulated. While CWA has provided a list of issues, none of these issues are reflected in the specific findings and rulings of the Proposed Order. CWA has failed to identify the specific issues in the Order in dispute; therefore, the Commission cannot effectively implement the provisions of section 120.80(13)(b), Florida Statutes.

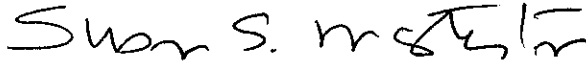
CWA's Petition fails to state a cause of action upon which the Commission may grant relief. In addition, it is procedurally deficient because it fails to identify the specific statutes or rules that CWA contends require reversal of the order, as required by Rule 28-106.201, Florida Administrative Code, and it fails to identify the specific disputed issues in the Proposed Order in accordance with section 120.80(13)(b), Florida Statutes. For these reasons, CWA's Petition should be dismissed.

IV. CONCLUSION

As demonstrated above, the purported injuries identified by CWA are purely speculative and are beyond the scope of this proceeding in any event. In addition, the purported injuries are outside the general scope of the CWA's interest and activity and are not appropriate for CWA to assert on behalf of its members. Accordingly, CWA has failed to establish any element necessary to establish standing to pursue its Petition. In addition, CWA's Petition fails to state a cause of action for which relief can be granted and is procedurally deficient. Movants therefore

respectfully request that the Commission dismiss CWA's Petition and declare the Proposed Order to be final.

Respectfully submitted this 3rd day of November, 2005.



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