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November 9, 2005

HAND DELIVERY

Ms. Blanca Bayo
Commission Clerk and Administrative Services Director
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Docket No.: 050551-TP; Joint Application for Approval of transfer of control of Sprint-Florida Incorporated
Our File No.: 40054.01

Dear Clerk:

Enclosed you will find for filing in the above-referenced docket an original and seven (7) copies of (1) Communication Workers of America's Response to Sprint Nextel Corporation, Ltd Holding Company, Sprint-Florida, Incorporated and Sprint Payphone Services, Inc.'s Motion to Dismiss the Petition of Communication Workers of America for a Formal Administrative Hearing and (2) Request for Oral Argument.

Please do not hesitate to give me a call should you have any questions regarding this filing.

Very truly yours,

MARTIN S. FRIEDMAN
For the Firm

MSF/mp
Enclosures

cc: Ms. Debbie Goldman, Research Economist (w/enclosures)
Paul Donnelley, Esquire (w/enclosures)
Jason Rojas, Esquire (w/enclosures)
Ms. Susan Masterton (w/enclosures)
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BEFORE THE PUBLIC SERVICE COMMISSION

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 of 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

_____/

COMMUNICATION WORKERS OF AMERICA'S RESPONSE TO SPRINT NEXTEL CORPORATION, LTD HOLDING COMPANY, SPRINT-FLORIDA, INCORPORATED AND SPRINT PAYPHONE SERVICES, INC.'S MOTION TO DISMISS THE PETITION OF COMMUNICATIONS WORKERS OF AMERICA FOR A FORMAL ADMINISTRATIVE HEARING.

I. BACKGROUND.

Petitioner, COMMUNICATIONS WORKERS OF AMERICA, ("CWA") as a customer of SPRINT-FLORIDA INCORPORATED, ("Sprint"), is petitioning the Public Service Commission ("Commission") for a formal administrative hearing concerning Sprint's proposed "spin off" into a separate business entity. Movant, SPRINT-NEXTEL CORPORATION, ("Movant") has filed a motion to dismiss CWA's petition on standing grounds.

II. CONTROLLING LAW.

In order to have standing to participate in a formal administrative hearing under the Florida Administrative Procedures Act, one need not cite a specific statute or rule that is being or will be violated; one must only be "substantially affected", per Section 120.57, Florida Statutes (2005). Under the seminal test for this qualification, the *Agrico* test, there are two requirements to be met: the Commission must evaluate (1) whether the petitioner

will suffer substantial injury in fact which is of sufficient immediacy, and (2) whether the substantial injury is of a type or nature which the proceeding is designed to protect. *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So.2d 478, 482 (Fla. 2d 1981).

In petitions such as these, "[i]n determining the sufficiency of the complaint, the trial court may not look beyond the four corners of the complaint . . . nor consider any evidence likely to be produced by either side. . . . Significantly, all material factual allegations . . . must be taken as true." *Varnes v. Dawkins*, 624 So.2d 349, 350 (Fla. 1st DCA 1993); *Sarkis v. Pafford Oil Co.,* 697 So.2d 524 (Fla. 1st DCA 1999)*; Gladstone v. Smith,* 729 So.2d 1002 (Fla. 4th DCA 1999) (similarly recognizing that "[w]hen considering the merits of a motion to dismiss, a court's gaze is limited to the four corners of the complaint...The facts alleged in the complaint must be accepted as true," and that "[a]ll reasonable inferences must be drawn in favor of the pleader."); *see, also Aguilera v. Inservices, Inc.*, 905 So.2d 84 (Fla. 2005) (recognizing and affirming once again the rule stated in *Varnes, Gladstone, and Sarkis, supra).*

This Commission is controlled under these circumstances by Chapter 364, specifically Section 364.33, Florida Statutes (2005). Section 364.33 provides, in pertinent part, that

> A person may not begin the construction or operation of any telecommunications facility, or any extension thereof for the purpose of providing telecommunications services to the public, or acquire ownership or control thereof, in whatever manner, including the acquisition, transfer, or **assignment of majority organizational control or controlling stock ownership, without prior approval.**

Movant has applied to transfer its organizational control to LTD Holding Company;

thus, pursuant to this statute, the Commission must approve said transfer.

The express legislative intent of the legislature in enacting Chapter 364 is provided in Section 364.01, which states, in pertinent part, the following:

> [T]he competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest ...

The legislature has also issued specific instruction as to how the Commission is to exercise its discretion, and to what end; the Commission is directed, in pertinent part, in Section 364.01(4) to:

> (a) Protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices
> ...
> (h) Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, *if doing so does not reduce the availability of adequate basic local telecommunications service to all citizens of the state at reasonable and affordable prices*

(Emphasis supplied). Among the specific statutory mandates provided in Chapter 364, the overall theme with which the Commission's mandates are to be executed should be colored and informed by the Legislature's direct, express reflections of intent as demonstrated by the entirety of the Chapter. *See, Fairbanks, Inc. v. State of Florida, Department of Transportation,* 635 So.2d 58 (Fla. 1st DCA 1994). Given the language above, the intent of the Chapter is clearly to provide customers with affordable, reliable service, and Section 364.33 is just one in a Chapter of procedural devices intended to be employed to that end.

Furthermore, specifically reading Section 364.33 in para materia with Section 364.35, as is proper when construing the intent of the drafters of the Florida Statutes where

an express statement of specific intent in particular sections is lacking *(see, generally McClung-Gagne v. Harbour City Volunteer Ambulance Squad, Inc.*, 721 So. 2d 799 (Fla. 1st DCA 1998)), provides elucidation as to the intent and objective of Section 364.33; this section provides the minimum application requirements for the transfer of certificates, and provides the standards to be used in reviewing a grant of such a certificate: whether the grant of that certificate is in the public interest. *See, also Fairbanks, supra.*

Indeed, this Commission has expressly recognized that in approving or denying such applications, the review of said applications with the goal of "providing service to Florida consumers" should be based on "an analysis of the public's interest in efficient, reliable telecommunications services." *In re: Joint Application of MCI Worldcom, Inc.*, 2000 Fla. PUC LEXIS 253 **13-14.

III. DISCUSSION OF LAW AND FACTS

CWA is currently a customer of Sprint at its Longwood, Florida offices. As a customer, any future activities by the company that will have an impact on the level of service that CWA directly receives from Sprint significantly impact CWA.

Indeed, this Commission, and the Florida Courts, have recognized on numerous occasions that customers have such direct interests in the acts of utilities that serve them, and that they have standing to petition this Commission. 2003 Fla. PUC LEXIS 223 (in petition to intervene, applying the *Agrico* test to a customer whose standing was contested, Commission ruled that because the Commission's decision will affect rates of service, petitioner had met the *Agrico* test); 2001 Fla. PUC LEXIS 86 (because petitioner was not a

customer of the utility at issue, petitioner's substantial interests were not affected by proceeding); *Legal Envtl. Assistance Found. v. Clark*, 668 So. 2d 982 (Fla. 1996) (court recognized that, in petition to intervene under Chapter 366, petitioners' status as customers of utility, whose actions would affect customers directly, was one of several factors in favor of granting intervention).

A. Agrico's First Prong: Immediate, Substantial Harm

Under the first prong of *Agrico*, CWA must demonstrate that it is threatened with a sufficiently immediate injury that will be occasioned by the proposed agency action. *Agrico, supra* at 482.

1. Injuries to CWA

CWA has alleged the following substantial material facts, which pose an immediate harm to its interests as a customer, who receives telecommunications services from Sprint:

a) The spin-off of LTD Holdings will result in a financially weaker Sprint-Florida with fewer resources remaining to invest in local telephonic infrastructure.

As this Commission is no doubt aware, Florida is now and will continue to be in the future, experiencing virtually exponential population growth, while simultaneously fighting to match this growth with sufficient infrastructure to meet demand. Indeed, utility services across the boards in the State of Florida struggle daily to meet capacity and quality demands, all the while fighting to expand and remain profitable. By divesting Sprint-Florida of the holdings and assets referenced in movant's petition, this transfer would leave Sprint-Florida ill-equipped to meet said growth. As a consequence, current subscribers and

customers, such as CWA, will experience a severe degradation in service quality occasioned by overused and overworked existing circuitry.

b) The spin off will result in LTD Holding Company being burdened with an extraordinarily high 7.25 billion dollar debt, which debt is greatly in excess of the debt that was attributable to Sprint Corp.'s FON division before the spin off; thus, the quality of service provided by LTD Holdings to its local exchange customers, including CWA, will suffer subsequent to the spin-off.

Such an extraordinary debt over-burdening will result in a disproportionate debt to equity ratio, that will adversely affect the company's credit rating, and its ability to obtain investment grade debt ratings. Without the latter, LTD Holding will be unable to raise sufficient capital to invest in service, infrastructure, and maintenance of existing customers. This will directly affect customers such as CWA, who will bear the downside of this debt burden, including service diminution and potential unavailability, and certainly higher rates.

c) The spin off of LTD Holdings does not represent an equitable allocation of assets and debts to ensure a viable entity. Sprint-Nextel intends to disproportionately allocate its debts to its regulated business, resulting in a stronger capital structure for Sprint-Nextel's non-regulated businesses.

The clear intent of Sprint in spinning off Sprint to LTD Holdings is to burden the new, regulated spin off entity with debt, while unburdening its more profitable, unregulated and future and technology-focused companies. This is a recipe for disaster for the off-spun

entity. By burdening an entity as such from the start, the burgeoning business has virtually no expectation of short-term profit realization, and, in such a competitive market, mere survival. If, in fact, the entity does survive, it will be at the expense of its customers.

In fact, the organizational rubric proposed by Sprint-Nextel virtually guarantees that the new entity will be in direct competition with Sprint's assorted other business ventures in the State of Florida, such as wireless and internet/VOIP providers, further driving down the value of the new entity to the point that it will lose all viable, commercial value.

2. Substantial and Immediate Effects of These Injuries on CWA

The aggregate of the above-listed factors indicates that CWA, as a customer of Sprint, would be immediately impacted by the proposed transfer of certificates. The spin off entity will be unable to meet even current standards of efficiency and reliability, and the spin off, due to the above factors having placed the spin off entity in an inferior market position and overwhelmingly burdened it with debt, would be unable to provide efficient and reliable communications services.

As demonstrated by the allegations above, the spin off entity will have no long term prospects of pulling itself from such an initially inferior position, as it will be adversely positioned in the marketplace from the start: the overlading of the infant entity coupled with the fierce competition it is likely to experience from other competitors, including other Sprint business ventures such as Sprint-Nextel's unregulated wireless[1] and voice-over-

[1] Sprint-Nextel's initial application confirms that "at the end of the first quarter of 2005, Sprint served nearly three times as many wireless customers ... as it did local wireline customers," and that "[w]ith the completion of the merger, Sprint now serves five times as many wireless customers as wireline customers." Movant's Application for Transfer of Certificate, p. 17. Indeed, according to its own application, Sprint will "naturally place greater emphasis on its nationwide business built around wireless services." *Id.*

internet ("VOIP") endeavors, will result in a short-lived company, that will consequently provide progressively inferior service until it is forced into insolvency and dissolution.

Sprint has spun off LTD Holdings in such a way that it will be, from the offset, in direct competition with its former parent; while LTD Holdings will be exclusively a land line provider, and will be unable to bundle any services but those of Sprint with the provision of its land line services, Sprint will be heavily capitalized, minimally leveraged, and will be the provider of services in direct competition with land line services: wireless and internet communications options. In point of fact, Sprint has, in the 1998-2004 period, directed more than 9 billion dollars from its land line operations to wireless investments and to purchase Nextel's operations; it now proposes to direct even more time and money into the more technologically advanced wireless and internet divisions, burdening its local divisions with extraordinary debt.

Indeed, filings in many other states, as well as the application filed in Florida with this Commission, indicate that Sprint has no comprehensively articulated financial business plan for the future of the spin off entity; this is clear in Florida, as movant's own application for transfer is so vaguely and ambiguously worded as to its future financial plans that it is hard to discern what plans Sprint has for keeping the spin off financially healthy despite its heavy debt burden. *See*, Movant's Application for Transfer of Certificate, p. 14-15.

Quite simply, Sprint is constructing the spin off to fail. It is lading the company with over 7.25 billion dollars in debt, and has to date failed to articulate the capitalization of and asset distribution to LTD Holdings. While the debt has been apportioned, the capital is as yet undetermined.

CWA, as a customer, will be substantially and immediately impacted by the transfer of this certificate because CWA will be a direct beneficiary of LTD Holdings' reduction in service quality and increase in price that will be concurrent with its new position – inferior to that of Sprint's curr ent local provision. When the spinoff begins to immediately experience the deleterious effects of this transfer, customers such as CWA will be directly and substantially impacted by a concomitant increase in price, and reduction, and potential elimination, of already strained local landline services.

This Commission is bound to treat CWA's above allegations as true; all inferences must be drawn in favor of CWA and against Sprint. *Varnes v. Dawkins*, 624 So.2d 349, 350 (Fla. 1st DCA 1993); *Sarkis v. Pafford Oil Co.,* 697 So.2d 524 (Fla. 1st DCA 1999). Nothing but the four corners of the Petition should be considered, and, taken as true, the four corners of CWA's Petition make clear that it is entitled to petition for redress.

3. Despite Movant's Assertions to the Contrary, CWA's Injuries Constitute Non-SPeculative, Certain Injuries in Fact

Movant alleges that CWA, as a customer, alleges merely speculative injuries. Movant alleges that a customer, fearful of drastically reduced or eliminated services, who wishes to have the Commission examine the effects of the above-listed concerns, has no real injury, and that the effects of such compelling facts are too illusory.

On the contrary, it is not speculative for the customers of a public utility, who rely on that utility for efficient and constant service, to be wary of a transaction that transfers 7.25 billion dollars in verified debt to a spin off company that will assume the utility's services to customers, without, at this point of approval by the Commission, a verified

amount of assets. For all this Commission knows based on the documents submitted by movant in its application, the company could be capitalized at one dollar, yet burdened with 7.25 billion dollars of debt.

It is not speculative for a customer to be concerned that Sprint's new division will be forced to compete with its own, highly competitive divisions within Florida including, but not limited to, its own wireless and VOIP divisions, both of which will compete strongly with land line services, and which could ultimately result in the total elimination of land line services completely. The very least concern that a customer would fear from such facts is an increase in pass-through costs and service charges to customers to finance the debt burden and competitive pressures of the market; the very worst is that service will disappear altogether.

Technological advance is not speculative, nor is market competition among technological rivals; indeed, the effects of such competition coupled with business realities such as debt burdened corporations having to compete with liquid corporations are not speculative at all, but are hard, time-tested and imminently threatened economic realities.

Finally, Movant cites to *In re: Joint Application of MCI Worldcom, Inc.*, ("*MCI/Worldcom*") for the argument that CWA's Petition should be dismissed for failure to allege sufficient, non-speculative harm that will occur if the transfer is completed. 2000 Fla. PUC LEXIS 253. Specifically, Movant refers the Commission to the passage from *MCI/Worldcom* indicating that, when the only allegation made by petitioner is that job loss is to occur, then such theories are insufficient to confer standing to petitioner. **34-35.

Although *MCI/Worldcom* is a convenient reference, as it denied CWA entry into

proceedings on a Section 364.33 transfer, Movant's reliance on this Order is misplaced; Movant attempts to direct this Commission's attention to this Order because it denied standing to CWA in a prior proceeding. Movant has overlooked in its reference to this Order that the Commission stressed that CWA's only allegation regarding the impact of the proposed transfer was that it would result in job loss, an allegation that this Commission has repeatedly found, standing alone without additional allegations, to be insufficient for standing purposes. However, nowhere in either CWA's petition or GTE's petition referenced in the *MCI/Worldcom* Order was an allegation made that either petitioner, as a customer of MCI, would suffer detrimental service quality and availability effects.[2]

Movant additionally attempts to categorize CWA's concerns as economic and thus fit the claims into a rubric of speculative economic injury; repeatedly, citing to the *Winstar* order and *Ameristeel* case, Movant argues that the detriment occasioned to CWA as a customer would simply be that of a speculative economic harm.

In both *Winstar* and *Ameristeel*, the complainant or petitioner was not a customer alleging future deficiencies in price, quality and availability of service, for the sake of its interest as a customer, but was instead somehow marketplace or competition driven, or was indeed alleging such vague potentialities to be without the Commission's purview. *In re:*

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[2] GTE argued that it was actively involved in the markets of MCI, that it was a competitor of MCI, and, although seeking to be classified as a customer of MCI, in reality was arguing that, as a reseller of MCI's long distance services, its "its ability to compete ... will be detrimentally affected." **2-4. Thus, although GTE framed its petition as one on behalf of its interest as a customer, this claim was predicated on its economic interests and its interests in reselling services as a wholesaler (in other words "because WorldCom is GTE's principal wholesaler in Florida", as GTE reframed its argument in its response to MCI's motion to dismiss), not as one in which it was actually concerned about the deleterious effects of the transfer.*19.

Emergency joint application for approval of assignment of assets and AAV/ALEC Certificate No. 4025 and IXC Certificate No. 2699 from Winstar Wireless, Inc. to Winstar Communications, LLC, 2002 Fla. PUC LEXIS 391; *Ameristeel v. Susan F. Clark*, 691 So.2d 473 (Fla. 1997).

In *Winstar*, Verizon, the petitioner, argued that conditions should be imposed on the transferee in order to prevent "possible future injury resulting from its dealings with the new company." 2002 Fla. PUC LEXIS 391 at *7. Verizon, as an account holder at Winstar, argued that its economic and business relationship with Winstar would be altered by the Commission's action – it did not claim that, as a customer, it was validly entitled to intervene in the proceedings due to service quality concerns. Based on such allegations, the Commission properly found that "Verizon's concerns regarding the future relationship between itself and New Winstar do not establish Verizon's standing." *Id.* at *8.

In *Ameristeel*, petitioner Ameristeel failed to satisfy the *Agrico* test because, according to the court, although it was a customer, its "position as a customer ... remains the same," and "its interests remain(ed) completely unaffected" by the agreement about which it was complaining. *Ameristeel*, 691 So.2d at 478. Ameristeel argued that the economic viability of its Jacksonville plant was threatened and that the proposed agreement between the Jacksonville Electric Authority (JEA) and Florida Power and Light (FPL) transferring Ameristeel's Jacksonville plant to FPL was "one factor contributing to the continued viability" of that plant. *Id.* at 477. The crux of Ameristeel's complaint, therefore, was purely economic: its plant was experiencing economic difficulty, and it sought to intervene to stop the approval of an agreement that would further accelerate the continued economic woes

of the corporation. The Commission dismissed Ameristeel's petition and the Supreme Court approved, based on speculative economic injuries alleged by Ameristeel and recognizing that Ameristeel had not alleged injuries as a customer that would be newly suffered due to the Commission's action on the application. *Id.*

In neither of these cases did the petitioner raise valid, concrete and substantial concerns and allegations regarding the injurious, immediate effects that would result to customers pursuant to the Commission's actions. In the instant case, the Petitioner is a customer petitioning based on its concerns as a customer – it is neither a business associate and creditor of Sprint, as was Verizon in the *Winstar* order, nor is it complaining of purely economic, marketplace effects on its cost structure, as was Ameristeel in the case of that name.

The intent should not be imputed to the Legislature that Section 364.33 is to be meaningless. To disallow a customer such as CWA from alleging very real injurious effects from a transfer of such a certificate based on speculation grounds would defeat the intent of the Legislature, which was to provide a mechanism to ensure such transfers are in the public interest. If a customer is prevented from petitioning to intervene regarding the potential quality of its services, this statute becomes meaningless, and this Commission relegates the statute to irrelevance.

Ultimately, regardless of the appearance of any claims at this point in the proceedings, the Commission must recognize that all claims are speculative until proven in a court of law or at a hearing of facts. To dismiss CWA's petition of real concern regarding the diminution in service quality at this point would be patently premature. Pleadings in

court and petitions under the APA are all speculative until the parties are given a chance to present evidence and prove their cases.

CWA has alleged facts sufficient to meet the standing requirements of *Agrico* and this Commission. Proof is to be had, indeed, but during a formal hearing where evidence can be accumulated, facts may be articulated, and allegations will be proven. A motion to dismiss is not appropriate to address alleged factual deficiencies at this point in the proceedings; it is enough that CWA has established substantial injuries that will immediately impact CWA as a customer of Sprint if the Commission approves the instant transfer.

Finally, CWA would posit to this Commission simply this: if a customer is not entitled to petition to intervene in such a proceeding because its injuries of service degradation and elimination, as alleged, are too speculative, who would be so entitled - what purpose does this Commission's statutory review jurisdiction serve?

4. Petitioner's Allegations of Fact Satisfy Section 120.80(13)(b) By Raising Factual Issues in Direct Conflict With This Commission's Proposed Agency Action

As another impediment to CWA's petition, movant suggests that CWA has failed to specifically identify the "findings and rulings of the Commission's Order with which it disagrees," and has thus failed to identify the issues in dispute.

CWA, in its petition, identified numerous grounds on which its Petition is based and questions of fact that would be brought out in formal hearing. As to which issues in the proposed agency action CWA disagrees with, this conclusion should be apparent based on the alleged facts which warrant reversal of the Commission's Order; specifically challenging the Commission's findings in Order Number PSC-05-0985-PAA-TP, CWA contends that:

(1) The spin-off will result in a financially weaker Sprint-Florida with fewer resources to invest in local telephone infrastructure and operations.

(2) The quality of service provided by Sprint-Florida to its local exchange customers, including CWA, after the spin-off will suffer.

(3) The spin-off will result in LTD Holding Company being saddled with $7.25 billion in debt, which is greatly in excess of the debt attributable to Sprint Corp.'s FON Division before the spin-off.

(4) The spin-off does not represent an equitable allocation of assets and debts to ensure a viable entity. Sprint Nextel intends to disproportionately allocate debt to its regulated businesses, resulting in a stronger capital structure for Sprint Nextel's non-regulated competitive businesses.

These contentions are in direct conflict with the Commissions findings in its proposed agency action; specifically, the following:

(1) That the new entity/entities will continue to have the same financial ability to provide service under the control of LTD Holdings as they have had under Sprint (paragraph 2, page 2, Order No. PSC-05-0985-PAA-TP);

(2) That the establishment of Sprint's wireline local service as an independant corporation will serve the public interest (paragraph 2, page 2, Order No. PSC-05-0985-PAA-TP);

(3) That the transfer of control is in the public interest (paragraph 3, page 2, Order No. PSC-05-0985-PAA-TP).

Therefore, by virtue of the fact that CWA's factual allegations are in direct and

material conflict with the Commission's proposed action, Section 120.80(13)(b) has been satisfied, *de facto*.

5. Petitioner Need Not Satisfy Associational Standing Requirements

Movant incorrectly argues that CWA needs to have associational standing in order to bring a petition as a customer of Sprint to intervene in the transfer proceedings. Associational standing only applies when the association, on behalf of the members, is asserting interests on behalf of and inherently inuring to the members. *See, e.g. International Jai-Alai Players Ass'n v. Florida Pari-Mutuel Com.*, 561 So. 2d 1224 (Fla. 3d DCA 1990); *see, generally Amalgamated Transit Union, Local 1267 v. Benevolent Ass'n. Of Coachmen, Inc.*, 576 So. 2d 379 (Fla. 4th DCA 1991); *see, also Save Our Beaches, Inc. v. Department of Environmental Protection*, 2005 Fla. Div. Adm. Hear. LEXIS 1049.

Associational standing is clearly not appropriate in this case. CWA is a customer of Sprint. Its bills are issued to CWA, not to its members. Its service is had in its own office, in its own name, not in that of its members. Whether CWA has met associational standing requirements is therefore irrelevant.

Additionally, Movant argues that CWA is prohibited from petitioning as a customer this Commission for oversight of the requested transfer. Movant argues that a customer of a utility must be authorized by a constitution or other document in order to act, as a customer, in its own best interests and in the interest of maintaining quality and efficient service from its utility service providers.

This argument is misplaced; CWA is a customer of Sprint at its Longwood office, as

much so as any individual residential subscriber at a residential address, concerned about the deleterious and disadvantageous effects of the Movant's Application. Does the Commission inquire as to individual consumers empowerment when looking to individual customer petitions? Does it inquire as to the ability of one individual to petition this Commission to oversee the potential problems that will inure to the consumer based on that customer's personal empowerment? It certainly does not; similarly, looking to CWA's constitution for specific empowerment to complain about a problematic service degradation is not proper - CWA is a customer, and it is alleging valid, immediate and substantial effects to be caused by this merger on its service from Sprint.

Equally misplaced is Movant's argument that CWA is prohibited from petitioning this Commission because concern about future service quality and availability from CWA's land line carrier at its business office in Longwood is outside CWA's "scope of interest". Again, Movant alleges that CWA has asserted this petition on behalf of its members, ignoring that CWA's petition clearly alleges a degradation in the quality of its services and the potential for breakdown of the efficiency and quality of services occasioned by the effects of the transfer and the overburdening of the spin off with debt. CWA is a customer of this utility, and is petitioning this Commission to review the effects of this transfer on customers such as CWA. Again, Petitioner would ask this Commission, if a customer is not inside its "scope of interest" by acting against such applications and attempting prevent service quality depletion or elimination, who would be?

Finally, Movant alleges that potential job loss by employees of the spinoff is insufficient to confer standing on petitioner, as it is too speculative. Speculation regarding

job loss may, in some cases, be insufficient to confer standing. However, CWA's primary concern in this matter is the quality and nature of service it will receive under the newly formed spinoff; an attendant circumstance, which CWA, as a union of communications workers who stand to suffer at the behest of this merger, would be remiss in not alleging, is the loss of jobs that is a highly likely effect of the transfer to an entity set up from the beginning to fail.

Ultimately, this Commission should recognize that CWA has alleged real, substantial and immediate injuries that it will suffer if the Commission approves the instant transfer. Based on the above facts, its claims are neither illusory nor speculative, because as a customer, it is substantially affected by the deleterious effects that will be ushered in by the approval of Movant's Application.

B. Agrico's Second Prong: Appropriateness of Proceeding

The second inquiry under the *Agrico* test is whether the substantial injury, detailed above, is of a type or nature which the proceeding is designed to protect. *Agrico, supra* at 482.

It is clear that, given the purview of the statute at hand and the intent of the Legislature in enacting and providing said statute, as well as this Commission's previous interpretations of its intended application, this potential immediate injury to customers of a public utility is exactly the type of injury that this proceeding is designed to protect.

Section 364.33 authorizes the Commission to approve a transfer of majority control of a telecommunications provider. *Fla. Stat.* (2005). The Commission has the sole jurisdiction to do so. Although the Movant would have this Commission believe that its

purview is so limited as to confine the Commission to act merely as a conduit through which Movant's Application should be summarily approved, this Commission has recognized in prior proceedings, involving similar factors, that the ultimate goal to be realized of this process is that of "providing service to Florida consumers"; this goal should be reached in consideration of "an analysis of the public's interest in efficient, reliable telecommunications services." *In re: Joint Application of MCI Worldcom, Inc.*, 2000 Fla. PUC LEXIS 253 **13-14. Given the concerns that CWA has raised regarding the immediate and substantial future impact of this transfer, coupled with the legislative intent of the entire Chapter taken as a whole, as manifested in Section 364.01(4), *supra*, this is exactly the procedure that was designed to remedy and determine these concerns. *Fairbanks, Inc. v. Department of Transportation*, 635 So.2d 58 (Fla. 1st DCA 1994).[3]

In looking to the scope of and protections afforded by a Section in a Chapter of the Florida Statutes, the Commission should consider not only the specific Section at issue, but the intent of the legislature as demonstrated by the Chapter as a whole. Narrowing one's scope of review to the specific confines of one provision to preclude standing of a petitioner

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[3] In *Fairbanks*, the petitioner sought a formal hearing under Section 120.57 pursuant to Chapter 337, and thus had to meet the *Agrico* test; in dispute was whether petitioner met the second prong of the test: in that case, whether Section 337.11 was intended to protect petitioner from the injury it alleged. *Id.* at 60. The Department of Transportation argued that petitioner was disallowed under *Agrico* from making its specific claim under the statute, and that since the statute did not specifically address the precise concerns and issues raised by petitioner, petitioner could not be entitled to be heard on that matter. *Id.* The Court, however, stated that "in focusing only upon Section 337.11 ... the Department has too narrowly focused its attention. That the legislature intended that, *in general*, the integrity and the economic efficiency of the public contracting process be ensured *is manifest from several statutory provisions*," and need not be specifically addressed in the text of the singular statute at issue. *Id.* (Emphasis supplied). The court recognized that such statutory schemes, with unitary subjects and goals, "should be construed to advance their purpose and to avoid their being circumvented." *Id.*

is disfavored. *Id.*

As did the Department of Transportation in *Fairbanks*, Movant erroneously argues that this Statute should be construed extremely narrowly – that, despite the intent of the Chapter as a whole, this Commission lacks authority or purview to examine this transfer, and whether it is in fact in the public interest. To adopt this reasoning is to attribute to the Legislature an intent that Section 364.33 be an empty paragraph, rather than an intent that the entire Chapter be read both *in para materia* with other statutory provisions, and with the intent of the legislature as expressed in Section 364.01 foremost in mind. As the Court stressed and held in *Fairbanks*, comprehensive statutes addressed, as Chapter 364 clearly is, at provision of services to the public and in the public interest, should be construed together in order to advance their purpose and stymie avoidance thereof. In this case, the purpose of providing efficient and reliable service to the consumer is foremost and is precisely what Petitioner asks this Commission to examine.

In fact, Movant acknowledges in its own original application what it now seeks to disavow, both demonstratively in moving to prevent CWA's entrance to these proceedings and literally in its Motion: that in making the determination of whether to grant the instant certificate, the scope of the Commission's purview extends to the duty of this Commission to "consider the public's interest in efficient, reliable telecommunications service." Movants Joint Application, Page 6; *compare*, Movant's Motion to Dismiss, Page 7 ("[E]ven if CWA's allegations[4] regarding service quality and possible job losses had merit ... such issues would

[4] Said allegations include that "Sprint-Florida will be (un)able to provide efficient and reliable communications service." Petition for Formal Administrative Hearing, Page 2.

be beyond the scope of this proceeding").

CWA recognizes that Chapter 364 is not a merger review statute. CWA is asking the Commission to review whether the transfer of the certificate is in the public interest and will result in efficient, affordable and reliable communication services to customers such as CWA, not to examine the details of the transfer beyond what those details will reveal as to service quality and availability. As this Commission has recognized in the past, under the statutory scheme of Chapter 364, no purpose but the public interest is to be served by the provisions of the Chapter. *In re: Joint Application of MCI Worldcom, Inc.*, 2000 Fla. PUC LEXIS 253 **13-14.

Movant also argues that the impact of the financial structuring that Sprint is engaging in to spin off its new subsidiary is irrelevant and not under this Commission's purview. Adopting this argument as valid would have this Commission ignore such facts pertinent to future service quality to Florida consumers as the debt lading of the new corporation, the under-capitalization of that corporation, and the inability of that corporation to obtain investment-quality rated bonds that would ensure future service quality and expansion opportunities.

Again, Movant would have this Commission act as a rubber stamp to its Application, and ignore critical, crucial factors that promise to play a large, if not vitally central, part in the future management and business viability of the new spinoff entity, which will then heavily impact consumers and customers such as CWA. The statutes make very clear that this Commission is to address the transfer of such certificates based on the public good. *See, generally* Sections 364.01, 364.335, Fla. Stat. (2005). CWA is a customer of Sprint, who

earnestly desires that the Commission evaluate carefully the ramifications and effects of the instant transfer and the attendant structuring of the spinoff itself to evaluate whether the new entity will continue to provide the level of service at affordable costs that it does now.

Finally, Movant suggests that CWA has "other procedural vehicles" available to it to redress the potential harm to be suffered as a customer under this proposed transfer. Movant, however, seems to misunderstand the nature of the Petition; CWA is not seeking to intervene in these proceedings in order to remedy current service problems - Sprint's customer service department is more than qualified to provide such services. What CWA seeks to address is not a perception of current service deficiencies, but the potentially disastrous impact of the proposed merger and its impact on service quality to customers, like CWA.

This Commission is empowered to grant or deny a transfer under Chapter 364 in the interest of public welfare, considering efficient, reliable and affordable service to Florida consumers. Failing to acknowledge that a customer of a utility who has applied for such a transfer is entitled to petition this Commission under Section 364.33 for a formal hearing on the deleterious effects to the customer of that transfer would be paramount to abrogating the Commission's duty to approve or deny such transfers, and would relegate Section 364.33 to meaninglessness.

IV. Conclusion

Petitioner, as a customer of Sprint, has satisfied the two-prong *Agrico* test for standing, proving that, given the concerns it has raised, in particular the effect on service quality, affordability, efficiency, and availability of Sprint's transfer of its certificate to LTD

Holdings, a minimally capitalized and heavily debt-burdened fledgling entity with little to no long-term viability prospects, Petitioner has a substantial interest in the outcome of the proceedings under Section 120.57, and is entitled to a formal hearing. Petitioner has demonstrated that it is substantially and immediately affected by the Commission's proposed action, and that Section 364.33 is the procedure designed to address Petitioner's concerns.

WHEREFORE, Petitioner, COMMUNICATIONS WORKERS OF AMERICA, respectfully requests that this Commission, viewing Petitioner's allegations as true, and in the light most favorable to Petitioner and disfavorable to Movant, grant Oetitioner's request for a formal administrative hearing, and reject Movant's Motion to Dismiss CWA's Petition.

Respectfully submitted on this 8 day of November, 2005.

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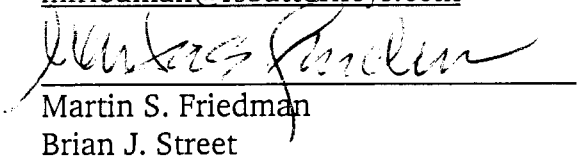

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CERTIFICATE OF SERVICE
DOCKET NO. 050551-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the following parties on this 9 day of November, 2005:

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