State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: December 15, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Scott)
Division of Competitive Markets & Enforcement (Curry, Mailhot, Moses)
Division of Economic Regulation (Maurey)

RE: Docket No. 050551-TP – 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.

AGENDA: 12/20/05 – Regular Agenda – Motion to Dismiss – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050551.RCM.DOC

Case Background

By Order No. PSC-05-0985-PAA-TP (PAA Order), issued October 13, 2005, the Commission approved the transfer of control of Sprint-Florida and Sprint Payphone from Sprint-Nextel to LTD Holding Company. Thereafter, on October 27, 2005, the Communications Workers of America (CWA) filed a Petition for a Formal Administrative Hearing protesting the PAA Order. On November 3, 2005, Sprint Nextel Corporation, LTD Holding Company, Sprint-

Florida, Incorporated, and Sprint Payphone Services, Inc., collectively filed a Motion to Dismiss. On November 9, 2005, CWA filed a Response and Request for Oral Argument.

On December 6, 2005, oral argument was held, followed by discussion among the Commissioners, representatives of Sprint and CWA, and staff. The Commissioners voted to defer their decision on whether to grant Sprint's Motion to Dismiss, and whether to reconsider the PAA Order to the December 20, 2005 Agenda Conference. Below is staff's revised recommendation addressing the concerns raised by the Commissioners at the December 6, 2005 Agenda Conference.

Discussion of Issues

Issue 1: Should the Commission grant Sprint's Motion to Dismiss CWA's Petition for a Formal Administrative Hearing protesting Order No. PSC-05-0985-PAA-TP?

Recommendation: Yes. CWA has failed to adequately allege standing to proceed in this matter. Therefore, staff recommends that the petition be dismissed. (Scott)

Staff Analysis:

I. Standard of Review

Formal adjudicatory proceedings under the Administrative Procedures Act use many of the pleadings, and processes of litigation in circuit court. The motion to dismiss is one such pleading. And although in both civil litigation and formal administrative proceedings the motion to dismiss is basically the same pleading, the context requires a significant conceptual distinction.

In circuit court, a motion to dismiss tests the sufficiency of the complaint as a matter of law.r. Varnes v. Dawkins, 624 So.2d 349, 350 (Fla. 1st DCA 1993). For example, the standard to be applied in disposing of a motion to dismiss in a civil case is whether, the complaint states a cause of action upon which relief may be granted assuming all its allegations are true. Id. In the typical civil complaint the plaintiff alleges that the defendant violated a duty owed the plaintiff under statute, contract or the common law causing harm to the plaintiff. A motion to dismiss would argue that even if the allegations are accepted as true, the plaintiff fails to show duty, violation, cause, harm or damages.

A motion to dismiss in a proceeding before the Florida Public Service Commission is similar in that it tests the sufficiency of a petition. Fla. Admin Code Rule 28-106.204(2) specifically authorizes such motions.

In an administrative petition the petitioner seeks some personal relief from proposed agency action. Fla. Admin. Code Rule 28-106.201(2) specifies the content of a petition. For our purposes, there are three key items required in the petition:

(1) "…an explanation of how the petitioner's substantial interests will be affected by the agency determination: and

(2) "a statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's propose action."

(3) "a statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action."

In sum, the Rule requires the petitioner to state how the proposed agency action hurts it, why this matters, and what the agency should do about it.

Returning now to the motion to dismiss before an agency, it's basic function is therefore to test the the sufficiency of the petition with respect to (1) substantial injury, (2) statutory right and (3) requested relief. In the instant case, Sprint's motion to dismiss focuses on the first item, CWA's "substantial interests" requirement, i.e., CWA's "standing" to demand a hearing.[1]

In determining the sufficiency of the petition, the Commission should confine its consideration to the petition and the grounds asserted in the motion to dismiss. In other words, the Commission should conform the standards set in case law for motions to dismiss in civil cases. See Flye v. Jeffords, 106 So. 2d 229 (Fla. 1st DCA 1958). Thus, the Commission should also construe all material facts and allegations in the light most favorable to CWA in determining whether the petition is sufficient. See Matthews v. Matthews, 122 So. 2d 571 (Fla. 2nd DCA 1960).

II. CWA's Petition

CWA's allegation of standing appears in paragraph 3 of its petition, which reads as follows:

> CWA's substantial interests are affected as a customer of Sprint-Florida. The proposed spin-off of Sprint-Florida will result in a degradation in the quality of local telecommunications service that it currently receives. CWA receives local exchange telecommunications services from Sprint at its offices in Longwood, Florida. In addition, the spin-off will result in a loss of jobs by CWA workers in Florida.

Fla. Admin Code Rule 28-106.201(2) also requires that disputed issues of fact be alleged. CWA indentifies the following issues as being in dispute:

> CWA cites the following as issues of fact in this proceeding that are disputed:
>
> 1) Whether after the spin-off, Sprint-Florida will be able to provide efficient and reliable communications service;
>
> 2) Whether after the spin-off, Sprint-Florida will have the ability to raise capital to invest in networks, employees and systems to continue providing high quality service;
>
> 3) Whether the newly created holding company, LTD Holding Company, will possess the financial capability to assist Sprint-Florida to provide quality service to its customers in Florida;
>
> 4) Whether sufficient assets not owned, but jointly used by Sprint-Florida, will be transferred to Sprint-Florida; and

[1] "Standing to demand a hearing" and "standing to participate in a proceeding as a party" both refer to the right of one whose substantial interess are being affected by the agency action, and these terms are used interchangeably..

5) Whether the level of debt and equity is such that LTD Holding Company will obtain investment grade debt ratings.

CWA concludes, without citing specific authority, that Section 364.33, Florida Statutes, and the Commission's various decisions interpreting that law, require reversal of the Commission's Proposed Agency Action (PAA) Order.

III. Sprint's Motion to Dismiss

Sprint argues that CWA has cited no statutory provisions or issues that would support its standing to pursue a hearing on the PAA Order. Sprint contends, rather, CWA seeks to establish standing by alleging that, as a customer of Sprint, CWA would be harmed by any degradation in service quality that results from the transaction. Sprint alleges that this allegation is not within CWA's general scope of interest and activity and is not appropriate for CWA to assert on behalf of its members. Sprint argues that CWA's assertion that the transfer of control will result in a loss of jobs by CWA workers in Florida, is outside the scope of the Commission's jurisdiction and review under Section 364.33. Sprint states that both of these alleged injuries are entirely speculative and, therefore, insufficient to establish standing under Rule 25-22.029, Florida Administrative Code.

Sprint further argues that CWA has not alleged any facts evidencing that the transfer of control will impair Sprint'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.

Sprint argues that CWA's allegations of prospective service degradation 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 in Order No. PSC-98-0702-FOF-TP (*MCI*)[2] 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 . . . .

[2] 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 at 19 (1998).

Sprint concludes that the purported injuries identified by CWA are purely speculative and are beyond the scope of this proceeding. In addition, the purported injuries are outside the general scope of CWA's interest and activity and are not appropriate for CWA to assert on behalf of its members. Accordingly, Sprint states that, 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. Sprint therefore requests that the Commission dismiss CWA's Petition and declare the PAA Order to be final.

IV. CWA's Response

In its Response, CWA contends that, as a Sprint customer, it is significantly impacted by any actions taken by Sprint that affect the level of service that CWA receives. CWA alleges that the divestiture of Sprint's holdings and assets will result in a financially weaker company with fewer resources to meet the demands of a growing Florida population. Consequently, CWA further alleges that as a result of a weakened Sprint, it will be injured by a degradation in quality of service. CWA also alleges that LTD Holding Company will be over-burdened with debt resulting in its inability to raise sufficient capital to invest in service, infrastructure, and maintenance of existing customers. CWA contends that a disproportionate debt to equity ratio would adversely affect CWA in that it would have to deal with service diminution and higher rates. Furthermore, CWA alleges that the spin off of LTD Holdings Company does not represent an equitable allocation of assets and debts to ensure a viable entity. As such, CWA contends that the proposed certificate transfer will ultimately result in its substantial and immediate injury.

CWA contends that its allegations of injury are not speculative. CWA further contends that it is purely a customer concerned with the affects of the transfer in question and not affiliated in any other way with Sprint. Furthermore, CWA asserts that its complaint is not entirely based on economic grounds. CWA also contends that dismissing a customer's complaint, in this instance, for lack of standing would render Section 364.33, Florida Statutes, meaningless.

Contrary to Sprint's argument in its Motion to Dismiss, CWA contends that it has satisfied Section 120.80(13)(b), Florida Statutes, by raising allegations in direct conflict with the findings in the Commission's PAA Order; i.e. that the new entity will have the same financial abilities to provide service and that the transfer will serve the public interest.

Furthermore, CWA contends that it is irrelevant whether it meets the requirements for associational standing since CWA, and not its members, is the recipient of bills and service provided by Sprint.

In addition to the first prong of the Agrico test, CWA concludes that it meets the second prong because it has alleged the type of injury that this proceeding is designed to protect. As such, CWA asserts that it has demonstrated that it is substantially and immediately affected by the Commission's PAA Order.

V. Standing

In order to establish standing, a petitioner must show: (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, hearing; and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Agrico Chemical Co. V. Department of Regulation, 405 So.2d 478, 482 (Fla. 2nd DCA 1981). The first prong of the test involves the degree of the injury, and the second prong involves the nature of the injury. Id.

A. "Injury in Fact"

The "injury in fact" must be both real and immediate and not speculative or conjectural. There is no case on all fours with the instant dispute. Nevertheless, International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission, 561 So.2d 1224, 1225-26 (Fla. 3rd DCA 1990) is instructive. In that case, the International Jai-Alai Players Association appealed a final order of the Florida Pari-Mutuel Commission denying the Association standing before the Commission to contest an application by jai-alai fronton owners to change their playing dates. The Association alleged, *inter alia*, that the contemplated changes in the jai-alai playing dates would aid the fronton owners in their labor dispute with the Association and thus would either break or prolong the ongoing strike of the Association to the economic detriment of its members. The Court found this alleged injury too remote and speculative.[3]

In the instant case, this Commission also proposes to allow an entity it regulates to make changes that a trade union argues will injure both it and its members. In the Jai-Alai case, the players association argued that the contemplated changes would directly affect their employment relation with the frontons and thus their substantial interests. To the extent, CWA argues that logistical changes made as a result of Sprint's structural changes will directly affect the employment relation of the CWA members with Sprint, this is even more remote. To the extent, CWA is arguing degradation of service as an immediate and substantial injury, International Jai-Alai is inapplicable. But see, Village Park Mobile Home Association, Inc. v. State, Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. denied, 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events are too remote to warrant inclusion in the administrative review process).

1) Sufficient Immediacy

The case law provides no explanation of the term "sufficient immediacy" that can be used as litmus test to determine that an alleged harm is too remote. As defined in the American Heritage Dictionary, "sufficient" means "as much as needed," which is insufficient to clarify the legal standard.

The definition of "immediacy" is , however, more useful. "Immediacy" is defined as the condition of being immediate. "Immediate" enjoys several definitions, but the first seems most

[3] The Court also found that this injury did not satisfy the second test of Agrico, i.e., that protection of the job interests of the players was not within the zone of interest created by the statute.

applicable and useful: "Acting or occurring without interposition of another agency or object; direct: *an immediate result."*

This definition allows us to identify precisely why CWA's alleged injury is not an injury in fact with sufficient immediacy within the meaning of the Section 120.57(2). Specifically, the Commission's proposed agency action directly and immediately affects Sprint. The consequences of the changes contemplated by Sprint may or may not have an observable effect on CWA or its members. Nevertheless, assuming for the sake of analysis that there is some observable effects, it will not be caused directly by this Commission's action. Indeed , it's not even clear that the alleged effects would occur directly because of Sprint's reorganization, but rather an effect that occurred through a causal change of mediating mechanism. Irrespective of that, whatever the alleged effects the reorganization might have on CWA and its members, it cannot be gainsaid that there will be the interposition of mechanisms and objects before those alleged affects materialize.

This is not to deny that these effects, if they occur, can trace a causal chain back to the approval of the Sprint's restructuring. Rather it is to discern that the causal chain has too many links in it to view the downstream effects as "immediate."

CWA may correctly argue that "but for" this Commission's approval these feared effects would never have occurred. That is also speculative. Yet assuming arguendo that CWA is correct in this assertion, the fact remains that neither the legislature nor the Courts have established a "but for" test to determine standing despite a spate of amendments to the APA. [4] Rather, they have stayed with the two–prong test for standing established in Agrico, and it is clear that CWA cannot satisfy the first prong.

2) Standard for Intervention is Certain

Before proceeding to determine whether CWA's speculative injury satisfies the second prong of the Agrico test, it's worth noting a basic serious allegation made by CWA to justify it's standing. CWAhas alleged that if the Commission approves Sprint's transfer of control in Florida, Sprint will be unable to meet its financial obligations resulting in a possible degradation of service quality. From a regulatory perspective, CWA has alleged perhaps the ultimate harm.

There is uncertainty about the future, and it is difficult to rule out unhappy scenarios whether Sprint makes the transfer or not. This uncertainy is one reason why CWA's allegations of injury are speculative. But there is one aspect of this case where there is certainty, and that is the Commission's obligation to apply the rule of law in determining whether a putative party is entitled to a hearing. And in this regard, it is clear that no matter how serious the claim of injury, it must be of "sufficient immediacy" to entitle the person to a hearing. In other words, CWA cannot lower the standard for intervention by raising the ante.

[4] The late Professor Pat Dore was a critic of the Agrico approach to establishing standing, arguing that Florida Courts had imported federal standing tests into the Florida APA thereby limiting access to administrative proceedings. Dore, *Access to Florida Administrative Proceedings,* 13 Fla. St. U.L.Rev. 965, 1086 (1986). The Legislature was not persuaded by her commentary.

B. "Zone of Interest" Test

As previously stated, satisfying the second prong of the test hinges on whether the alleged injury is of the type the proceeding is designed to protect. Section 364.33, Florida Statutes, authorizes the Commission to give prior approval to transfers of control, among other transactions. The Commission is not specifically authorized to review an ILEC'scapital structure, *inter alia*, prior to its approval of a transfer of control. There are no other standards set forth in this particular statutory provision, or elsewhere, for the Commission to follow in making its decision to approve a transfer of control. However, staff believes that a public interest standard may be applied to the Commission's decisions under Section 364.33, Florida Statutes. Section 364.01, Florida Statutes, appears to provide the Commission some guidance in the approval process, in that the Commission can reject an application for transfer of control if, after reviewing the relevant information, it finds that the transaction would not be in the public interest.

Proceedings conducted pursuant to Section 364.33, Florida Statutes, are simply not designed to provide in-depth analysis of potential long term financial possibilities. CWA's allegations regarding Sprint's potential inability to raise future capital, as well as other future financial impacts, are not the types of concerns to be addressed through the transfer of control process, nor are the allegations ripe for consideration. If Sprint fails to fulfill any payment obligations that may arise in the course of doing business in Florida, or fails to meet service quality standards, such issues may be addressed through a complaint proceeding. Staff does not believe that CWA has sufficiently alleged that Section 364.33, Florida Statutes, is designed to protect the potential harms it is alleging in its Petition.

C. Conclusion

In conclusion, staff recommends that the Commission find that CWA has failed to adequately allege standing to proceed to an evidentiary hearing. Therefore, the Commission should grant Sprint's Motion to Dismiss.

Issue 2: Should the Commission reconsider Order No. PSC-05-0985-PAA-TP? **(Mailhot, Maurey, Moses, Scott)**

Recommendation: No. Staff recommends that the Commission adopt Order No. PSC-05-0985-PAA-TP as a final order.

Staff Analysis:

I. Jurisdiction

A. Section 364.33, Florida Statutes

The Commission has authority under Section 364.33, Florida Statutes, to approve an application for transfer of control. Staff notes that this provision does not provide specific standards which the Commission may follow in making its decision to approve a transfer of control. However, staff believes that Section 364.01, Florida Statutes, implies a public interest standard that the Commission may follow when deciding whether to approve or deny transfers of control, among other transactions.

The legislative intent in Section 364.01, Florida Statutes, is clear: the Commission is to exercise its jurisdiction in order to protect "the public health, safety, and welfare" as it relates to basic local telecommunications services. Based on the clear intent of the Florida Legislature, the Commission should base its decisions on whether to grant applications for transfer of control if it satisfies the public interest. There is little guidance on what constitutes the "public interest." It appears that in most cases that what is in the public interest is left up to the interpretation of the particular administrative body charged with upholding that interest.

II. Staff's Findings

A. Financial Viability

In the various states that Sprint Nextel Corporation (Sprint Nextel) has applied for approval of the transfer of control of its local wireline division (LTD Holding Company or LTD), certain parties in these proceedings have raised a variety of concerns that they believe support their position that the transaction as it is currently structured is detrimental to the public interest. One of the main arguments against approval of the proposed transaction is that the former Sprint operating companies and their new parent, LTD, will be weaker, more financially constrained entities after their spin-off from Sprint Nextel than before the separation and as a result the customers of these entities will experience a degradation in service.

The parties allege that the asset and debt allocation to LTD by Sprint Nextel is not fair and equitable. As a result, they contend that LTD will have a capital structure that has significantly more debt leverage compared to the pre-transaction LTD capital structure. Moreover, the parties argue that LTD will be constrained by certain terms and conditions of this new bank debt and bond debt that will limit its financial flexibility. In addition to the $7.25 billion of debt Sprint Nextel has announced it will allocate to LTD, it has also been announced

that LTD will pay an annual dividend of $300 million a year. As the deal is currently structured, it is the position of these parties that the significant increase in debt leverage, with the accompanying restrictions, and the planned dividend payment will severely constrain the cash resources that LTD will have available to it to invest in its business and new networks and services.

Sprint Nextel contends that the operating companies will be fiscally unaffected by the change in their parent company. Sprint Nextel states that the anticipated capital structure for LTD will not limit its financial flexibility nor will the anticipated capital structure prevent the company from having numerous financing alternatives for accessing capital in the future. Based on the results of its consultant's analysis of the transaction, it is Sprint Nextel's contention that LTD will have adequate capital and that neither the level of debt nor the anticipated dividend policy should limit the company's ability to invest in its network and employees at the levels required to maintain its current or an improved level of quality of service. For these reasons, it is Sprint Nextel's position that the operating companies and LTD will continue to possess the financial capability to generate sufficient cash flow to pay expenses, service debt, and pay a dividend to its shareholders following the transfer of control.

Staff has reviewed numerous documents related to Sprint Nextel's proposed spin-off of its local wireline division. As the transaction is currently structured, the accounting for the spin-off will occur at the LTD parent level. At this time there are no plans to push any of the debt down to the operating company level. This supports Sprint Nextel's contention that the transaction will have only a minimal impact on the financial statements of Sprint – Florida, Inc. (Sprint – FL) and the other operating companies. In addition, the cash flow projections prepared by Sprint Nextel and its consultant appear to support Sprint Nextel's position that LTD will generate sufficient cash flow to meet its operating needs and maintain quality service.

The rating agency and investment analyst reports identify certain concerns. The local wireline service is a declining business while the wireless service and Internet are the growing parts of the telecommunications industry. If LTD's access lines decline at an accelerating rate due to increased competition from cable, VOIP, and wireless substitution, its revenues and cash flow would also decline and erode key credit measures. As a stand-alone entity, LTD will not benefit from the revenue growth of the diverse businesses of the former consolidated company. Finally, while Sprint Nextel has chosen to focus on a market value approach to valuing LTD, it is readily apparent that on a book value basis LTD will have significantly greater debt leverage than either Sprint Corporation before the merger or Sprint Nextel after the separation. It is important to note, however, that Sprint Nextel does not believe that a book value comparison is relevant in this case.

Staff notes that Standard and Poor's (S&P) currently assigns a corporate credit rating of triple B minus (BBB-) to Sprint – FL. Moreover, S&P has placed its ratings on the debt of the local wireline division of Sprint Nextel on CreditWatch with negative implications. The local division is comprised of Sprint – Florida, Inc., Centel Corporation, Centel Capital Corporation, Central Telephone Company, and Carolina Telephone & Telegraph Company. The implications were revised to "negative" from "developing" reflecting the potential that the local wireline

company could be rated below investment grade after its spin-off from Sprint Nextel. Specifically, S&P stated:

> Despite the relatively moderate proposed capital structure, strong EBITDA margins, and good discretionary cash flow characteristics, we are concerned about industry-wide business risk from rising cable telephony and wireless substitution, which could eventually weaken the financial profile. (Research Update: Sprint Nextel Corp. Local Division's Ratings Remain on CreditWatch Negative, November 10, 2005)

S&P states that it expects to determine the final ratings near the time of the spin-off but intends to provide further clarity on the probable outcome as appropriate in the months preceding the spin-off. While it appears unlikely that S&P will assign an investment grade rating to LTD, there are indications that other rating agencies may assign LTD an investment grade rating under certain scenarios. Because of the uncertainties regarding which scenario will actually transpire, neither staff nor Sprint Nextel can give the Commission any assurance that LTD will receive an investment grade rating following the spin-off.

The FCC approved the Sprint Nextel merger with the commitment that the new local wireline company that is being spun off will receive an equitable debt and asset allocation at the spin-off so that it will be a financially secure entity.

In addition to the FCC, the transfer of control of the local wireline division has been approved by 5 of the 14 state commissions required to review the transaction as of the time of the filing of this recommendation. It is anticipated that the remaining state commissions will rule on this matter some time during the first quarter of 2006. The spin-off of the local wireline company is expected to be completed in the second quarter of 2006.

Staff has reviewed the allocation of the assets and debt in the spin-off of LTD and believe the allocation is reasonable. However, staff cannot state with certainty if the resulting financial measures for LTD will be sufficient to support an investment grade credit rating. To provide the Commission with a means of assessing the financial viability of the new entity following the spin-off, Sprint Nextel has volunteered to provide certain documents to the Commission. First, LTD will file with the Commission all credit rating agency reports concerning LTD Holding Company that are issued while Sprint – FL continues in its role as the carrier of last resort. Second, LTD commits that, at the time of separation, it will have the financial measures of other local exchange companies that have debt that is rated investment grade. In the event that two out of the three major credit rating agencies do not assign an investment grade corporate credit rating to LTD at the time of the spin-off, then LTD will file with the Commission a report that demonstrates that its primary financial measures (such as EBITDA interest coverage and debt-to-EBITDA) presented to the major credit rating agencies fall within investment grade ranges, and that the non-investment grade ratings are the result of factors other than the financial measures of LTD.

B. Service Quality

The Commission expressed concern about the possible deterioration of Sprint's service quality due to Sprint's financial situation when the transfer of control is completed. Sprint is currently operating under a Service Guarantee Program (SGP) whereby it has obtained waivers of the service rules, but credits customers when the service rule objective is missed. Using the rule requirements as a benchmark for comparing Sprint's service prior to the implementation of the SGP and afterward, it appears that the service quality has declined.

Staff initiated discussions with Sprint and expressed its concerns with the decline in service quality. As a result, Docket Number 050918-TL has been established to provide a supplemental commitment by Sprint to improve installation and repair intervals. Sprint has submitted a commitment letter which will be brought before the Commission for disposition in the near future.

The Commission continues to have the same authority under Chapter 364, Florida Statutes, to address service quality issues after the transfer of control is completed. Staff also believes that Sprint will have the financial ability to improve and maintain its service quality.

C. Conclusion

Staff believes that the spin-off will result in no change to Sprint-Florida's balance sheet and have minimal impact on its income statement. Staff further believes that the allocation of assets and liabilities appear reasonable. In addition, Sprint should have the financial ability to improve its service quality. Therefore, staff believes that the spin-off would not be contrary to the public interest. As such, the PAA Order issued by the Commission should be adopted as a final order.

D. Procedural Outcomes

1) Appove the Transfer. If the Commission agrees with staff's findings and assessment of Sprint's financial viability, in that the spin-off will be in the public interest, then the Commission may adopt original PAA Order as its final and effective with the modifications as set out in staff's analysis.

2) Reject the Transfer. If the Commission does not agree with staff's assessment, *i.e.* that the spin-off is not in the public interest, then the Commission can vacate its original PAA Order, and decide to reject the transfer. Under this approach, a new PAA Order would be issued denying Sprint's request for transfer of control.

3) Set the Matter for Hearing. If the Commission is not satisfied with the information as presented, it may decide to vacate the original PAA Order and set this matter for evidentiary hearing on its own motion.

Issue 3: Should this Docket be closed?

Recommendation: Yes, if the Commission approves staff's recommendations in Issues 1 and 2, Order No. PSC-05-0985-PAA-TP should be adopted as a final order. Therefore, this docket should be closed as there are no further proceedings. **(Scott)**

Staff Analysis: If the Commission approves staff's recommendations in Issues 1 and 2, Order No. PSC-05-0985-PAA-TP should be adopted as a final order. Therefore, this docket should be closed as there are no further proceedings. If, however, the Commission denies staff's recommendations in Issues 1 and 2, staff recommends that the Commission either vacate Order No. PSC-05-0985-PAA-TP, and set this matter for an administrative hearing, or vacate Order No. PSC-05-0985-PAA-TP and issue another Proposed Agency Action Order setting forth the Commission's decision.