

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Determination of the cost of basic local
telecommunications service, pursuant to Section 364.025,
Florida Statutes.

DOCKET NO. 980696-TP

COPY

BEFORE:	CHAIRMAN JOE GARCIA COMMISSIONER J. TERRY DEASON COMMISSIONER SUSAN F. CLARK COMMISSIONER JULIA A. JOHNSON COMMISSIONER E. LEON JACOBS
PROCEEDING:	AGENDA CONFERENCE
ITEM NUMBER:	26
DATE:	March 30, 1999
PLACE:	4075 Esplanade Way, Room 148 Tallahassee, Florida

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STAFF RECOMMENDATION

Issue 1: Should the Commission grant GTE Florida Incorporated's Motion to Strike the Joint Response of AT&T, e.spire, FCCA, FCTA, MCI, and WorldCom to GTE Florida Incorporated's Response in Support of Sprint-Florida's Motion for Reconsideration?

Recommendation: Yes. The Commission should grant GTE Florida Incorporated's Motion to Strike the Joint Response of AT&T, e.spire, FCCA, FCTA, MCI, and WorldCom to GTE Florida Incorporated's Response in Support of Sprint-Florida's Motion for Reconsideration.

Issue 2: Should Sprint-Florida Incorporated's Request for Oral Argument on its Motion for Reconsideration of Order No. PSC-99-0068-PCO-TP be granted?

Recommendation: No. Sprint's Request for Oral Argument should be denied.

Issue 3: Should Sprint-Florida Incorporated's's Motion for Reconsideration of Order No. PSC-99-0068-FOF-TP be granted?

Recommendation: Yes. Staff recommends that Sprint's Petition for Reconsideration be granted so that the \$4,350 loop cost investment cap should only be applied in modeling the cost of service in BellSouth's territory.

Issue 4: Should GTEFL's Petition for Reconsideration of Order No. PSC-99-0068-FOF-TP be granted?

Recommendation: No. The Commission should deny GTEFL's Petition for Reconsideration of Order No. PSC-99-0068-FOF-TP in its entirety.

Issue 5: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon issuance of the Commission's order on this recommendation.

P R O C E E D I N G S

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CHAIRMAN GARCIA: Issue Number 26.

COMMISSION STAFF: Commissioners, Item 26 is staff's recommendation on Sprint and GTE's separate motions for reconsideration of Commission Order No. PSC-99-0068-FOF-TI and other related motions to those motions for reconsideration. In that order, you selected the BCPM 3.1 cost/proxy model to determine the cost of basic local telecommunications service for the purpose of assisting the legislature in establishing a permanent universal service mechanism.

In staff's recommendation, Issue 1 addresses a motion filed by GTE to strike a response filed by the joint respondents, which are a number of CLECs for all practical purposes.

Issue 2 addresses Sprint's request for oral argument on its motion for reconsideration.

Issue 3 addresses Sprint's actual motion for reconsideration. And that motion for reconsideration that Sprint filed seeks reconsideration of the loop cost investment cap value that is utilized by the model in its computation of the cost of service.

Issue 4 discusses GTE's motions for reconsideration. And in its motion GTE requests reconsideration of other Commission decisions that

1 relate to costs of capital and depreciation input
2 values with regard to those specific ones that were
3 selected for GTE and approved by the Commission.

4 And Issue 5 was whether the docket should be
5 closed.

6 In sum, staff recommends that you grant GTE's
7 motion to strike, that you deny Sprint's request for
8 oral argument, that you grant Sprint's motion for
9 reconsideration, and that you deny Sprint's motion for
10 reconsideration -- excuse me, GTE's motion for
11 reconsideration.

12 Commissioners, Chairman Garcia, we can proceed
13 issue-by-issue or at your pleasure.

14 COMMISSIONER CLARK: With respect to Issue 3,
15 then the cap would be 10,000, is that what happens,
16 the default cap comes into play?

17 COMMISSION STAFF: Yes. It would just be for --

18 COMMISSIONER CLARK: GTE and Sprint?

19 COMMISSION STAFF: Just for GTE and Sprint,
20 because the only evidence that we had on the record
21 was with regard to BellSouth. Staff felt there was a
22 deficiency in the record as to the other carriers, and
23 therefore the default appeared to be more appropriate.

24 COMMISSIONER DEASON: I move staff on Issue 1.

25 COMMISSIONER CLARK: Second.

1 CHAIRMAN GARCIA: Everyone in favor signify by
2 saying aye.

3 COMMISSIONER CLARK: Aye.

4 COMMISSIONER DEASON: Aye.

5 COMMISSIONER JOHNSON: Aye.

6 CHAIRMAN GARCIA: Aye.

7 COMMISSIONER JACOBS: One brief question. What
8 happens if somebody else shows up, another provider
9 shows up, do they have to argue for -- maybe you
10 can't.

11 COMMISSION STAFF: If we have another incumbent
12 LEC --

13 COMMISSIONER JACOBS: Yes. Well, I guess there
14 is not another.

15 COMMISSION STAFF: This is just for the three
16 major incumbent LECs that had to use the model.

17 COMMISSIONER JACOBS: Okay.

18 COMMISSION STAFF: And we determined those are
19 the three LECs that had to use the model.

20 COMMISSIONER CLARK: I move staff on Issue -- I
21 move staff on the rest of the issues.

22 CHAIRMAN GARCIA: Do we have a second?

23 COMMISSIONER DEASON: I have some questions.
24 First of all, I guess we need to -- I don't have a
25 problem with going ahead and moving staff on Issue 2,

1 but I have questions on Issue 3. However you want to
2 handle it. I can ask the questions now or if you want
3 to address Issue 2, it makes no difference to me.

4 CHAIRMAN GARCIA: If you have questions on Issue
5 2 --

6 COMMISSIONER DEASON: No, I have no questions on
7 Issue 2. It's just a question of whether we are going
8 to have oral argument or not is Issue 2. Let's just
9 wait on that. Maybe if I ask some questions on Issue
10 3, it may lead to oral argument, but I don't know.

11 The question I have on Issue 3, and it kind of
12 relates back to Issue 2, is when it gets right down to
13 it, staff is saying there is not evidence in the
14 record that demonstrates that the information that
15 BellSouth provided should be applied to Sprint and to
16 GTE. But you also characterize that -- and this is in
17 Issue 2 -- and I quote, you say, "Sprint's failure to
18 put on its case on the loop investment cap is
19 insufficient grounds to grant its request for oral
20 argument." But then you say that, well, we should
21 basically grant their request, though, in the
22 substantive issues and impose a \$10,000 cap, which is
23 the default.

24 It seems to me everyone has got an obligation to
25 put their case on. And to me if there is no evidence

1 on it, there is no -- if there is no evidence, there
2 is nothing that says that the default is any more
3 persuasive or appropriate than just applying what
4 BellSouth applies to their particular situation. And
5 I guess to me that's what it all boils down to. Is
6 there evidence or is there not evidence in the record.

7 And I would address you to Page 9 of your
8 recommendation, in the middle of the top paragraph,
9 top partial paragraph. It states, "Sprint contends
10 that the \$4,350 cap is not economically achievable in
11 this territory." Well, did they address that or not?

12 And then in the next paragraph, middle-ways, it
13 states, "Sprint's subsequent compliance value
14 indicated 8,987 lines above the \$10,000 cap value."
15 Did they provide that information in the record, or is
16 this just something you are giving us that they have
17 provided after the record has been closed.

18 So that is the essence of my question. What is
19 in the record and why is it -- if they didn't prove
20 their case to have oral argument, why is it now that
21 we are giving them what they are requesting on the
22 substantive issues?

23 COMMISSION STAFF: Several points. First, the
24 concern with not granting them oral argument was that
25 it appeared based on the filing and the requests for

1 oral argument, that they intended to argue facts that
2 were not in the record. That was a concern. And that
3 appeared to be a great thrust of their request for
4 oral argument. Because they believed that the issue
5 was not in dispute in this proceeding, and therefore
6 now suddenly they felt like they should have an
7 opportunity to argue it, when they have already had
8 that opportunity through the hearing process. In
9 fact, we had BellSouth's witness testify on this
10 issue. And it was, in fact, Commissioner, all of the
11 input values and constraints of the model were at
12 issue.

13 Secondly, as far as the question --

14 COMMISSIONER DEASON: But you're saying that all
15 this was at issue and that Sprint had the obligation
16 that if they wanted the default they needed to
17 substantiate the default. And if they wanted
18 something else, they should have substantiated
19 something else.

20 COMMISSION STAFF: Right.

21 COMMISSIONER DEASON: Okay.

22 COMMISSION STAFF: Secondly, with regard to
23 Sprint and GTE, there was no specific witness that
24 testified to the investment cap value for those two
25 companies. The only one that testified was a

1 BellSouth witness and they talked about their own
2 internal study that they did.

3 The default value we felt was more appropriate in
4 this instance because there was simply no evidence.
5 We selected a number of areas within the context of
6 approving this model, default values where there was
7 essentially no evidence.

8 COMMISSIONER DEASON: It seems to me, though,
9 that time and time again, especially when we were
10 going through the vote on this matter and reading
11 staff's recommendation that it was, well, Company X
12 provided information, and we think that that is
13 applicable statewide, or it's a good assumption to
14 make that that would be applicable statewide, so we
15 are going to apply it to other companies. This is not
16 the only issue where something like this was done. Am
17 I correct on that?

18 COMMISSION STAFF: That is correct.

19 COMMISSIONER CLARK: I took the staff's
20 recommendation to be in here that BellSouth said based
21 on their -- on what they had found, the model was okay
22 with respect to a lot of things, but with this
23 particular one a different value, a lower value for
24 the cap was appropriate. And that we were following
25 the model, it wasn't demonstrated that that lower cap

1 for BellSouth should also be applicable to the others.
2 Therefore, you use the default value in the model you
3 have subsequently approved. And that's how I took the
4 staff's recommendation.

5 COMMISSIONER DEASON: Is it this Commission's
6 position that -- that's why I asked the first question
7 about, does the company have a burden to prove
8 everything, or is it only prove things that they are
9 not requesting default, and if they just request
10 default, it's a non-issue, no proof, no evidence, and
11 we are going to give them the default? What is it?

12 COMMISSIONER CLARK: I didn't take it to be that
13 if there is no issue, no evidence, then you
14 automatically use the default. Because there could
15 have been other evidence that suggests it is
16 appropriate not to use the default. But in this case
17 the evidence was not such that the default values for
18 BellSouth would also appropriately apply to these
19 other companies. Therefore, you would use the default
20 values.

21 COMMISSIONER DEASON: No, we had evidence from a
22 BellSouth witness that said the default is not
23 applicable to their company. That the cap of 4,350 is
24 more appropriate given, I guess, their service
25 territory, their economics. And what I thought we

1 decided was, well, we don't have any evidence from
2 Sprint and GTE, the question is do we use the default
3 or do we -- there is some evidence in the record that
4 BellSouth, which is the majority of this state,
5 indicates that 4,350 is a good number. Which number
6 do we use? And now we are wanting to change that.
7 And I guess my question is -- if we were back in the
8 original decision-making mode, I guess we could
9 consider all of this. But where we are now is
10 reconsideration, and does this meet the
11 reconsideration standard? And what was our decision?
12 What was our original decision? Was it that the
13 BellSouth information is a good surrogate? It's
14 better information than the default and we are going
15 to apply it to all the companies. Was that the
16 decision or was the decision -- or what was the
17 decision?

18 Or if there is good reliable evidence in the
19 record that was put on by Sprint that shows that the
20 default is the correct number for their company, their
21 territory, and their operations and the economics
22 which they confront, and that we just ignored it, and
23 it was the wrong thing to do, I guess that would meet
24 the reconsideration standard. So what standard are we
25 using?

1 COMMISSION STAFF: I guess we are putting it
2 simply in staff's opinion that there was not
3 sufficient reasonable information to support applying
4 the 4,350 value to the other two companies.

5 COMMISSIONER DEASON: All right. Is there good
6 information that shows that 10,000 is the appropriate
7 number? You just said that Sprint didn't put on a
8 case, that they didn't put on any evidence --

9 (Simultaneous conversation.)

10 COMMISSION STAFF: Well, I think that based on
11 what is in the record -- we have a model that the
12 industry has worked for years on to develop. There is
13 a manual that is hundreds of pages in which they
14 worked at developing these default values, that is all
15 in the record. And I believe that that is the more
16 reasonable approach in this case. I think that is
17 staff's opinion. I will let Mr. Dowds expound upon
18 that.

19 MR. DOWDS: If I may, is the glass half full or
20 half empty? There is no explicit testimony from
21 Sprint nor GTE as to their use of the default -- it
22 comes with a model for the investment cap. They did
23 no -- they presumably did no independent verification
24 about that that would lead them to challenge the
25 propriety of it. We don't know one way or the other.

1 We only have two pieces of information on the issue at
2 all. On the one hand -- first, during her deposition,
3 BellSouth Witness Caldwell was asked a line of
4 questions that, in essence said, oh, by the way, the
5 default value for the model is 10,000 and you used
6 4,350; could you explain. And she essentially said,
7 oh, we talked to -- somebody in BellSouth did a study
8 of wireless technology and we thought the 4,350 was a
9 more reasonable value for us. The inference being for
10 us. She didn't claim that it was appropriate for
11 anybody else. She didn't claim anything more than
12 that. It was literally one sentence.

13 The only other sentence that is even on mark is
14 -- I believe it was also during the deposition of the
15 AT&T Witness Wells, he acknowledged as I recall that
16 the \$10,000 investment cap had been used in numerous
17 other proceedings around the country. That is the
18 extent of the record. And in all candor, I think
19 reasonable minds can go either way. But based on
20 reconsideration --

21 COMMISSIONER DEASON: Reasonable minds can go
22 either way, but does this meet the reconsideration
23 standard that we made an error of fact or law?

24 COMMISSIONER CLARK: I took it that what staff
25 was saying is we overlooked the fact that the

1 testimony given by BellSouth was specific to BellSouth
2 as opposed to being one that was applicable to all of
3 Florida. And there is no testimony that would form
4 the basis for you to say it is appropriate to use it
5 for all rather than the default value.

6 COMMISSION STAFF: That's correct.

7 COMMISSION STAFF: Yes.

8 COMMISSIONER DEASON: And there were numerous
9 other issues where we did the exact same thing.

10 COMMISSION STAFF: Certainly.

11 COMMISSIONER DEASON: We said we think even
12 though this is information for GTE, it is better
13 information --- it's better information for the State
14 of Florida and for BellSouth than to use the default
15 for BellSouth. We did that on numerous occasions.

16 COMMISSIONER CLARK: But I had understood that
17 the basis for those were some discussion as to why it
18 is appropriate to use them, not it was just, well, we
19 are deciding to use this discreet company's because we
20 like the number better. There was a rationale as to
21 why we thought it was appropriate to use it for all of
22 Florida.

23 COMMISSION STAFF: Yes. We did do analysis to
24 see if they were reasonable, and that is true for all
25 of the default values that we recommend to the

1 Commission.

2 COMMISSIONER JACOBS: That analysis is missing
3 here as to the 4,350 for everybody outside of Bell,
4 and that's what I understood the analysis to say.

5 COMMISSION STAFF: That's correct.

6 COMMISSIONER JACOBS: And that is rationale for
7 reconsideration, the fact that there was an apparent
8 support for that but, in fact, there is not.

9 COMMISSION STAFF: Right. And staff had
10 originally recommended the default value and the
11 Commission modified that to apply the 4,350 value.
12 And now we are suggesting that the 4,350 value would
13 be appropriate for BellSouth, but not for Sprint and
14 GTE.

15 COMMISSIONER DEASON: Okay. And then, I guess,
16 the last question I have is on Page 10, the middle of
17 that paragraph. You are indicating there is no record
18 evidence to support the 4,350 cap, that it is
19 appropriate for GTE and for Sprint. Is there any
20 evidence that it is not appropriate?

21 MR. DOWDS: No.

22 COMMISSIONER DEASON: So, here again, it's a
23 toss-up.

24 MR. DOWDS: Other than the --

25 COMMISSIONER DEASON: Other than the default.

1 MR. DOWDS: The only other piece of testimony at
2 all on the issue was a remark by AT&T Witness Wells
3 that he thought that 10,000 was reasonable. That is
4 the extent of the record. It is solely a matter of
5 relative weight one wants to put on those two pieces
6 of information. It's not a black and white issue.

7 CHAIRMAN GARCIA: We had a motion, and I believe
8 Commissioner Jacobs seconded that. Julia, you made
9 the motion, right?

10 COMMISSIONER JOHNSON: (Inaudible. Microphone
11 not on.)

12 COMMISSIONER CLARK: I move staff on 2 through 5.

13 CHAIRMAN GARCIA: Issue 2 through 5.

14 COMMISSIONER JACOBS: One more brief question.
15 The impact of allowing the higher cap with GTE and
16 Sprint is --

17 COMMISSION STAFF: Mr. Dowds will expound upon
18 that one for you.

19 MR. DOWDS: You want to know the numbers?

20 COMMISSIONER JACOBS: Not necessarily. A
21 conceptual overview will be good.

22 MR. DOWDS: Basically, the higher the cap -- let
23 me get my directions right here. The lower the cap,
24 the lower the average cost per monthly -- average
25 monthly cost per loop will be. For example, with a

1 cap at 4,350, the number for Sprint Centel holding
2 everything else constant in the compliance filing that
3 we conducted, yields a study area number of 28.81. If
4 that cap is relaxed and allowed to go to \$10,000, the
5 number goes to 31.66. Not surprisingly, it doesn't
6 have a whole lot of impact on GTE, because GTE is not
7 a high cost company. Although it does increase a
8 little bit.

9 COMMISSIONER DEASON: And if staff's
10 recommendation is approved then are we going to file
11 an amended report?

12 MR. DOWDS: I honestly hadn't thought about that.

13 COMMISSIONER DEASON: What is the whole use of
14 this exercise then if we are not going to amend the
15 report? Is this predicate for some future cost of
16 service proceeding, then?

17 COMMISSIONER CLARK: Well, we had to issue an
18 order, right?

19 MR. DOWDS: Yes.

20 COMMISSIONER CLARK: Because we had a hearing,
21 and I assume this is --

22 COMMISSION STAFF: We would forward this order to
23 the legislature.

24 COMMISSIONER JACOBS: That is a good point,
25 though. To what extent, though, is that binding on

1 future proceedings? Are those numbers binding on
2 future proceedings?

3 COMMISSION STAFF: I think it would be our
4 opinion right now that we just had a very clear
5 legislative mandate to provide this study, and how the
6 legislature uses it is at their pleasure at this
7 point.

8 COMMISSIONER JACOBS: Right, we have done that.
9 We now have a proceeding coming up where we have to
10 determine costs for a legitimate proceeding here. Are
11 those numbers binding that we sent to the legislature
12 on us?

13 COMMISSION STAFF: I don't think they are binding
14 in any other proceeding right now. I can't see how
15 they would be.

16 COMMISSIONER JACOBS: So then they come up when
17 they prove up in the next proceeding that where we
18 will make those determinations for purposes of our
19 policy here, then they would have the opportunity and
20 probably would prove up those numbers again.

21 COMMISSION STAFF: Sure. I mean, it's
22 speculation, but I think cost figures would change.
23 So I don't think this would apply if we have a
24 proceeding in the next two years.

25 COMMISSIONER DEASON: Well, I guess my question

1 was kind of facetious. It was like, this is not
2 predicate, which it probably isn't, because costs are
3 going to change in the future, and we will have
4 another whole cost proceeding. Why did we even go
5 through this exercise of having this reconsideration?
6 It's just a report that we file with the legislature.
7 If it is that important that we went through all of
8 this and we have had all of this discussion and used
9 up so much staff time, it looks like to me like we
10 need to file an amended report, or else just say the
11 report has been filed, the changes are not that
12 significant, we -- if you agree with staff's
13 recommendation, we probably would have done it
14 differently, but it really doesn't -- when you get
15 down to it, it doesn't make that much difference. And
16 the report is good enough for the legislature to use
17 for whatever purpose they are going to use it. Or if
18 it is important, we need to file an amended report.

19 COMMISSION STAFF: Well, we filed the order as an
20 attachment to the report in Study 1, and that included
21 all of the costs figures that would be changed as a
22 result of perhaps changing this cap value. I don't
23 see why we wouldn't, you know, forward any amendments,
24 changes that come out through the reconsideration
25 process to the legislature. It makes sense to me.

1 COMMISSIONER DEASON: And we are going to get all
2 of that before the legislature, we are going to have
3 an order and get all of that amended information
4 before the session ends?

5 COMMISSION STAFF: If the Commission feels it's
6 appropriate, we can --

7 COMMISSIONER CLARK: I think we have an
8 obligation to fix the order to make sure it's right.
9 And the order itself is in a sense part of the report,
10 so by amending the order you are amending the report.
11 And it would seem to me that you just send it to the
12 same parties and highlight what you did differently,
13 what the reconsideration resulted in.

14 COMMISSION STAFF: Right. I mean, it was
15 established from the start of this proceeding that we
16 would follow through with a normal 120 hearing process
17 to determine the cost model, and that would include
18 reconsideration and everything else, and that's why we
19 are doing what we are doing here today.

20 COMMISSIONER JACOBS: I second that motion.

21 CHAIRMAN GARCIA: There is a motion and a second.
22 All those in favor signify by saying aye.

23 COMMISSIONER JOHNSON: Aye.

24 COMMISSIONER JACOBS: Aye.

25 COMMISSIONER CLARK: Aye.

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CHAIRMAN GARCIA: Aye.

COMMISSIONER DEASON: I need to clarify my vote.
I will be voting in the majority on all issues except
Issue 3, and I would vote to deny the reconsideration.

CHAIRMAN GARCIA: Very good. Show it as stated.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages number 1 through 20 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 12th day of April, 1999.

Jane Faurot
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