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June 16, 1999

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Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 980253-TX

Dear Ms. Bayo:

Enclosed for filing is the original and fifteen (15) copies of Sprint Corporation's Posthearing Comments in Docket 980253-TX.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in this matter.

Sincerely,

S. A Khazraee for Charles J. Rehwinkel
Attorney

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In Re: Petition to Initiate Rulemaking Pursuant to Section 120.54(5), Florida Statues, to Incorporate "Fresh Look" requirements to all Incumbent Local Exchange Company (ILEC) Contracts	)))))	Docket No. 980253-TX Filed: June 16, 1999

POSTHEARING COMMENTS OF SPRINT

Introduction

These brief comments are submitted on behalf of Sprint Corporation. Sprint provides local exchange telephone service in Florida under separate certifications as an Incumbent Local Exchange Company and as an Alternative Local Exchange company. Sprint submits these posthearing comments in this matter in support of the Commission's proposed "Fresh Look" rule, with the modifications recommended in the comments of Sprint witness F. Ben Poag. Mr. Poag testified that the proposed rules would be fair to both ILEC and CLEC providers. Only two significant substantive modifications are suggested by Sprint. One would establish the "Fresh Look" window at one year instead of the proposed two years. This proposal would be a compromise between Sprint's initial proposal of six months (which is the period conditionally supported by GTEFL) and the longest proposed period of four years proposed by the FCCA. The second would require that customers not have the option to artificially avoid termination liability. Sprint submits these very brief comments in an effort to focus on the truly important aspects of the propsal and to avoid further duplication of comments already made. Sprint brings its unique status as both CLEC and ILEC in Florida to this debate and urges that the Commission give due consideration to these comments in that light.

Sprint strongly supports the rules as proposed with relatively minor modifications. In these comments, Sprint will address the substance of the rules proposal only with respect to the contract eligibilty cutoff, and the Fresh Look window. The suggestions by BellSouth and GTEFL, regarding lawfulness of the rule wil also be briefly addressed. With respect to other issues, Sprint stands by its postition contained in the comments submitted of F. Ben Poag filed on April 23, 1999. These comments are incorporated by reference herein.

Background.

The Commission held a rulemaking hearing on May 12 and in addition to several rounds of written comments and testimony submitted, heard from companies supporting and opposing the proposed rule. Opinions regarding the rule were divided. BellSouth and GTEFL opposed the rule on the claim that it was an unconstitutional taking and/or impairment of the contract between the company and the customer. They further suggested that the rule was unneccessary since the alleged advent of competition sufficient to warrant the contracts was roughly concurrent with the start date of the average contract at issue. Competing local exchange companies on the other hand support the thrust of the Commission's proposed rule. Only Sprint is positioned as both a large ILEC and a CLEC and Sprint supports the rule.

Sprint's basic position.

Sprint's basic position in this rulemaking is that the proposed rule is one that represents a reasonable balance between the interests of ILEC and CLEC. For this reason, Sprint is uniquely positioned to make this assessment. Sprint serves more than 2 million access lines in Florida and provides local exchange service as an incumbent in 17 other states. Sprint also provides service as a CLEC in Florida and is in the process of introducing around the nation, including in Florida, its state-of-the art technology platform and service-Sprint ION or Integrated On-Demand Network. Thus, Sprint is acutely aware of the impediments that contract termination penalties will impose on customers who want new products and services from facilities based competitors that did not exist at the time contracts were signed. Likewise, Sprint the ILEC is aware of the impacts of implementing a Fresh Look rule. As an ILEC, Sprint believes that the Commission only has an obligation to allow recovery of any facilities costs that would be stranded if the customer departed early.

Eligibility cut-off.

In the hearing process, the proposed "eligibility cut-off" date of 60 days after the effective date of the rule was challenged by BellSouth since they faced some level of competition-real or potential-as far back as 1995. Clearly, BellSouth did not provide convincing evidence of material effective widespread facilities-based competition in 1995 (at the time of passage of the Chapter 364 revisions), 1996

(at the time of the Federal Telecommunications Act) or in 1997 or 1998, (when arbitration and adjudication of the terms and conditiions of interconnection and unbundled network elements (UNE) pricing were undertaken by the Commission). Even today substantial uncertainty exists in terms of collocation and availability of UNEs in light of the recent United States Supreme Court decision in AT&T Corp. et. al., v Iowa Utilities Board et. Al., 119 S. Ct. 721 (1999). As pointed out by Time Warner witness March, as of September 1998, less than 2% of the lines in BellSouth and GTEFL, territory were served by CLECS and the vast majority of those were resale, (Marck, Tr. 15). The Commission should adhere to an eligibility cut-off date concurrent with the effective date of the rule.

Fresh Look Window.

The Fresh Look window was also a source of dispute in the hearing. Although objecting to the rule in its entirety, GTEFL supported no more than a 6 month window, while the FCCA supported a 4 year window. The Commission has proposed a two year window. Sprint finds itself more in agreement with GTEFL on this issue, but suggests a compromise. Sprint's May 15, 1998 proposal advocated a six month window. As Mr. Poag testified, six months is probably adequate time for customers to take action to seek competitive opportunities. Additionallly, most candidates would be targeted by CLECs in the first months of any chosen window, rendering the two year period unneeded. (Poag Comments at 3-4;Poag, Tr.114). In light of the Commission's proposed window, Sprint has adopted a compromise position between the CLEC and ILEC sides of the business. Sprint believes that a four year window is unreasonable in that it would introduce unneccessary cost and uncertainty into the business operations while not providing any competitive benefits beyond a one year window. Sprint urges the Commission to consider the compromise of a one year window.

Legal objections.

BellSouth and GTEFL have raised legal challenges to the rule. Sprint concurs in and adopts the responsive legal analysis by Time Warner in its April 29, 1999 comments. Furthermore, in support of Time Warner's analysis, Sprint submits that Chapter 364 provides compelling authority for the Commission to adopt this rule. As noted by Time Warner, Section 364.19 provides the Commission with authority to regulate, by reasonable rules, the terms of contracts between companies and customers. It is significant that this provision was not repealed at

the time of the 1995 revisions to Chapter 364. Instead, the Legislature preserved the Commission's plenary authority over contracts, including Contract Service Arrangements (CSAs) which the Commission created and authorized in 1983. The provisions of 364.051(6)(a) preserve in the statute what the Commission created while adding an affirmative allowance to bundle basic services with nonbasic services in those contracts. Coupled whith this provision, Section 364.051(6)(b) further provides in part that:

> The Commission shall have continuing regulatory oversight of nonbasic services for the purposes of ....ensuring that all providers are treated fairly in the telecommunications market.

Additionally, Section 364.01(4)(i) directs that the Commission shall continue its historical role as a surrogate for competition for monopoly services. They practically dictate that result in furtherance of the Commission's mandate to encourage a competitive telecommunications market.

Obviously, the legislature was aware of the existence of contracts and intended that the Commission should regulate the terms of contracts (including termination liability "terms") in order to foster competition. The Commission is well aware that the purpose of competition from a regulator's standpoint is to provide benefits to the customers. Despite BellSouth's assertions to the contrary, the Commission's rule is customer-focused while adequately balancing the interests of ILECs and CLECs. In this light, the rule lies squarely within the duty charged to the Commission. There could be no clearer expression of a "significant and legitimate public purpose" than that contained in the cited sections of Chapter 364 or in the proposed rule.

The Commission should not allow the red herring of these unfounded legal objections to divert attention from the legitimate and lawful purposes of this rule. No impairment or uncompensated taking will occur. These contracts were entered into with the full knowledge that they were ultimately subject to Commission oversight and regulations throughout their life. The 1995 revisions to Chapter 364 confirm this.

Conclusion

In conclusion, Sprint urges the Commission to adopt the rule substantially as proposed with the revisions proposed in Sprint's April 23, 1999 comments. Although not discussed above, the clarification regarding termination liability

choices of customers in Section(5)(b) of the rule should be adopted. Also, the limitation of eligibility to customers actually leaving for a competitor should be added. Finally the clarifying language regarding the limitiation of termination liability definitional language proposed by Mr. Poag should also be included. As Mr. Poag so eloquently summarized the rule's balance:

> Again, this is basically a compromise position of the company looking at both sides of the business. And it's personal opinion that this is a fair and reasonable approach to resolve this issue (Poag, Tr. 118-119). The Commission should give great weight to this "compromise" and adopt the rule.

Wherefor, Sprint urges that the Commission adopt the rules proposed with the suggested modifications.

Respectfully submitted this 16th day of June, 1999.

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CERTIFICATE OF SERVICE
DOCKET NO. 980253-TX

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 16th day of June, 1999 to the following:

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