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Charles J. Rehwinkel
Senior Attorney

Law/External Affairs
Post Office Box 2214
Tallahassee, FL 32316-2214
Mailstop FLTLHO0107
Voice 850 847 0244
Fax 850 878 0777
charles.j.rehwinkel@mail.sprint.com

Via Hand Delivery

August 8, 2000

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

Re: Docket No. 990994-TP; Initial Comments of Sprint.

Dear Ms. Bayó:

Enclosed for filing are the original and fifteen (15) copies of the Initial Comments of Sprint in this rulemaking. Service has been made this same day via electronic transmission and U.S. Mail to the interested parties listed on the attached service list.

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

Sincerely,

Charles J. Rehwinkel

CJR/tk
Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to Rules 25-4.003, F.A.C., Definitions; 25-4.110, F.A.C., Customer Billing for Local Exchange Telecommunications Companies; 25-4.113, F.A.C., Refusal or Discontinuance of Service by Company; 25-24.490, F.A.C., Customer Relations; Rules Incorporated; and 25-24.845, F.A.C., Customer Relations Rules Incorporated.	DOCKET NO. 990994-TP Filed: August 8, 2000

Initial Comments of Sprint

COMES NOW Sprint Communications Company Limited Partnership ("Sprint") and, pursuant to Section 120.54, Florida Statutes, and Rule 28-103.004(7), Florida Administrative Code, provides these initial comments to the Florida Public Service Commission (FPSC or Commission) on the Proposed Amendments to Rules 25-24.490(1) and 25-24.485 insofar as they would apply proposed new Sections (2) and (19) of Rule 25-4.110 to interexchange carriers (IXCs) and alternative local exchange carriers (ALECs). These provisions are newly adopted in Order No. PSC-00-1117-TP (Order), issued June 19, 2000. That order made the amendments

applicable only to incumbent local exchange carriers (ILECs). The amendments were adopted in a Notice of Rulemaking (Notice) issued March 10, 2000. See, Order No. PSC-00-0525-NOR. In addition to the substantive objections, Sprint objects to the proposed process on several grounds.

Sprint Communications Company Limited Partnership is an Interexchange Telecommunications Company (IXC) and Alternative Local Exchange Company (ALEC or CLEC) authorized by the Florida Public Service Commission ("Commission") to operate as an IXC and CLEC.

These comments are provided in response to the rule amendments proposed in the Notice. Sprint recognizes and supports the PSC's desire to develop rules and guidelines for the protection of customers. For this very reason, Sprint did not request a hearing on the other measures applicable to IXCs and CLECs in the Order. The PSC's efforts are consistent with those undertaken by the FCC and the FTC. Sprint offers these comments in the spirit of cooperation and with the hope that the PSC recognizes that the costs of any amendments under consideration should not materially outweigh the benefits to companies, customers and competition in general.

Sprint recognizes that customers want bills that are easier to read and which give them adequate information to make intelligent choices in an increasingly competitive environment, and Sprint's ILEC operations, at

considerable expense revised its customer bills. However, Sprint believes that its services - including the format of its bills - in the competitive marketplace in which its IXC and CLEC segments operate - satisfy our customers. And, where customers are not satisfied, they have choices to select alternative providers. Because of this existence of choice the intervention of regulation should only be imposed where a clear and convincing need exists and where competitive forces are proven to be ineffective.

The proposed rule amendments would apply the bill format and billing block requirements adopted for Incumbent Local Exchange Companies (ILECs) to Sprint's IXC and ALEC operations. In general, Sprint objects to the application of the rule amendments because, without justification or any cost/benefit analysis, they impose unnecessary and harmful costs upon the competitive telecommunications marketplace. This constitutes a barrier to competitive entrants and increase prices to end user customers. Both IXC and CLEC operations are highly competitive and depend on the exercise of competitive choice by the customer for building their respective customer bases. Sprint is unaware of any compelling need for these requirements to be applied to competitive providers like IXCs and CLECs.

Apart from the substantive objections, Sprint has three procedural and/or legal issues that the Commission should consider.

First, as a threshold matter, Sprint respectfully submits that the Commission should refrain from proposing rules at this time when there are only three Commissioners. Sprint has no concerns about the ability of the existing Commissioners and understands that the Commission has no control over the resignation of Commissioners. Nevertheless, the precedent of rulemaking by a three-member panel in the five-member era should seemingly be avoided. Although the Commission is within its rights to proceed, Sprint respectfully urges that the hearing be delayed, slightly, until the Commission is at full strength.

Second, as discussed more fully below, should the Commission decide to proceed with making a decision based on the August 21 hearing, Sprint urges that the Commission should consider a "draw-out" to take evidence on the impact the proposed amendments would have on the companies, consistent with the requirements of Sections 364.337(2) and 364.337(4), Florida Statutes.

Third, the proposed rule is squarely contrary to the legislative mandate that the FPSC not impose regulations on IXCs and ALECs in a manner that will adversely impact competition. For this reason the FPSC should refrain from adopting amendments that would apply billing format standards to competitive local exchange carriers and interexchange carriers. See, Sections 364.337 (2) & (4) and 364.01(4)(b), (d), (e), (f), (g) & (h).

The statutory underpinning of the proposed amendments is Section 364.604. Although Section 364.604 could - at least with respect to billing for residential customers - facially apply to CLECs and IXCs, the Commission possesses the express authority to withhold application of the billing standards to CLECs and IXCs. Section 364.337 allows the Commission to waive the billing standards portion of the Chapter 364, upon a showing that such a waiver is in the public interest. It is indisputable that the fostering of competition is in the public interest, since the Legislature has so declared in Section 364.01. Furthermore, the ability to grant a waiver upon the filing of a petition necessarily implies the ability to grant a "waiver" in the form of declining to adopt a rule. This concept is consistent with the requirement in Section 364.337(2) & (4) which mandates that any rules adopted by the commission and governing CLEC and IXC service *shall* be consistent with Section 364.01.

In giving this direction, the Legislature was undeniably intent on requiring the Commission to proceed cautiously with respect to measures that would retard the market entry of competitive providers and the introduction of new competitive services. In relevant part, Section 364.01 provides that:

> (4) The commission shall exercise its exclusive jurisdiction in order to:
>
> ****
>
> (b) Encourage competition through *flexible regulatory treatment among providers of telecommunications services*

in order to ensure the availability of the *widest possible range of consumer choice* in the provision of all telecommunications services.

****

(d) Promote competition by encouraging new entrants into telecommunications markets and by allowing a transitional period in which new entrants are *subject to a lesser level of regulatory oversight* than local exchange telecommunications companies.

(e) Encourage all providers of telecommunications services to introduce new or experimental telecommunications services *free of unnecessary regulatory restraints.*

(f) *Eliminate any rules and/or regulations which will delay or impair the transition to competition.*

(g) Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and *eliminating unnecessary regulatory restraint.*

(h) Recognize *the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services* ...

[Emphasis added].

There is absolutely no substantive evidence that the Commission has considered any of the competitive checklist in proposing these rules. For this reason, the Commission can and should proceed no further.

In the Notice, the Commission has cited Section 364.604 as the specific authority for application of the rules to IXCs and CLECs. Sprint is certainly aware that Section 364.604 was enacted in 1998, while Section 364.337 was enacted in 1995. Staff has suggested that the latter enactment of Section 364.604 provides clear evidence that the Legislature intended the Commission to ignore the mandates of Section 364.337. To the contrary, the proper and harmonious reading of the two sections is that the legislature intended that the sections operate in tandem. As written, Section 364.604 does apply to all companies (with respect to residential service) so long as the Commission conducts the competitive harm analysis required in 364.337(2) & (4). The Legislature must be presumed to know what is in Chapter 364.

Any supposition that the Legislature intended - through silence -- to disable a crucial component of the pro-competitive Chapter that it adopted in 1995 would be awkward at best and, at worst, contrary to to well-settled principles of statutory construction. The courts presume that statutes are passed with knowledge of prior existing statutes, and will favor a construction that gives a field of operation to both rather than construe one statute as being meaningless or repealed by implication. *Woodgate Development Corp. v Hamilton Invest. Trust (1977, Fla) 351 So 2d 14. Oldham v Rooks (1978, Fla) 361 So 2d 140. State Dept. of Public Welfare v Galilean Children's Home (1958, Fla App D2) 102 So 2d 388.*

Analogously, the Commission should also take note of the principles underlying the Uniform Commercial Code (UCC) (Chapters 670-680, Florida Statutes). Because the UCC is a general act intended as a unified coverage of its subject matter, no part of it will be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. As such, repeal by implication is generally not favored and will be found only when no other conclusion can be reached. See, 6 Fla. Jur BILLS, NOTES, AND OTHER COMMERCIAL PAPER §11.

As the agency charged with exercising its exclusive jurisdiction in "all matters set forth in [Chapter 364]," the FPSC has consistently viewed Chapter 364 in the same cohesive and comprehensive manner that describes the UCC. Beginning in 1995 the Legislature promulgated a new, pro-competitive unified regulatory framework. The Commission has implemented the Chapter in this spirit. Selective implementation of a portion of the Chapter (364.604) without reference to the guiding principles set out in the legislative intent section (364.01) would be contrary to plain legislative intent and guiding principles of law. For this reason, the Commission cannot ignore the mandatory "checklist" established in 364.337 and 364.01(4). Only by following it will the Commission satisfy the legislative intent embodied in Section 364.01(3) that:

> [T]he competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom

> of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure.

Clearly, the Commission cannot ignore the mandate that any rulemaking governing CLECs and IXCs may only be undertaken consistent with Section 364.01. In this rulemaking, the Commission has not undertaken any analysis to show that the proposed amendments meet the legislature's test.

For this reason, if the Commission believes that it must proceed, Sprint requests that the Commission conduct a "draw-out" or evidentiary proceeding pursuant to 120.54(3)(c)2. As competitors, Sprint's CLEC and IXC operations have a substantial interest in having the Commission determine whether the rules will impact their ability to compete effectively and offer innovative services free of unnecessary regulatory restraint. Sprint asserts that the rulemaking process will provide an adequate opportunity to protect these interests. For example, Sprint has announced plans to offer new and innovative services such as the Integrated On-Demand Network (ION) service to Florida customers. ION will represent a dramatic departure from the traditional method of deploying local telecommunications service. In today's highly consumer driven marketplace, the ION service that combines the delivery of voice data and long distance service with Internet access, will bring complete solutions to customers who want them. Introduction of unnecessary

regulatory requirements can only have a negative effect on bringing such choice to customers. The proposed rule amendments fall into this category with respect to CLECs.

Imposing rigid, formalistic billing format standards - designed for traditional, basic telecommunications services - to services that customer can exercise choice for, will not make sense in an ION environment. For example, where customers are more concerned with the availability of the innovations that ION brings than extra detail on the bill, which may or may not be desired by the customer.

Clearly, the cost of deploying a billing system (including a billing block option) that would meet the proposed rule requirements could constitute a barrier to competitive entry and a substantial impediment to the introduction of new services like ION.

Absent an evidentiary hearing where Sprint is allowed to confront any evidence that the Commission might possess showing that CLEC and IXC bill formats are creating consumer problems, Sprint's substantial interests will not be protected. Sprint strongly urges that the Commission refrain from applying the billing format requirements of this rule to IXCs and CLECs who are offering or are poised to offer new services to Florida's consumers. CLECs and IXCs must compete for every customer and they always have an alternative carrier (including, in the case of CLECs, the ILEC which is subject to the rules. Applying

regulations to competitive new entrants is unnecessary and serves as a barrier to entry.

It is important that competitive carriers be allowed the flexibility to choose how they serve customers. Without the flexibility to react to customer expectations, competitors cannot as easily distinguish themselves from ILECs and their competitors, and thus may not be able to tailor a combination of price and services that meets the desires of customers. This is an essential component of competition. Rigid and costly bill format and bill blocking requirements limit this ability to respond in the marketplace.

The marketplace should dictate what packages of services carriers (including billing format) provide to their customers. Competitive carriers must offer "value-added" products and quality service at competitive prices to be effective in the marketplace. Customer satisfaction and loyalty become indispensable elements of a CLEC's business. The rule amendments will cause Sprint and other competitive carriers to incur substantial costs to make billing system modifications that many customers do not want or need. In an era of innovative product offerings and bundling to meet competitive demands, the costs associated with rigid bill formatting and bill blocking requirements will only serve to retard the innovation that a nascent competitive market could offer customers. This will harm customers and it will harm competitive telecommunications providers.

WHEREFORE, for the above-stated reasons, Sprint requests that the Commission refrain from acting further until all five Commissioners are impaneled, and that a "draw-out" proceeding should be conducted to determine the impact of the rule proposals on competition, generally, and Sprint, specifically. Regardless of whether a "draw-out" is conducted, the Commission is forbidden from acting unless it insures the rulemaking comports with Sections 364.337 (2) and (4). In no event should the rules be adopted.

Respectfully submitted this 8th Day of August 2000.

Charles J. Rehwinkel
Susan Masterton
P.O. Box 2214
MC: FLTLHO0107
Tallahassee, Florida 32301-2214

CERTIFICATE OF SERVICE

Docket No. 990994-TP

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-mail transmission, U. S. Mail, or hand delivery (*) this 9th day of August, 2000, to the following:

Beth Keating *
Division of Legal Services
Florida Public Service Comm.
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Nancy B. White
Bennett L. Ross
BellSouth Telecommunications
150 S. Monroe St., Suite 400
Tallahassee, FL 32301-1556

Karen F. Jusevitch
AT&T
101 N. Monroe Street, Suite 700
Tallahassee, FL 32301-1549

Steve Bowen/Jeremy Marcus
Blumenfeld & Cohen
1625 Massachusetts Ave., NW
Suite 300
Washington, DC 20036

Mark Rothschild
Swidler & Berlin Law Firm
3000 K Street, NW #300
Washington, DC 20007-5116

Jim Lamoureaux
AT&T Communications
1200 Peachtree Street, N.E.
Room 8068
Atlanta, GA 30309

Michael A. Gross
Florida Cable Telecommunications Assoc., Inc.
310 N. Monroe Street
Tallahassee, FL 32301

Joseph McGlothlin
McWhirter, Reeves, et al.
117 South Gadsden Street
Tallahassee, FL 32301

Charles Pellegrini
Wiggins and Villacorta
2145 Delta Blvd., Suite 200
Tallahassee, FL 32303

Catherine F. Boone
COVAD
10 Glenlake Parkway
Suite 650
Atlanta, GA 30328

Kimberly Caswell
GTE Florida Incorporated
P. O. Box 110, FLTC0007
Tampa, FL 33601-0110

Norman H. Horton, Jr.
Messer, Caparello & Self
215 S. Monroe St., Suite 701
Tallahassee, FL 32301

Richard Melson
Hopping Law Firm
P. O. Box 6526
Tallahassee, FL 32314

Scott Sappersteinn
Intermedia Communications, Inc.
3625 Queen Palm Drive
Tampa, FL 33619-1309

Mark Buechele
P. O. Box 398555
Miami Beach, FL 33239-8555

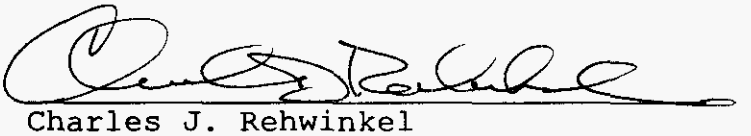
Karen Camechis
Pennington, Moore, et al.
215 S. Monroe Street
Tallahassee, FL 32301

Donna C. McNulty
MCI WorldCom
325 John Knox Road, Suite 105
Tallahassee, FL 32303-4131

Stephen C. Reilly
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison St., Room 812
Tallahassee, FL 32399-1400

J. Jeffry Wahlen
Ausley & McMullen
P. O. Box 391
Tallahassee, FL 32302

Rodney L. Joyce
Shook, Hardy & Bacon
600 14th St., N.W., Suite 800
Washington, DC 20005-2004



Charles J. Rehwinkel