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ORIGINAL

July 29, 1998

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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RECORDS AND REPORTING

Re: Special Project No. 980000B-SP
Access by Telecommunications Companies
To Customers in Multi-Tenant Environments

Dear Ms. Bayo:

Enclosed for filing in the above-referenced special project is the original and fifteen (15) copies of the Positions on Issues of Sprint-Florida, Inc. and Sprint Communications Company Limited Partnership. A diskette with this document in Microsoft Word 97 format is also enclosed with this letter.

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.

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Sincerely,

J. Jeffrey Wahlen

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JUL 29 1998
FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Access by Telecommunications Companies
To Customers in Multi-Tenant Environments

Docket No. 980000B-SP
Filed: July 29, 1998

SPRINT CORPORATION'S POSITIONS ON ISSUES

Sprint-Florida, Inc. and Sprint Communications Company Limited Partnership, submit the following positions on the issues identified by the Staff in the July 17, 1998, Notice of Second Staff Workshop.

Issues and Positions

- I. **In general, should telecommunications companies have direct access to customers in multi-tenant environments? Please explain. (Please address what need there may be for access and include discussions of broad policy considerations).**

Position: Yes. Telecommunications carriers should have direct access to customers in multi-tenant environments ("MTE"). The goals of the Telecommunications Act of 1996 ("1996 Act")¹ are to (1) open the local exchange and exchange access markets to competitive entry, (2) promote increased competition in telecommunications markets that are already open to competition, and (3) reform and preserve the system of universal service so that universal service is maintained.² These goals are also reflected in the 1995 amendments to Chapter 364, Florida Statutes. The public policy of the United States and the State of Florida includes the development of local exchange competition and giving consumers the power to choose between competing telecommunications carriers and the services they offer.

¹ Pub. L. No. 104-104, 110 Stat. 56 to be codified at §§ 47 U.S.C. §§ 151 et. seq.

² First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (August 8, 1996).

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Prior to 1995, the Florida Public Service Commission had complete authority to decide who should provide local exchange services in a particular geographic area. It did so by giving a small number of local exchange companies an exclusive franchise to serve all of a discrete geographic area. Congress and the Florida Legislature did not invite competition into the local exchange market so that multi-tenant building owners, property managers and landlords (collectively “landlords”) could assume the historical role of the FPSC by deciding which carrier serves an MTE through contract or otherwise. Rather, by enacting 47 U.S.C. § 251(a)(4), which addresses conduit, and the other provisions of the 1996 Act, Congress designed a system where carriers could compete for end user customers on a non-discriminatory, competitively neutral basis.

This kind of competitive environment requires non-discriminatory equal access by certificated carriers at some point on or at the premises of an MTE.³ To allow otherwise would subordinate the interests of end user customers and the development of competitive local exchange markets to the landlords. Sprint supports an approach to MTEs that balances the interests of affected parties, promotes competition and encourages the development of new technology and services by certificated carriers.

³ Determining the location of that point is a critical part of the solution to whatever problems may exist in MTEs. If landlords demand monopoly control over access to customers in an MTE, it may be necessary for the FPSC or some other regulatory authority to regulate MTE landlords through certification, the development of minimum technical and service standards (equipment, lightening protection, etc.) and other means usually associated with the regulation of bottleneck monopolies (including enforcing interconnection responsibilities).

II. **What must be considered in determining whether telecommunications companies should have direct access to customers in multi-tenant environments?**

A. **How should “multi-tenant environment” be defined? That is, should it include residential, commercial, transient, call aggregators, condominiums, office buildings, new facilities, existing facilities, shared tenant services, other?**

Position: In general, the term “MTE” should be broadly defined to include all “tenant” situations, whether residential or commercial or single or multiple building; however, it should not include “transients” and certain other sharing arrangements. The definition should include residential condominiums, as well as new and existing facilities. When excluding “transients” and other sharing arrangements, the Commission should adopt the reasoning it used in the 1980s when it declined to certificate entities like hospitals (excluding doctors in private practice with offices in hospitals), dormitories, nursing homes, adult congregate living facilities, continuing care facilities, and retirement homes. These entities provide telephone service to persons who are resident in the facility for short periods of time and would find it impractical to obtain service in their own names for that short period of time.

B. **What telecommunications service should be included in “direct access,” i.e., basic local service (section 364.02(2), F.S.), Internet access, video, data, satellite, other?**

Position: All telecommunications services as defined in 47 U.S.C. § 153(43)⁴ provided by a telecommunications carrier, regardless of access media used, should be included in “direct

⁴ That section states: “The term ‘telecommunications service’ means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”

access.” Absent a rational basis for doing so, excluding some telecommunications services from “direct access” while including others would appear to violate the procompetitive, non-discriminatory framework contemplated in the 1996 Act and the 1995 Amendments to Chapter 364, Florida Statutes.

- C. **In promoting a competitive market, what, if any, restrictions to direct access to customers in multi-tenant environments should be considered? In what instances, if any, would exclusionary contracts be appropriate and why?**

Position: Restrictions to direct access to customers in an MTE should only be allowed upon a compelling showing that the restriction is in the public interest. Whether accomplished by new legislation or rules adopted under existing law, there should be a strong rebuttable presumption that any arrangement whereby a telecommunications carrier gets exclusive use of private building riser space, conduit, easements, closet space, and the like, is anti-competitive and unlawful. Any other result would be inconsistent with the pro-competitive purposes behind the 1996 Act and the 1995 Amendments to Chapter 364, Florida Statutes.

- D. **How should “demarcation point” be defined, i.e., current PSC definition (Rule 25-4.0345, F.A.C.) or federal MPOE?**

Position: Developing a new definition of “demarcation point” is important to a meaningful resolution of the issues facing carriers, customers and landlords in an MTE. Adopting an MPOE approach to the definition of demarcation point could reduce the physical presence of a carrier’s facilities at an MTE, but could leave landlords in control of, and responsible for significant amounts of wires, cable and other equipment beyond the demarcation point needed to serve customers. FPSC’s current demarcation point rule generally places the demarcation point closer to the customer and minimizes landlord responsibility and control over portions of the

telecommunications network, but presents potential problems when the different tenants in a MTE demand service from different carriers. Revisiting the definition of the demarcation point in MTEs could be a way to balance the interests of customers, carriers and landlords. The FPSC should consider a comprehensive review of its existing rule as an extension of this project. The Commission should consider this a long-term project and devote the necessary resources to its completion.

E. **With respect to actual, physical access to property, what are the rights, privileges, responsibilities or obligations of:**

- (i) **Landlords, owners, building managers, condominium associations**
- (ii) **Tenants, customers end users**
- (iii) **Telecommunications companies**

In answering the questions in Issue 2.e., please address issues related to easements, cable in a building, cable to a building, space, equipment, lightning protection, service quality, maintenance, repair, liability, personnel, (price) discrimination, and other issues related to access.

Position: The rights, privileges, responsibilities or obligations of the various parties implicated in an MTE are complicated. The special project exists so that the FPSC can make policy recommendations to the Legislature. Accordingly, the FPSC should focus more on what the rights and responsibilities among the parties **should be** than what those rights and responsibilities **are**.

With that in mind, Sprint offers the following comments:

1. Carriers and landlords share a common interest in serving their common customers. The interests of those customers should be paramount.

2. The 1996 Act and the 1995 Amendments to Chapter 364, Florida Statutes, were intended to promote competition. Competition is intended to help consumers. Solutions to MTE problems that harm competition also harm consumers and should be avoided.
3. To different degrees, both landlords and carriers are already subject to laws and rules that govern their activities. For example, Chapter 83 of Florida Statutes governs residential and non-residential tenancies in Florida. There are many statutes that regulate land use, commercial development, condominiums and other areas that are implicated in an MTE. Most cities and counties have a building code, and there is an effort ongoing to developing minimum state building codes. As the Commission develops its recommendations to the Legislature, it should remember that the answer to the MTE problem might require legislation in places other than Chapter 364. For example, it may be appropriate to recommend changes to the building code to establish minimum standards for the provision of conduit and riser space, lightening protection and other similar matters. Likewise, if Landlords demand control of telecommunications facilities on their property, it may be necessary to amend Section 83.67(1), Florida Statutes, to prevent Landlords from disconnecting telecommunications services to non-paying tenants as a means to coerce payment of rent.
4. Universal service is an important public policy goal. To this end, the Florida Legislature codified the concept of carrier of last resort (“COLR”) to ensure that all qualified consumers would have access to telecommunications services.

Landlords should not be allowed to interfere with a COLR's obligations through private contract or otherwise.

5. Under any existing technology, telecommunications services to customers in an MTE cannot be accomplished without at least some access to conduit, riser space and equipment rooms, and the installation of cable, wire and other equipment. Telecommunications services are as essential to tenants as electricity, water and sewer. Most tenants would likely consider a unit without telecommunications services uninhabitable. It is in the mutual interests of landlords and carriers to resolve any MTE problems in a manner that promotes customer choice of telecommunications carriers and services.
 6. The Commission has historically regulated persons who own and/or operate telecommunications facilities for hire to the public. If landlords demand monopoly control over the facilities on their property needed to serve end user customers, impose a separate charge on tenants for service, or seek to extract a fee from a carrier for the right to serve an MTE, the landlords should be regulated by the FPSC in some fashion as telecommunications carriers, especially regarding the obligation to interconnect on a non-discriminatory basis with other telecommunications carriers.
- F. **Based on your answer to Issue 2.e., above, are there instances in which compensation should be required? If yes, by whom, to whom, for what and how is cost to be determined?**

Position: The answer to this question depends on the location of the demarcation point. The provision of facilities at an MTE beyond the demarcation point should be considered an

obligation of the landlord or the customer, not the carrier. Historically, local exchange companies have not been required to pay compensation to place facilities from the property boundary to the demarcation point, and it seems abundantly clear that the 1996 Act was not enacted to give landlords the opportunity to extract monopoly rents from any carrier seeking to serve the demands of tenants in a MTE. If customers in an MTE demand service from a carrier and existing facilities cannot be used by the carrier to provide that service, the costs of installing the necessary facilities at the property should be included in the rental charge or allocated as a matter of separate contract between the landlord and tenant, but should not involve the carrier. Unless they can recover these costs from the customer requesting the service, forcing carriers to pay these costs creates an implicit subsidy in favor of MTE tenants.

G. What is necessary to preserve the integrity of E911?

Position: The integrity of E911 at MTEs should be preserved. Sprint is not aware of any specific E911 problems at MTEs, but reserves the right to comment further if technical problems are identified during the workshop.

II. Other issues not covered in 1 and 2.

If an interested participant wishes to discuss any issue not specifically delineated above, they may do so wherever they deem appropriate or as part of Issue 3.

Position: None at this time.

DATED this 29th day of July, 1998.



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