

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Petition by Wireless One)	DOCKET NO. 971194-TP
Network, L.P., d/b/a Cellular)	ORDER NO.
One of Southwest Florida for)	PSC-97-1466-PHO-TP
arbitration with Sprint-Florida,) ISSUED:	
Incorporated pursuant to Section)	November 21, 1997
252 of the Telecommunications)	
Act of 1996.)	

PROCEEDINGS: ARBITRATION HEARING

BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JOE GARCIA
(teleconferencing)

DATE: Monday, November 24, 1997

TIME: Commenced at 9:45 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: RAY D. CONVERY, Court Reporter
(850) 224-5491

BUREAU OF REPORTING
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1 APPEARANCES:

2 BETH KEATING, Florida Public Service Commission,
3 2540 Shumard Oak Boulevard, Tallahassee, Florida
4 32399-0850, appeared on behalf of the Commission Staff.

5 WILLIAM P. COX, Florida Public Service Commission,
6 2540 Shumard Oak Boulevard, Tallahassee, Florida
7 32399-0850, appeared on behalf of the Commission Staff.

8 WILLIAM A. ADAMS, Arter & Hadden, One Columbus
9 Circle, 10 West Broad Street, Suite 2100, Columbus, Ohio
10 43215-3422, appeared on behalf of Wireless One Network,
11 L.P.

12 DANE STINSON, Arter & Hadden, One Columbus Circle,
13 10 West Broad Street, Suite 2100, Columbus, Ohio
14 43215-3422, appeared on behalf of Wireless One Network,
15 L.P.

16 CHARLES J. REHWINKEL, 1313 Blair Stone Road, MC
17 FLTLHO0107, Tallahassee, Florida 32301, appeared on
18 behalf of Sprint-Florida, Incorporated.
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E X H I B I T S

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P R O C E E D I N G S

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2 CHAIRMAN JOHNSON: I'm going to call the hearing
3 to order this morning.

4 MR. COX: Pursuant to the notice filed November
5 7, 1997, this time and place has been set for a hearing in
6 Docket No. 971194-TP, petition by Wireless One Network,
7 L.P, doing business as Cellular One of Southwest Florida
8 for arbitration with Sprint-Florida, Incorporated, pursuant
9 to Section 252 of the Telecommunications Act of 1996.

10 CHAIRMAN JOHNSON: Take appearances.

11 MR. ADAMS: Yes, Your Honor, on behalf of Wireless
12 One Network, the law firm of Arter & Hadden, 10 West Broad
13 Street, Columbus, Ohio 43215 --

14 CHAIRMAN JOHNSON: Can you hear him?

15 MR. ADAMS: William A. Adams and Dane Stinson and
16 Laura Hauser. Thank you.

17 CHAIRMAN JOHNSON: Thank you.

18 MR. REHWINKEL: Charles J. Rehwinkel on behalf of
19 Sprint-Florida, Incorporated, P.O. Box 2214, Mail Code
20 FLTLHO 0107, Tallahassee, Florida 32301.

21 MR. COX: William Cox and Beth Keating on behalf
22 of Commission staff.

23 CHAIRMAN JOHNSON: Okay. Are there any
24 preliminary matters?

25 MR. COX: Yes, there are, Chairman.

1 CHAIRMAN JOHNSON: Let me ask one question, sir.
2 You are William Adams?

3 MR. ADAMS: Correct.

4 CHAIRMAN JOHNSON: Okay. I just wanted to make
5 sure.

6 MR. COX: We have several outstanding motions to
7 deal with, the first of which may or may not be withdrawn
8 depending upon what counsel for Wireless One agrees to
9 today, but the first is the motion for reconsideration and
10 request for oral arguments on the prehearing officer's
11 ruling on the determination of issues.

12 CHAIRMAN JOHNSON: Is that motion still
13 outstanding?

14 MR. ADAMS: It is. We conditionally withdraw it
15 today depending on the outcome of one of Mr. Rehwinkel's
16 motions to strike. The same issues are involved. We
17 agree that the toll issue that was subject to the
18 prehearing conference a week ago today is not part of
19 this case; however, it is necessary to get into questions
20 as to Sprint's access charges and the reverse toll option
21 charges, and we need to ask questions and make a record
22 on those points here today. So to the extent we are
23 permitted to do that, we withdraw our motion to -- for
24 reconsideration.

25 CHAIRMAN JOHNSON: I'm sorry. To the extent

1 you're permitted to ask those questions, is that -- does
2 Sprint have an outstanding motion that we need to address
3 first?

4 MR. ADAMS: Yes, exactly. I think it would be --

5 CHAIRMAN JOHNSON: Why don't we do that and then
6 we'll entertain your motion and then we'll determine one
7 way or the other.

8 MR. ADAMS: Thank you.

9 MR. COX: Chairman Johnson, there's one problem
10 with that approach in that what the issues are may
11 determine the outcome on the motion to strike testimony,
12 and that's why I felt like the motion for reconsideration
13 on the issues should and must be taken up first.

14 COMMISSIONER CLARK: Well, I don't mean to take a
15 different view, but I have -- you know, I made the decision
16 on the motion, and let me just tell you my thinking.

17 Joe, can you hear me? Can you hear me?

18 COMMISSIONER GARCIA: I can hear you. I can
19 hear you.

20 COMMISSIONER CLARK: All right. It appeared to
21 me that the issue of what charges were applicable
22 depending on our decision with respect to how that
23 interconnected -- interconnection was treated is for
24 another day, that the real issue is what we put in Issue
25 No. 2. And I read through the motion to strike the

1 testimony and it was my view that the testimony relative
2 to the reverse toll option helped put in context what we
3 had to decide, and to that extent, I was of the opinion
4 that the issue should stay where it is, but that the
5 testimony ought to be allowed in, or most of the
6 testimony should be allowed in. I can't recall if I saw
7 any that was inappropriate -- was so far off the mark as
8 far as being relevant and shouldn't be allowed in. And I
9 don't -- so to that extent, I didn't think it was
10 necessarily we couldn't consider if we were letting the
11 testimony in, and if it is let in, then we don't have to
12 revisit.

13 And Madam Chairman, I apologize to you. I hate
14 to leave things pending so that the presiding officer is
15 sort of faced with this without the opportunity to have
16 heard from the parties, and to atone for that sin I did
17 look over it on the weekend and am prepared to help out
18 in an analysis of that motion -- the two motions to
19 strike if it is all necessary. I think one motion is
20 predicated on the idea that there are some issues touched
21 on that are not the subject -- that are not properly the
22 subject of arbitration and another one is on whether or
23 not it's improper rebuttal or use of the deposition, and
24 so there are two different issues that -- upon which the
25 motion to strike were based.

1 CHAIRMAN JOHNSON: Okay. Thank you. And I
2 understand Mr. Adams to state that the -- as it -- and I
3 think as it relates to the portions -- the motions to
4 strike the direct and rebuttal testimony of Francis
5 Heaton, particularly the motions and the rationale being
6 that they were not raised in the petition, to the extent
7 that we deny those motions, a lot of those issues will
8 address your concern.

9 MR. ADAMS: Yes, we agree that Sprint's toll
10 relationships with its customers are not part of this
11 proceeding, but Sprint's reverse option relationship with
12 us is a carrier-to-carrier relationship and we need to
13 probe into access issues as part of resolving that issue.

14 CHAIRMAN JOHNSON: Okay.

15 MR. COX: That will be fine.

16 COMMISSIONER CLARK: Madam Chair?

17 Are you still going to pursue your motions to
18 strike?

19 MR. REHWINKEL: No, ma'am.

20 CHAIRMAN JOHNSON: And I think that's where we
21 are now.

22 MR. COX: Yes, the first motion to strike was that
23 which was filed November 5th, and it's entitled Motion to
24 Strike Portions of Rebuttal Testimony of Frank Heaton and
25 John Meyer.

1 COMMISSIONER CLARK: Okay.

2 MR. COX: We can proceed line by line or however
3 you deem fit.

4 MR. REHWINKEL: Madam Chairman, if I might, I
5 think it might be more appropriate to take up the second
6 motion that was filed, which is the one from the 5th,
7 which is the motion to strike relative to the scope of
8 the proceeding.

9 CHAIRMAN JOHNSON: I don't know if I have that
10 one. You said -- which one is that, Mr. Rehwinkel?

11 MR. REHWINKEL: I think I may have given the
12 wrong date. No, I'm sorry, the 6th, I apologize. This
13 is the Motion to Strike Portions of Direct and Rebuttal
14 Testimony of Francis J. Heaton, a parenthetical second
15 motion.

16 CHAIRMAN JOHNSON: And why do you think it's more
17 appropriate to start there?

18 MR. REHWINKEL: Because it goes to the scope of
19 the hearing and the issues that the Commissioners were
20 just talking about. The deposition issue is more of a
21 matter of procedure.

22 CHAIRMAN JOHNSON: Sure. Mr. Cox, do you have a
23 --

24 MR. COX: We don't have a preference. That would
25 be fine.

1 COMMISSIONER GARCIA: Let me ask -- Commissioner
2 Clark?

3 COMMISSIONER CLARK: Yes. Somebody asked --

4 COMMISSIONER GARCIA: Yes, Commissioner, this is
5 Joe Garcia. I wanted to ask you, did you say -- because
6 obviously you didn't rule on them, but did you say you had
7 a preference in the sense that you thought that the
8 testimony should stay in if the issue stayed as it was?
9 Did I understand you?

10 COMMISSIONER CLARK: Yes. We resolved whether
11 or not there should be an issue, how the issue should be
12 framed, and we -- my ruling was what was in the
13 prehearing order was the way the issue should be worded.

14 Now, Mr. Rehwinkel's motion to strike some of
15 the testimony was predicated on the idea that Wireless
16 One had raised an issue that was not appropriate for this
17 proceeding, and I assume since we did not accept that
18 issue, that we stated it differently, he will pursue that
19 motion. I will say, I looked at it over the weekend and
20 I thought the information that he is seeking to strike is
21 nonetheless important for understanding the whole process
22 and context of the relationship between a wireless
23 provider and a cellular -- I mean, and a wire line
24 provider, and I didn't -- my -- I guess looking at the
25 pleadings, I didn't think it was appropriate to strike

1 them, but I don't have here my notes on each one and I
2 hope to get that in a minute.

3 COMMISSIONER GARCIA: Well, just maybe to save
4 Mr. Rehwinkel and everyone some time, I happen to agree
5 with you, so before we embark on a long course and a
6 discussion on this, I happen to agree with the prehearing
7 officer's decision, and so if that's any clarification
8 for you, Mr. Rehwinkel, or the chairman.

9 MR. COX: Madam Chairman, if I might, those
10 comments from Commissioner Garcia, with those comments
11 from Commissioner Garcia, as far as the second motion,
12 staff would move to deny the motion in its entirety for
13 basically the similar grounds that Commissioner Clark
14 expressed. We do have some portions on the first motion,
15 however, that we would deny and portions that we would
16 grant on the first motion, but as far as the second
17 motion, we would deny it in its entirety -- recommend.

18 COMMISSIONER CLARK: Chairman, I want to make it
19 clear that we understand that it's your call here.

20 CHAIRMAN JOHNSON: And I know, Mr. Rehwinkel, that
21 you've been sitting patiently. Did you want to say
22 something?

23 MR. REHWINKEL: Madam Chairman and Commissioners,
24 I apologize because this is a matter that is being taken up
25 at the beginning of this hearing, but I need to say a few

1 words about this issue.

2 CHAIRMAN JOHNSON: Certainly.

3 MR. REHWINKEL: As I understand what the
4 Commissioners have said is that there's a relevance of
5 hearing the information for purposes of understanding a
6 relationship between the development of the reverse toll
7 bill option and access charges of which Mr. Adams wishes
8 to inquire, but I think it is vitally important for the
9 Commissioners to understand the way this issue developed
10 in light of the petition that was filed and the pleadings
11 that have been filed in this case.

12 If the sole purpose of this information is for
13 purposes of understanding that relationship, I have less
14 of a problem with this information going in, but if the
15 purpose is to develop a record upon which to engage in
16 rate setting, it is Sprint's position that rate setting
17 in this docket is completely with -- outside of your
18 jurisdiction and is not contemplated by federal law.

19 CHAIRMAN JOHNSON: Could you say that last
20 sentence again?

21 MR. REHWINKEL: Yes. If the purpose of this
22 information is to understand how the reverse toll bill
23 option charge was developed and its relation to access
24 charges, however that might be relevant, that gives me
25 less of a concern from a legal standpoint than if the

1 information that is the subject of a motion to strike is
2 used as the basis, a record basis, for rate setting,
3 which I believe it is unquestionable that the Commission
4 does not have jurisdiction based on the petitions and the
5 case before you -- the petition and the case before you
6 to engage in a rate setting or to alter the reverse toll
7 bill option rate.

8 The only thing I would ask you to do is to look at
9 the chronology that is contained in pages 2 and 3 of
10 Sprint's motion to strike. A petition was filed and there
11 were two issues presented to the Commission. On the second
12 issue, which is the one about tandem switching, Wireless
13 One said there was a material issue of fact there. They
14 did not present a material issue of fact on the first issue
15 and they solely stated that they -- that the reverse toll
16 bill option was unlawful. That was the sole issue that was
17 presented.

18 On October 3rd, four days before Sprint filed
19 its petition, Wireless One sought to raise an issue about
20 modifying the transport rate and introduce the subject of
21 the Vanguard agreement which is a LATA-wide additive
22 which gets into a cost-based rate setting issue. That
23 was four days before Sprint filed its response. Sprint
24 adamantly denies that it had raised the issue that would
25 call into this hearing the rate setting -- any rate

1 setting. So I want to make it clear for the record that
2 we have not raised the issue. Wireless One, four days
3 before our response, raised the issue.

4 Your jurisdiction is specifically limited by
5 federal law to the issues that are raised in the petition
6 and the response. There was not a factual issue
7 presented by Wireless One on setting any reverse toll
8 bill option rate, so to that extent this information that
9 Mr. Adams seeks to introduce both through the deposition
10 that he has filed and through any cross-examination that
11 he might like to make is improper and extrajurisdictional
12 to this arbitration.

13 COMMISSIONER CLARK: Well, it's not extra -- it
14 may be outside the scope of this proceeding, but it's not
15 extrajurisdictional to us.

16 MR. REHWINKEL: Madam Commissioner, I agree with
17 you, but we are not here -- there is no citation or
18 request that you act under Florida law in this case in
19 Wireless One's petition. Sprint is here because it is
20 mandated that we be here. We don't have an objection to
21 the arbitration process or the process that Congress and
22 the FCC have set down, but we do have an objection, in a
23 very accelerated proceeding that is supposed to be
24 limited, that is limited by federal law, to having any
25 issues that are not jurisdictional under a federal

1 arbitration being heard here. It is our position that it
2 would deny us due process to have to respond to an issue
3 that was -- most of this information was raised in
4 rebuttal at a point where we had no opportunity to file
5 surrebuttal. That information was not provided for and
6 the subject of the next motion is the timing of the
7 filing of the testimony, essentially, and the procedure
8 by which this information is sought to be introduced. So
9 that is Sprint's position on this issue.

10 Again, if the purpose of the data or whatever is
11 sought to be introduced on the level of access charges or
12 the reverse, the development of the reverse toll bill
13 option rate is to understand, that's one thing, but if
14 it's to build a record for purposes of setting rates,
15 that is not an issue that you can do in this federally
16 mandated compulsory arbitration, and that is Sprint's
17 position.

18 CHAIRMAN JOHNSON: Thank you.

19 Mr. Adams?

20 MR. ADAMS: Yes. Let me read from paragraph 7
21 of our petition that was filed with the Commission on
22 September 12th of this year.

23 Paragraph 7 quotes the FCC's local competition
24 order as follows: "Traffic between an incumbent LEC and
25 the CMRS network that originates and terminates within

1 the same MTA, defined based on the parties' locations at
2 the beginning of the call, is subject to transport and
3 termination rates under Section 251(b)(5) rather than
4 interstate or intrastate access charges."

5 That is in our petition. It is part of the
6 petition. At the time we filed our petition, Sprint's
7 originating access charge was 5.88 cents, which was equal
8 to the reverse option charge, so our position was that
9 the charge should go to zero.

10 Subsequently, on October 1st, Sprint lowered its
11 originating access charge by five percent, and so our
12 position with that is that the -- only the originating
13 access charge should be subtracted from the reverse
14 option rate, which leaves .294 cents per minute of use,
15 and we -- setting rates in this proceeding is what this
16 case is all about.

17 We happen to agree on terminating rates in the
18 agreement that was already filed, but on the areas that
19 we couldn't agree on the originating side of the call,
20 that's why we're here today. That's why we brought this
21 case.

22 CHAIRMAN JOHNSON: Okay. Staff?

23 MR. COX: Madam Chairman, we've wrestled over
24 these issues for some time now, and staff has done its
25 best to recommend a proposed issue which we felt fairly

1 encompassed the issue that is in dispute in this
2 proceeding and is fully in compliance with the scope of
3 an arbitration proceeding under federal law.

4 CHAIRMAN JOHNSON: So let me ask you a question,
5 Mr. Cox. So you do believe that we have the authority to
6 look at the cost-based rate setting in this particular
7 proceeding, we don't just have to look at the reverse
8 toll bill option rate as it was developed and why it was
9 developed, but we could actually look at the rate
10 itself, and could establish a different rate or question
11 that rate in this proceeding?

12 MR. COX: I wouldn't say that we've made a
13 determination on the jurisdiction aspect involved there
14 as of this date. I would say that the parties should
15 present their cases under the issues that we've specified
16 and they can make their arguments, yea or nay, why to do
17 what Mr. Adams is requesting is outside of our
18 jurisdiction or within our jurisdiction. It's
19 encompassed under the RTBO issue and relevant to this
20 proceeding.

21 CHAIRMAN JOHNSON: Somehow, though, the legal
22 issue will be addressed.

23 MR. COX: I believe they will have the
24 opportunity to address it.

25 COMMISSIONER CLARK: I looked at it as the issue

1 is, how do we characterize this traffic, and then once
2 you characterize it, then you can determine what applies,
3 and it may be that the reverse toll option will no longer
4 be appropriate because of the way we've characterized the
5 traffic, but that's the subject -- if -- depending on our
6 outcome, there may need to be a subsequent proceeding to
7 resolve what the rate is.

8 CHAIRMAN JOHNSON: Mr. Rehwinkel, do you have a
9 closing point?

10 MR. REHWINKEL: I agree with what Commissioner
11 Clark just said.

12 COMMISSIONER CLARK: That's how I resolved it in
13 my mind.

14 MR. REHWINKEL: That would not be in this docket
15 if you --

16 CHAIRMAN JOHNSON: We wouldn't do the rate
17 setting in this particular docket. We would look at those
18 issues and look at the reverse toll billing option rate,
19 how it was developed, how it's being implemented, and then
20 we'd make a -- depending on our decision, if we wanted to
21 raise that issue of the rate setting, we'd do that in a
22 separate docket.

23 MR. REHWINKEL: That's right, and that
24 delineation there is consistent with the way I view this
25 case being and the purpose for which any such evidence

1 would be treated in this case.

2 CHAIRMAN JOHNSON: Okay. And, again, your point
3 then is you are -- or your concern is that we not use this
4 evidence or this information as evidence to determine the
5 rate setting?

6 MR. REHWINKEL: That's absolutely correct.

7 CHAIRMAN JOHNSON: In this proceeding?

8 MR. REHWINKEL: Yes, ma'am.

9 MR. ADAMS: If the Commission elected to move
10 that direction, what we would ask is, we are currently
11 paying 5.88 cents, which is a huge rate for this
12 traffic. We would request that the Commission order some
13 lower rate, .294, .4, something subject to true-up back
14 to the time of implementation with whatever comes out of
15 the subsequent proceeding.

16 CHAIRMAN JOHNSON: What would be our basis for
17 setting the lower rate? What will we rely upon?

18 MR. ADAMS: Rely upon the evidence that we will
19 put in the hearing today, that the reverse option is 5.88
20 cents, and that is based on Sprint's originating access.
21 Sprint has lowered its originating access by five percent
22 on October 1st of this year, and if you subtract that
23 charge from 5.88 cents, which hasn't changed, you come to
24 .294, which is approximately equal to what BellSouth and
25 Vanguard agreed to in their agreement which was approved

1 by the Commission, which was .4 cents per minute, and
2 otherwise, we're in a situation where it could be some
3 period of time before we have any rate relief, and in the
4 meantime, Sprint continues to collect 5.88 cents. We
5 would say, if you decide to go through a proceeding, give
6 us the benefit of that proceeding from this time forward
7 on an interim rate subject to true-up that would allow us
8 some rate relief now, and if you deemed .294 to be a
9 reasonable approximation for that, then --- and then you
10 decide at some higher rate later, we would pay back
11 Sprint the difference, or if it's a lower rate, Sprint
12 would pay us the difference, once a final rate comes out.

13 CHAIRMAN JOHNSON: Mr. Cox?

14 MR. COX: I'm not sure what else to say. I
15 mean, I think we have established the issues as we saw
16 fit. We did not put any sort of language about rate
17 setting in the wording of that issue, and it wasn't
18 raised in the initial petition or response, and that's
19 why we're going forward. If they decide that it -- from
20 their position, it should be, let them argue it, but I
21 don't think that -- I mean, staff has not taken a
22 position on any of the issues yet. That's why I'm trying
23 to be as neutral as I can at this point.

24 CHAIRMAN JOHNSON: Sure, and I'm really kind of
25 speaking to the legal issue --

1 MR. COX: Sure.

2 CHAIRMAN JOHNSON: -- and the posture of this
3 case, whether or not this is even the appropriate forum
4 for setting the particular rate, and responding to his --
5 the procedural mechanism that he suggested that, okay,
6 even if we're going to go this route, could we not set a
7 rate and then set it subject to true-up in a subsequent
8 proceeding? In my mind it appears that we should do it
9 just the opposite, that we should not set a rate, and if
10 we in a subsequent proceeding determined that it was
11 otherwise, then have that subject to refund where your
12 client would get the money back.

13 COMMISSIONER CLARK: Well, and I would add, Madam
14 Chair, once we make a decision on how to characterize it,
15 then they know what the ground rules are and they can
16 negotiate, and then if the negotiations fail, then we can
17 deal with that.

18 CHAIRMAN JOHNSON: Mr. Rehwinkel?

19 MR. REHWINKEL: Madam Chairman, I need to
20 respond to just the interim aspect of what Mr. Adams
21 suggested. This is the first time that I've ever heard
22 this suggestion. I would point to you that Florida
23 Statutes 364.051(1)(c) specifically repeals the interim
24 statute and any ability of the Commission to set Sprint's
25 intrastate rate subject to refund. I'm not pushing that

1 issue because I don't think it's before you at the time.
2 I think what it does is highlights and frames for you
3 that this is a ratemaking concept that you're being asked
4 for. There is no such interim refund mechanism in the
5 federal statute or the FCC's rules.

6 When a party -- let's go back and look at how
7 this process got here. If you enter into a negotiation
8 process that resulted in arbitration, no carrier
9 requesting interconnection has the right under federal
10 law to ask that rates be set subject to refund pending
11 the negotiations in the final outcome of an arbitration,
12 so there's no federal remedy there, there's no state
13 remedy. I don't hear that we're at the point of putting
14 the stake in the ground and putting revenues subject to
15 refund, but if that were to be seriously raised or
16 considered by the Commission, we would want the
17 opportunity to file briefs and respond.

18 This is the first time I've ever heard that, so
19 I'm giving you this kind of off the cuff, but that's my
20 position on that.

21 CHAIRMAN JOHNSON: Mr. Rehwinkel, I think that
22 to the extent that it is or would be considered, it would
23 be considered in a subsequent proceeding and the parties
24 would have the opportunity to make argument as to how the
25 rate should be set and whether there should be some

1 retroactive mechanism imposed and how we would proceed
2 under that, but for purposes of the Motion to Strike
3 Portions of the Direct and Rebuttal Testimony of Mr.
4 Heaton that was filed on November 6, 1997, I'm going to
5 deny the motion to strike in total, but I -- with the
6 understanding that as the issue is framed and as the
7 issues will be discussed and the testimony allowed, that
8 it will address the reverse toll billing option rate as
9 it was developed and how -- as it was formatted, and I
10 don't believe that it will go, in this proceeding, to the
11 rate that will actually be set, that the ratemaking would
12 be set in a subsequent proceeding, but we will allow the
13 testimony.

14 MR. ADAMS: It's not clear to me the basis for
15 Sprint's position that rates can't be set in
16 interconnection disputes. I mean, that's what this is all
17 about. We happened to agree on terminating rates in our
18 negotiation process, but had we not agreed on those, we
19 would be here today to say, here is the cost of tandem
20 interconnection, transport and end office termination, and
21 we might have to go through cost analysis to figure out
22 what those rates would be. That's what's going on in
23 arbitrations all over the country. Some commissions are
24 ordering interim relief in the arbitrations and setting
25 interim rates, and then having a global proceeding where

1 all the ALECs or CLECs can be involved and go through an
2 actual cost study analysis rate case subject to true-up in
3 the interconnection proceeding.

4 This issue is no different than that. This just
5 happens to be the originating side of the call rather than
6 the terminating side of the call, and that's what these
7 cases are all about. We have raised this issue in our
8 petition and it should be decided in this case at least on
9 an interim basis so we can have some relief from this
10 extremely high charge that Sprint is no longer able to
11 assess. It is an access charge for a local call, and they
12 can no longer assess that pursuant to federal order.

13 CHAIRMAN JOHNSON: Which issue, and this is for my
14 edification, because I've already ruled, but which issue
15 addresses the rate setting? Within which issue would we
16 discuss and determine that?

17 MR. ADAMS: On the reverse option issue.

18 CHAIRMAN JOHNSON: That we would actually set the
19 rate?

20 MR. ADAMS: Well, you would be setting a rate --
21 there are two issues, one I call equivalent functionality
22 and one I call reverse option. Equivalent functionality,
23 you will be setting a rate, because you will be deciding
24 whether our wireless network has the functional equivalent
25 of a tandem and end office. So you will decide, do we get

1 .7954 cents or do we get .3587 cents. So you will be
2 setting a rate there.

3 On the reverse option, we also -- you will also --
4 we thought you would be setting a rate here as well and the
5 rate would be removing the originating access portion of
6 the reverse option charge, and we have uncontroverted
7 evidence from Mr. Poag in his deposition that we would like
8 to introduce here today that says what all these rates
9 are. There's nothing else to be decided.

10 CHAIRMAN JOHNSON: Was that contemplated when the
11 issue was developed?

12 COMMISSIONER CLARK: (The Commissioner shakes her
13 head.)

14 CHAIRMAN JOHNSON: Okay. I don't believe that --

15 COMMISSIONER CLARK: I still -- the distinction I
16 made was the characterization of it, and when we get to the
17 deposition, we'll deal with the deposition. I certainly
18 thought parts of the deposition were appropriate to the
19 extent they were relevant, but I didn't think the whole
20 deposition should be entered in the record, but we'll get
21 to that, I suppose. It seems to me that the only issue
22 that the petition raised and that is properly before us is
23 how do you characterize this traffic, and that's what the
24 issue attempts to do.

25 CHAIRMAN JOHNSON: Okay. I've allowed you the

1 opportunity to elaborate just for purposes of preserving
2 those arguments on the record, but I have made my ruling,
3 so then we'll go on to the next issue.

4 MR. COX: I think for purposes of this issue,
5 excuse me, this motion, the November 5th Motion to Strike
6 Portions of the Rebuttal Testimony of Frank Heaton and
7 John Meyer, as I mentioned earlier, there are parts that
8 staff would recommend granting the motion and there are
9 parts where staff would recommend denying the motion.

10 CHAIRMAN JOHNSON: Okay.

11 MR. COX: The first major ground that is raised
12 by Sprint as objectionable is improper rebuttal of a
13 deposition, so what has happened is Wireless One has
14 rebutted deposition testimony in its rebuttal. For those
15 portions of the testimony which are rebutting the
16 deposition, Staff has finally resolved that granting the
17 motion as improper rebuttal of a deposition in that the
18 rebuttal should be responding to the direct testimony,
19 and we feel it would be a bad precedent to set as far as
20 the use of depositions in our proceedings.

21 CHAIRMAN JOHNSON: Okay. And let me be clear.
22 In this instance, the information -- and I guess we can go
23 page and line later, but the information that was provided
24 in the rebuttal does not address something that was
25 actually stated in the direct?

1 MR. COX: Right, it specifically cites to the
2 deposition.

3 CHAIRMAN JOHNSON: And the deposition was attached
4 as an exhibit, is that --

5 MR. COX: That's another portion of the motion to
6 strike, is to strike that exhibit, yes.

7 CHAIRMAN JOHNSON: Okay. I'll start with Mr.
8 Rehwinkel. It's your motion.

9 MR. REHWINKEL: Thank you, Madam Chairman, and
10 Commissioners. I agree with -- well, let me just start
11 this way. It's Sprint's position that the core issue
12 involved in this motion is what is the essence of
13 rebuttal testimony in Public Service Commission
14 proceedings. Our view is, and I think it is
15 substantiated by years and years of practice by the
16 Commission, and the way the Commission's order on
17 prehearing procedure is structured is that rebuttal
18 testimony has, since the inception of this Commission of
19 prefiled testimony, always meant testimony that
20 responds to the prefiled testimony of another party or
21 another party's witness.

22 Sprint asks that the Commission question whether
23 -- we ask the question whether the prefiled testimony
24 that admittedly responds to a deposition taken 13 days
25 after the deadline for filing of direct testimony of Mr.

1 Ben Poag, Sprint's only witness on direct, meets this
2 definition, and we submit to you that it does not. To
3 the extent the so-called rebuttal responds to statements
4 made in a deposition, it is not rebuttal, and this is
5 especially true where the answers were given in response
6 to questions not even directed to the direct testimony of
7 Mr. Poag that he filed in this proceeding.

8 We have several subsidiary objections to the
9 process that Wireless One has undertaken in the filing of
10 this testimony. We object to the wholesale filing of the
11 testimony, to the deposition as an exhibit to testimony,
12 just in and apart -- in and of itself. We feel that the
13 filing of rebuttal testimony to already improperly filed
14 deposition is not appropriate; in other words, this is
15 what I would call tandem rebuttal. They filed testimony
16 that they structure in the deposition and then rebut it.
17 And it is bootstrapping of the worst magnitude in our
18 view, and if it is appropriate to file the deposition in
19 toto as Wireless One has attempted to do by attaching it
20 to the rebuttal testimony of Mr. Heaton, this filing must
21 adhere to the Rules of Civil Procedure, Rule 1.330, which
22 requires that the -- which only allows the wholesale use
23 in the hearing if the witness in the deposition was
24 noticed and designated as the agent or managing agent,
25 director or officer of the company for purposes of

1 testifying at the deposition.

2 And finally, if such wholesale use of the
3 deposition is to be used in an administrative proceeding
4 before the Public Service Commission pursuant to the
5 order on prehearing procedure, such filing of the
6 testimony must comport with the deadlines established in
7 such order.

8 In other words, if Wireless One wants to use Mr.
9 Poag's testimony as -- on behalf of their case, there are
10 specific deadlines for filing direct testimony or
11 rebuttal testimony. If the direct testimony deadline was
12 October 7th, the rebuttal testimony deadline was October
13 28th. If they want to file it as direct, take the
14 deposition before the 7th, file it before the 7th,
15 especially if their position is -- as demonstrated by
16 their raising of this additive issue on October 3rd, they
17 knew about this issue before the 7th, before that
18 testimony was due to be filed. File it then if that's
19 the way you want to structure your case in this
20 proceeding.

21 If it is rebuttal, file it on the 28th if you
22 can meet the other requirement, which is that it be
23 designated -- a designated witness or a deposition of the
24 corporation with issues delineated pursuant to the rules,
25 file it on that date, but then you don't get the

1 opportunity to come and do tandem rebuttal.

2 So I think what Wireless has done is -- Wireless
3 One has done is created a situation where they are not in
4 compliance with the Commission's procedures either with the
5 filing of direct testimony or the filing of rebuttal
6 testimony, and they have not complied with the Rules of
7 Civil Procedure which we have laid out in the motion.

8 The Rules of Civil Procedure allow the use of a
9 deposition for purposes other than contradiction or
10 impeachment if the criteria of the rule are met, and
11 those criteria which Wireless One argues that they have
12 met or that they have noticed Mr. Poag pursuant to Rule
13 1.310 or 1.320, and in their responsive motion, Wireless
14 One suggests that they have met the rule because Mr. Poag
15 is a managing agent of Sprint, and that as such, he was
16 designated to testify.

17 Now, keep your eye on the word "testify" and
18 what purpose the Rules of Civil Procedure intend when
19 they talk about "testify." "Testify" does not mean that
20 Mr. Poag is testifying in this docket as a witness on
21 behalf of Sprint. The Rules of Civil Procedure require
22 that the designation to testify means designated to
23 testify at that deposition in response to notice that the
24 party seeking the deposition wishes to inquire of certain
25 subject areas, and in that regard, a party will designate

1 someone, they will submit it and hold that person out on
2 their behalf to answer any question within that
3 delineated subject area. That's fine.

4 That was not the purpose for which Mr. Poag was
5 noticed, and even if it had been, the requirement of your
6 rules are that if that testimony is to be submitted in
7 this proceeding, that it be in accordance with your
8 filing deadlines of October 7th or October 20th.

9 And that in essence, Commissioners, is our
10 argument on why Mr. Poag's wholesale deposition is
11 inappropriate and why any rebuttal of that deposition is
12 inappropriate.

13 CHAIRMAN JOHNSON: Mr. Rehwinkel, you are
14 suggesting that it is inappropriate in this context. I
15 noted that the Staff will have the deposition that they
16 will offer. Your objections would not apply to the
17 deposition being admitted through that process?

18 MR. REHWINKEL: Madam Chairman, traditionally --
19 traditionally at the Commission, if a deposition is to be
20 offered into evidence, it's by stipulation among the
21 parties. I have not been approached by Wireless One to
22 stipulate any or all of Mr. Poag's deposition. Because
23 of the argument that we had on the last motion, there is
24 a significant chunk of that deposition that deals with
25 the development of the reverse toll bill option rate,

1 i.e., the rate setting evidence. I have a serious
2 objection to that. I objected at the deposition about
3 that evidence, but I allowed Mr. Poag to answer the
4 questions because it would not have served this process
5 to object, order him not to answer the question, have us
6 come back to the prehearing officer one week before the
7 testimony filing date. We were down in Ft. Myers, it
8 would have been very cumbersome. So I let the
9 questioning go on.

10 I don't think that because I have reserved my
11 objection there because I let that go forward that I now
12 have to be subject to having evidence that I feel is
13 irrelevant and beyond the scope of the hearing go in
14 wholesale.

15 Our biggest problem is that this is a process
16 that has -- that does not comport with the Commission's
17 procedure, and any rebuttal to this evidence is
18 improper. I can work -- if the parties approached me
19 about stipulating to certain portions of the deposition,
20 maybe some for all purposes and some for limited
21 purposes, I would be willing to do that, but that has not
22 occurred. So I'm certainly willing to have these even
23 be offered and me have an opportunity to file any
24 objections or make any objections or delineate portions
25 that I think are improper.

1 CHAIRMAN JOHNSON: Okay. I guess we'll have to
2 handle that at the appropriate time, then, understanding
3 that there will be elements in the deposition, even if
4 offered by Staff, that you may have some objection to.

5 MR. REHWINKEL: That's correct.

6 CHAIRMAN JOHNSON: Okay.

7 MR. ADAMS: Mr. Stinson will respond.

8 MR. STINSON: My name is Dane Stinson. I'm
9 representing Wireless One with Arter & Hadden.

10 Wireless One takes exception that it did not
11 follow the rules of the Commission in offering the
12 deposition of Mr. Poag in this proceeding. The
13 Commission's rules do not address the use of a deposition
14 in its proceedings but defer to the Civil Rules of
15 Procedure. In addition, the prehearing order in this
16 case did not state that rebuttal testimony must only be
17 filed to direct prefiled testimony. Rebuttal testimony
18 can be filed in this proceeding, and that is due October
19 28th, which was what Wireless One complied with in this
20 case.

21 The issue is rather straightforward. The
22 Commission's rules that I stated are silent as to the use
23 of a deposition in its proceedings, and the Florida Rules
24 of Civil Procedure apply. Under the Civil Rules of
25 Procedure, the deposition of a managing party or of a

1 managing agent, which Mr. Poag is, is admissible for any
2 purpose. There is no requirement that the deponent be
3 noticed as such. It is sufficient that Mr. Poag is a
4 managing agent. The Florida Supreme Court has addressed
5 the issue of the definition of a managing agent, and I'll
6 quote from that decision and I'll give you the citation.

7 It would be the case of Tucker Brothers versus
8 Menard. The citation is 90 So.2d 908, and the Court
9 stated, "We do not construe the expression 'managing
10 agent' to require that the corporate representative be an
11 officer or in the nature of a general manager. So far as
12 this particular rule is concerned, it is sufficient if he
13 is a managing representative of the corporation in
14 connection with the particular matter under
15 consideration. Certainly the status," parentheses, "of
16 the witness occupied this latter status in addition to
17 his employment status. It seems to us that the fact that
18 he was designated representative of the corporation in
19 the trial of the case would be sufficient."

20 In this case Mr. Poag does hold a managerial
21 position with Sprint. He is the director of tariff and
22 regulatory matters. In addition, he has been designated
23 by Sprint in this proceeding to testify on the issues
24 that have been placed before the Commission.

25 Beyond that, Mr. Poag is serving as the

1 designated representative to assist at trial in this
2 proceeding. He's assisted at the deposition, he's here
3 today to assist. Mr. Poag clearly is a managing agent
4 for Sprint, and Wireless One is entitled to use that
5 deposition for any purpose.

6 CHAIRMAN JOHNSON: Mr. Stinson, let me -- I'll
7 allow you to finish, but let me ask you a question. The
8 first part of your argument is that the Commission, that
9 we have no rule that limits rebuttal to those -- to the
10 testimony that was provided in direct?

11 MR. STINSON: I'm sorry. The prehearing order
12 issued in this case merely requires that rebuttal testimony
13 be filed on October 28th. There is no requirement that the
14 rebuttal testimony be filed to the direct testimony
15 prefiled by Sprint.

16 CHAIRMAN JOHNSON: Okay.

17 MR. STINSON: Clearly, Mr. Poag, as I've stated,
18 is a managing agent for Sprint under the federal Rules of
19 Civil Procedure that apply in this case. As such, it can
20 be used for any purpose. That purpose includes Wireless
21 One being able to use that deposition in full to submit
22 it in evidence in its case-in-chief.

23 The Florida appellate courts have also ruled on
24 that issue in the case of LaTorre vs. First Baptist
25 Church of Ojus, Inc. There the Court states -- let me

1 give you the citation, too. It's 498 So.2d 455.

2 There the Court states that, "The plaintiffs
3 were entitled to use the witness's deposition testimony
4 as substantive evidence without being exposed to the
5 witness's evasive and other self-serving devices."

6 The rule is clear: The deposition of a party or
7 anyone who at the time of taking the deposition was an
8 officer, director or managing agent of a corporation that
9 is a party may be used by an adverse party for any
10 purpose. Such a deposition may be used notwithstanding
11 that the deponent is available to testify at trial.

12 In this case, Mr. Poag's testimony may be used
13 by Wireless One in its case-in-chief. As such, the
14 federal Rules of Civil Procedure also permit Wireless
15 One's witnesses to rebut that testimony. In Civil Rule
16 1.330, that rule is quite clear. It states in
17 subdivision (c), "The introduction in evidence of the
18 deposition or any part of it for any purpose other than
19 that of contradicting or impeaching the deponent makes
20 the deponent the witness of the party introducing the
21 deposition, but this shall not apply to the use by an
22 adverse party of a deposition under subdivision (a)(2) of
23 this rule." Subdivision (a)(2) is the exception for the
24 managing agent.

25 Wireless One can use the deposition of Mr.

1 Sprint -- or, I'm sorry, of Mr. Poag. The testimony
2 remains, it does not become the direct testimony, it
3 cannot become the direct testimony of Wireless One
4 because Mr. Poag remains Sprint's witness. Wireless
5 One's witnesses can then rebut that testimony because
6 there is no preclusion from filing rebuttal testimony
7 under the prehearing order or in the Commission's own
8 rules.

9 If I may proceed, just as a practical matter,
10 also this same procedure was available to Wireless One.
11 Wireless One is claiming some sort of prejudice in this
12 -- I'm sorry, Sprint is claiming some sort of prejudice
13 in this proceeding by the introduction of this testimony
14 under the Florida Civil Rules. Again, the reason that
15 Sprint -- or that Wireless One had to introduce the
16 deposition of Mr. Poag is that the direct testimony of
17 Mr. Poag was incomplete. I submit that the Florida Rules
18 of Civil Procedure permit a party to use the deposition
19 when the direct testimony is incomplete to give the trier
20 of fact all of the facts in the case. Indeed, this use
21 of Mr. Poag's testimony is beneficial to the Commission
22 because it places before the Commission all of the facts
23 at issue and gives the responses of both parties.

24 CHAIRMAN JOHNSON: Thank you.

25 MR. REHWINKEL: May I respond?

1 CHAIRMAN JOHNSON: One second.

2 Staff, did you have something to add?

3 MR. COX: If Mr. Rehwinkel would like to respond
4 first, I can go after him.

5 MR. REHWINKEL: Commissioners, what you've just
6 heard, especially the last point, was that we, Sprint, is
7 a dispensable or a disposable party and we don't need to
8 be here because Wireless One can write our direct and
9 then rebut it and all in one compact filing. That's not
10 what the history of the Commission has been, and that's
11 not the intent of the word "rebuttal."

12 I note that Wireless One did not seek
13 clarification of what rebuttal, the scope of rebuttal was
14 in your order on prehearing procedure.

15 Let's look at this from a slightly different
16 angle, from a practical standpoint. What if Mr. Poag had
17 not filed any direct testimony but they noticed him as
18 they claim to have done because he is a managing agent?
19 Would you have allowed them to then file the deposition
20 and then rebut it all in the same stroke? That's
21 inconsistent with their notion that somehow they get to
22 decide whether our case is complete for our purposes. On
23 one side they tell you, he's our witness so we can't make
24 him their witness, but he's our witness and he's
25 incomplete so we get to rebut it. There's no logic to

1 this. What they're asking you to do is to allow them to
2 create a huge loophole in your filing procedures and
3 allow one party to dictate both the scope of direct and
4 the scope of rebuttal. What you're going to see if you
5 allow this to go forward is that parties will abuse the
6 deposition process to create their own -- to create and
7 shape the testimony of the other party the way they
8 wanted to do, and to evade the direct and rebuttal filing
9 deadlines.

10 I'm not ascribing any improper purpose to
11 Wireless One and what they've done. I'm saying what they
12 have asked you to allow them to do will create a
13 precedent that will allow loopholes and that will cause
14 the disintegration of the orderly direct and rebuttal
15 process that you have established here.

16 CHAIRMAN JOHNSON: Thank you.

17 MR. STINSON: If I could respond to that just
18 briefly?

19 CHAIRMAN JOHNSON: Briefly.

20 MR. STINSON: And Mr. Rehwinkel's
21 characterization as to what would have happened if they
22 had not prefiled Mr. Poag's testimony, that's the point.
23 They did designate Mr. Poag to be the representative in
24 this proceeding. He's familiar with the issues. They're
25 vouching for the veracity of his testimony. He remains

1 their witness. We can elaborate on that testimony or
2 develop that testimony that they chose not to in their
3 direct and then our witnesses can rebut it. Mr. Poag
4 remains their witness, period.

5 CHAIRMAN JOHNSON: Do you want --

6 COMMISSIONER CLARK: Yes, Madam Chair, as I
7 indicated earlier, I did go over these because I felt
8 that I owed it to you to have looked over it, and as I
9 looked over the rebuttal testimony, it's true that he
10 cites to a deposition, and I think it's improper for the
11 whole deposition to be attached, but as I looked over at
12 least the rebuttal testimony, the concern about Meyer, it
13 was not rebutting a deposition but it was relying on the
14 deposition to respond to the notion that it was -- that
15 is, part of the first issue, and that is whether it
16 provides a functionally equivalent interconnection. And
17 to that extent, I mean, actually what the motion to
18 strike does is call for virtually the whole rebuttal
19 testimony of Mr. Meyer to be stricken, and I found that
20 it was probative of the issue. The issue is should
21 Sprint be required to pay Wireless One tandem
22 interconnection, transport and office termination rates
23 for calls originating on Sprint network and terminating
24 on Wireless One, and as I understood the testimony,
25 you're entitled to that if there is this functional

1 equivalency, regardless of what is actually used.

2 And as I read Mr. Meyer's testimony, that while
3 he does cite to the deposition, I would note at least on
4 page 1, lines 9 through 12, that should be taken out
5 because it is inappropriate to respond to a deposition,
6 but it's entirely appropriate, I think, to take discovery
7 information, and whether that's a deposition or
8 interrogatories, to use that as the basis for responding
9 to the direct testimony, which I think is done in the
10 majority.

11 For instance, Mr. Rehwinkel asks that -- I guess
12 he asks, do you agree with Mr. Poag's assertion that
13 Wireless One's comparisons of a network with Sprint on
14 these bases is an oversimplification, and it's the tandem
15 switch transmission facilities and end offices, and I
16 read Mr. Poag's direct testimony to speak to those. And
17 in responding to it, Wireless One uses the information
18 gleaned during discovery. It looks like it's the right
19 thing to do to me.

20 MR. REHWINKEL: You mean Mr. Adams?

21 COMMISSIONER CLARK: I'm sorry, Mr. Who?

22 MR. REHWINKEL: Mr. Adams asked it. You're
23 talking about in the deposition?

24 COMMISSIONER CLARK: I guess what I'm suggesting
25 is the direct testimony of Mr. Poag does touch on and

1 deals with the issue of whether they are equivalent
2 functions, and to the extent that the deposition is used
3 to respond to that issue with respect to information
4 gained from Sprint, I thought it was appropriate, and it
5 was not in fact direct, it was rebuttal, and appropriate
6 rebuttal.

7 So I just viewed it as he was supporting his
8 rebuttal of direct through the use of information gained
9 during discovery, which is what you do. But that's not to
10 say that I think the entire deposition is appropriate.

11 CHAIRMAN JOHNSON: Staff?

12 MR. COX: Like I mentioned earlier, staff kind of
13 went back and forth on this issue and we came down on the
14 side of it being a bad precedent, we felt, to my
15 perspective, to allow them to rebut the deposition.

16 COMMISSIONER CLARK: But I didn't think that's
17 what they were doing.

18 I agree, you shouldn't let the whole deposition
19 in, but I thought they were in fact rebutting the direct.

20 MR. COX: Sure. We think that the testimony is
21 relevant and it goes to the issues in this proceeding, and
22 we think that there could be made an argument that it would
23 be a permissive use of the deposition in this instance,
24 although we felt like it was walking a fine line.

25 CHAIRMAN JOHNSON: I think what I would have to

1 do, which I haven't done as carefully as Commissioner
2 Clark, is to go back through almost line by line and not
3 make a determination in toto, because to the extent that
4 there is information that is not indeed rebutting a
5 deposition but focused more at the direct testimony, it
6 was just stated in the deposition, then that would be
7 admissible. And I don't think Staff is arguing that it
8 wouldn't be admissible, but it appears as if perhaps in
9 staff's recommendation you're looking at it more in total
10 and not on a line-by-line basis.

11 MR. COX: Right. Well, we looked at it line by
12 line, but I guess our recommendation was sort of an
13 overall principle recommendation. I guess you could say
14 that would be a fair characterization of it.

15 CHAIRMAN JOHNSON: Okay. And that would, I guess
16 --

17 MR. COX: I guess, in that case, it might be the
18 best thing to do is just go line by line, just have you
19 rule line by line. I don't know another way to do it.

20 COMMISSIONER CLARK: Madam Chair, one final thing
21 and I'll be quiet.

22 We did at the prehearing decide that we would do
23 direct and rebuttal together, so it doesn't really give
24 you time, unless you'd like to take a break so you can --

25 CHAIRMAN JOHNSON: I think the easiest thing for

1 me to do, and I won't have to have argument from both
2 parties, is to go ahead and take a break now and to walk
3 through this because we may be able to resolve it in just
4 that manner. I think we would paint an overly broad
5 brush right now to just determine that it is improper
6 rebuttal of a deposition, but let me take a --

7 COMMISSIONER GARCIA: Madam Chairman --

8 CHAIRMAN JOHNSON: Joe, did you say something?

9 COMMISSIONER GARCIA: Yes. Madam Chairman, I
10 just wanted to request, if possible, I have an engagement
11 that I must attend between 12:45 and 1:45, so if we could
12 take our lunch a little bit later today, and obviously, if
13 I'm not back by 1:45, then you can proceed and I will read
14 the transcripts. But if that's all right, there's an
15 engagement that I must attend, sort of an emergency that
16 came up.

17 CHAIRMAN JOHNSON: That's fine. We can -- okay.
18 We will break at 12:45 for lunch, and we'll break right now
19 for 15 minutes. Let's go off the record.

20 (Whereupon, a recess was had in the proceedings.)

21 CHAIRMAN JOHNSON: We're going to go back on the
22 record. Joe is available.

23 Going back to the Motion to Strike Portions of
24 the Rebuttal Testimony of Frank Heaton and John Meyer,
25 we'll go on a page-by-page, line-by-line approach.

1 Page 1, lines 9 through 12, I'm going to have to
2 go back through and follow through here.

3 COMMISSIONER GARCIA: Madam Chairman, which
4 testimony are you going to start with?

5 CHAIRMAN JOHNSON: Yes, it gets confusing, but
6 I'm going to start with John Meyer, and it's on page 1,
7 lines 9 through 12. It is a simple reference to the
8 deposition, and it says that a copy of the deposition is
9 attached as an exhibit. I'm going to grant the motion to
10 strike that reference to the deposition. It adds nothing
11 to the rebuttal of the direct.

12 I'm also -- well, I guess you haven't moved it
13 yet, for the admission of the exhibit, but I'm not going
14 to allow the exhibit to be admitted through this
15 process. I'll entertain the exhibit during staff's
16 presentation, and at that point you all can argue
17 substantive portions that you may want to have stricken
18 at that point in time.

19 On page 1, lines 13 through 19 -- let me go back
20 over this one because it looks like we skipped that one.
21 Oh, I'm sorry. I was -- let me go through the
22 deposition's items first and then come back to the
23 pleading.

24 So the first one was lines 1 -- page 1, lines 9
25 through 12, and I will omit that. Let's skip number 2,

1 because that's a reference to a pleading. Let's go to
2 number 3, which is lines 6 through 21 on page 2. Again,
3 it's page 2, lines 6 through 21.

4 Looking at that particular item, I'm going to
5 allow that to stay in. It appears as if it goes to the
6 direct subject matter at issue, and it flows directly
7 from Mr. Poag's direct testimony. I think I have Poag's
8 testimony here, particularly page 11, line 4, throughout
9 that page it appears as if it's the same subject matter
10 and it flows directly from that testimony. I don't think
11 that is anything new or different and it is more of a
12 reference.

13 The cite on line 7, deposition at page 17, 18
14 and 22, seems to be an incidental reference, but it is
15 not directly relied upon to reach those particular
16 positions, so I'm going to allow that to stay in and deny
17 the motion. That would apply to page -- or page 7 --
18 well, no, this is a different one. Pages 7 through 11, I
19 think you asked that we strike all of those pages. And
20 for pages 7 through 11, we're going to allow that to
21 remain in, so I'll deny the motion.

22 Again, a lot of these comments are direct flow-
23 throughs from the testimony of Mr. Poag in his direct on
24 page 17, even looking at the question on page 10, line
25 11, that goes to the functional equivalency of the

1 information. It does not directly flow from what was
2 stated in or provided in the direct, and it does not
3 appear to be complementary in any fashion to that issue,
4 so for that reason, I'll strike that, and note that I'm
5 striking these, but this doesn't mean that the
6 information is not relevant and cannot be raised through
7 cross or direct examination of other witnesses, but it
8 does not appear appropriate to include in this particular
9 document.

10 COMMISSIONER CLARK: Madam Chair, just so the
11 record is clear, I think you also want to strike -- it says
12 20 through 21, but it includes 22, line 22 on page 2.

13 CHAIRMAN JOHNSON: Okay. Thank you. Yes, 20
14 through 22 and then lines 1 through 4, and not 5.

15 COMMISSIONER CLARK: Correct.

16 CHAIRMAN JOHNSON: There are a couple of those I
17 tried to --

18 COMMISSIONER CLARK: Yes, I found them, too, and
19 -- yes, you're right. There are some misidentification of
20 lines.

21 MR. REHWINKEL: Madam Chairman, may I ask, are we
22 in the rebuttal on page 2?

23 CHAIRMAN JOHNSON: Yes.

24 MR. REHWINKEL: Your page ends with line 22?

25 CHAIRMAN JOHNSON: Yes. We thought maybe that

1 was your problem, you were reading something different from
2 --

3 MR. REHWINKEL: I might want to just make sure
4 that I have the same testimony that you're working off of.

5 CHAIRMAN JOHNSON: Do you?

6 MR. ADAMS: We've got -- ours is -- only has 21
7 lines.

8 COMMISSIONER CLARK: You have to remember, we have
9 the redacted version, we don't have the actual -- parts of
10 our testimony is left out.

11 CHAIRMAN JOHNSON: That's why it was confusing.
12 It was very confusing for us back there to figure out the
13 line and page.

14 MR. ADAMS: Could you read the language that
15 you're striking, just so the record's clear?

16 CHAIRMAN JOHNSON: Sure. The question is, "Was
17 Mr. Poag aware that Wireless One had these end office
18 interconnections when he made those comments?" And then
19 the answer starts, "Mr. Poag testified in his deposition
20 that he was aware that Wireless One had some end office
21 interconnection. However, insofar as Mr. Poag was not a
22 direct participant in the negotiations, he was under the
23 mistaken impression that Sprint sent land to mobile
24 traffic over the end office trunk groups to eliminate the
25 reverse option charge for that traffic." And then you

1 cite to the pages of the deposition.

2 MR. ADAMS: Thank you.

3 CHAIRMAN JOHNSON: Next would be page 5, lines
4 -- at least in my particular version, line 13 through
5 line 2 on page 6, which would be probably in your version
6 lines 13 through 22.

7 COMMISSIONER GARCIA: On page 6 or on page 5?

8 CHAIRMAN JOHNSON: Page 6. Joe, what you have
9 would probably -- well, I guess you have the same -- you
10 would have the same copy that we have. It would be page
11 5, line 13 through line 2 on page 6?

12 COMMISSIONER CLARK: It starts in the middle of a
13 question, right?

14 MR. COX: I believe the Chairman had it right, 1
15 through 2 on 6.

16 CHAIRMAN JOHNSON: But it doesn't start on line
17 13.

18 MR. COX: It starts on 13 on page 5.

19 CHAIRMAN JOHNSON: What did you mean for your
20 request to include?

21 MR. REHWINKEL: On page 5, I have the complete
22 version.

23 CHAIRMAN JOHNSON: Okay. But how does the
24 question read, what does it start?

25 MR. REHWINKEL: It starts, "In his deposition, Mr.

1 Poag testified."

2 CHAIRMAN JOHNSON: Okay. So that would be line 11
3 through line 2 on the second page of our particular
4 version, the redacted version.

5 MR. REHWINKEL: Madam Chairman, I just -- my
6 only concern is that when we go to insert this testimony
7 into the record, that the version that the ruling be
8 geared to be the one that actually goes in, and it
9 probably would be most appropriate that we -- and we can
10 do -- we don't have to do this here. We can do this
11 among ourselves to make sure that your rulings comport
12 with the version that Wireless One would offer into the
13 record.

14 CHAIRMAN JOHNSON: Okay.

15 MR. REHWINKEL: And I think they will probably
16 want the confidential version to be the record testimony,
17 even though apparently you're working off of a redacted
18 version.

19 MR. STINSON: I think that we could work with Mr.
20 Rehwinkel on that to clarify the record as to what would be
21 coming in.

22 CHAIRMAN JOHNSON: That will be fine.

23 MR. STINSON: We're working off the same
24 unredacted copy that Mr. Rehwinkel is, so his suggestion
25 makes sense.

1 CHAIRMAN JOHNSON: And then I'll state on the
2 unredacted copy, it's page 5, lines 13 through 22. For
3 purposes of the Commissioners following along, it's page
4 5, line 11, through page 6, line 2.

5 MR. ADAMS: Is it the entire question and answer?
6 Would that be --

7 CHAIRMAN JOHNSON: It is the entire question and
8 answer, and I will grant the motion in this regard.

9 Again, going back through the testimony, there
10 was no direct tieback to the direct testimony for
11 purposes of rebuttal. Again, the subject matter is
12 probably appropriate for questioning and perhaps the
13 comments and materials here can be brought out through
14 cross-examination.

15 Page 7 unredacted says lines 21 and 22, and also
16 says lines 1 and 2.

17 Mr. Rehwinkel, what were you intending here? How
18 does the question begin?

19 MR. REHWINKEL: "Is it economically efficient to
20 back off" on page 7, through page 8 ending with the
21 phrase, "to its end offices."

22 CHAIRMAN JOHNSON: Okay.

23 MR. STINSON: Page 8, line 2.

24 MR. REHWINKEL: Yes, I'm sorry, yes.

25 CHAIRMAN JOHNSON: And let me read what we will

1 strike.

2 The question will remain the same. What would
3 be stricken for Commissioners' purposes is page 8, the
4 first clause, as Mr. Poag stated on page 22, lines -- it
5 looks like 1 -- 23 dash -- page 21, 1-3, we're just going
6 to strike that reference, that clause, but we'll allow
7 the -- Mr. Meyer's statement to stand, because it does
8 appear to me that that's a clarification that he's making
9 rebutting and he's not relying upon Mr. Poag's
10 deposition.

11 Let me see if I can find the next one. Page 9
12 unredacted says lines 5 through 11.

13 MR. STINSON: Yes.

14 MR. REHWINKEL: Yes, that's what I have.

15 CHAIRMAN JOHNSON: And I think they're the same in
16 our version.

17 MR. REHWINKEL: Yes.

18 CHAIRMAN JOHNSON: I will strike page -- or
19 lines 9 beginning with the words, "However, Mr. Poag
20 testified that the signal could be routed over the Ft.
21 Myers tandem location where it currently passes and the
22 voice traffic could be routed over the end office type
23 2-B trunk." Again, reviewing the direct testimony and
24 what was provided, there was difficulty in connecting
25 that up to something that was provided earlier or finding

1 a direct flow-through, so that will be stricken.

2 The next one is page 11, lines 6 through 15 in
3 the unredacted, and in our copies it's lines 5 through
4 15. This was a little more difficult because there were
5 elements that were discussed in the direct testimony. On
6 page 13, Mr. Poag talks about the call processor for the
7 cellular end office is centrally located at the tandem as
8 opposed to the end office of -- the land line end office,
9 but it was very difficult in the context of the entire
10 statement here to find the connectivity or the flow-
11 through from the direct, so I will indeed strike that
12 portion from the document.

13 Also, I think that continues unredacted page 11,
14 lines 17 and 18, striking the sentence that begins, "Mr.
15 Poag is absolutely correct in that the call processing
16 function of the cellular end offices are performed in a
17 central location at the cellular tandem office," leaving
18 in the next sentence, "As John Meyer explained in his
19 direct, however, the fundamental mobile nature of the
20 cellular network requires that call processing from the
21 cellular end office be centrally located," leaving that;
22 also leaving, "The central location of the call processor
23 did not change the functionality of the cellular end
24 office." That would all remain, but strike, "In
25 essence, Mr. Poag's view is that the cellular

1 distribution system begins at the cellular tandem. This
2 is wrong." Those would be the sentences that would be --
3 that sentence would be stricken.

4 Let me read what would be stricken again. "In
5 essence, Mr. Poag's view is that the cellular
6 distribution system begins at the cellular tandem,"
7 period. "This is wrong," period.

8 Page 16 -- I didn't leave any of those out, did
9 I, staff?

10 Okay. Then we can go to page 16. The unredacted
11 says, page 16, lines 16 through 20, and page 17, lines 1
12 through 3. Under the version that we have, Commissioners,
13 it starts at page 16, line 16, and ends on page 17, line
14 5. Those are two new items and I will allow those to be
15 stricken. They cannot be directly tied up to the
16 information that was provided in the direct nor do they
17 directly flow from that information, but --

18 COMMISSIONER GARCIA: What line, Madam Chairman?
19 I'm sorry, what page and line?

20 CHAIRMAN JOHNSON: Page 16, lines 16 through 20,
21 and page 17, lines 1 through 5.

22 COMMISSIONER CLARK: Are you going to strike the
23 question?

24 CHAIRMAN JOHNSON: Oh, I thought I did.

25 COMMISSIONER CLARK: Well, no, I mean -- I'm

1 sorry, I'm on the wrong page -- no. On page 17, if you
2 strike through 5, on my line 4 and 5, it's the next
3 question.

4 CHAIRMAN JOHNSON: Oops. Did I go too far?

5 COMMISSIONER CLARK: Yes, I think it goes just
6 to 3.

7 CHAIRMAN JOHNSON: I'm sorry. I went too far. I
8 think the request only went to line 3.

9 Mr. Rehwinkel, is that correct?

10 MR. REHWINKEL: Yes, Commissioner.

11 CHAIRMAN JOHNSON: Okay. The second question I
12 guess would stand. There was no request for it to be
13 stricken.

14 MR. STINSON: The part ends at line 3.

15 CHAIRMAN JOHNSON: Okay. I think that's it for
16 the depositions.

17 Now, back to the motions that were based upon
18 improper rebuttal of the pleading. Those motions went to
19 page 1, lines 13 through 19.

20 MR. STINSON: And that is of Mr. Meyer's
21 testimony?

22 CHAIRMAN JOHNSON: I'm sorry?

23 MR. STINSON: Mr. Meyer's testimony?

24 CHAIRMAN JOHNSON: In Mr. Meyer's testimony. It
25 was lines -- page 1, lines 13 through 19, and that's the

1 only reference that I have that was based on a rationale of
2 the pleading, is that correct, Mr. Cox?

3 MR. COX: That's correct.

4 CHAIRMAN JOHNSON: Okay. I'm going to deny the
5 request. The information is different than that that was
6 provided in the deposition. Additionally, the information
7 was filed and available before the direct was filed. It is
8 information that can be relied upon and it is filed in this
9 proceeding and will be a part of the record, so I will go
10 ahead and allow that information in and deny the motion to
11 strike.

12 That will also apply to the testimony of Mr.
13 Heaton. The request was for page 14, lines 7 through 22,
14 page 15, lines 1 through 17, and I believe that's it.

15 MR. COX: That's it.

16 CHAIRMAN JOHNSON: For the same reasons, I'll
17 deny those motions and allow that information to remain
18 also.

19 Is there anything else on those?

20 MR. COX: That's all for those two motions.

21 CHAIRMAN JOHNSON: Okay. Apologize for that.
22 That was very -- it was difficult for us to follow, not
23 having the same versions that y'all have.

24 Any other preliminary?

25 MR. COX: I'm not sure whether at this time

1 Wireless One wants to renew its motion for reconsideration
2 of the issues.

3 MR. ADAMS: Yes, we do. It was our impression
4 after the prehearing conference last week that we would
5 be allowed to address the reverse option issue pricing in
6 this proceeding. The reverse option issue is a
7 carrier-to-carrier relationship between Sprint and
8 Wireless One. It does not affect Sprint's customer
9 relationship. We agree that that is not part of this
10 proceeding, and we are confining our case to the
11 carrier-to-carrier relationship between Sprint and
12 Wireless One which is the reverse option charge which is
13 part of Sprint's mobile services tariff, the same mobile
14 service tariff that we have been getting all of our other
15 services from. It's part of this interconnection
16 relationship and it's an issue that should be decided in
17 this case.

18 CHAIRMAN JOHNSON: Sir, I'm sorry to cut you off.
19 I can't find the original -- you filed a motion for
20 reconsideration? Did you file it?

21 MR. ADAMS: It was filed Thursday last week, I
22 believe.

23 CHAIRMAN JOHNSON: It may not be in my file.

24 MR. COX: Madam Chairman, I believe you do have
25 a copy, hopefully, somewhere in there, in the tome of

1 filings in this docket.

2 CHAIRMAN JOHNSON: I had it on Friday when we were
3 talking about it. Do you have another copy?

4 Thank you.

5 MR. ADAMS: The reverse option has always been a
6 term and condition of the interconnection relationship
7 between Sprint and Wireless One. Since we started in
8 business in 1990, we have been paying the reverse option
9 charge for the entire period of time. This is all new
10 incremental revenue for Sprint that has been priced at an
11 originating access charge.

12 Originating access can no longer be part of our
13 interconnection carrier-to-carrier relationship and it
14 has to be removed in this proceeding. This is exactly
15 what the arbitration proceeding is for, is to set the
16 interconnection rates between the carriers. That's
17 precisely what the Telecommunications Act was all about,
18 and that's why we're here today. This is our primary
19 issue. Without the prospect of rate relief on this
20 issue, we wouldn't even be here today. We couldn't
21 cost-justify this proceeding if we don't have the
22 prospect of rate relief on this issue. We would have
23 been reluctantly accepting whatever Sprint is offering.
24 They are the incumbent. They are currently charging 5.88
25 cents. Every day that goes by, they continue to charge

1 5.88 cents. We need rate relief on this and we need it
2 now, and we believe it's part of the issues that have
3 been properly framed in the petition and the response as
4 the Telecommunications Act and the FCC rules provide, and
5 it should be decided in this proceeding. Thank you.

6 CHAIRMAN JOHNSON: Thank you.

7 Mr. Rehwinkel?

8 MR. REHWINKEL: Yes.

9 Madam Chairman and Commissioners, I'm not
10 objecting to the fact that the motion was filed. I think
11 Mr. Adams -- on Thursday, I think Mr. Adams in good faith
12 filed it.

13 MR. GARCIA: Mr. Rehwinkel, can you speak into the
14 mike? I can barely hear you.

15 MR. REHWINKEL: Commissioners, Madam Chairman,
16 Sprint does not object to the fact that we have not had
17 the time allowed to respond to this issue. I have not
18 filed a pleading in the -- getting prepared for the
19 hearing by myself, I have not had an opportunity to draft
20 a pleading in response, but we strenuously object. I
21 just don't want the Commissioners to think that because
22 we have not filed a pleading that we do not oppose this
23 motion in the most strenuous fashion.

24 What Wireless One has asked you to do, you the
25 Commissioners, is to reconsider the ruling of the

1 prehearing officer, and it is our view that Wireless One
2 has not met the burden -- their burden of showing where
3 the prehearing officer's ruling was erroneous as a matter
4 of law and fact.

5 Sprint has a serious issue with the
6 characterization of how the issues were formulated. You
7 have in the pleading before you a discussion of which
8 issues were formulated by Sprint and which issues were
9 formulated by Wireless One. The issue represented to you
10 in the motion as Sprint's formulation of the issue was
11 actually an issue that was raised by Wireless One. It
12 uses the exact wording that Wireless One used in its
13 October 3rd submittal for determination of issues.
14 Wireless One's formulation of the issue was one that was
15 developed well after the filing of the pleading -- the
16 petition, rather, pardon me, and highlights the issue --
17 the fact that this issue about setting rates, developing
18 an additive, now we hear it's an originating access
19 charge rate that they're asking you to set, all was
20 developed subsequent to the jurisdictional state of the
21 filing of the petition and the response, or without
22 regard to what Sprint's response was.

23 And I think it's abundantly plain that Sprint
24 did not raise this issue, that Wireless One did, and what
25 Wireless One represents as Sprint's formulation of the

1 issue is in fact Wireless One's formulation of the
2 issue. At the conference that the staff and the parties
3 had, Wireless -- Sprint objected to Wireless One's
4 formulation of the issue, but conceded, to get the case
5 going.

6 So we have not formulated the issue they said we
7 formulated. That was Wireless One's exact formulation in
8 the petition. If you read the petition, there is nowhere
9 in there -- and I ask you to ask them to show you where
10 they have raised any issue other than the reverse toll bill
11 option is unlawful. If they want rate relief, that's where
12 they get their rate relief, by having you declare that it
13 is unlawful, if you have the jurisdiction and the law to do
14 that. Otherwise, there is no other option in this
15 arbitration to set rates, and I think the prehearing
16 officer has correctly ruled on what the issue and how the
17 issue should be framed.

18 The issue that is at issue here asks the
19 Commission to decide what is the purpose of the reverse
20 toll bill option, which part of the call it's intended to
21 compensate for. Either Wireless One is right and it's
22 unlawful, or we're right and it is a matter between us
23 and our customers that they voluntarily step into and we
24 bill them because they subscribe to that tariff. You
25 will hear evidence in this case that not all CMRS

1 providers subscribe to this, and even those that do don't
2 subscribe everywhere, like Wireless One does.

3 So with that said, Commissioners, we strenuously
4 object to any reconsideration. The standard has not been
5 met and the issue is properly framed for the purpose of a
6 federally mandated compulsory arbitration.

7 CHAIRMAN JOHNSON: Mr. Rehwinkel, could you walk
8 through something again for me? Now, if we were to
9 determine that the rate was an -- I think your words were
10 an unlawful rate, then we'd have to go to another
11 proceeding, okay. Could you --

12 MR. REHWINKEL: No, Commissioners, you would not
13 have to go to another proceeding. Your work would be
14 done in this proceeding. Now, it would be incumbent upon
15 any party that felt like they had a case to make under
16 state law or federal law that the rate should be
17 reduced. But keep in mind, what you've been submitted is
18 two sets of language. One set of language says that they
19 can -- that we cannot charge it, and the other says that
20 we can charge it because it is not a term of
21 interconnection. The rates for local interconnection are
22 stipulated. And if you read the petition, they say in
23 there very clearly that the only two issues that are here
24 is whether this reverse toll bill option is unlawful and
25 whether they provide the tandem end office hierarchy, and

1 on that second issue, the only one that they submit to
2 you is where there is an issue of material fact for you
3 to decide.

4 Okay. So whatever remedy they have in another
5 proceeding is for them to present to you, it is not our
6 obligation or the Commission's obligation to carry forward
7 on that point.

8 CHAIRMAN JOHNSON: Okay. Staff?

9 MR. ADAMS: May I respond to that or --

10 CHAIRMAN JOHNSON: Go ahead.

11 MR. ADAMS: A couple of points. At the time the
12 petition was filed, and I mentioned this earlier, the
13 originating access charge was equal to the reverse option
14 charge, which when you subtract one from the other, it goes
15 to zero, and that was our initial position is the charge
16 should be zero. Subsequently, Sprint has revised its
17 originating access by reducing it five percent, and now our
18 position is that that five percent is the increment that we
19 should be paying for the origination of that call.

20 The issue process of defining the issue, it
21 really has turned out to try to prejudge this entire case
22 before we even get to the hearing. It's our position
23 that this issue was raised in our petition and in
24 Sprint's response, and even though Sprint and Wireless
25 One cannot agree on the precise formulation of the issue,

1 that this Commission ought to resolve all the issues that
2 are raised here and it can't -- it can't mutate our issue
3 that we have brought into something else that we are not
4 trying to seek.

5 We need to have our issue resolved in this case,
6 and that issue is rate relief from the reverse option
7 charge. It's very clear in our petition that that's what
8 we're after. As I said before, we wouldn't be here
9 today, we're paying \$40,000 a month to Sprint for this
10 charge right now, and it ought to be something less than
11 \$5,000. It's an enormous cost for us, and we could not
12 justify going through the cost of this proceeding -- as
13 you can tell from all the paper, has been very
14 expensive. And what we're going to be left with, if you
15 agree with Sprint's position, is a prospect where
16 competitive carriers like us have to think about an
17 incredible burden to come through this process to get any
18 relief, and that's going to have a chilling effect on
19 anything. Carriers are not going to come forward and go
20 through the cost of this to have it delayed until another
21 day. We just can't continue to be here all the time. We
22 don't have permanent people placed in Tallahassee that do
23 this on a day in and day out basis. We're based in Ft.
24 Myers and we are not regulated. We do not come here.
25 Thank you.

1 CHAIRMAN JOHNSON: Thank you.

2 Staff?

3 MR. COX: Staff would recommend that the
4 presiding officer deny this motion, that the panel deny
5 this motion. The parties were unable to agree on the
6 wording of an issue involving land and mobile calls and
7 the applicability of the reverse toll billing option
8 tariff, as Mr. Rehwinkel said, whether it was unlawful or
9 not. In fact, the wording of the issue as stated in the
10 petition filed by Wireless One in this arbitration
11 proceeding states whether all land-to-mobile and
12 mobile-to-land calls originating and terminating within
13 an MTA are local telecommunications traffic subject to
14 transport and termination rates rather than toll charges.

15

16 Now, the prehearing officer determined and staff
17 recommended that the wording as we proposed captures that
18 issue, and we didn't feel that it was appropriate,
19 though, for the Commission to address the relationship
20 between a company and its customers in an arbitration
21 proceeding. That's why we didn't go to the toll charges
22 aspect of the issue as drafted in the petition by
23 Wireless One.

24 And as I mentioned, after two staff identification
25 workshops resubmitted by the parties and oral argument at

1 the prehearing conference, it was abundantly clear that the
2 parties could not agree on appropriate wording, and as a
3 result, the prehearing officer ruled on the appropriate
4 wording. Staff and the prehearing officer felt that the
5 wording of the issue effectively captures the underlying
6 dispute between the parties.

7 And in response -- okay, I'm sorry.

8 CHAIRMAN JOHNSON: Let me ask you one question.
9 You're focusing on the wording of the issue, but it
10 appears to go to the heart of the matter, to the
11 substance of the issue in what this Commission can or
12 cannot resolve in this particular proceeding. If
13 Wireless One had couched their petition in such a way
14 that would very clearly suggest that what they wanted
15 here was the rate relief, for us to actually set the
16 rates, what would we have done? Is that something -- is
17 it a flaw because they filed wrong or is it a flaw
18 because we've reached the decision that we don't have the
19 jurisdictional authority?

20 MR. COX: Well, it's a tough question. The
21 question, as I see it, points to, did the issue as they
22 proposed relate to the interconnection between the two
23 companies, and that's what we are required by federal law
24 to resolve in an arbitration proceeding.

25 CHAIRMAN JOHNSON: Say that again. I'm sorry.

1 MR. COX: The task set before us in an
2 arbitration proceeding under the federal law is to set
3 the rates, terms and conditions for interconnection
4 between the two companies. Wireless One would have you
5 believe that the RTBO is and has always been part of
6 their interconnection agreement. That is why they're
7 asking you now to set a rate. They didn't initially from
8 the petition ask you to set a rate. That was never
9 cited, and it really only came out from staff's
10 perspective in the issue ID workshops following a
11 petition and a response in this arbitration proceeding.
12 We feel strongly that we were never asked to set a rate
13 here, and that although it might be debatable whether or
14 not the RTBO is part of the interconnection proceeding,
15 our tentative feeling is that -- well, I'll stop there,
16 but -- I'll stop there because I don't want to prejudge
17 the issues. I mean, you're sort of -- I feel that the
18 parties can argue what needs to be argued under the
19 issues the prehearing officer set.

20 CHAIRMAN JOHNSON: But I hear him arguing that --
21 and I'm just trying to better understand the context of the
22 arguments and how it developed. I hear Mr. Adams arguing,
23 though, that I guess that it is within our jurisdiction to
24 determine this particular rate, that the rate was one of
25 the -- you know, part of the interconnection rates and

1 process that should be resolved in this particular
2 proceeding, and I was wondering, did we reach the
3 conclusion that that is not the case?

4 MR. COX: No, and that's the problem, and I
5 think that's why the issue was phrased the way it's
6 phrased because Sprint would vehemently disagree with
7 that proposition, that this was part of their
8 interconnection, and I think my understanding of the way
9 the issue was phrased would resolve whether the RTBO was
10 part of the transport and termination or not, and if
11 there needed to be another proceeding after this as a
12 result of resolving that issue, then so be it. But that
13 was the issue that the Commission was to resolve in this
14 petition and response.

15 CHAIRMAN JOHNSON: So we have to resolve whether
16 or not it --

17 COMMISSIONER GARCIA: Aren't we wasting
18 efficiency, though, by saying if we resolve one part of
19 it then we can go to another hearing to resolve -- or go
20 back to another hearing? I mean, I'm trying to -- I'm
21 trying to get -- to get a broader perspective on this
22 because --

23 COMMISSIONER CLARK: I would urge everyone to
24 look at the way the issue is phrased, and what it says
25 is, what characterizes the relationship between these two

1 companies, what is the interconnection? Is it simply
2 between Wireless One and Sprint, and Sprint to Wireless
3 One's end office switch, or does it include all the way
4 back to the originating land line end user to Wireless
5 One's end office switch? We are determining what the
6 relationship is, and I would presume if you determine the
7 relationship goes all the way back to the customer, then
8 there is no RTOB or whatever it is, reverse toll billing
9 option, and we would have to address that in terms of
10 revenue. I would assume Sprint would come in if it
11 adversely affected their revenue.

12 If, on the other hand, we say that it is a small
13 -- it is the interconnection from point of
14 interconnection between Wireless One and Sprint to
15 Wireless One's end office switch, then you reach a
16 different result, and that's what we should be
17 determining in this proceeding, is what does the
18 interconnection consist of.

19 CHAIRMAN JOHNSON: And then it would be incumbent
20 upon the company once we --

21 COMMISSIONER CLARK: Yes, you know, if we say
22 it's the whole -- if that thing is the whole
23 interconnection, then you get what you want, that's the
24 issue; and if it's not, then the reverse toll billing
25 option still applies because it's still a toll call.

1 CHAIRMAN JOHNSON: Okay. Any final comments?
2 Seeing none, this is a motion for -- before the
3 entire panel. Is there a motion?

4 COMMISSIONER GARCIA: Well, I guess I'll deny.

5 COMMISSIONER CLARK: Second.

6 COMMISSIONER GARCIA: That's a motion for
7 reconsideration, correct?

8 CHAIRMAN JOHNSON: There's a motion for
9 reconsideration, and there is -- I'm sorry -- there's a
10 motion to deny the request for reconsideration, and there's
11 a second. Any further discussion?

12 Seeing none, show that then approved unanimously.
13 The issue will not be resolved. It will be taken and
14 litigated as stated in the prehearing order.

15 Are there any other preliminary matters?

16 MR. COX: Staff has a request that the
17 Commission take official recognition of several of the
18 Commission's orders, a tariff, a federal statute and a
19 federal order, and that's -- everyone should hopefully
20 have a copy of the official recognition list.

21 CHAIRMAN JOHNSON: Okay. Have we distributed
22 the official recognition list to the parties? Staff then
23 -- or the Commission will take official recognition of
24 those documents.

25 MR. ADAMS: We have one objection to one of

1 those. There -- we have no objection to everything on
2 the list except for one item, and that's Order No. 20475
3 in DN 87065-TP, which is a very old decision which we are
4 not familiar with, have just seen a copy just recently,
5 haven't had a chance to look at it. It appears to be
6 some sort of land-mobile interconnection issue that -- a
7 case that is over ten years old or about ten years old
8 that probably has been largely superceded since then from
9 other orders of the Commission, and it's not clear to us
10 what relevance, if any, this has to the issues in this
11 case.

12 So on that basis, we would object to having
13 that, but we certainly don't have any objection to the
14 FCC interconnection order and Telecommunications Act,
15 Sprint's tariff or any of the land and mobile
16 interconnection agreements.

17 CHAIRMAN JOHNSON: Okay. Staff?

18 MR. COX: That order staff believes is some
19 policy background for the formulation of the RTBO
20 tariff. It was an old docket dealing with cellular
21 issues. Staff thought it was foundational information
22 for this proceeding, but we're not going to fight
23 vigorously for it.

24 CHAIRMAN JOHNSON: Well, I'm going to overrule the
25 objection. The Commission traditionally takes official

1 recognition of its own orders. The information in the
2 order can speak for itself. To the extent that you have an
3 opportunity to review it and have some objections to the
4 substance and how it's being used, you can raise those at
5 the appropriate time.

6 MR. COX: Staff asks that this be marked as
7 Exhibit No. 1 one for the hearing.

8 CHAIRMAN JOHNSON: You want the official
9 recognition list marked?

10 MR. COX: Yes.

11 CHAIRMAN JOHNSON: Okay. I'll identify this as
12 Exhibit 1.

13 (Exhibit No. 1 marked for identification.)

14 CHAIRMAN JOHNSON: And the short title will be
15 Official Recognition List.

16 Is there anything else preliminarily?

17 MR. ADAMS: We have some other issues to bring
18 up.

19 CHAIRMAN JOHNSON: Okay.

20 MR. ADAMS: I wanted to make sure it's clear,
21 and I think it is, but I just wanted to bring this point
22 up now. We will intend to cross-examine Mr. Poag and Ms.
23 Khazraee on issues perhaps beyond the scope of their
24 direct examination, and based upon the prior orders here
25 today, I presume that is permissible. Either that or we

1 would like to call them as part of our case-in-chief
2 which we have indicated in our prehearing order, and
3 specifically it's the access issue, for example, that we
4 would like to make a record on that with Mr. Poag.

5 He has testified to this in his deposition. We
6 would like to cross-examine him as part of the record in
7 this case.

8 COMMISSIONER CLARK: Madam Chair, I would simply
9 suggest that we take it as it comes up in the
10 proceeding. The issues are the two issues before us.
11 Your cross-examination has to relate to the testimony
12 filed. That's what -- the standard it's always been, and
13 I simply suggest he ask his questions and if they're
14 objected to, then we'll deal with it. If they're not, we
15 can go forward.

16 CHAIRMAN JOHNSON: I appreciate you putting us
17 on notice, and that's how we'll proceed. To the extent
18 that there are questions and there are objections to
19 them, we will entertain them on a question-by-question
20 basis.

21 MR. ADAMS: Have the depositions that we have
22 filed, Mr. Poag and Ms. Khazraee's as part of the record,
23 are they going to be considered part of the record in this
24 case?

25 CHAIRMAN JOHNSON: Staff, you have those?

1 MR. COX: We're going to --

2 CHAIRMAN JOHNSON: Would it be appropriate to go
3 ahead and have those marked now?

4 MR. COX: Yes. I would just ask that -- staff
5 would request that Exhibit No. 1 be moved into the
6 record, before we go on to those.

7 CHAIRMAN JOHNSON: Okay. We will admit the
8 Official Recognition List with the objections cited in the
9 record, but that objection's been overruled. So the
10 Official Recognition List will be admitted in total.

11 (Exhibit No. 1 received in evidence.)

12 CHAIRMAN JOHNSON: Other exhibits?

13 MR. COX: Staff -- just one second.

14 Staff would request that the depositions taken
15 in this proceeding be moved in the record and I will go
16 through them one by one. I note that counsel for Sprint
17 may have objection to certain portions. We'll start --
18 excuse me?

19 CHAIRMAN JOHNSON: I'm sorry, she's getting ready
20 to pass them out.

21 Do you want to go ahead and have them marked?

22 MR. COX: Do all the parties have copies now?

23 CHAIRMAN JOHNSON: We'll go ahead and mark them.
24 Mr. Cox, I have the copies, I'll mark them and then allow
25 them an opportunity before we address them.

1 MR. COX: Yes. The first request that it be
2 marked as Exhibit No. 2, and it's the deposition of
3 Sandra Khazraee, staff would proffer this deposition
4 transcript and ID number will be SK-1.

5 MR. REHWINKEL: Is that Khazraee?

6 MR. COX: Khazraee, excuse me.

7 CHAIRMAN JOHNSON: The deposition, we'll mark that
8 as Exhibit 2, deposition of Witness Khazraee.

9 MR. REHWINKEL: Khazraee.

10 CHAIRMAN JOHNSON: Khazraee, close enough.

11 MR. REHWINKEL: Sandy.

12 CHAIRMAN JOHNSON: SK-1.

13 (Exhibit No. 2 marked for identification.)

14 MR. COX: The second exhibit number would be
15 Exhibit No. 3. It will be the deposition transcript of
16 Witness Poag for Sprint, and that should be marked as ID
17 number FBP-1, FBP-1.

18 CHAIRMAN JOHNSON: It's the deposition of Poag and
19 it's FPB-1?

20 MR. COX: FBP-1.

21 CHAIRMAN JOHNSON: FBP-1. Okay.

22 (Exhibit No. 3 marked for identification.)

23 CHAIRMAN JOHNSON: Do you have another one?

24 MR. COX: Yes. The next exhibit number would be
25 Exhibit No. 4, and that would be the deposition transcript

1 of Witness Meyer, Wireless One.

2 COMMISSIONER CLARK: Beth, you just gave us two
3 of Meyer. Did you mean to give us Heaton?

4 CHAIRMAN JOHNSON: I'll mark the Meyer deposition
5 as Deposition 4, and that's JM-1.

6 MR. COX: Yes, JM-1, yes.

7 (Exhibit No. 4 marked for identification.)

8 MR. COX: And the last exhibit would be Exhibit
9 No. 5, deposition transcript of Witness Heaton of Wireless
10 One, and the ID number would be FJH-10.

11 CHAIRMAN JOHNSON: Okay. Marked as 5 is the
12 Heaton deposition and it's marked FJH-1.

13 MR. COX: FJH-10.

14 CHAIRMAN JOHNSON: Oh, that's a 10?

15 MR. COX: Yes, there were nine exhibits attached
16 to his testimony, so we felt it appropriate to mark this as
17 10.

18 (Exhibit No. 5 marked for identification.)

19 CHAIRMAN JOHNSON: Okay. We've marked those
20 exhibits.

21 MR. COX: Staff is aware that at least counsel
22 for Sprint objects to portions of the Poag deposition
23 being inserted into the record. As far as the other
24 depositions, staff wasn't aware of any other objections
25 to the others being inserted into the record.

1 CHAIRMAN JOHNSON: Okay. Let's try to move those,
2 then.

3 MR. REHWINKEL: Madam Chairman, I would, in
4 essence, have no objection to Mr. Meyer's, but I would
5 prefer to wait until after he is on the stand to admit
6 his deposition.

7 CHAIRMAN JOHNSON: Okay.

8 MR. REHWINKEL: Because I have some questions for
9 him about his deposition.

10 COMMISSIONER CLARK: I think, as long as they're
11 identified, we can -- they can be asked questions and then
12 the actual moving them in the record can wait until after
13 they are excused.

14 MR. COX: Okay. That will be fine.

15 CHAIRMAN JOHNSON: Okay, that will be fine.

16 So we've identified the exhibits, are there any
17 other preliminary matters?

18 MR. COX: I don't believe there are any other --

19 CHAIRMAN JOHNSON: Three hours later.

20 MR. COX: -- preliminary matters. We do have
21 allowed, by the prehearing officer's order, five minutes of
22 opening statements for each party.

23 CHAIRMAN JOHNSON: Okay. Commissioner Garcia,
24 we're going to have five minutes each for the opening
25 statements. Do you have time? Or we can wait until

1 after your lunch.

2 COMMISSIONER GARCIA: Why don't we take them
3 after lunch if possible, Madam Chairman.

4 CHAIRMAN JOHNSON: That will be fine. Then we'll
5 go ahead and recess until 1:45.

6 COMMISSIONER GARCIA: Thank you.

7 (Whereupon, the proceedings were recessed at
8 12:45 p.m.)

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(Transcript continues in sequence in Volume 2.)

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