Sprint

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February 23, 1998

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

Re: Docket No. 971194-TP

Dear Ms. Bayo:

Enclosed are the original and fifteen (15) copies of Sprint-Florida, Incorporated's Cross-Motion for Reconsideration and Request for Oral Argument in the above referenced docket.

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

Thank you for your assistance in this matter.

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Sincerely,

Charles J. Rehwinkel

CJR/th

Enclosures

cc: All Parties of Record

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Wireless One Network, L.P. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with Sprint-Florida, Incorporated Pursuant to Section 252 of the Telecommunications Act of 1996	Docket No. 971194-TP Filed: February 23, 1998

CROSS-MOTION FOR RECONSIDERATION, RESPONSE AND MOTION FOR STAY

Pursuant to Rules 25-22.060(b) and 25-22.037, F.A.C., Sprint-Florida, Incorporated ("Sprint") files its Cross-Motion for Reconsideration ("Cross-Motion") and its Response to the Motion for Reconsideration ("Motion") filed on February 11, 1998 by Wireless One Network, L.P. ("Wireless One"). In addition, Sprint requests that the Commission stay the portions of Order No. PSC-98-0140-FOF-TP ("Order") that requires Sprint to incorporate language into the agreement negotiated between the parties and to further execute such agreement insofar as the language would require Sprint to pay increased rates to Wireless One prospectively and retroactively pending outcome of the Cross-Motion. In support Sprint states as follows:

I. INTRODUCTION.

The order under reconsideration embodies two substantive decisions. First, it makes a determination that the Wireless One network is functionally equivalent to the Sprint network for reciprocal compensation purposes. In this regard, the following language (of the Commission's derivation) was ordered to be added

to the agreement:

> For all land to mobile traffic that Company terminates to Carrier, Company will pay tandem interconnection, transport, and end office termination rate elements where interconnection occurs at the access tandem. Where connection occurs at the carrier's end office (cell site), Company will pay the end office termination rate only.

Order at 10. Second, the Commission agreed with Sprint that FCC Rule 51.703(b) does not preclude Sprint from continuing to offer its RTBO [Reverse Toll Billing Option] tariff option. The Commission ordered that the language proposed by Sprint be included in the agreement. Order at 16-17.

Sprint seeks reconsideration by Cross-Motion on three points. First, the Order does not contain a sufficient factual or legal basis for concluding that Wireless One's cell site meets the FCC's definition of "termination" pursuant to Rule 701(d) and thus that the DMS 250 functions as a tandem. Second, Sprint submits that the ultimate decision regarding the functional equivalence of the two networks is as a consequence inconsistent with the factual findings that the Commission made. Finally Sprint requests that the Commission reconsider including any language in the order that discusses the so-called "LATA-Wide additive" that Wireless One offered as a substitute for the RTBO. This language is based on an incorrect legal and factual assumption. Furthermore, and most importantly it is not necessary for the resolution of the issues submitted for arbitration.

II. FUNCTIONAL EQUIVALENCE FINDING.

The Order overlooks or misapprehends the fundamental inconsistency between

the finding that a cell site provides no switching functionality and the legal conclusion that Wireless One is entitled to more than end office termination rates. The Order cites the provisions of 47 C.F.R. § 51.701(d) thus:

> .... termination is the ***switching*** of local telecommunications traffic ***at*** the terminating carrier's end office switch, or ***equivalent facility***, and delivery of such traffic to the called party's premises.

(Emphasis added). The FCC rule cited contains a two-prong test that the Commission has to apply. That test is that (1) switching of local telecommunications traffic occur at the [cell site] and (2) that the traffic is delivered to the called party's premises. In this case the Commission has misapplied or even ignored the first prong of the test, namely that switching occur at the cell site. The Order only discusses and applies the second prong which involves the delivery of the call. The Commission does not make the required factual finding that "switching... at the... equivalent facility " occurs. The only facts in the record support a finding the cell cite participates in the delivery of the call to end user. The Commission expressly recognized that the switching occurs at the MTSO. In fact, language in the Staff's recommendation, approved by the Commission, but inexplicably omitted from the Order, acknowledges that the cell sites are "not providing a switching function". Staff recommendation, at 12.[1]

The lack of switching capability at the cell site is at the heart of Sprint's objection to Wireless One's proposal on this issue. The lack of switching

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[1]Sprint is unaware that the Commission requested deletion of the omitted language. Sprint is not suggesting any impropriety in the deletion. The language is crucial to Sprint's position regarding the legal infirmity of the Order's analysis and constitutes a finding by the Commission inasmuch as the staff recommendation was approved and the record supports the finding that the cell sites lack switching capability.

capability preclude Sprint from transport alternatives (Poag, T. 387-388; 393-394; 399-400; 445-446). The lack of alternatives for transport on land-to-mobile calls undermines the notion of reciprocal compensation. The lack of switching function in the cell site demonstrates that the cell site does not meet the FCC Rule 51.701(d) requirements.

Clearly the fact that the cell site does not perform a switching function means that the requirements of Rule 51.701(d) are not met. It then follows that the DMS 250 does not perform a tandem function. This has been Sprint's position throughout and the evidence fully supports this conclusion. Sprint has pointed out that calls cannot be delivered at a cell site for termination at that cell site. Delivery at such a point would allow Sprint to provide its own transport -- something delivery at the MTSO would not allow.

As a practical matter the Order recognizes this fact. The language to be inserted recognizes that

> [w]here connection occurs at the carrier's end office (cell site)[2], Company will pay the end office termination rate only.

Order at 10. This language accurately recognizes the physical reality that delivery to "connection" at the cell site is a "virtual" concept, and that physical delivery to the end user occurs via further transport to the MTSO, switching, additional transport, and finally termination. Because Sprint will be able to deliver calls in this manner (prospectively), the company may not be severely economically disadvantaged. Nevertheless, the Commission's finding of

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[2]Sprint respectfully requests that the term "end office" be removed. The record is clear that Wireless One has no such facility. The Commission expressly found that the cell site was an "equivalent facility" and not an end office.

functional equivalency is wrong as a matter of law. As such, the Commission should not require payment beyond end office termination for calls delivered at the MTSO. Under this arrangement, Wireless One is not economically disadvantaged compared to a situation where calls are delivered at the cell site connection.

Sprint also points out that the Commission language, while seemingly fair prospectively, requires Sprint to retroactively to pay tandem switching and termination for calls that Sprint had no opportunity to deliver at the cell site connection.[3] This problem only exists because the Wireless One system is not physically the functional equivalent.

III. LATA-WIDE ADDITIVE ISSUE.

Sprint also requests that the Commission delete the language cited by Wireless One in the Motion regarding the LATA -wide additive. The recommendation refers to the additive as being in-lieu of the RTBO charge. The "in lieu of" language is not included in the order, but the clear implication is that the is what the Commission is referring to. Sprint believes that the Commission has erred as a matter of law in making any reference to the additive contained in a negotiated agreement between providers that are not parties to this docket. Even if it is proper to interpret such a contract, the interpretation is based on lay testimony regarding the additive that was clearly wrong. In fact, Attachment B-1 of the BellSouth/Vanguard agreement that is referred to in the Order clearly indicates that the additive applies to mobile-to-land traffic, not the land-to-mobile traffic to which the RTBO rate applies. . This rate is a

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[3] Wireless One first offered to charge end office only termination in Rebuttal Testimony filed on October 28, 1997.

terminating rate. The Commission has already recognized that the RTBO charge has nothing to do with the originating aspect of end-user pricing for which the CMRS provider is a surrogate payor. The additive language of the Order is inapplicable to the case at hand and has apparently generated confusion which Wireless One seeks to exploit in its Motion.

IV. STAY REQUESTED.

Sprint seeks a stay of the requirement that an executed agreement be submitted for approval and containing the language embodied in the order. Sprint is ready and willing to comply with the Order. A compliant agreement will be submitted to Commission. However, Sprint urges that, at a minimum, any action on approving the agreement be held in abeyance until resolution of the matters on reconsideration.

Sprint submits that Wireless One will not be harmed if a decision is delayed on the tandem switching issue. This matter is covered by a section of the agreement.[4] Sprint has agreed to retroactive payment of rates. Wireless One has not agreed to compensate Sprint if payment is made and subsequently the decision to require payment of all three elements is reversed. Thus, Wireless One would be protected and Sprint would not be if implementation of the decision is not stayed. Actually the stay that Sprint seeks is from approval of the agreement until the Commission makes its decision on reconsideration. This would protect Sprint because the effective date of the agreement is the

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[4] Attachment II, Sect. D.2 provides in part: Carrier will charge Company the end office rate element pending negotiated or arbitrated resolution of whether Carrier is entitled to bill and Company is obligated to pay higher tandem interconnection, transport, and end office rates for land-to-mobile traffic. Any negotiated or arbitrated resolution of this issue will be retroactively effective to August 1, 1997 and a true up to that date will occur.

approval date.

Because Sprint has combined the response and the Cross-Motion, it would be proper for Wireless One to respond only to the Cross-Motion and not to the response. For this reason, Sprint segregates the response (below) from the Cross-Motion (above).

V. RESPONSE TO MOTION FOR RECONSIDERATION.

In response to the request for reconsideration, Sprint notes that Wireless One does not raise any new issues. The Commission has expressly considered and rejected each argument now re-asserted by Wireless One. The so-called competitive asymmetry argument was not raised as an arbitration matter. New argument should be disregarded. To the extent reconsideration is founded upon the LATA-wide additive argument it should be rejected as indicated below, since Wireless One made no showing that the BellSouth/Vanguard agreement applies to this arbitration.

Likewise, the notion that the voluntary subscription to the RTBO offering is a "term and condition" of the interconnection relationship was rejected by the Commission as having "no bearing on [47 C.F.R. § 51.703(b)]'s applicability." Wireless One has shown no reason why this conclusion should be modified.

The contention that the RTBO is a new class of service is a new one -- not raised in the original Petition of Wireless One. More importantly, it cannot be reconciled with Wireless One's original request for a finding that the RTBO is unlawful and that such a finding would preclude the charging of toll for these

calls! Were RTBO to be a "different class of service" Sprint would not be precluded -- as asserted by Wireless One -- from charging toll to the originating customers in this case and the many instances where a CMRS provider does not subscribe to RTBO.

Wireless One's claim that the Order errs in some respect to assessment of originating access charges is completely misplaced. Wireless One has cited the law correctly, but has not shown that the Commission has erred in applying it. The Order clearly finds that the voluntary RTBO payments are not access charges for purposes of the FCC rule. Likewise, the Commission has considered and rejected the Wireless One contention that rule 51.701(b) does anything other than define when local interconnection rates rather than access charges apply to the terminating portion of the land-to-mobile call. No showing is made that the RTBO payments are access charges.

As to the alternative relief requested, the Commission should refrain from taking any action on Wireless One's alternative request for relief. Sprint and any other ILEC providing RTBO services should have the proper opportunity (including 20 days) to respond to a Petition setting out the legal basis for a proceeding. See Rules 25-22.036 and 25-22.037, F.A.C. (establishing elements of a petition and the rights of affected parties to respond).

Additionally, this Commission has historically limited generic decision making to the full five-members, rather than panels established for scheduling reasons. Sprint submits that the rights of it and all other affected parties should be are determined by the full Commission in accordance with past practice.

In summary, Sprint objects to any decision based on a motion filed without meeting the requirements of the Commission's procedural Rules, with less than the 20 day response time allowed and where Commission practice regarding initiation of a generic docket is not followed.

Wherefore, in light of the above, Sprint requests that the Commission:

(1) Grant reconsideration to the extent requested in the Cross-Motion;

(2) Issue a stay or reserve approval of the agreement until the reconsideration issues are resolved; and

(3) Decline to act upon the alternative request to initiate a generic docket.

RESPECTFULLY SUBMITTED this 23rd day of February 1998.

Charles J. Rehwinkel
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Wireless One Network, L.P. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with Sprint-Florida, Incorporated Pursuant to Section 252 of the Telecommunications Act of 1996	)	Docket No. 971194-TP Filed:

SPRINT'S REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 25-22.058. F.A.C., Sprint hereby request oral argument on the Cross-Motion for Reconsideration filed this same day in this docket. This docket has involved highly technical matters. The issue of reciprocal compensation and functional equivalence of a CMRS provider is a novel one for this Commission. Sprint's argument in support of reconsideration on the reciprocal compensation issue is one that involves comparing the routing of land-to-mobile calls to the actual pricing structure ordered by the Commission. Sprint believes that oral argument will aid in the understanding of the issues. Sprint will be prepared to make oral argument at any agenda conference where the Commission considers the any Motion or Cross-Motion for reconsideration.

Wherefore, Sprint respectfully requests that the Commission grant oral argument on the Cross-Motion for Reconsideration filed in this docket.

RESPECTFULLY SUBMITTED this 23rd day of February 1998.

Charles J. Rehwinkel
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail or hand delivery (*) upon the following on this 23rd day of February 1998 .

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