

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

MEMORANDUM

December 23, 1997

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TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (NORTON) *nk*
DIVISION OF LEGAL SERVICES (B.KEATING, COX) *WC*

RE: DOCKET NO. 971194-TP - PETITION BY WIRELESS ONE, L.P.
D/B/A/ CELLULAR ONE OF SOUTHWEST FLORIDA FOR ARBITRATION
WITH SPRINT-FLORIDA, INCORPORATED PURSUANT TO SECTION 252
OF THE TELECOMMUNICATIONS ACT OF 1996

AGENDA: JANUARY 6, 1998 - REGULAR AGENDA - POST HEARING DECISION
- PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: REQUIRED FEDERAL DEADLINE: JANUARY 10, 1998

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\971194TP.RCM

CASE BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act concerns interconnection with the incumbent local exchange carrier, while Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements reached through compulsory arbitration. Specifically, Section 252(b)(1) states:

(1) Arbitration.-During the period from the 135th day to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the state commission shall resolve each issue set forth in the petition and response, if any,

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

On April 10, 1997, Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida (Wireless One) and Sprint-Florida, Inc. (Sprint) entered into negotiations regarding Wireless One's request for interconnection arrangements with Sprint. The parties were unable to reach final agreements on certain issues. Thus, on September 12, 1997, Wireless One filed a petition for arbitration of issues not resolved in its negotiations with Sprint.

Section 252(b)(4)(A) provides that this Commission shall limit its consideration of any petition to the issues set forth in the petition and in the response, if any. The Commission conducted a hearing in this docket on November 24, 1997.

DISCUSSION OF ISSUES

ISSUE 1: Should Sprint be required to pay Wireless One tandem interconnection, transport, and end office termination rates for calls originating on Sprint's network and terminating on Wireless One's wireless network? If not, what are the appropriate elements of compensation?

STAFF RECOMMENDATION: Yes, Wireless One's network should be considered to be functionally equivalent to Sprint's. Hence, Wireless One is entitled to charge Sprint the transport, tandem, and/or the end office rate elements when it terminates Sprint-originated traffic on its network. The following language should be inserted into the agreement to be filed with this Commission:

Attachment II.D.3, p. 35

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.

POSITION OF PARTIES:

Wireless One: Wireless One's telecommunications network contains tandem offices, transmission facilities, and end office-equivalent cell sites over which Sprint originated calls will be transported and terminated. 47 C.F.R. §§ 51.701(c) and (d). Sprint is required to compensate Wireless One for the use of each of these facilities at the same rate that it charges Wireless One. 47 U.S.C. §§ 251(b)(5) and 252(d)(2)(A)(i); 47 C.F.R. § 51.711(a)(1).

Sprint: Sprint should only have to pay Petitioner for functions performed. Petitioner does not perform tandem switching or provide a transport function for Sprint-originated calls. Under the facts and the MCI and MFS precedents, Petitioner is only entitled to end office termination since it's the only function performed by Petitioner's network.

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

STAFF ANALYSIS: Section 251(b)(5) of the Telecommunications Act of 1996 (the Act) requires that ILECs establish reciprocal compensation arrangements with carriers requesting interconnection for the transport and termination of telecommunications. The compensation elements include transport between switches, tandem switching and end office switching. The parties have agreed that these are the appropriate elements to be paid by Wireless One to Sprint for mobile to land traffic. However, the parties have been unable to agree on the appropriate elements to be paid by Sprint for land to mobile traffic terminated by Wireless One. The issue hinges on whether the components of Wireless One's network are equivalent to Sprint's network for purposes of compensation for terminating land to mobile traffic.

The dispute which the Commission has been asked to resolve centers on the interpretation of §51.701(d) of the FCC's rules accompanying the Interconnection order (96-325 issued August 8, 1996 in CC 96-98). §51.701(d) defines termination for purposes of compensation. It states that:

...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.

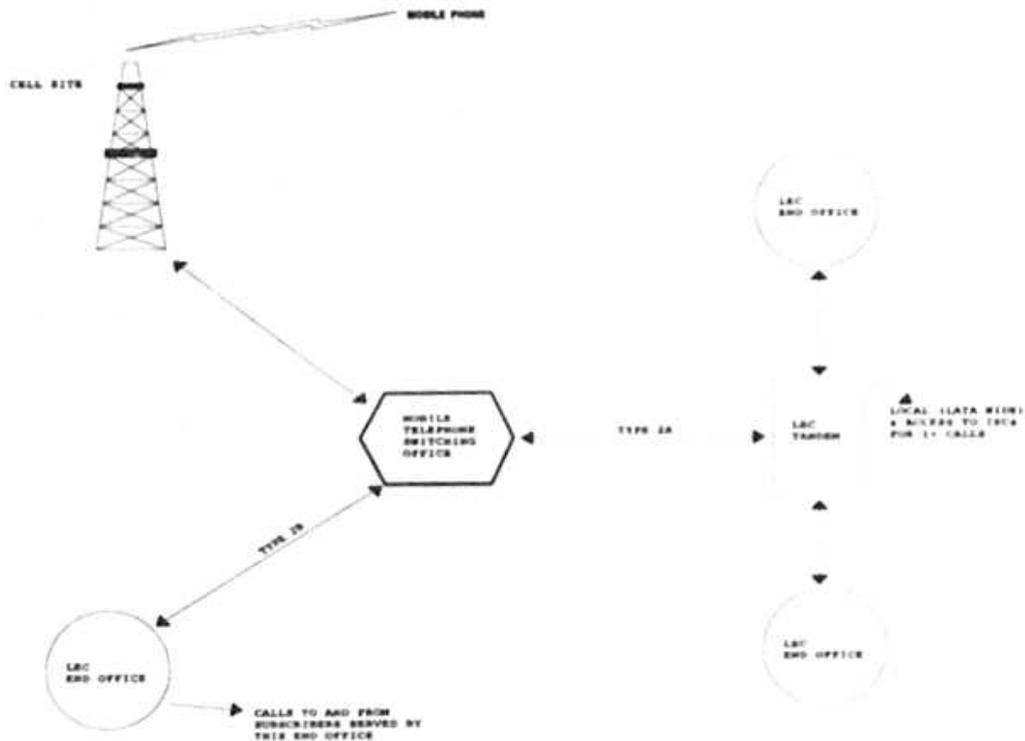
47 C.F.R. § 51.701(d). Emphasis added.

Wireless One contends that its network, though not identical to Sprint's, is functionally equivalent for purposes of assessing transport, tandem and end office switching termination charges. (Heaton TR 239) Sprint contends that Wireless One's network is not equivalent; therefore Wireless One is not entitled to all of the termination compensation elements that Sprint receives when it terminates traffic. (Poag TR 393)

Florida's mobile interconnection tariffs, including Sprint's, contain different rates for various types of interconnection. Two of those types are called Type 2A and Type 2B. Type 2A covers mobile interconnection at the LEC's access tandem and Type 2B provides connection at a LEC end office as shown below.

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

DIAGRAM 1 MOBILE INTERCONNECTION TYPES



As shown in the above diagram, with Type 2A, a land line originated call would begin at the calling party's premises, and would be carried to the caller's serving end office, then to the access tandem at which the mobile carrier interconnects. The mobile carrier picks up the call, and transports it to its Mobile Telephone Switching Office (MTSO); from there the signal is converted into a radio frequency signal and transmitted to the appropriate cell site to be broadcast to the mobile unit.

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

Type 2B, on the other hand, is a dedicated connection at a LEC's end office. Thus a cellular carrier can receive landline originated calls at the LEC end office. However, only calls from callers located in the local serving area of that end office will be directed to the cellular carrier's point of interconnection there. Thus, a cellular carrier must establish numerous points of interconnection utilizing Type 2B in order to cover the same area that a single point of interconnection would cover utilizing Type 2A (at the access tandem).

According to witness Meyer, Wireless One's network consists of:

- 1) DMS-250 switch
- 2) Central Call Processor in the DMS-250
- 3) Transport facilities consisting of T-1 trunks or microwave facilities connecting the DMS-250 with the cell sites.
- 4) End offices consisting of cell sites
- 5) Radio frequency transmissions between the cell sites and the mobile phone (often referred to a wireless loop). (Meyer TR 103-106)

With a Type 2A connection, a land to mobile call is handed off by Sprint to Wireless One at the point of interconnection, which in this case is the access tandem. It is carried over Wireless One trunking facilities to the MTSO, where the call processor determines the appropriate cell site, or end office, to which to send the call. (Meyer TR 105) The most appropriate cell site is the one that would provide the strongest radio signal depending on the location of the mobile phone. (TR 105) Because of the customer's mobility, the call processor may have to transfer the signal to different cell sites during the call, in order to maintain the strength of the signal and quality of the transmission. (TR 105)

Sprint's network consists of :

- 1) Tandem Switch
- 2) Transport facilities between the tandem switch and end office
- 3) End office switch
- 4) Loop between the end office and the customer premises. (Kazraee TR 330-331; 346)

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

A land to mobile call originates at the customer's premises. The call goes to the serving end office where it is switched and transported to Sprint's access tandem (for a Type 2A connection) which is the point of interconnection with a CMRS provider's network.

Wireless One witness Meyer argues that both networks contain three essential components: tandem switches, transmission facilities, and end offices. (TR 102) He notes that in some respects the two networks are physically the same, but in others they are by definition different by virtue of the fact that Sprint provides wireline services and Wireless One provides wireless services. (TR 102) First, he states that the tandems function in the same way, and that the physical, but not the functional, differences begin after the tandem switches the call to the serving end office. Witness Meyer states that the end office is not dedicated to the end user, as is the case in a wireline environment, because of the mobile nature of the service. (TR 105)

Next, witness Meyer explained how a central location for message processing is essential for wireless service to accommodate end users who travel from cell site to cell site. (TR 106) For example, when a mobile unit is turned on by an end user to receive a call, it scans the strongest available radio frequency (RF) signal in that vicinity. If there are no available channels at the closest cell, the central processor will automatically shift delivery of the call to the next strongest signal sending end office. (TR 106) When the signal locks on to a specific cell site's transmitter, the mobile unit will then transmit its identity to that cell site. The cell site sends a digital message via data link to the tandem switch, a process called "registration." In this way, the tandem switch knows to which cell site to send the call for completion. (TR 106) Witness Meyer notes the importance of a central location for registration. He states that if end office registrations were not interdependent, an automatic shift to a stronger RF channel from one end office to another could not occur. (TR 108)

According to witness Meyer, however, the respective components still perform the same functions. (TR 102) Wireless One's tandem switches, called Mobile Telephone Switching Offices (MTSOs), are both Northern Telecom DMS-250s. (TR 103) He states that Sprint's tandem switches are Northern Telecom DMS-200s, and that both have the same hardware. (TR 103) He also states that they are functionally the same in that each switch provides for transmission

DATE: DECEMBER 23, 1997

to the end office serving the called party. (TR 103) Wireless One's transmission facilities consist of leased T-1 lines, proprietary microwave facilities, or a combination of both. Witness Meyer states that Sprint uses T-1 lines. According to witness Meyer, where microwave is used by Wireless One, the technological means of transmission is different, but not the function, in that both provide for transmission of the call from the tandem to the end office. (TR 104) Finally, he states that both carriers' end offices perform the same function of delivering the call to or receiving the call from the end user, although Sprint's network utilizes wirelines between the end office and the fixed end user location, and Wireless One's network uses radio signals. (TR 104) Specifically, Sprint's end offices contain Line Concentrating Modules (LCMs) which provide the connections to the end office from the end user's fixed location via a wireline, whereas Wireless One's end offices contain Line Interface Modules (LIMs), which provide the same connection via radio frequencies. (TR 104)

Wireless One witness Meyer further contends that a tandem switch is defined in BellCore Manual SR-TAP-000191, page 12-18 as "a switching system in the message network that establishes trunk-to-trunk connections." (Meyer 207) He states that Wireless One has two tandem switches, referred to as MTSOs in this proceeding, which are Nortel DMS 250s, and which establish trunk to trunk connections to end offices, interexchange carriers' points of presence, and other carriers' tandems and end offices. (Meyer TR 113) Wireless One also has transmission facilities which transport calls over its network between its tandem office and cell sites. (Poag TR 351) Once a call is switched at the tandem, it is transmitted over Wireless One's transport facilities, either T-1s or proprietary microwave or a combination of both, to the cell site serving the called party. (Meyer TR 102-103) Wireless One states that, according to BellCore manual SR-TAP-000191, an end office is defined as "a switching system in the message network that establishes line-to-line, line-to-trunk, and trunk-to-line connections and provides dial tone to customers." (Meyer TR 197) Wireless One asserts that its cell sites provide line termination and dial tone to the end user, which cannot be done through the DMS 250. (TR 104, 114) Staff notes that Sprint's witness agreed that Wireless One's tandems cannot provide this line connectivity for call termination. (Khazraee TR 347) Witness Meyer states that it is for this reason that Wireless One and Sprint both collocate end offices with their tandem locations - to make the line terminations to the end users that these tandems cannot. (TR 114) Thus, Wireless One contends that its cell sites are functionally equivalent to end offices. (TR 104) On that basis, Wireless One argues that it should be entitled to assess both tandem and end

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

office switching rate elements, as well as transport for terminating Sprint-originated land to mobile traffic. (Heaton TR 239)

Sprint, on the other hand, argues that Wireless One's cell sites do not function as end offices. Sprint states that the MTSO is the functional equivalent of the end office, and that cell sites function as extensions of the loop. (Poag TR 387, 391) Thus, Sprint argues that Wireless One is only entitled to be paid the end office termination rate. (Poag 387, 391)

Sprint argues that an end office connects one customer within the switch to another customer within the switch. Since a cell site cannot connect one customer to another without using the MTSO, it is not functionally equivalent to an end office. (Poag TR 387) In addition, Sprint witness Poag states that Sprint cannot interconnect at a Wireless One cell site to terminate traffic (a Type 2B connection), although Wireless One can connect at a Sprint end office. (TR 387) Finally, Sprint states that Sprint can direct trunk from its end office to Wireless One's MTSO to terminate calls, but Wireless One cannot direct trunk from its cell sites to any of Sprint's switches. (TR 387)

Witness Poag also asserts that Wireless One's description of Sprint's local loop as "a single wireline between the end office and the fixed end user location" is an oversimplification. In most cases, witness Poag argues, there are also remote switches, subscriber line carrier (SLC) systems, and copper and fiber carrier systems between the host and end office switches and SLCs. (TR 390) Thus, there may be several links in the overall loop aside from the single wireline facility. (TR 390) Witness Poag asserts that the cell site is more properly classified as a piece of network equipment necessary to complete the final loop connection to the end user. (TR 390) He states that the cell site performs the same type of loop functionality as the SLC in Sprint's network. (TR 390-391)

Witness Poag further states that the Control Data Base processor described by Wireless One witness Meyer directs a connection function, not a switching function, as those terms are defined by the FCC, at the cell sites that serve to connect the wireless portion to the fixed elements of the cellular loop. (TR 391) This, he says, is functionally equivalent to the SLC in the wireline network, i.e., connecting the feeder side of the loop to the distribution side of the loop. (TR 391) He describes the SLC as a concentration device which condenses the traffic from many lines to a lesser number of lines. The subscriber's side of the SLC connects directly to the distribution cable that contains all

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

the lines that terminate to customers' premises. The switch side of the SLC connects to a fewer number of circuits that are then brought back to the end office switch. Witness Poag testifies that this is the same type of connection made at the cell site under the direction of the control database processor, connecting the wireless portion to the fixed portion of the cellular loop. (TR 392-393) Witness Poag concludes that, for purposes of reciprocal compensation, these are loop costs which should be excluded from transport and termination rates. (TR 391-392)

Wireless One opposes this comparison of Sprint's SLCs to its cell sites, stating that Sprint's network can function without the SLC, or line concentrator, which is an optional piece of equipment, whereas Wireless One's network cannot function without the cell site. (Meyer TR 119) At hearing, Sprint witnesses Poag and Khazraee acknowledged that this is true. (Khazraee TR 349-350; EXH 3, p. 110-111)

Sprint also argues that since cell sites do not have the same switching functionality as Sprint's end office switches, Sprint cannot directly connect its facilities at Wireless One's cell sites to terminate traffic. (Poag TR 393-394) Thus, Sprint argues, if Wireless One's position is adopted, Sprint would be required to pay Wireless One transport and tandem switching on all calls to Wireless One, whereas Wireless One has the option to connect at Sprint's end offices via a Type 2B connection, and hence only pay end office switching, thus avoiding transport and tandem switching charges. (TR 394)

Wireless One responds that while Sprint can house its call processing functions in its end office because the fixed location of its end users allows Sprint to connect them via wireline facilities to their serving end office, the nature of mobile service precludes such hard wire arrangements. The technology of a mobile network requires a centralized call processor for the cellular system to provide the ability to transfer call signals among different cell sites during a single call. (Meyer TR 107-108) Wireless One also argues that Sprint could, in fact, connect at its cell sites if Sprint would provide SS7 connectivity at its end offices. (Heaton TR 247) SS7 signalling would provide Automatic Number Identification which would be necessary for call origination and termination. (Heaton TR 248; Meyer TR 118) Witness Meyer states that to connect a trunk from a Sprint end office to a Wireless One end office, a voice path (or trunk termination) and a SS7 end-to-end signalling connection is needed. (TR 118) He states that Sprint has provided the voice path via its end offices, but that Sprint has not equipped its end offices to deliver SS7 signalling. He states that Sprint obtains its SS7 signalling

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

capabilities by routing through its tandems. Witness Meyer asserts that Sprint's dependence on other offices for SS7 signalling is analogous to Wireless One's dependence on its MTSO for call processing. (TR 119)

Wireless One states that even though it would be necessary, based on the requirements of its own system, to transport the signal back to its MTSO to direct the call to the cell site providing the strongest RF signal for the location of the mobile phone, it would nevertheless charge Sprint symmetrical end office switching rates if Sprint were to terminate traffic at Wireless One's end office. (Heaton TR 252, 299) According to Wireless One, it would be willing to bear the additional transport cost because they would benefit from having equivalent compensation mechanisms overall. (Heaton TR 308) In fact, witness Heaton stated that Wireless One has sufficient capacity to carry that traffic with almost no incremental cost to itself. (TR 308) Sprint argues that this arrangement would cause Sprint to have to configure its network inefficiently and would require additional "links" be put into the transmission of a call. (Poag TR 446)

Recommendation

Again, staff notes that there is no dispute here as to what the rate levels should be. The parties have agreed to the rates for transport and switching. The issue to be resolved is when they would apply for land to mobile traffic, i.e., which rates Sprint should pay for its traffic terminating on Wireless One's network. Clearly, the record demonstrates both similarities and differences between the landline and mobile network technologies. The dispute has focused on whether Wireless One's MTSO/cell site architecture should be considered equivalent to Sprint's tandem/end office hierarchy for purposes of establishing reciprocal compensation.

In its Interconnection order, the FCC defined "termination" as follows:

For purposes of this subpart, 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.

47 C.F.R. § 51.701(d)

The issue to be resolved, therefore, is whether Wireless One's MTSO constitutes a tandem switch for rating purposes, and thus whether

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

a cell site constitutes an "equivalent facility" for purposes of assessing end office switching rates to Sprint. Essentially, the Commission must decide if Wireless One's network is "functionally equivalent" to Sprint's.

Under Sprint's interpretation, the Commission must construe "functionally equivalent" to mean technologically identical. From that perspective, the networks are different. Wireless One's cell sites cannot act autonomously in that they cannot direct traffic without using the intelligence residing in the MTSO. From that perspective, the cell site might be considered to function more as part of the wireless loop, since the sole switching function is being performed at the MTSO. Under this analysis, there is no transport or tandem switching; the MTSO acts more in the capacity of an end office; and the costs associated with the cell site function would be considered as extensions of the loop, and should be recovered in charges directly assessed to the end user. Sprint recovers intrastate loop costs from basic local exchange rates approved in its intrastate tariffs, and interstate loop costs primarily from Subscriber Line Charges mandated by the FCC and assessed to end users by means of a flat charge on monthly bills. Wireless One also charges its end users flat monthly charges. (Heaton TR 311) Under this approach, Wireless One would only charge Sprint end office switching for terminating Sprint's traffic.

Alternatively, the Commission can construe the term "equivalent facilities" more broadly, and determine that since Sprint and Wireless One both transport, switch and terminate telecommunications traffic, the two systems are functionally equivalent even though they utilize different technologies to accomplish these functions. Under this approach, and as argued by Wireless One, the Commission would determine that Wireless One's DMS 250 (the MTSO), in which all the call processing functions must reside in order for the cellular system to be able to provide the mobile aspect of the telecommunications service, is a tandem, and that the cell sites, although not providing a switching function, do provide essential functions associated with transport and "delivery of a call to the called party's premises," as set forth in the FCC rules. (See 47 § 51.701(d)). Therefore, Wireless One's network facilities constitute equivalent facilities for purposes of reciprocal compensation. Under this approach, Wireless One would be allowed to assess the same rate elements that Sprint charges - transport, tandem and end office switching.

Staff acknowledges the arguments for and against both approaches. After considering the intent of the Act, the FCC's interconnection order, and the evidence in this case, however,

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

staff believes that, taken together, the two networks have functionally equivalent facilities that merit symmetrical and equal reciprocal compensation. The main advantage to this approach is that it recognizes that alternative local carriers with different network technologies will not be unduly disadvantaged with respect to methods of cost recovery simply because their networks are not identical to those of the incumbents. Staff believes that another advantage is that it provides less incentive for carriers to attempt to gain a competitive advantage by means of the regulatory system with respect to revenues and compensation.

We recognize that by doing so, the rate elements that will be applied may not match exactly with every particular function performed, or the cost associated with that function. The parties have, however, already agreed on the rates, and have requested a decision based solely on their applicability. Therefore, the issue of rate levels is not before this Commission, but only the issue of functional equivalence.

Staff also notes that the FCC contemplated the particular situation that has given rise to the issues in this arbitration. Although the FCC did not itself make a ruling with respect to the equivalent functionalities of wireless versus wireline networks, it instructed the states to "consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch." (Interconnection Order, ¶1090)

Staff also notes that there appears to remain a point of contention with respect to the provision of SS7 signalling. The record indicates that some efficiencies may be gained if Sprint were to provide this capability. However, both parties have acknowledged that this is not an issue to be raised in this proceeding. To the extent the provision of SS7 signalling capability cannot be resolved when the parties renegotiate their next contract, this Commission remains an avenue for resolution at that time.

Since the parties disagreed on the rate elements to be charged for land to mobile traffic, they have requested that the Commission

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

determine the appropriate language to be inserted in their agreement.

Wireless One's proposed language is:

Attachment II.D.3, p. 35

For all land to mobile traffic that Company terminates to Carrier, Company will pay tandem interconnection, transport, and end office termination rate elements.

Sprint's proposed language is:

Attachment II.D.3, p. 36

For all land to mobile traffic that Company terminates to Carrier, Company will pay for the functionality provided.

Based on the analysis above, staff recommends the following language be incorporated into 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.

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

ISSUE 2: With respect to land to mobile traffic only, do the reciprocal compensation rates negotiated by Wireless One and Sprint-Florida, Inc. apply to intraMTA calls from the originating land line end-user to Wireless One's end office switch, or do these rates apply from the point of interconnection between Wireless One and Sprint to Wireless One's end office switch?

STAFF RECOMMENDATION: Reciprocal compensation rates for land to mobile traffic apply only from the point of interconnection between Wireless One and Sprint to Wireless One's end office. The portion of the call from Sprint's originating landline end user to the point of interconnection is not governed by the FCC's decision that the MTA is the local calling area for CMRS traffic. Therefore, the Reverse Toll Billing Option (RTBO) is not affected by FCC Rule 51.703(b), and is not subsumed in the parties' agreed upon reciprocal compensation rates; Sprint may continue to offer it. The following language should be inserted into the agreement:

Part B, page 21-22:

"Local Traffic" for purposes of the establishment of interconnection and not for billing of customers under this Agreement, is defined as telecommunications traffic between an LEC and CMRS provider that, at the beginning of the call originates and terminates with the same Major Trading Area, as defined in 47 C.F.R. Section 24.202(a); provided, however, that consistent with Sections 1033 et seq. of the First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (Aug. 8, 1996), hereinafter the "First Report and Order," the Commission shall determine what geographic areas should be considered "Local areas" for purposes of applying reciprocal compensation obligations under Section 251(b)(5), consistent with the Commission's historical practice of defining local service areas for wireline LECs. (See, Section 1035, First Report and Order).

Part C, Attachment II, C.4., p. 34:

IntraLATA toll traffic. For the purpose of establishing charges between the Carrier and Company, this traffic is defined in accordance with Company's then-current intraLATA toll serving areas to the extent that said traffic does not originate and terminate within the same MTA.

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

POSITION OF PARTIES:

Wireless One: There is no dispute that the agreement termination rates apply from the point of interconnection to termination. The Reverse Option charge, which Wireless One pays for intraMTA calls from originating end users to the point of interconnection, is a term and condition of interconnection that cannot include originating access charges.

Sprint: Federal law doesn't require Sprint to forego collecting voluntary payments made on behalf of Sprint customers. The FCC, solely for computing intercompany compensation (access charges versus local interconnection rates), defined areas larger than state-defined local calling scopes which determine application of toll charges. This federal definition leaves state ratemaking authority unaffected.

STAFF ANALYSIS: Wireless One and Sprint have successfully agreed on the rates, terms, conditions, and calling scope for mobile to land traffic. As in Issue 1, the dispute in this issue rests with land to mobile traffic. However, the dispute does not center on the rates to be charged, but rather with what constitutes the scope of interconnection. As background, staff notes that traditionally, interconnection rates in Florida have been assessed for termination of mobile traffic (mobile to land) only. Florida LECs did not pay wireless carriers for terminating LEC-originated traffic (land to mobile). That relationship has changed with the Act and the FCC's interconnection order, as explained later on.

LEC mobile interconnection tariffs have historically contained a provision, called a Reverse Toll Billing Option (RTBO) in Sprint's tariff, which was established in Order No. 20475 issued in DN 870675-TP, this Commission's first policy decision with respect to mobile interconnection. This option can be elected by the mobile carrier solely at its discretion in conjunction with Type 2A connections. (The reason for the provision, as stated in that order, was to give CMRS providers the option to prevent land line callers from being assessed toll charges for calls to mobile phones, a situation which CMRS carriers were concerned would retard the growth of the mobile industry.) The RTBO allows a CMRS carrier to pay the toll charges that would normally be assessed to the originating land line caller when the interconnection point with the mobile carrier (the access tandem in the case of Type 2A) is beyond the local calling area of the originating caller's

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

serving end office. Sprint's current RTBO rate is \$.0588 per minute, which approximates but does not equal, its rate for originating switched access.¹

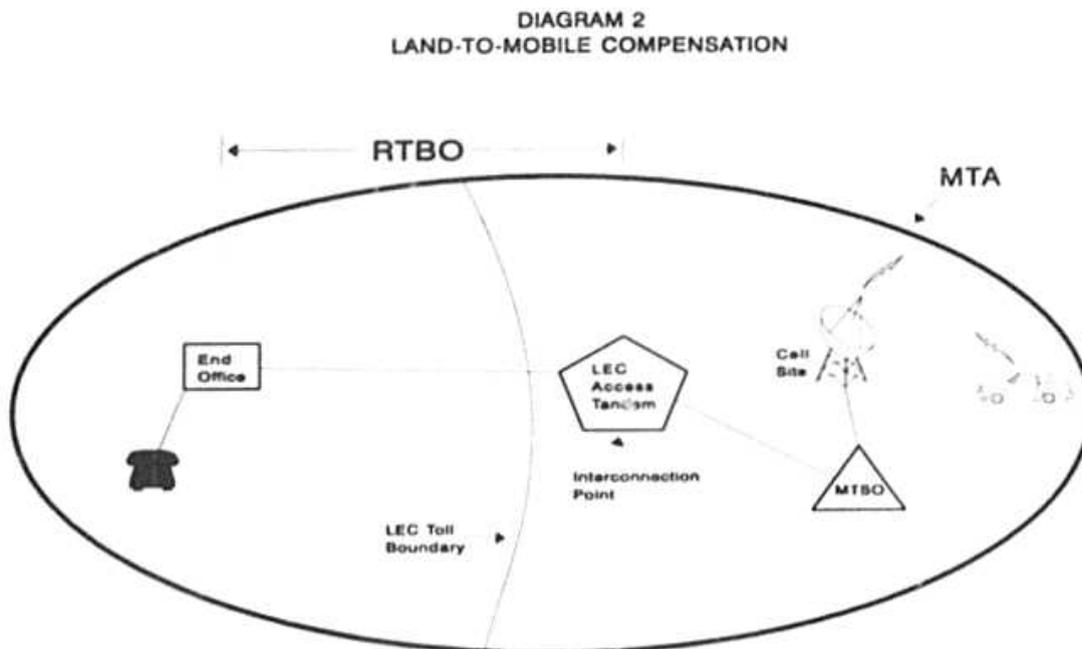
The present dispute centers on the applicability of the RTBO in the new, post-Act environment. Wireless One Heaton maintains that the requirements of the FCC Interconnection order have changed the traditional terms and conditions of interconnection. Specifically, witness Heaton argues that FCC rule 47 C.F.R. 51.701(b)(2) precludes Sprint from charging access for calls originating and terminating within a Major Trading Area (MTA). (Heaton TR 222)

Under Wireless One's interpretation of the FCC's rules and the discussion in the order, Sprint would no longer be compensated by toll or the RTBO rate for transport of a call to the access tandem, but instead would be compensated via the transport and termination rates already agreed to by Wireless One and Sprint. (Heaton TR 222) That combined rate is \$.007954 per minute. (TR 255) This is significant to Wireless One since the difference between the current RTBO rate of \$.0558 and the interconnection rate in their agreement is more than \$.05 per minute. (TR 257) Wireless One witness Heaton, in his prefiled testimony, offered to pay an additive, if the Commission thought it appropriate, to cover any incremental cost of transport as a result of the increased calling scope. (TR 228-229) He suggested an appropriate rate might be either \$.00294, which reflects the difference between the RTBO rate and Sprint's current switched access rate, or \$.004, which is the additive contained in the BellSouth/Vanguard Cellular, Inc. agreement, approved in Order No. PSC-0685-FOF-TP in DN 970228-TP.

¹The RTBO originally provided for the mobile carrier to pay originating access charges (minus the Busy Hour Minute of Capacity Charge) in lieu of the toll charges normally assessed to the end user. In Order No. 20475, the Commission required that changes in switched access rates also be reflected in the RTBO. Hence, as access charges have been reduced, so historically has the RTBO. In a subsequent proceeding, however, the Commission broke the link between access rates and the RTBO. (See Order No. PSC-1247-FOF-TP in DN 940235-TP) Since that time, most LECs have not reduced their RTBO rates when they reduced their access rates.

Sprint disagrees with Wireless One's interpretation of the FCC Interconnection order, stating that the RTBO is a purely intrastate tariff charge that is regulated by the FPSC, not the FCC. (Poag TR 383) Sprint believes that the language in the order does not alter the traditional local and toll calling areas in Sprint's intrastate tariffs. Sprint argues that the RTBO is a purely optional rate that Wireless One elects to pay on behalf of Sprint's customer, and that this arrangement does not remove it from the end user toll category and into the realm of interconnection. (Poag TR 377)

The diagram below shows the part of the call that is at issue.



Applicable Rules

In order to address this issue, it is necessary to examine the FCC's rules governing transport and termination, as well as those specifically addressing CMRS traffic. Staff agrees with the parties that FCC rules relevant to this issue are:

§ 51.701 Scope of transport and termination pricing rules.

(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers.

(b) Local telecommunications traffic. For purposes of this subpart, local telecommunications traffic means:

(2) telecommunications traffic between a LEC and a CMRS [Commercial Mobile Radio Service] provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in §24.202(a) of this chapter.²

(c) Transport. For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

(e) Reciprocal Compensation. For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

§51.703 Reciprocal Compensation obligation of LECs.

(a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier.

(b) A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

²§24.202(a) identifies the source that defines the areas for each MTA as the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38-39. The 50 states and the District of Columbia are organized into 47 MTAs and 487 BTAs (Base Trading Areas).

Analysis:

Staff has reviewed these rules, the supporting discussion in the Interconnection order, and the parties' arguments in the testimony and the briefs. We believe that ¶1033-1036 and 1039-1043 are particularly relevant. The discussion in these paragraphs focuses on: 1) the applicability of transport and termination rates versus access charges, 2) the distinction between Transport versus Termination, and 3) the specific provisions and rules pertaining to CMRS traffic. First, the FCC had to establish the situations in which transport and termination rates would apply, versus when switched access rates would apply. Noting that the Act preserved the differences between transport and termination of local versus toll traffic, the FCC concluded that reciprocal compensation obligations apply only to traffic that originates and terminates within a local area. (¶ 1033-1034) Emphasis added.

The FCC then defined a local calling area. At this point, it carved out its jurisdiction with respect to CMRS, and distinguished it from state authority. The order states:

With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs.

Interconnection Order at ¶ 1035.

Thus, the FCC reserved for itself the authority to define local calling areas for wireless carriers. At ¶ 1036, it states:

On the other hand, in light of this Commission's exclusive authority to define the authorized license areas of wireless carriers, we will define the local service area for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under section 251(b)(5)... Because wireless licensed territories are federally authorized, and vary in size, we conclude that the largest FCC-authorized wireless license territory (i.e., MTA) serves as the most

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5) as it avoids creating artificial distinctions between CMRS providers. Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.

Staff notes that although the FCC made its analysis and set forth its rules concerning reciprocal compensation for transport and termination to include all ILEC/ALEC relationships, the Eighth Circuit vacated these rules with respect to all ALECs except for CMRS providers. Thus, the Eighth Circuit acknowledged the jurisdiction of the FCC over CMRS providers in contrast to the authority the FCC originally sought to exert over landline carriers for purposes of pricing. (See Eighth Circuit order filed July 18, 1997 at p. 16)³

Staff is persuaded by Sprint's analysis of 47 C.F.R. §51.701(b)(2), which establishes local calling areas for purposes of establishing the applicability of transport and termination rates, to distinguish them from those areas for which switched access charges would apply, for traffic involving CMRS. Staff agrees that this simply means that LECs and CMRS providers cannot charge each other access charges for calls originating and

³Footnote 21 reads in part: Because Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by Commercial Mobile Radio Service (CMRS) providers, see 47 U.S.C. 152(b) (exempting the provisions of section 332), 332(c)(3)(A), and because section 332(c)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to the CMRS providers, i.e., 47 C.F.R. §51.701, 51.703, 51.709(b), 51.711(a)(1), 51.715(d), and 51.717 remain in full force and effect with respect to the CMRS providers, and our order of vacation does not apply to them in the CMRS context.

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

terminating within the MTA at the beginning of the call.⁴ (Poag TR 379; Sprint BR 13)

Next, staff notes that the FCC specifically defined "transport" within §51.701(c). As indicated above, Transport is the transmission from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party. Staff believes that the meaning is plain. Staff agrees with Sprint that transport for land to mobile traffic begins at the point of interconnection. (Sprint BR 12) In the case of Type 2A connections, that is the access tandem. Transport for land to mobile traffic ends at the end office switch.

Finally, §51.703 requires that LECs not charge CMRS providers access charges for call origination. This interpretation is borne out by the discussion in ¶¶ 1042 and 1043 of the interconnection order. The FCC's concern centered on the traditional access regime whereby LECs charge IXCs both originating and terminating access. The FCC noted that Section 251(b)(5) of the Act does not address charges payable to a carrier that originates traffic. The FCC, therefore, concluded that Section 251(b)(5) "prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic." The FCC further stated: "As of the effective date of this order, a LEC must cease charging a CMRS provider . . . for terminating LEC-originated traffic and must

⁴ Staff believes that the phrase "at the beginning of the call" is key to interpreting the FCC's purpose with this rule. Given the mobility of this type of traffic, the FCC had to establish some guidelines for determining when a call can be considered to be intraMTA. A car with a mobile phone can cross MTA boundaries any number of times during the same call. With this rule, the FCC established that the location of the mobile phone at the beginning of the call is the determining factor as to whether the call is intraMTA or not. That is, if both the land line party and the mobile party are physically in the same MTA at the beginning of the call, then the call is to be deemed an intraMTA call. This means that the mobile party can travel out of the MTA during the call and the call is still considered intraMTA. On the other hand, if the mobile party is outside the MTA of the landline party at the beginning of the call, the call is considered to be interMTA even if the mobile party travels inside the MTA during the call.

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

provide that traffic to the CMRS provider at no charge." Rule §51.703(b) establishes this requirement.

Staff notes, however, that Florida's mobile interconnection tariffs, including Sprint's, have never authorized LECs to charge for originating access so this last requirement did not affect Florida LECs. Staff believes that the FCC's language clearly indicates that the FCC in no way contemplated that the originating part of a LEC originated call (land to mobile) is incorporated in the transport and termination functions for purposes of reciprocal compensation. That part of the call does not appear to have been addressed at all.

Furthermore, staff does not believe that the language in §51.703(b), which forbids LECs to charge originating access to CMRS providers, affects the ability of LECs to continue to offer the RTBO rate. Although the RTBO rate does cover the originating part of the land to mobile call, staff disagrees with Wireless One that the RTBO constitutes "access charges" within the meaning of §51.703(b). Staff does not believe that the FCC's rule addresses the voluntary subscription by CMRS providers to a charge that is designed to replace the toll charges that Sprint would otherwise assess its own customers. The fact that Wireless One has traditionally subscribed to this provision does not have an effect on the interpretation of this rule. Moreover, if the RTBO were eliminated for Wireless One in this proceeding, Sprint would in all likelihood begin charging its end user customers toll charges for applicable calls to Wireless One customers. Sprint does this today on calls made by its customers to customers of CMRS providers that do not subscribe to the RTBO. (Poag TR 395) The RTBO is an optional provision in LEC mobile interconnection tariffs. (Poag TR 381-382) Staff does not believe that §51.703(b) precludes the continued provision of this option.

Staff acknowledges that there may be competitive difficulties confronting Wireless One and other mobile carriers because of the potential dampening effect that imposition of toll charges could have on the growth of CMRS. (Wireless One BR 15, 17-20) That is why some CMRS providers have traditionally subscribed to the RTBO. (Heaton TR 279) However, staff does not agree with Wireless One that the FCC has addressed in its interconnection order, the question of a wireline carrier's ability to assess toll charges to its own customers when calls to mobile phones are involved. This is an issue which the FCC may need to address, but it is not certain

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

whether the FCC even has the jurisdiction to act since intrastate wireline rates and calling scopes are the province of this Commission. Ultimately, the most appropriate forum to address the different calling scopes between wireline and wireless carriers may be a generic proceeding in Florida if the CMRS industry believes that it is unable to compete effectively in the Florida market.

Staff would note that some LECs and CMRS providers in Florida have voluntarily entered into agreements whereby the CMRS provider pays only transport and termination plus a "LATA-wide additive" for all calls that it terminates (land to mobile), in lieu of the RTBO. This approach essentially makes the entire MTA the local calling area for both LECs and CMRS providers. Staff believes this is a competitively equitable approach and commends these carriers for establishing this arrangement without resorting to arbitration. While we believe that carriers are free to adopt such an approach, we do not believe that this Commission can require any LECs to do so in an arbitration proceeding conducted under the Act.

Recommendation:

The parties were unable to agree on a definition of "local traffic" in the agreement and requested the Commission arbitrate the disagreement. (See Wireless One's Petition, pp. 21-22)

Wireless One's proposed definition is:

Part B, page 22:

"Local Traffic" for purposes of the establishment of interconnection and reciprocal compensation under this Agreement, is defined as telecommunications traffic between an LEC and CMRS provider that, at the beginning of the call, originates and terminates with the same Major Trading Area. No toll charges may be assessed upon Local Traffic originated by Carrier or Company. All Local Traffic is subject to transport and termination rates only.

Sprint's proposed language is:

Part B, page 21-22:

"Local Traffic" for purposes of the establishment of interconnection and not for billing of customers under this Agreement, is defined as telecommunications traffic between an

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

LEC and CMRS provider that, at the beginning of the call originates and terminates with the same Major Trading Area, as defined in 47 C.F.R. Section 24.202(a); provided, however, that consistent with Sections 1033 et seq. of the First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (Aug. 8, 1996), hereinafter the "First Report and Order," the Commission shall determine what geographic areas should be considered "Local areas" for purposes of applying reciprocal compensation obligations under Section 251(b)(5), consistent with the Commission's historical practice of defining local service areas for wireline LECs. (See, Section 1035, First Report and Order).

Based on staff's analysis above, staff recommends that Sprint's language should be inserted for the definition of "local traffic."

The parties were also unable to agree on the statement concerning "IntraLATA Toll Traffic", and requested that the Commission arbitrate the disagreement.

Wireless One's proposed language is:

Part C, Attachment II, C.4., p. 34:

IntraLATA Toll Traffic. This traffic is defined in accordance with Company's then-current IntraLATA toll serving areas to the extent that said traffic does not originate and terminate within the same MTA.

Sprint's proposed language is:

Part C, Attachment II, C.4., p. 34:

IntraLATA toll traffic. For the purpose of establishing charges between the Carrier and Company, this traffic is defined in accordance with Company's then-current intraLATA toll serving areas to the extent that said traffic does not originate and terminate within the same MTA.

Although Wireless One's language is identical to that contained in the FCC's rules, given the nature of the dispute

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

between the two carriers, staff recommends, based on the analysis above, that Sprint's language be approved.

DOCKET NO. 971194-TP
DATE: DECEMBER 23, 1997

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendations in Issues 1 and 2, the parties should be required to file their final arbitration agreement conforming with the Commission's rulings within 30 days of the issuance of the Order from this recommendation. This docket should remain open pending Commission approval of the parties final arbitration agreement in accordance with Section 252(e) of the Act.

STAFF ANALYSIS: If the Commission approves staff's recommendations in Issues 1 and 2, the parties should be required to file their final arbitration agreement conforming with the Commission's rulings within 30 days of the issuance of the Order from this recommendation. This docket should remain open pending Commission approval of the parties final arbitration agreement in accordance with Section 252(e) of the Act.