BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Wireless One Network, 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.	DOCKET NO. 971194-TP ORDER NO. PSC-98-0140-FOF-TP ISSUED: January 26, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
JOE GARCIA

APPEARANCES:

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On behalf of Wireless One Network, L.P..

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On behalf of the Commission Staff.

FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

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, by imposing the appropriate conditions as required. In accordance with this Section, we are required 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.

On April 10, 1997, Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida (Wireless One) and Sprint-Florida, Incorporated (Sprint) entered into negotiations regarding Wireless One's request for interconnection arrangements with Sprint. The parties were unable to reach a final agreement on certain issues. Thus, on September 12, 1997, Wireless One filed a petition requesting that we arbitrate the unresolved issues between the parties.

Pursuant to Section 252(b)(4)(A), we are required to limit our consideration of any petition to the issues set forth in the petition and in the response, if any. We conducted a hearing in this docket on November 24, 1997. Upon consideration of the testimony and evidence presented at hearing, the briefs and arguments of the parties, and our staff's recommendation, our decision on the issues is described below.

I. Application of Termination Rates

A. Background

Section 251(b)(5) of the Act requires that ILECs establish reciprocal compensation arrangements with carriers requesting interconnection for the transport and termination of telecommunications traffic. The compensation elements include transport between switches, tandem switching, and end office

switching. In their testimony and briefs, both parties agreed that it is appropriate for Wireless One to pay Sprint for these elements for all mobile to land traffic. The parties were, however, unable to agree on the appropriate elements to be paid by Sprint for land to mobile traffic terminated by Wireless One. The essence of the issue is whether the components of Wireless One's network are equivalent to the components of Sprint's network for purposes of compensation for terminating land to mobile traffic.

Florida's mobile interconnection tariffs, including Sprint's, contain different rates for various types of interconnection. Two of those types are Type 2A and Type 2B. Type 2A covers mobile interconnection at the LEC's access tandem, while Type 2B provides connection at a LEC end office. Under a Type 2A interconnection, when a call is made by a landline carrier's customer to a mobile customer, the call proceeds to the serving end office where it is switched and transported to the LEC's access tandem. The LEC's access tandem is the point of interconnection with a Commercial Mobile Radio Service (CMRS) provider's network. There, the mobile carrier picks up the call, and transports it to its Mobile Telephone Switching Office (MTSO). From the MTSO, the signal is converted into a radio frequency signal and transmitted to the appropriate cell site to be broadcast to the mobile unit.

Type 2B, on the other hand, is a dedicated connection at a LEC's end office. Under this type of interconnection, a cellular carrier can receive landline originated calls at the LEC end office. 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. Thus, a cellular carrier must establish numerous points of interconnection utilizing Type 2B interconnection in order to cover the same area that a single point of interconnection would cover utilizing Type 2A interconnection at the access tandem.

B. Wireless One

Wireless One's witness Heaton contends that Wireless One's network, though not identical to Sprint's, is functionally equivalent for purposes of assessing transport, tandem, and end office switching termination charges. According to Wireless One's

witness Meyer, Wireless One's network consists of:

1) a DMS-250 switch;
2) a 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; and
5) Radio frequency transmissions between the cell sites and the mobile phone, often referred to as a "wireless loop."

Witness Meyer explains that with a Type 2A connection, a land to mobile call is transferred from Sprint to Wireless One at the point of interconnection, which in this case is the access tandem. The call is then 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. The witness states that the most appropriate cell site is, therefore, the one that would provide the strongest radio signal depending on the location of the mobile phone. The witness further indicates that 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.

Wireless One's witness Meyer argues that both Sprint's and Wireless One's networks contain three essential components: 1) tandem switches; 2) transmission facilities; and 3) end offices. He notes that in some respects the two networks are even physically the same, while in other respects they are quite different by virtue of the different types of service that each provides. For instance, Witness Meyer asserts that the tandems function in the same way. He also asserts that the physical, but not the functional, differences begin after the tandem switches the call to the serving end office. Witness Meyer further states that the end office is not dedicated to the end user, as in a wireline environment, due to the mobile nature of the service.

Next, witness Meyer explains that a central location for message processing is essential for wireless service in order to accommodate end users who travel from cell site to cell site. To illustrate, the witness states that when a mobile unit is turned on by an end user to receive a call, the unit 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. 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." Witness Meyer states that this is the way that the tandem switch recognizes the cell site to which it should forward the call. Witness Meyer also notes that the central location is important for registration. He states that if end office registrations were not interdependent, it would not be possible to automatically shift to a stronger RF channel from one end office to another.

Regardless of the numerous physical differences in the two networks, the respective components still perform the same functions, according to witness Meyer. He states that Wireless One's MTSOs are both Northern Telecom DMS-250s and that Sprint's tandem switches are Northern Telecom DMS-200s. He asserts that both the DMS-250s and the DMS-200s have the same hardware. He claims that they are functionally the same because each switch provides for transmission to the end office serving the called party. The witness then indicates that Wireless One's transmission facilities consist of leased T-1 lines, proprietary microwave facilities, or a combination of both, and that Sprint uses T-1 lines. According to witness Meyer, in those places where Wireless One uses microwave, the technological means of transmission is different. He argues, however, that the function is not different because both provide transmission of the call from the tandem to the end office. Finally, he states that, although Sprint's network uses wires between the end office and a fixed location, and Wireless One's network uses radio signals, both carriers' end offices perform the same function of delivering the call to or receiving the call from the end user. 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. Wireless One's end offices contain Line Interface Modules (LIMs), which provide the same connection via radio frequencies.

Wireless One witness Meyer further contends that a tandem switch is defined in BellCore Manual SR-TAP-000191, pages 12-18 as "a switching system in the message network that establishes trunk-to-trunk connections." In addition, he notes that BellCore manual SR-TAP-000191, defines an end office 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."

Witness Meyer further asserts that Wireless One's cell sites provide line termination and dial tone to the end user, which cannot be done through the DMS 250. We note that Sprint's witness Khazraee agreed that Wireless One's tandems cannot provide this line connectivity for call termination. Witness Meyer states that the reason that Wireless One and Sprint both collocate end offices with their tandem locations is to make the line terminations to the end users that these tandems cannot. As such, Witness Meyer contends that Wireless One's cell sites are functionally equivalent to Sprint's end offices. Wireless One's witness Heaton argues that Wireless One should, therefore, be entitled to assess both tandem and end office switching rate elements, as well as transport for terminating Sprint-originated land to mobile traffic.

C. Sprint

Sprint's witness Poag contends that Wireless One's network is not equivalent to Sprint's because Wireless One's cell sites do not function as end offices. Witness Poag argues that, therefore, Wireless One is not entitled to all of the termination compensation elements that Sprint receives when it terminates traffic. Witness Poag asserts that the MTSO is the functional equivalent of the end office, and cell sites function as extensions of the loop. Thus, witness Poag argues, Wireless One is only entitled to the end office termination rate.

In support of witness Poag's assertions, witness Khazraee states that Sprint's network consists of :

1) Tandem Switch;
2) Transport facilities between the tandem switch and end office;
3) End office switch; and
4) Loop between the end office and the customer premises.

Sprint's witness Poag argues that an end office connects one customer within the switch to another customer within the switch. Because a cell site cannot connect one customer to another without using the MTSO, witness Poag states that the cell site is not functionally equivalent to an end office. In addition, witness Poag states that Sprint cannot interconnect at a Wireless One cell site to terminate traffic, although Wireless One can connect at a Sprint end office. Furthermore, witness Poag 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.

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 incorrect oversimplification of the loop. Witness Poag argues that in most cases 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. Thus, the witness asserts, there may be several links in the overall loop aside from the single wireline facility. Witness Poag further states 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. He states that the cell site actually performs the same type of loop functionality as does the SLC in Sprint's network.

Witness Poag further states that the Control Data Base (CDB) processor described by witness Meyer directs a connection function, not a switching function, at the cell sites that connect the wireless portion of the network to the fixed elements of the cellular loop. Thus, he testifies, the cell site is functionally equivalent to the SLC in the wireline network because it connects the feeder side of the loop to the distribution side of the loop. He further describes the SLC as a concentration device which condenses the traffic from numerous lines to fewer lines. The witness states that the subscriber's side of the SLC connects directly to the distribution cable that contains all the lines that terminate to customers' premises. The switch side of the SLC connects to fewer circuits that are then routed back to the end office switch. Witness Poag testifies that this is the same type of connection made at a wireless carrier's cell site under the direction of the CDB. Witness Poag, therefore, concludes that these are loop costs that should be excluded from transport and termination rates for purposes of reciprocal compensation.

Sprint witness Poag also argues that since cell sites do not have the same switching functionality as Sprint's end office switches, Sprint cannot connect its facilities directly to Wireless One's cell sites to terminate traffic. Witness Poag argues that if we adopt Wireless One's position, Sprint will be required to pay Wireless One transport and tandem switching on all calls to Wireless One, whereas Wireless One will have the option to connect at Sprint's end offices by a Type 2B connection. Thus, the witness

asserts that Wireless One will only be required to pay end office switching and will avoid transport and tandem switching charges.

We note here that Wireless One disputes Witness Poag's comparison of Sprint's SLCs to its cell sites. Witness Meyer states 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. At hearing, Sprint witnesses Poag and Khazraee acknowledged that witness Meyer's assessment was correct.

In response to witness Poag's assertions, Wireless One's witness Heaton also states that Sprint can house its call processing functions in its end office because the fixed location of Sprint's end users allows Sprint to connect them by wireline facilities to their serving end office. He adds that Wireless One is, however, precluded from such hardwire arrangements by the very nature of mobile service.

In addition, witness Heaton argues that Sprint could, in fact, connect at Wireless One's cell sites if Sprint would provide SS7 connectivity at its end offices. Witness Meyer further notes that the technology of a mobile network requires a centralized call processor in order for the cellular system to provide the ability to transfer call signals between different cell sites during a single call. Both of Wireless One's witnesses also testified that SS7 signaling would provide the Automatic Number Identification that is necessary for call origination and termination. Witness Meyer states that in order 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 are necessary. 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 also states that Sprint obtains its SS7 signalling capabilities by routing through its tandems. Witness Meyer adds that Sprint's dependence on other offices for SS7 signalling is analogous to Wireless One's dependence on its MTSO for call processing.

Witness Heaton states that even though it would be necessary, based on the requirements of the Wireless One system, to transport the signal back to Wireless One's MTSO to direct a call to the cell site providing the strongest RF signal for the location of the mobile phone, Wireless One would charge Sprint symmetrical end office switching rates if Sprint terminated traffic at Wireless

One's end office. Witness Heaton also asserts that Wireless One would be willing to bear the additional transport cost because Wireless One would benefit from having equivalent compensation mechanisms. Furthermore, witness Heaton stated that Wireless One has sufficient capacity to carry the traffic with almost no incremental cost to itself. Sprint witness Poag argues, however, that such an arrangement would cause Sprint to have to configure its network inefficiently and would require that additional "links" be put into the transmission of a call.

D. Determination

The record clearly demonstrates a number of differences between the landline and mobile network technologies. The dispute has, however, focused on whether the function of Wireless One's MTSO/cell site architecture should be considered equivalent to that provided by Sprint's tandem/end office hierarchy for purposes of establishing reciprocal compensation.

Essentially, the core of the dispute is the interpretation of FCC Rule §51.701(d). This rule defines termination for purposes of compensation and 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). We must, therefore, decide whether Wireless One's MTSO constitutes a tandem switch for rating purposes, and whether a cell site constitutes an "equivalent facility" for purposes of assessing end office switching rates to Sprint.

According to Sprint, we should construe "functionally equivalent" to mean technologically identical. Clearly, the networks are technologically different. As indicated by Wireless One's witness Meyer, Wireless One's cell sites cannot act autonomously because they cannot direct traffic without using the intelligence residing in the MTSO. Thus, it might appear, on the surface, that the cell site should be considered to function more as part of the wireless loop. If viewed this way, the Wireless One network does not perform transport or tandem switching. The MTSO

would be considered similar to an end office. The costs associated with the cell site function would, therefore, be considered extensions of the loop, and would be recovered in charges directly assessed to the end user. Under this approach, Wireless One would only charge Sprint end office switching for terminating Sprint's traffic.

Upon consideration, we find it is appropriate to construe the term "equivalent facilities" more broadly. Sprint and Wireless One both transport, switch, and terminate telecommunications traffic; therefore, the two systems are functionally equivalent, although they use different technologies. We, therefore, agree with Wireless One that its DMS 250, the MTSO, functions as a tandem. We also agree that the cell sites do provide essential functions associated with transport and "delivery of a call to the called party's premises," as set forth in FCC Rule 47 C.F.R. § 51.701(d). Wireless One's network facilities are, therefore, equivalent facilities for purposes of reciprocal compensation. We find that Wireless One may assess the same rate elements that Sprint charges; transport, tandem and end office switching.

We believe that this construction best comports with the intent of the Act, that alternative local carriers with different network technologies not be disadvantaged with respect to methods of cost recovery solely because their networks are not identical to those of the incumbents. We also note that the FCC has indicated that the states should:

> 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.

FCC First Report and Order, Order No. 96-325, issued in CC Docket No. 96-98, at ¶1090. In making this determination, we recognize that the rate elements that will be applied may not exactly match every function performed, or the cost associated with that function. As previously indicated, however, the parties have already agreed on the rates for these functions. The issue decided here is limited to the applicability of those rates.

E. Approved Language

In view of our determination, the following language shall be included in the Sprint/Wireless One agreement:

> Attachment II--Interconnection, D.3
>
> 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.

II. Application of Land-to-Mobile Reciprocal Compensation Rates

A. Background

Wireless One and Sprint have successfully agreed on the rates, terms, conditions, and calling scope for mobile to land traffic. We have only been asked to determine the scope of interconnection for land to mobile traffic, and more specifically, the point at which reciprocal compensation rates apply.

Traditionally, interconnection rates in Florida have been assessed for termination of mobile traffic (mobile to land) only. Wireless carriers were not compensated for terminating LEC-originated traffic. Also, LEC mobile interconnection tariffs have, historically, contained a provision, called a Reverse Toll Billing Option (RTBO). In accordance with Order No. 20475, issued December 20, 1988, in Docket No. 870675-TP, Sprint's tariff contains this option. A mobile carrier can elect this option, at its discretion, in conjunction with Type 2A connections. As stated in Order No. 20475, the purpose of the RTBO is to prevent the assessment of toll charges on land line calls made to mobile phones. CMRS carriers were concerned that such toll charges would retard the growth of the mobile industry. The RTBO allowed 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 was beyond the local calling area of the originating caller's serving end office. Sprint's current RTBO rate is $.0588 per minute.

B. Wireless One

In view of the Act's requirements regarding reciprocal compensation, Wireless One now asks that we reexamine the propriety of the RTBO. Wireless One witness Heaton maintains that the requirements of the FCC Order 96-325 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).

Witness Heaton interprets FCC Order 96-325 and the FCC Rules to mean that Sprint is no longer allowed to charge toll or assess the RTBO tariffed rate for transporting a call to the access tandem within the MTA. Witness Heaton argues that Sprint should, instead, be compensated by the parties' negotiated transport and termination rates. That combined rate is $.007954 per minute. The witness further states that this is significantly different from the current RTBO rate of $.0558. Witness Heaton argues that this represents a significant difference in rates. Witness Heaton also indicates that Wireless One would be willing to pay a rate additive, if appropriate, to cover any incremental cost of transport resulting from the increased calling scope of the MTA. He suggested a rate of either $.00294, which reflects the difference between the RTBO rate and Sprint's current switched access rate, or $.004, which is the rate additive contained in the BellSouth/Vanguard Cellular, Inc. interconnection agreement, approved by Order No. PSC-0685-FOF-TP, issued in Docket No. 970228-TP.

C. Sprint

Sprint disagrees with Wireless One's interpretation of FCC Order 96-325. Sprint's witness Poag asserts that the RTBO is a purely intrastate tariff charge that is regulated by this Commission, not the FCC. Witness Poag argues that the language in the FCC Order does not alter the traditional local and toll calling areas in Sprint's intrastate tariffs. The witness argues that the RTBO is a purely optional rate that Wireless One elects to pay in order to avoid the assessment of toll charges to the originating Sprint customer. Witness Poag further argues that the RTBO does not alter the classification of a toll call; instead, it merely allows Wireless One, rather than the originating Sprint customer, to accept the charges for the toll call. Witness Poag asserts that the RTBO does not, therefore, make the toll call an interconnection issue.

D. Determination

In considering this issue, we have reviewed the FCC's rules governing transport and termination, as well as those specifically addressing CMRS traffic. As indicated by the parties, the relevant FCC rules are as follows:

§ 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.

(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.

Having reviewed these rules, the supporting discussion in FCC Order 96-325, and the parties' arguments in the testimony and the briefs, we find ¶1033-1036 and 1039-1043 of FCC Order 96-325 particularly relevant. The FCC's discussion in these paragraphs focuses on; 1) the applicability of transport and termination rates versus access charges, 2) the distinction between transport and termination, and 3) the specific provisions and rules pertaining to CMRS traffic. First, the FCC established the situations in which transport and termination rates would apply. Noting that the Act preserved the differences between transport and termination of local and toll traffic, the FCC concluded that reciprocal compensation obligations only apply to traffic that originates and terminates within a local area. See FCC Order 96-325, at ¶¶ 1033-1034. (Emphasis added).

The FCC then defined a local calling area and also distinguished its authority over CMRS providers from state authority, as follows:

> 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.

FCC Order 96-325, at ¶ 1035. At ¶ 1036, the FCC further stated:

> 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 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.

We note the Eighth Circuit Court upheld the FCC's Rules concerning reciprocal compensation for transport and termination for CMRS providers. See Iowa Util. Board v. Bell Atlantic Corp., Nos. 96-3321, etc., 1997-2 Trade Case (CCH)P71, 876, 1997 U.S. App. Lexis 18183 at 38 (8th Cir. July 18, 1997)) [1]

Upon consideration, we find Sprint's analysis of FCC Rule 51.701(b)(2) persuasive. That Rule defines "local telecommunications traffic" between a LEC and a CMRS provider. It is distinguished from the definition of "local telecommunications traffic" between a LEC and any other carrier set forth in FCC Rule 51.701(b)(1). As indicated in FCC Rule 47 C.F.R. § 51.701(a), the FCC set forth these separate definitions to establish the scope and applicability of reciprocal compensation for transport and termination, as opposed to the applicability of switched access charges. We agree with Sprint's assessment that FCC Rule 47 C.F.R. § 51.701(b)(2) was promulgated simply to identify when LECs and CMRS providers are required to apply transport and termination rates, rather than assess an access charge. We find the phrase "at the beginning of the call" contained in FCC Rule 51.701(b)(2)

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[1]Footnote 21 of the Court's order states, 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.

important in interpreting the FCC's intent. It is apparent from the language chosen by the FCC that the location of the mobile phone at the beginning of the call determines whether the call is intraMTA or not. That is, if both the land line party and the mobile party are physically within the same MTA at the beginning of the call, then the call will be deemed an intraMTA call. If, however, 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.

In FCC Rule 47 C.F.R. § 51.701(c), the FCC specifically defined "transport" as the transmission from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party. The plain-meaning of the language is apparent. We therefore agree with Sprint's argument in its brief that transport for land to mobile traffic begins at the point of interconnection. For Type 2A connections, the point of interconnection is the access tandem. Transport for land to mobile traffic ends at the end office switch.

Finally, we note that FCC Rule 47 C.F.R. § 51.703(b) prohibits LECs from charging CMRS providers access charges for call origination. This prohibition is further explained in ¶¶ 1042 and 1043 of FCC Order 96-325. In those paragraphs, 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 provide that traffic to the CMRS provider at no charge."

We believe that the language in FCC Order 96-325 and in the FCC's Rules implementing that Order clearly indicates that the FCC did not contemplate the inclusion of the originating portion of a LEC-originated call in the transport and termination functions for purposes of reciprocal compensation. Our review indicates that the FCC has not addressed whether its definition of an MTA has any effect on the originating portion of a land to mobile call.

Furthermore, it appears that the language in FCC Rule 47 C.F.R. § 51.703(b) that prohibits LECs from assessing originating access charges to CMRS providers has no bearing on the ability of LECs to continue to offer the RTBO rate. While the RTBO rate does cover the originating part of the land to mobile call, we do not agree that the RTBO constitutes an "access charge" within the meaning of FCC Rule 51.703(b). Subscription to the RTBO tariff is voluntary, and as we have already explained in Order No. 20475, issued in Docket No. 870675-TP, the RTBO is designed to replace the toll charges that Sprint would otherwise assess its own customers for toll calls in accordance with its tariff. In view of the language of the FCC's Rule and of our own previous determination regarding the purpose of the RTBO tariff, we do not believe that FCC Rule 51.703(b) precludes Sprint from continuing to offer its RTBO tariff option. Furthermore, Wireless One's assertion that it has traditionally subscribed to this provision has no bearing on the Rule's applicability.

We note that Sprint witness Poag stated that Sprint currently assesses toll on applicable calls to mobile customers whose CMRS providers do not subscribe to the RTBO. While we acknowledge that the assessment of toll charges may impact competition and have some bearing on the growth of CMRS providers in general, we do not agree with Wireless One that the FCC has addressed the question of a wireline carrier's ability to assess toll charges to its own customers when calls to mobile phones are involved. The issue presents jurisdictional questions, as well, since intrastate wireline rates and calling scopes are the province of this Commission. Nevertheless, the impact of toll charges on the CMRS providers' ability to compete is an issue best addressed in another proceeding.

We also note that some LECs and CMRS providers in Florida have agreed that the CMRS provider will pay only transport and termination plus a "LATA-wide additive" for all calls that it terminates. We believe that is a competitively equitable approach. We do not, however, believe that we can require implementation of such a provision in the context of an arbitration proceeding conducted under the Act. Carriers are free, nevertheless, to adopt such an approach through negotiation.

E. Approved Language

In view of our conclusions, we hereby approve Sprint's proposed definition of "Local Traffic," as set forth below:

1. Part B, pages 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 purposed 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).

The parties were also unable to agree on the definition of "IntraLATA Toll Traffic." Based on the foregoing, we approve Sprint's proposed definition as set forth below:

2. Part C, Attachment II--Interconnection, 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.

III. Conclusion

We have conducted the arbitration of the unresolved issues in this proceeding pursuant to the directives and criteria of the Telecommunications Act of 1996, 47 USC § 251 and § 252. We believe that our decision is consistent with the terms of Section 251, and the provisions of the FCC's implementing Rules.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the issues submitted for arbitration by Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida and Sprint-Florida, Incorporated are resolved as set forth in the body of this Order. It is further

ORDERED that Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida and Sprint-Florida, Incorporated shall submit a written agreement memorializing and implementing our decision within thirty (30) days of the issuance of this Arbitration Order. It is further

ORDERED that the agreement shall be submitted for approval pursuant to the standards set forth in Section 252(e)(2)(B) of the Telecommunications Act of 1996. It is further

ORDERED that this Docket shall remain open pending our approval of the parties final agreement memorializing this decision.

By ORDER of the Florida Public Service Commission this 26th day of January, 1998.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

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BK/WPC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.