

David B. Erwin  
Attorney-at-Law

ORIGINAL

127 Riversink Road  
Crawfordville, Florida 32327

Phone 850.926.9331  
Fax 850.926.8448  
derwin@lewisweb.net

October 18, 1999

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

In re: Request for arbitration concerning complaint of Orlando Telephone Company regarding enforcement of interconnection agreement with Sprint-Florida, Incorporated - Docket No. 990884-TP.

Dear Ms. Bayo:

Pursuant to the time table set forth in Order No. PSC-99-1803-PCO-TP, Orlando Telephone Company files the original and 15 copies of the direct testimony and exhibits of Herb Bornack and Jerry Locke.

Exhibit JL-2 is not included and will be filed within the next few days.

A copy of the testimony and exhibits has been provided by hand delivery today to Charles Rehwinkel, Sprint's attorney, and to Diana Caldwell, the attorney for the Commission.

Sincerely,



David B. Erwin

AFA	_____
APP	_____
CAF	_____
CMH	_____ DBE:jm
CTR	_____ Attachments
EAG	_____
LEG	_____ 7
MAS	_____ 3108
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**ORLANDO TELEPHONE COMPANY, INC.**  
**DIRECT TESTIMONY OF HERB BORNACK**  
**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
**DOCKET NO. 990884-TP**  
**October 18, 1999**

**Q. PLEASE STATE YOUR NAME, YOUR COMPANY'S NAME AND ADDRESS.**

A. My name is Herb Bornack. I am employed by Orlando Telephone Company, Inc., subsequently referred to as OTC. The company's address is 4558 S. W. 35<sup>th</sup> Street, Suite 100, Orlando, Florida 32811.

**Q. WHAT IS YOUR HISTORY WITH ORLANDO TELEPHONE COMPANY, INC. AND WHAT IS YOUR POSITION?**

A. I am the Chief Executive Officer of OTC. I formed the company and then sought operating authority from the Commission in order to compete in the business of providing local telephone service.

**Q. WHAT IS THE NATURE OF THE BUSINESS OF OTC?**

A. OTC holds authority from the Commission as an ALEC. Certificate No. 4698 was granted in Order No. PSC-96-1020-FOF-TX, Docket No. 960635-TX to Orlando Business Telephone Systems, Inc. In 1997, a request to change the

1 name of the company to Orlando Telephone Company was approved by Order  
2 PSC-97-1328-FOF-TX, Docket No. 971258-TX. OTC is a facilities based  
3 carrier. OTC has its own Siemens EWSD switch and has about 90 miles of  
4 fiber in the ground. By and large, customers of OTC are commercial customers  
5 that buy service in T1 increments and are served via the company's Sonet Fiber  
6 Rings and Electronic Interfaces. OTC has customers in the certificated  
7 territories of both BellSouth and Sprint in the Orlando area. OTC is small, but  
8 we believe that OTC embodies the true meaning of competition as it was  
9 envisioned by the Commission and by the FCC.

10

11 **Q. WHAT IS THE APPROXIMATE AMOUNT OF INVESTMENT THAT**  
12 **OTC HAS IN TELECOMMUNICATIONS FACILITIES USED TO**  
13 **SERVE OTC'S CUSTOMERS IN THE ORLANDO AREA?**

14

15 A. Initially, OTC invested in excess of \$3,000,000.

16

17 **Q. WHEN YOU FORMED OTC, HOW MANY OTHER FACILITY BASED**  
18 **ALECS WERE THERE IN THE ORLANDO AREA?**

19

20 A. I am not sure, but I believe we were one of the first to begin operations.

21

22 **Q. DID YOU HAVE A MODEL THAT YOU FOLLOWED AT THE**  
23 **BEGINNING TO DETERMINE CHARGES AND OPERATING**  
24 **METHODS?**

25

1 A. No. I spent many years working for Southern Bell/BellSouth, and I was familiar  
2 with many aspects of the telephone business, but there were many things we had  
3 to discover and learn along the way. One of these areas was the matter of access  
4 charges. When we first began, we had to rely heavily on both BellSouth and  
5 Sprint to advise us about the procedures necessary to receive ported traffic and  
6 our entitlement to compensation for the traffic. When we “negotiated” our  
7 interconnection agreements with BellSouth and Sprint, we were basically at  
8 their mercy in many respects. When BellSouth, for example, was not clear  
9 about which company’s terminating access rate would be used, we simply  
10 accepted their agreement as they had drafted it without questioning their  
11 language. We did the same with Sprint, and it was Sprint’s language, not  
12 OTC’s that said that the compensation for interstate terminating switched access  
13 would be computed using OTC’s tariffed rate for terminating access.

14  
15 **Q. WHAT WOULD YOU HAVE DONE IF THE SPRINT AGREEMENT**  
16 **HAD PROVIDED THAT THE TERMINATING INTERSTATE**  
17 **SWITCHED ACCESS RATE WOULD BE THE SPRINT RATE, AS**  
18 **TARIFFED?**

19  
20 A. We would probably not have done anything because we were not then cognizant  
21 of the implications of the language. It was only later, after we realized that OTC  
22 was receiving zero compensation from Sprint for terminating interstate access  
23 traffic that we became fully aware of the implications of the language drafted by  
24 Sprint. We went to both BellSouth and Sprint with OTC’s problem. As  
25 indicated in Jerry Locke’s testimony, BellSouth immediately acknowledged the

1 problem and fixed it through an amendment to their agreement with OTC.  
2 BellSouth then paid OTC a considerable amount of money going back to the  
3 first interstate call terminated. Needless to say, the experience of OTC with  
4 Sprint has been quite the opposite.

5  
6 **Q. WHAT HAS YOUR EXPERIENCE BEEN WITH SPRINT?**

7  
8 **A.** Sprint has been very difficult to deal with. They have either been unable or  
9 unwilling to fix the problem of helping OTC receive compensation for  
10 terminated traffic. Under temporary number portability, Sprint never was able  
11 to provide OTC with data that would allow OTC to bill IXCs directly. Sprint  
12 kept indicating to us that they were working on the problem, but Sprint never  
13 solved the problem until well after the permanent number portability fix was  
14 implemented in late 1998 and early 1999.

15  
16 I personally feel that Sprint could have given OTC the information OTC needed  
17 to bill the IXCs, and if Sprint had given OTC the information, OTC would have  
18 been paid OTC's terminating access rate a long time ago, and this case would be  
19 a moot issue.

20  
21 During all the time Spint was supposedly working on the problem, OTC was  
22 receiving zero compensation for terminating access for either intrastate or  
23 interstate traffic. Finally, after a year of not being compensated, OTC filed an  
24 informal complaint with the Florida Public Service Commission Staff.

25

1 Q. WHAT HAPPENED AFTER FILING THE COMPLAINT WITH THE  
2 COMMISSION STAFF?

3

4 A. Sprint offered to pay OTC some compensation and did so. The payment to  
5 OTC by Sprint resolved the intrastate portion of the claim, but did not resolve  
6 the interstate claim.

7 Q. DID YOU, PERSONALLY, SIGN AN ACCEPTANCE LETTER ON  
8 MARCH 15, 1999?

9

10 A. Yes.

11

12 Q. WHAT IS YOUR UNDERSTANDING OF WHAT YOU SIGNED?

13

14 A. At the time I signed the February 12, 1999 letter drafted by Sprint, I believed  
15 that I was agreeing to compromise and resolve the intrastate dispute that was  
16 resolved with the help of the Commission. The letter specifically states in the  
17 first paragraph that, “. . . Sprint proposes the following resolution of the  
18 intrastate portion of the terminating access dispute between our companies.” It  
19 was never in my mind that I was agreeing to put off the interstate dispute for an  
20 indefinite period. I would never have knowingly indefinitely postponed  
21 resolution of a claim in excess of a quarter of a million dollars in order to get an  
22 additional \$4,034.04 for intrastate terminating switched access. It never  
23 occurred to me then, and I still do not believe today that the letter I signed on  
24 March 15, 1999, was an agreement on my part to forego or indefinitely postpone  
25 OTC’s claim for a lot of money that OTC needed badly to operate in

1 competition with Sprint. Before I signed the March 15, 1999, letter, Sprint  
2 never explained the nature of FCC Docket No. CCB/CPD No. 98-63. I have  
3 since learned that this was a petition by IXCs Sprint and AT&T complaining  
4 about the level of CLEC access charges, but I was not aware of the case at the  
5 time I signed the letter. I have since learned that the petition in Docket No.  
6 CCB/CPD No. 98-63 has been denied, but that Sprint expects OTC now to wait  
7 for who knows how much longer for compensation while the FCC has a rule  
8 proceeding to address access charges. OTC can not wait forever for  
9 compensation from competitors and successfully compete. The Commission  
10 should address this complaint against Sprint now under the clear provisions of  
11 the agreement Sprint drafted, which provides for FPSC resolution of issues  
12 related to disputed amounts.

13

14 **Q. ARE YOU FAMILIAR WITH A SPRINT PLEADING IN THIS DOCKET**  
15 **IN WHICH SPRINT REFERS TO YOUR CLAIM AS A "BOGUS**  
16 **CLAIM" THAT SPRINT SHOULD PAY "PHANTOM ACCESS**  
17 **REVENUES" TO OTC, WHICH OTC "CANNOT EVEN**  
18 **DEMONSTRATE IT WOULD HAVE COLLECTED HAD IT DIRECT-**  
19 **BILLED THEM TO THE IXCS CARRYING THE CALLS"?**

20

21 **A.** Yes. In the first place, due to the ineptitude of Sprint, Sprint could never figure  
22 out how to provide data to OTC to permit direct billing of IXCs and never did  
23 provide such data until well into 1999, even after repeated requests from OTC to  
24 furnish the data. Once Sprint provided the data, OTC has billed IXCs directly,  
25 and most have paid access charges, except for Sprint and AT&T. With regard to

1 this being a bogus claim, it is the same claim made to BellSouth, whose  
2 response was to agree with the claim of OTC, amend the agreement between the  
3 parties, pay the terminating access charges back to the first call received by  
4 OTC, with total payment being a significant amount. Throughout the process,  
5 BellSouth acted as if they were trying to foster competition instead of thwart it  
6 at every turn, like Sprint. In my opinion, OTC's claim in this docket is a bona  
7 fide claim and is proper in every respect. The claim should be ordered to be  
8 paid, with interest.

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10

11 A. Yes.

12