

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In the Matter of:)	
)	Docket No. 000828-TP
Petition of Sprint Communications Company L.P. for)	
Arbitration with BellSouth Telecommunications, Inc,)	
Pursuant to Section 252(b) of the Telecommunications)	
Act of 1996.)	Filed: December 1, 2000
)	

**PRE-HEARING STATEMENT OF
BELLSOUTH TELECOMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc. ("BellSouth"), in accordance with the provisions of the Order Establishing Procedure (Order No. PSC-00-1823-PCO-TP) issued October 5, 2000, submits its Pre-hearing Statement.

Witnesses

BellSouth proposes to call the following witness to offer testimony on the issues in this docket, as enumerated in Appendix A of the Order Establishing Procedure:

<u>Witness</u>	<u>Issues</u>
John Ruscilli (Direct and Rebuttal)	1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 23, 26, 27, 28, 29, 30 and 31
Daonne Caldwell (Direct)	35
Dave Coon (Direct)	24 and 25
Keith Milner (Direct and Rebuttal)	9, 16, 18, 21, 22, 32, 33 and 34

BellSouth reserves the right to call additional witnesses, witnesses to respond to Commission inquiries not addressed in direct or rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Pre-hearing Officer at the pre-

hearing conference to be held on December 15, 2000. BellSouth has listed the witnesses for whom BellSouth filed testimony, but reserves the right to supplement that list if necessary.

Exhibits

John Ruscilli: JAR-1 (Direct)

 JAR-2 (Direct)

 JAR-3 (Direct)

Daonne Caldwell: DDC-1 (Direct)

BellSouth reserves the right to file exhibits to any testimony that may be filed under the circumstances identified above. BellSouth also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

Statement of Basic Position

The Commission's goal in this proceeding is to resolve each issue in this arbitration consistent with the requirements of Section 251 of the Telecommunications Act of 1996 ("1996 Act"), including the regulations prescribed by the Federal Communications Commission ("FCC"), and to establish rates for interconnection services and network elements in accordance with Section 252(d) of the 1996 Act. The Commission should adopt BellSouth's positions on the issues in dispute. BellSouth's positions on these issues are reasonable and consistent with the 1996 Act, which cannot be said about the positions advocated by Sprint Communications Company, LP ("Sprint").

BellSouth's Position on the Issues of Law and Fact

ISSUE A: **What is the Commission's jurisdiction in this matter?**

Position: Section 252(b)(1) of the Telecommunications Act of 1996 empowers the Commission to arbitrate open issues in an interconnection agreement upon the filing of a Petition for Arbitration by either party. For purposes of this arbitration, the relevant limitations on the Commission's 252(b)(1) jurisdiction are found in sections 252(b)(4)(A), 252(b)(4)(C), 252(c)(1)-(3), and 252(e).

Under section 252(b)(4)(A), the scope of the Commission's consideration in an arbitration proceeding is limited to the issues set forth in the petition and in the response. The provisions of 252(b)(4)(C) require the Commission to resolve the open issues within nine (9) months of the filing of the Petition for Arbitration. Under sections 252(c)(1)-(3), the Commission is required to ensure that the arbitration decision: (a) meets the requirements of section 251, including FCC regulations prescribed pursuant to section 251; (b) complies with the pricing standards of section 252(d); and (c) provides a schedule for implementation of the agreement. Finally, section 252(e) sets forth the time frames for the Commission to accept or reject negotiated and arbitrated agreements, specifically delineating the circumstances under which the Commission can reject an agreement.

ISSUE 1: RESOLVED.

ISSUE 2: RESOLVED.

ISSUE 3: **Should BellSouth make its Custom Calling features available for resale on a stand-alone basis?**

Position: No. BellSouth is not obligated under the 1996 Act, or elsewhere, to offer to Sprint, or any other ALEC, Custom Calling Services on a stand-alone basis. BellSouth makes available for resale any telecommunications service that BellSouth offers on a retail basis to subscribers that are not telecommunications carriers. The Commission should not require BellSouth to offer Custom Calling features for resale on a stand-alone basis.

ISSUE 4: **Pursuant to Federal Communications Commission ("FCC") Rule 51.315(b), should BellSouth be required to provide Sprint at TELRIC rates combinations of UNEs that BellSouth typically combines for its own retail customers, whether or not the specific UNEs have already been combined for the specific end-user customer in question at the time Sprint places its order?**

Position: No. On July 18, 2000, the United States Court of Appeals for the Eighth Circuit declined to reinstate 47 C.F.R. Sec. 51.315(c)-(f) that it had previously vacated. The Court found that subsections (c)-(f), which require the ILECs to do the work of combining network elements for the competitors, violate Section 251(c)(3) of the Act, which in turn requires ILECs to provide network elements "in a manner that allows the requesting carriers to combine such elements."

Section 51-315(b), which the Supreme Court reinstated, only prohibits the ILECs from separating network elements that are already combined in the network. The Commission should only require BellSouth to provide UNE combinations in accordance with the 1996 Act and FCC rules.

ISSUE 5: RESOLVED.

ISSUE 6: Should BellSouth be required to universally provide access to EELs that it ordinarily and typically combines in its network at UNE rates?

Position: No. The EEL is not a mandatory UNE, and therefore, BellSouth should not be required to provide it at UNE rates. In addition, to provide the EEL BellSouth would have to combine the loop and dedicated transport for the ALEC, which BellSouth is not required to do. (See response to Issue 4) Thus, the Commission should not require BellSouth to offer the EEL at UNE rates.

ISSUE 7: In situations where an ALEC's end-user customer is served via unbundled switching and is located in density zone 1 in one of the top fifty Metropolitan Statistical Areas ("MSAs") and who currently has three lines or less, adds additional lines, should BellSouth be able to charge market-based rates for all of the customer's lines?

Position: Yes, when a specific customer has four or more lines, whether they were purchased all at once or gradually over time, BellSouth does not have to provide unbundled local switching as long as the other criteria for Rule 51.319(c)(2) are met. BellSouth requests the Commission to approve BellSouth's proposed contract language with respect to this issue.

ISSUE 8: Should BellSouth be able to designate the network Point of Interconnection ("POI") for delivery of BellSouth's local traffic?

Position: Yes. The FCC addresses this issue in its Local Competition Order, in Section IV. Further, the FCC determined that each originating carrier has the right to designate its POI on the ILEC's network. Thus, if Sprint wants BellSouth to bring BellSouth's originating traffic to a point designated by Sprint, then Sprint should pay for those additional facilities. The Commission should confirm each carrier as originating carrier has the right to designate the POI on the ILEC's network for its originating traffic.

ISSUE 9: Should the parties' Agreement contain language providing Sprint with the ability to transport multi-jurisdictional traffic over a single trunk group, including an access trunk group?

Position: BellSouth understands Sprint's request to be, in lieu of establishing a reciprocal trunk group in some central offices, place all originating and/or terminating traffic, local or non-local, over direct end office switched access Feature Group D trunks. BellSouth is in the process of determining the technical feasibility of Sprint's request. If Sprint's request appears to be

technically feasible, the Commission should order Sprint to pay for any and all implementation costs associated with, or resulting from, BellSouth offering this service.

ISSUE 10: Should Internet Service Provider ("ISP")-bound traffic be treated as local traffic for the purposes of reciprocal compensation in the new Sprint/BellSouth interconnection agreement, or should it be otherwise compensated?

Position: No. ISP-bound traffic is not local traffic eligible for reciprocal compensation, and should not be otherwise compensated. Based on the 1996 Act and the FCC's Local Competition Order, reciprocal compensation obligations under Section 251(b)(5) only apply to local traffic. ISP-bound traffic constitutes access service, which is clearly subject to interstate jurisdiction. The Commission should rule that reciprocal compensation is not owed for ISP-bound traffic.

ISSUE 11: Where Sprint's switch serves a geographic area comparable to the area served by BellSouth's tandem switch, should the tandem interconnection rate apply to local traffic terminated to Sprint?

Position: No. In order for an ALEC to appropriately charge tandem rate elements, the ALEC must demonstrate to the Commission that: 1) its switch serves a comparable geographic area to that served by the ILEC's tandem switch; and 2) its switch performs local tandem functions. Clearly, the CLEC should only be compensated for the functions that it actually provides. Sprint has not demonstrated that it meets the required criteria.

ISSUE 12: Should voice-over-Internet ("IP telephony") traffic be included in the definition of "Switched Access Traffic?"

Position: It depends on the end-points of the call. As with any other local traffic, reciprocal compensation should apply to local telecommunications provided via IP Telephony, to the extent that it is technically feasible to apply such charges. To the extent, however, that calls provided via IP telephony are long distance calls, access charges should apply, irrespective of the technology used to transport them. It should be noted that Phone-to-Phone IP telephony should not be confused with Computer-to-Computer IP telephony, where computer users use the Internet to provide telecommunications to themselves. BellSouth is not purporting to address Computer IP telephony in this issue. Thus, the Commission should determine the applicability of reciprocal compensation or access charges based on the end-points of the call, not the technology used to complete the call.

ISSUE 13: RESOLVED.

ISSUE 14: RESOLVED.

ISSUE 15: RESOLVED.

ISSUE 16: RESOLVED.

ISSUE 17: RESOLVED.

ISSUE 18: Should Sprint and BellSouth have the ability to negotiate a demarcation point different from Sprint's collocation space, up to and including the conventional distribution frame?

Position: Yes. BellSouth will comply with the Commission's collocation Order regarding the demarcation point and will establish said point at a location at the perimeter of the collocation space unless Sprint and BellSouth can agree on some other arrangement.

ISSUE 19: RESOLVED.

ISSUE 20: RESOLVED.

ISSUE 21: Under what conditions, if any, should Sprint be permitted to convert in place when transitioning from a virtual collocation arrangement to a cageless physical collocation arrangement?

Position: BellSouth will authorize the conversion of virtual collocation arrangements to physical collocation arrangements without requiring the relocation of the virtual arrangement where there are no extenuating circumstances or technical reasons that would cause the arrangement to become a safety hazard within the premises or otherwise being in conformance with the terms and conditions of the collocation agreement and where (1) there is no change to the arrangement; (2) the conversion of the virtual arrangement would not cause the arrangement to be located in the area of the premises reserved for BellSouth's forecast of future growth; and (3) due to the location of the virtual collocation arrangement, the conversion of said arrangement to a physical arrangement would not impact BellSouth's ability to secure its own facilities. The Commission should require transition from virtual to physical collocation under the guidelines presented by BellSouth.

ISSUE 22: Should Sprint be required to pay the entire cost of make-ready work prior to BellSouth's satisfactory completion of the work?

Position: Sprint should be obligated to pay for pre-license surveys and make-ready work in advance, as such payments are commercially reasonable and will ensure that all ALECs are treated in a nondiscriminatory manner with respect to such work. Thus, the Commission should adopt BellSouth's language requiring advanced payments for make-ready work.

ISSUE 23: Should the Agreement contain a provision stating that if BellSouth has provided its affiliate preferential treatment for products or services as compared to the provision of those same products or services to Sprint, then the applicable standard (i.e., benchmark or parity) will be replaced for that month with the level of service provided to the BellSouth affiliate?

Position: No. Consistent with the FCC's conclusions in the BellAtlantic-NY 271 Application decision, the appropriate performance measurement standard is the ILEC's service to its retail customers. Attempting to base performance measurements on any other standard will result in confusion and inconsistency. The Commission has available the performance data for BellSouth affiliates and, therefore, can determine for itself if BellSouth is providing preferential treatment to an affiliate.

ISSUE 24: What is the appropriate level of geographic disaggregation for performance measurement reporting to Sprint?

Position: In accordance with the nondiscrimination requirements of the 1996 Act, BellSouth produces Performance Measurements that permit regulatory bodies to monitor non-discriminatory access. It was not the intent of the Act or the FCC to have measurements for each and every process or sub-process, for each and every product, at the lowest geographic level, each month. BellSouth reports on approximately 8,000 performance measurement results each month at the state level. These results would, at a minimum, triple if reporting were done at the MSA level. In considering additional geographic disaggregation below the state level, the Commission must consider if even more results will clarify or further confuse the Commission's ability to detect non-discriminatory access. The Commission should adopt the performance measurements proposed by BellSouth.

ISSUE 25: What performance measurement audit provision(s) should be included in the Agreement?

Position: BellSouth's Service Quality Measurements, Appendix C, sets forth BellSouth's position on auditing performance measurements. This position provides the Commission with sufficient auditing capability to conclude that BellSouth is meeting its obligations under the Act. Under Sprint's proposal, given the number of ALECs with whom BellSouth has interconnection agreements, BellSouth would potentially have to conduct hundreds of audits each year, at significant cost. BellSouth's proposal balances the need to provide ALECs with the ability to audit performance data with the need to keep the process manageable, efficient, and cost-effective. The Commission should adopt BellSouth's audit proposal.

ISSUE 26: Should the availability of BellSouth's VSEEM III remedies proposal to Sprint, and the effective date of VSEEM III, be tied to the date that BellSouth receives interLATA authority in Florida?

Position: Yes to both parts of the issue. The FCC has identified the implementation of enforcement mechanisms to be a condition of 271 relief. The FCC reviews enforcement mechanisms and remedy plans as a part of its Public Interest Analysis. These plans are an additional incentive to ensure that BellSouth continues to comply with the competitive checklist after interLATA relief is granted. Enforcement mechanisms and remedies, however, are neither necessary nor required to ensure that BellSouth meets its obligations under Section 251 of the Act and the FCC has never indicated otherwise. Thus, it is appropriate that the VSEEM III proposal not take effect until it is necessary to serve its purpose – i.e., until after BellSouth

receives interLATA authority. Consistent with the purpose of enforcement mechanisms, the Commission should not require BellSouth to provide VSEEM III to Sprint until BellSouth obtains interLATA relief in Florida

ISSUE 27: Should BellSouth be required to apply a statistical methodology to the SQM performance measures provided to Sprint?

Position: Statistical methodology is not used on, or a part of BellSouth's Service Quality Measurements ("SQM"). Sprint is trying to merge the contents of two different plans. The statistical methodology being requested by Sprint is part and parcel of BellSouth's VSEEM III remedies plan. The Commission should confirm that BellSouth is not required to apply statistical methodology to SQM as well.

ISSUE 28a: Should BellSouth be required to provide Sprint with two-way trunks upon request?

ISSUE 28b: Should BellSouth be required to use those two-way trunks for BellSouth originated traffic?

Position: Yes, however, BellSouth is only obligated to provide and use two-way local interconnection trunks where traffic volumes are too low to justify one-way trunks. In all other instances, BellSouth is able to use one-way trunks for its traffic if it so chooses. Nonetheless, BellSouth is not opposed to the use of two-way trunks where it makes sense, and the provisioning arrangements and location of the Point of Interconnection can be mutually agreed upon. The Commission should require the provision and use of two-way trunks under the circumstances set forth by BellSouth.

ISSUE 29: Should BellSouth be allowed to designate a virtual point of interconnection in a BellSouth local calling area to which Sprint has assigned a Sprint NPA/NXX? If so, who pays for the transport and multiplexing, if any, between BellSouth's virtual point of interconnection and Sprint's point of interconnection?

Position: BellSouth should be allowed to designate a VPOI in a BellSouth local calling area to which Sprint has assigned a Sprint NPA/NXX, if that local calling area is different than the local calling area where Sprint has established its POI. Sprint should pay BellSouth the TELRIC rates for Interoffice Dedicated Transport and associated multiplexing, as set forth in the Interconnection Agreement, for BellSouth to transport local traffic and Internet traffic over BellSouth facilities from the VPOI (in the BellSouth local calling area, different from the local calling area where Sprint has established its POI, where Sprint has assigned an NPA/NXX) to the POI designated by Sprint.

ISSUE 30: RESOLVED.

ISSUE 31: RESOLVED.

ISSUE 32: Upon denial of a Sprint request for physical collocation, what justification, if any, should BellSouth be required to provide to Sprint for space that BellSouth has reserved for itself or its affiliates at the requested premises?

Position: Upon denial of a Sprint request for physical collocation, BellSouth shall provide to the Commission justification for the reserved space based on what is currently required by and provided to the Commission. Consistent with FCC Rule 51.323(f)(5), BellSouth shall relinquish any space held for future use prior to denying a Sprint request for virtual collocation unless BellSouth proves to the Commission that virtual collocation at that point is not technically feasible.

ISSUE 33: RESOLVED.

ISSUE 34: Upon denial of a Sprint request for physical collocation, and prior to the walkthrough, should BellSouth be required to provide full-sized (e.g., 24- inch x 36-inch) engineering floor plans and engineering forecasts for the premises in question?

Position: BellSouth will provide to Sprint floor plan drawings consistent with the size provided to the Commission for determination of the reasonableness of BellSouth’s denial of a physical collocation request. Adding any further specificity in an interconnection agreement with regard to the details of what will be furnished would unnecessarily add to the administrative complexity of the process. BellSouth requests that the Commission reject Sprint’s proposed contract language.

ISSUE 35: What rate(s) should BellSouth be allowed to charge for collocation space preparation?

Position: The Commission should adopt the rate set forth in the cost study (Exhibit DDC-1) filed by Daonne Caldwell in her direct testimony.

Stipulations

It is BellSouth understands that issues 1, 2, 5, 13, 14, 15, 16, 17, 19, 20, 30, 31 and 33 have been resolved. If BellSouth’s understanding is incorrect, BellSouth reserves the right to seek leave of the Commission to amend this Pre-Hearing Statement to add positions on those issues.

Pending Motions

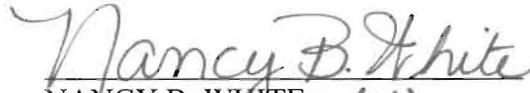
None.

Other Requirements

None.

Respectfully submitted this 1st day of December 2000.

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