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September 6, 2002

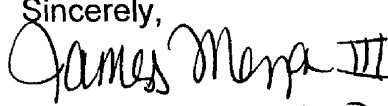
Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket No.: 020868-TL
Petition for Investigation of Wireless Carriers' Request for
BellSouth Telecommunications, Inc. to Provide
Telecommunications Service Outside BellSouth's Exchange**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Sprint PCS' Motion to Dismiss and Opposition to Petition for Investigation, which we ask that you file in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

James Meza III (LA)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER DATE
09451 SEP-6 8
FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
DOCKET NO. 020868-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

(*) Electronic Mail and First Class U.S. Mail this 6th day of September, 2002 to

the following:

Lee Fordham
Adam Teitzman
Staff Counsels
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Commission
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Investigation of Wireless Carriers')
Request for BellSouth Telecommunications, Inc.)
To Provide Telecommunications Service)
Outside BellSouth's Exchange)
_____)

Docket No. 020868-TL

Filed: September 6, 2002

**BELLSOUTH'S RESPONSE TO SPRINT PCS' MOTION TO DISMISS
AND OPPOSITION TO PETITION FOR INVESTIGATION**

On August 26, 2002, Sprint Corporation, on behalf of its wireless division, Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint") filed its Motion to Dismiss and Opposition to Petition for Investigation ("Motion to Dismiss" or "Motion") in response to BellSouth Telecommunications Inc.'s ("BellSouth") August 6, 2002 Petition for the Florida Public Service Commission ("Commission") to conduct an investigation and establish a generic docket to address wireless carriers' requests that BellSouth provide telecommunications service outside of BellSouth's exchange ("Petition"). In its Motion, Sprint generally alleges that the Commission lacks the subject matter jurisdiction to consider the Petition. Alternatively, Sprint requests that the Commission stay the matter pending the resolution of a proceeding before the Federal Communications Commission ("FCC"). The Commission should deny Sprint's Motion in its entirety for the reasons discussed below as well as those set forth in BellSouth's August 29, 2002 Opposition to Nextel's Motion to Dismiss.¹

ARGUMENT

I. Standard for Motion to Dismiss

A motion to dismiss raises as a question of law the sufficiency of the facts alleged in a petition to state a cause of action. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). The standard to be applied in disposing of a motion to dismiss is whether, with all allegations in the petition assumed to be true, the petition states a cause of action upon which relief may be granted. Id. When making the determination, only the petition can be reviewed, and all reasonable inferences drawn from the petition must be made in favor of the petitioner. Id.

Based on this standard, the Commission should strike or not consider the numerous factual allegations Sprint raises in its Motion to Dismiss. Stripped of its improper factual allegations, the simple question raised in the Motion is whether the Commission has the authority to interpret interconnection agreements as well as BellSouth's intrastate tariffs. For the reasons discussed in detail below, the answer to this question is an unequivocal yes.

II. The Commission Has Jurisdiction to Resolve BellSouth's Petition.

In support of its Motion to Dismiss, Sprint makes a number of allegations (many of which conflict with each other or are inaccurate) designed solely to make this issue appear to be more complex than it actually is. Simply put, this dispute between wireless carriers and BellSouth involves a conflict between a state tariff and the limitations on a Commercial Mobile Radio Service ("CMRS") provider's right to establish points of interconnection and assign virtual NXX codes outside of the incumbent local exchange company's ("ILEC") franchised service territory. Although not in the context of CMRS traffic, this Commission has previously determined that it has the jurisdiction to address issues concerning virtual NXX codes and points

¹ With this Response, BellSouth is incorporating, in its entirety, its response to Nextel's Motion

of interconnection. See FPSC Docket No. 000075-TP. Contrary to Sprint's assertion, the Commission's jurisdiction over these issues extends to CMRS providers as well.

Sprint's contention that the Commission lacks the subject matter jurisdiction to consider this Petition because the FCC has exclusive jurisdiction over LEC-CMRS is without merit. Under Florida law, there is no question that the Commission has the authority to interpret, enforce, and review BellSouth's intrastate tariffs. See Section 364.01(2), Florida Statutes; Florida Interexchange Carriers Assoc., Inc. v. Beard, 624 So. 2d 248 (Fla. 1993) (finding that the Commission has "exclusive jurisdiction in Section 364.01 to regulate telecommunications . . ." and that the Commission had the authority to review and reclassify GTE's proposed tariff). As set forth in BellSouth's Petition, a wireless carrier has requested that BellSouth activate certain NPA/NXXs, which results in the routing of traffic to the NAP/NXXs being established within BellSouth's service area while the rating of such traffic is established in Northeast Florida Telephone Company, Inc.'s ("Northeast") service area. See Pet. at ¶ 7. BellSouth has asked the Commission to decide if providing virtual designated service outside of BellSouth's exchange, as requested by the wireless carriers, violates Section A35 of BellSouth's intrastate General Subscriber Service Tariff ("GSST") regarding "Interconnection Services for Mobile Providers." See Pet. at ¶ 4-5.

Sprint is well aware that this Commission has subject matter jurisdiction over interconnection and intercarrier compensation issues between ILECs and CMRS providers. In fact, Sprint has asked the Commission to exercise subject matter jurisdiction over a Section 252 arbitration proceeding between Sprint and BellSouth which involved issues concerning interconnection and the payment of intercarrier compensation resulting from that

to Dismiss.

interconnection. See FPSC Docket No. 000761-TP. Thus, Sprint's actions are inconsistent with its position that the Commission is without subject matter jurisdiction to address the issues presented in this Petition.

Even more damaging to Sprint's argument that the FCC has exclusive jurisdiction over interconnection issues between ILECs and CMRS providers is the fact that Sprint (ILEC) has a tariff nearly identical to the BellSouth A35 Tariff that is at issue in this proceeding. At best, it is disingenuous for Sprint to challenge the Commission's jurisdiction to consider issues arising from a tariff when Sprint (ILEC) has a nearly identical tariff that was filed with, and approved by, the Commission. Also instructive is the fact that Sprint acknowledges that it "recently amended its Virtual Rate Center Tariff (containing language similar to BellSouth's current VDE Tariff) to eliminate restrictions relating to routing and rating points in different exchange areas involving a different ILEC." Obviously, Sprint (ILEC) recognized that its tariff, which virtually had the same language as BellSouth's A35 tariff, precluded NXX assignments in the manner in which Sprint is requesting – otherwise there would have been no need to modify the tariff. Further, Sprint (ILEC) modifying the tariff is an acknowledgment that this issue is within the subject matter jurisdiction of the Commission. If the FCC had exclusive jurisdiction over this issue, then Sprint (ILEC) should have either withdrawn its tariff as irrelevant or declined to modify it claiming that the Commission could not enforce it anyway.

Simply put, resolution of BellSouth's Petition will require the Commission to interpret and review BellSouth's intrastate tariff, which is clearly within the ambit of its authority. For this reason alone, the Commission should deny Sprint's Motion to Dismiss.²

² Moreover, the Eleventh Circuit, pending an en banc decision, recently vacated its holding in BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Serv., Inc., 278 F.3d 1223 (11th Cir. 2002), wherein it found that state commissions do not have authority under the

Sprint also contends that BellSouth has, in the past, allowed NXX codes to be assigned in the manner requested by Sprint. Contrary to Sprint's assertion, BellSouth has never knowingly allowed such NXX arrangements. By way of history, when BellSouth had responsibilities for numbering assignment, BellSouth would not allow NXX codes to be assigned in the manner requested by Sprint because such an assignment would be contrary to the A35 tariff. However, after the FCC relieved the BellSouth (and the other ILECs) of numbering administration responsibilities in 1998, BellSouth had no control over the assignment of NXX codes.³ After BellSouth was relieved of numbering administration responsibilities, the new numbering administrator apparently made NXX assignments that were used by CMRS providers in a manner similar to that proposed by Sprint. BellSouth was unaware of these NXX assignments until, as irony would have it, Sprint (ILEC) sent an e-mail⁴ to BellSouth complaining that:

. . . BellSouth (ILEC) has allowed four wireless providers to have a Starke Virtual Rate Center (VRC) on their Type 2A interconnection trunks at the Jacksonville Access Tandem. Further, BellSouth has allowed one CLEC to also have a Starke VRC in the Jacksonville tandem. (This is a violation of Sprint and BellSouth tariffs, because it is taking away access revenue from Sprint and also causing

Telecommunications Act of 1996 (the "Act") to enforce and interpret interconnection agreements. See BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Serv., Inc., 297 F.3d 1276 (11th Cir 2002) ("IT IS ORDERED that the above causes shall be reheard by this Court en banc. The previous panel's opinion is hereby VACATED.") Accordingly, the Commission's previous findings that it has the authority to enforce and interpret the interconnection agreements that it approves under the Act is still applicable. See In re: MCIMetro Access Transmissions Services, LLC, Order No. PSC-00-2471, 2000 WL 33251863 at *2 (Dec. 21, 2000) ("State commissions retain primary authority to enforce the substantive terms of agreements they have approved pursuant to Sections 251 and 252 of the Act."). Therefore, to the extent BellSouth's Petition requires the Commission to resolve a dispute arising out of CMRS interconnection agreements executed pursuant to the Act, the Commission has subject matter jurisdiction over BellSouth's Petition. Thus, the Commission should deny Sprint's Motion for this additional reason.

³ In 1998, the FCC chose NeuStar as the numbering administrator.

⁴ A copy of the March 8, 2000 email from Sprint (ILEC) to BellSouth is attached hereto as Attachment A.

Sprint to incur additional expenses on EAS trunks and toll trunks with no additional compensation).

Equally ironic is the fact that Sprint (PCS) was one of the four wireless carriers that Sprint (ILEC) was complaining had violated BellSouth's A35 tariff by assigning NXX codes outside of BellSouth territory. See March 8, 2000 e-mail.

In essence, Sprint is attempting to avoid the expenses of interconnecting with the independent ILEC's ("ICO") network, but instead leveraging BellSouth's network to achieve a pseudo-presence in the ICO's territory. While the 1996 Act allows Sprint to interconnect with an ILEC at any technically feasible point on the *ILEC's network*, it does not allow Sprint (or any CMRS provider) to manipulate the NXX numbering codes in such a manner as to avoid interconnection, and the resulting compensation, with the ICOs.⁵ See First Report and Order, FCC 96-325, ¶1009. This avoidance of compensation and imposition of additional trunking expenses noted by Sprint (ILEC) in the March 8, 2000 e-mail to BellSouth is precisely what Sprint is attempting to do now. As noted above, the Commission has already determined (in the context of wireline traffic) that virtual NXXs cannot be used to avoid toll obligations. Thus, the Commission should not allow Sprint to assign virtual NXX codes outside of BellSouth's service territory.

Finally, in its Motion to Dismiss, Sprint acknowledges that BellSouth has agreed to provision the NXX code requests from the CMRS providers while BellSouth pursues this Petition. See Motion at 5. Notwithstanding this admission, the Motion to Dismiss is replete with insinuations and allegations that BellSouth ceased or refused to process the NXX codes. To be

⁵ Sprint's contention that it does not use virtual NXX codes is simply wrong. Because Sprint has not assigned CLLI codes to the cell towers in the ICO's territory, and is not interconnected to a central office in the ICO's territory, Sprint's assignment of an NXX code to that cell tower is, in fact, a virtual NXX code.

clear, all of Sprint's numbers have been loaded with the NXXs designated by Sprint. However, because Sprint's routing and rating points associated with the NXXs involve areas in which BellSouth does not provide local service, issues regarding appropriate billing and compensation have arisen. These matters fall within the purview of this Commission and are properly before this Commission through BellSouth's Petition.

III. Sprint's Request for a Stay Should Be Rejected.

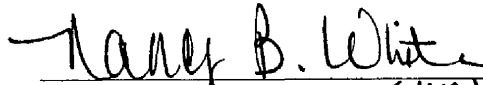
Alternatively, Sprint requests that the Commission hold the instant proceeding in abeyance until the FCC rules on Sprint PCS' Petition for Declaratory Ruling pending before the FCC. Motion at 14. The Commission should deny this request because the questions posed by BellSouth invoke the Commission's exclusive authority to resolve intrastate telecommunications issues.

CONCLUSION

BellSouth will carry traffic and recognize the NXX assignments of Sprint and other CMRS providers that require BellSouth to route traffic in a manner inconsistent with its rating points until such time as the Commission rules on this Petition. Nevertheless, the Commission should note that these arrangements result in, at a minimum, inappropriate intercarrier compensation (including reciprocal compensation, access charges and/or inter-company settlements) and appear to be directly contrary to BellSouth's A35 tariff. When a CMRS provider does not interconnect directly with the independent ILEC and insists that BellSouth arrange for the transmission of these local calls with rate centers within the ICO's calling area and routing points within BellSouth's calling area, then all parties are not compensated correctly for the costs incurred for provision of the service. Thus, the Commission should deny Sprint's Motion to Dismiss and rule on BellSouth's Petition.


Respectfully submitted this 6th day of September 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.



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460277

ATTACHMENT A

-----Original Message-----

From: Jack.Burge@mail.sprint.com
[mailto:Jack.Burge@mail.sprint.com]
Sent: Wednesday, March 08, 2000 2:28 PM
To: Gene Lunceford
Cc: joanne.fallis@mail.sprint.com;
barbara.green@mail.sprint.com;
stephen.a.harvey@openmail.mail.sprint.com;
al.lubeck@openmail.mail.sprint.com; paul.milhan@mail.sprint.com;
scott.stringer@openmail.mail.sprint.com;
denise.m.vidal@openmail.mail.sprint.com
Subject: Virtual Rate Center Issue between Sprint and BellSouth
in Florida

Gene,

As I discussed with you earlier on the phone, BellSouth (ILEC)
has

allowed four wireless providers to have a Starke Virtual Rate
Center

(VRC) on their Type 2A interconnection trunks at the
Jacksonville Access Tandem. Further, BellSouth has allowed one
CLEC to also have a Starke VRC in the Jacksonville tandem. (This
is a violation of Sprint and BellSouth tariffs, because it is
taking away access revenue from Sprint and also causing Sprint
to incur additional expenses on EAS trunks and toll trunks with
no additional compensation).

Sprint discovered this when these translation changes were sent
via the LERG (Local Exchange Routing Guide) update process.
The approximate dates of these inappropriate VRC implementations
were:

Alltel Mobile- September 1998
Sprint PCS- April 1999
Powertel-May 1999
Delta Com (CLEC) -???
TSR- March 2000

The BellSouth tariff reference is :
General Subscriber Service Tariff , A35. Interconnection of
Mobile
Services, A35.1.1.R.2.

The four wireless carriers are Sprint PCS, Alltel Mobile,
Powertel and
TSR Wireless.

Issues:

Starke has EAS to the ALLTEL (ILEC) exchanges of Waldo and Booker. Waldo and Brooker are in a different LATA than Starke and Jacksonville, therefore ALLTEL does not have any trunk groups that go between Waldo/Booker and Jacksonville. Consequently, land to mobile calls originating from Waldo and Brooker, terminating to one of these Starke VRCs, are routed over the EAS trunks to Sprint's Starke central office. Sprint then routes the calls over the Starke to Jacksonville toll trunk group. BellSouth picks up the calls in Jacksonville and then routes them over the wireless carrier's Type2A interconnection trunks to the wireless carrier's switch.

Action Required by BellSouth:

BellSouth should rescind these VRCs as they are in violation of both Sprint and BellSouth tariffs. Alltel (ILEC) would need to establish trunks between Waldo/Booker and Jacksonville. Sprint would then block these codes from coming across the EAS trunk group between Waldo/Booker and Starke. BellSouth should calculate the lost revenues that Sprint is due for loss access revenue. Let me know if you need additional information?? Thanks Jack

Starting on December 13, 1999, my new location:

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Mailstop: KSOPHM0310-3A500
6480 Sprint Parkway
Overland Park, KS 66251
voice: 913-315-7850
fax: 913-315-0628
jack.burge@mail.sprint.com

Florida SBS



Competition

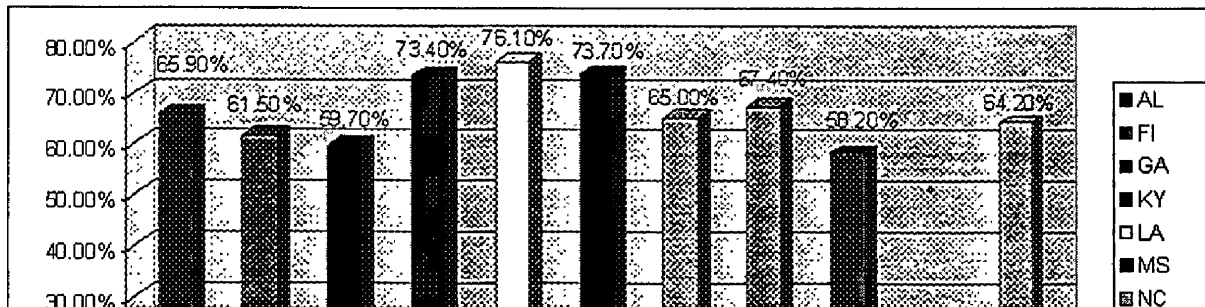
January 2002 – Market Share

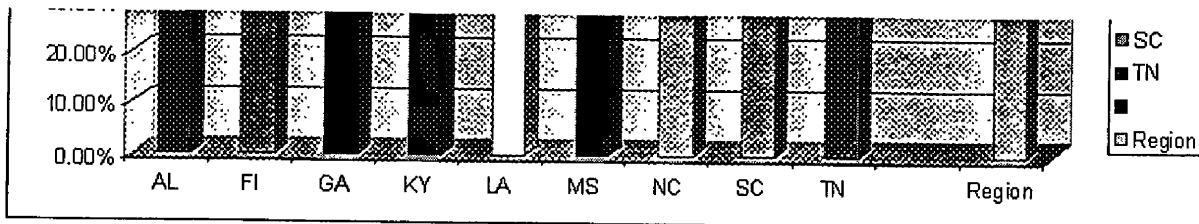
Miami	64.7%
Ft. Ldle	58.5%
W. Palm Bch	66.6%
Jacksonville	58.4%
Orlando	55.4%

Major Competitors

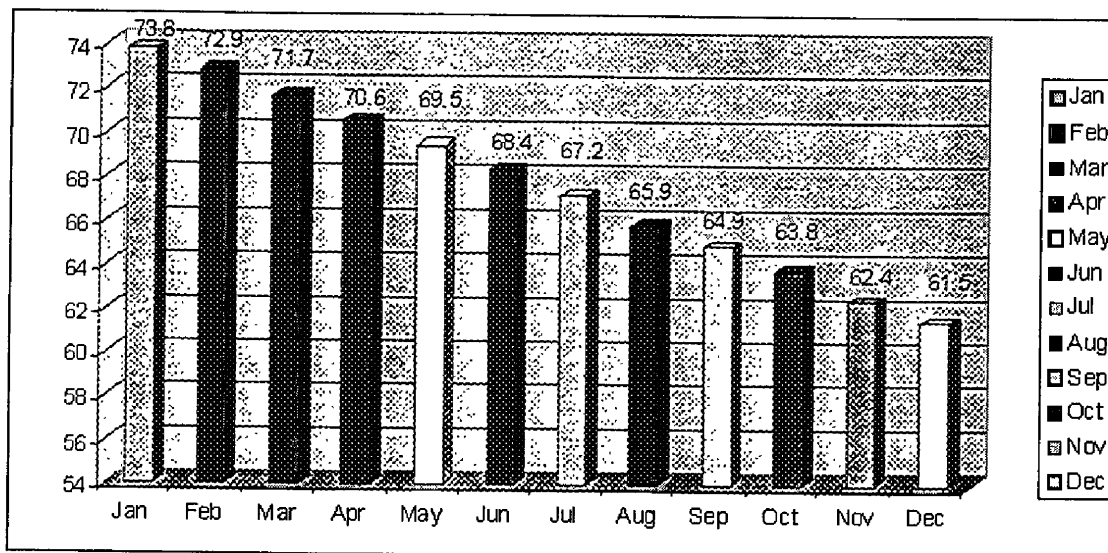
- **Supra Telecom**
- **XO Telecommunications**
- **AT&T**
- **MCI –WorldCom**
- **Florida Digital Network**
- **NewSouth**
- **KMC**
- **And coming soon Birch Telecomm**

GEO MARKET SHARES - JAN 2002

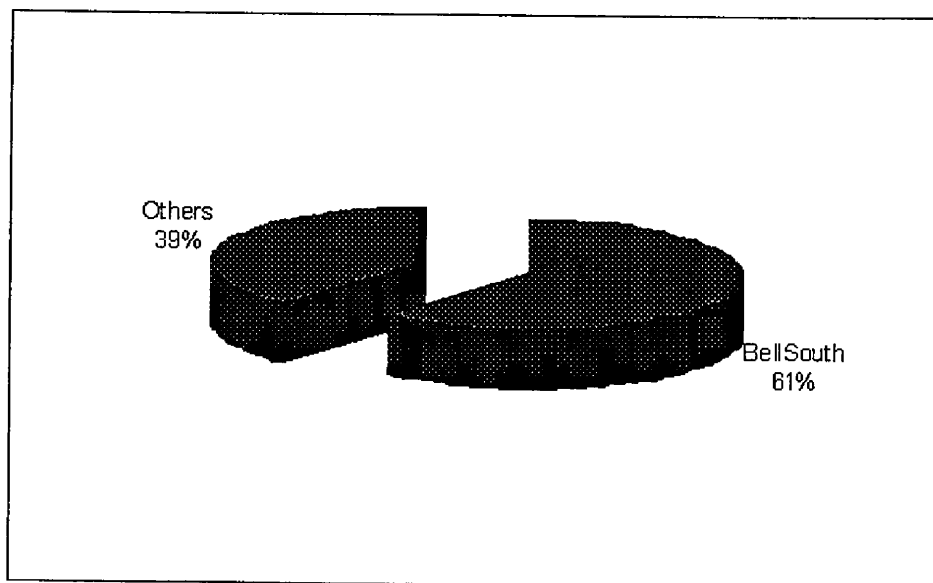




FLORIDA MARKET SHARE TREND



A PIECE OF THE PIE - JAN 2002



FLORIDA LINE LOSS FOR 2001

	Jan 12,855	
Jul. 15,460	Feb 11,891	Aug
17,561	Mar 15,623	Sep
13,867	Apr 14,264	Oct
17,223	May 15,505	N ov 14,167
	June 15,766	Dec
	16,017	
	Total 180,199	