

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of unresolved issues resulting from negotiations with Sprint-Florida, Incorporated for interconnection agreement, by AT&T Communications of the Southern States, LLC d/b/a AT&T and TCG South Florida.

DOCKET NO. 030296-TP
ORDER NO. PSC-03-0880-PHO-TP
ISSUED: July 31, 2003

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on July 24, 2003, in Tallahassee, Florida, before Commissioner Charles M. Davidson, as Prehearing Officer.

APPEARANCES:

LORETTA A. CECIL, ESQUIRE, Womble Carlyle Sandridge & Rice, PLLC, 1201 West Peachtree Street, Suite 3500, Atlanta, Georgia 30309
On behalf of AT&T Communications of the Southern States, LLC and TCG South Florida.

TRACY HATCH, ESQUIRE, 101 North Monroe Street, Suite 700, Tallahassee, Florida 32301
On behalf of AT&T Communications of the Southern States, LLC and TCG South Florida.

SUSAN S. MASTERTON, ESQUIRE, P. O. Box 2214, 1313 Blairstone Road, Tallahassee, Florida 32301-3021
On behalf of Sprint-Florida, Incorporated.

KENNETH A. SCHIFMAN, ESQUIRE, 6450 Sprint Parkway, Overland Park, Kansas 66251
On behalf of Sprint-Florida, Incorporated.

J. JEFFRY WAHLEN, ESQUIRE, Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32301
On behalf of Sprint-Florida, Incorporated.

LINDA H. DODSON, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

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FPSC-COMMISSION CLERK

PREHEARING ORDER

I. **CONDUCT OF PROCEEDINGS**

Formal hearing proceedings before the Florida Public Service Commission are governed by Chapter 120, Florida Statutes, and Chapters 25-22, 25-40, and 28-106, Florida Administrative Code. To the extent provided by Section 120.569(2)(g), Florida Statutes, the Florida Evidence Code (Chapter 90, Florida Statutes) shall apply. To the extent provided by Section 120.569(2)(f), Florida Statutes, the Florida Rules of Civil Procedure shall apply.

Rule 28-106.211, Florida Administrative Code, specifically provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of this case. This Order is issued pursuant to that authority. The scope of this proceeding shall be based upon the issues raised by the parties up to and during the prehearing conference, unless modified by the Commission or Prehearing Officer.

II. **CASE BACKGROUND**

On March 24, 2003, AT&T Communications of the Southern States, LLC and TCG South Florida (AT&T) filed a petition pursuant to Section 252(b)(1) of the Telecommunications Act of 1996 (the Act) for arbitration of unresolved issues relating to AT&T's negotiations with Sprint-Florida, Incorporated (Sprint) for an interconnection agreement. On April 21, 2003, Sprint filed its response. Pursuant to Section 252(b) of the Act, this matter is set for hearing on August 7 and 8, 2003.

III. **ATTENDANCE AT HEARING: PARTIES AND WITNESSES**

Unless excused by the Presiding Officer for good cause shown, each party (or designated representative) shall personally appear at the hearing. Failure of a party, or that party's representative, to appear shall constitute waiver of that party's issues, and that party may be dismissed from the proceeding.

Likewise, all witnesses are expected to be present at the hearing unless excused by the Presiding Officer upon the staff attorney's confirmation prior to the hearing date that:

- (i) all parties agree that the witness will not be needed for cross examination; and
- (ii) all Commissioners assigned to the panel do not have questions for the witness.

In the event a witness is excused in this manner, his or her testimony may be entered into the record as though read following the Commission's approval of the proposed stipulation of that witness' testimony.

IV. PENDING MOTIONS

On July 15, 2003, Sprint-Florida, Incorporated filed a Motion to Compel, requesting that AT&T be compelled to answer Sprint's First Set of Interrogatories Nos. 3-15. On July 22, 2003, AT&T filed their response, and in addition, a Motion for Protective Order and a Motion in Limine Regarding Compensation for VOIP Traffic. A separate order will be issued to rule on these Motions.

V. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

VI. OPEN PROCEEDINGS AND PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Confidential information should be treated in accordance with the provisions of the Order Establishing Procedure previously issued in this docket.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing by the Commission.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing, unless approved by the Prehearing Officer for good cause shown. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services's confidential files.

VII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

VIII. OPENING STATEMENTS

Opening statements, if any, shall not exceed 10 minutes per party.

IX. WITNESSES: OATH, PREFILED TESTIMONY, EXHIBITS, AND CROSS-EXAMINATION

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand at the hearing, affirmed whether he or she has been sworn, and affirmed the correctness of the testimony and associated exhibits. However, all testimony remains subject to appropriate objections. Upon insertion of a witness' testimony into the record, exhibits appended thereto may be marked for identification. Each witness will be given five minutes to orally summarize his or her testimony, including both direct and rebuttal testimony, at the time he or she takes the stand.

Witnesses are then to be tendered for cross-examination by all parties and staff. Commissioners may also pose questions as they deem appropriate. Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and staff have had the opportunity to object and cross-examine, exhibits may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

X. ORDER OF WITNESSES

Witnesses will be heard in the following order except that where a witness has submitted both direct and rebuttal testimony, his or her direct and rebuttal testimony will be heard at the same time.

<u>Witness</u>	<u>Proffered By</u>	<u>Issue Nos.</u>
<u>Direct</u>		
David L. Talbott	AT&T	1-14
Jay M. Bradbury*	AT&T	11, 12
James Michael Maples	Sprint	1-6, 8, 9, 11-13
Kenneth J. Farnan	Sprint	5
James R. Burt	Sprint	7, 14
<u>Rebuttal</u>		
David L. Talbott	AT&T	1-9, 11
Jay M. Bradbury*	AT&T	11, 12
James Michael Maples	Sprint	1-6, 8, 9, 11-12
James R. Burt	Sprint	7, 14

* Mr. Bradbury is adopting the testimony of David L. Talbott on Issue No. 11.

XI. EXHIBIT LIST

The following lists the exhibits proffered by parties and staff prior to the hearing. However, parties and staff reserve the right to identify additional exhibits for the purpose of cross-examination during the hearing.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
James Michael Maples	Sprint	_____ (JMM-1)	Sprint Point of Interconnection Proposal
James Michael Maples	Sprint	_____ (JMM-2)	AT&T Point of Interconnection Proposal
James Michael Maples	Sprint	_____ (JMM-3)	Meet Point Interconnection
James Michael Maples	Sprint	_____ (JMM-4)	Virtual NXX for ISP-Bound Traffic
James Michael Maples	Sprint	_____ (JMM-5)	Indirect Interconnection
James Michael Maples	Sprint	_____ (JMM-6)	Transit Service
James R. Burt	Sprint	_____ (JRB-1)	VoIP Toll Service
James R. Burt	Sprint	_____ (JRB-2)	MCI Article
James R. Burt	Sprint	_____ (JRB-3)	Forbes.com - AT&T Article
<u>Rebuttal</u>			
David L. Talbott	AT&T	_____ (DLT-1)	POI at Terminating Switch Location

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
David L. Talbott	AT&T	_____ (DLT-2)	POI Not Located at Terminating Switch Location
David L. Talbott	AT&T	_____ (DLT-3)	AT&T POI at Term Switch Location
David L. Talbott	AT&T	_____ (DLT-4)	AT&T POI Not at Term Switch Location
James Michael Maples	Sprint	_____ (JMM-7)	Verizon VGRIP and Sprint POI Proposal

XII. BASIC POSITIONS

SPRINT: The terms and conditions proposed by Sprint are clearly consistent with the Florida Public Service Commission decisions and FCC rules. Therefore, the Commission should adopt Sprint's positions and order that Sprint's proposed language be incorporated into the parties' interconnection agreement.

AT&T: Sprint is attempting to limit the competitiveness of today's marketplace by forcing AT&T to work within an outdated "traditional telephony paradigm" regarding network interconnection and related compensation issues. The Commission should reject Sprint's outdated paradigm in resolving the Issues set forth in AT&T's Petition.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

XIII. ISSUES AND POSITIONS

ISSUE 1: **What are each Party's rights and obligations with respect to establishing a point of interconnection (POI) to the other Party's network and delivery of its originating traffic to such POI?**

SPRINT: Pursuant to the Commission's Generic Reciprocal Compensation Order, AT&T may designate a single point of interconnection (POI) for the mutual exchange of traffic at any technically feasible location on Sprint's network within a LATA; however, the POI selected by AT&T is established for the mutual exchange of traffic. There should be a pro rata sharing of the cost of the interconnection facilities, i.e., dedicated transport from the POI to AT&T's switch. AT&T's position that it may require Sprint to establish multiple POIs on AT&T's network for Sprint-originated traffic (thereby resulting in additional facility and engineering costs to be borne by Sprint) is inconsistent with the 1996 Act and should be rejected.

AT&T: §251(c)(2) of the Telecommunications Act of 1996¹ ("Act") requires Sprint, as an incumbent local exchange carrier ("ILEC"), to provide interconnection at any technically feasible point on its network. AT&T, as a competing local exchange carrier ("CLEC"), must interconnect directly or indirectly with another telecommunications carrier under § 251(a)(1) of the Act. The transport of originating traffic by the ILEC and the CLEC to the point of interconnection is the responsibility of each originating Party. AT&T has the *right* under §251(c)(2) to select where it chooses to interconnect with the ILEC. AT&T has the *obligation* to pay for its originating traffic to the point of interconnection. Sprint has the *right* to designate an independent point of interconnection for Sprint originated traffic as long as both Parties agree to the location. The *obligations* of Sprint to provide for originating traffic to the point of interconnection and to allow interconnection at any technically feasible point are required pursuant to 47 C.F.R. §51.305(a)(2).

STAFF: Staff has no position at this time.

ISSUE 2: **May AT&T require the establishment of a Mid-Span Fiber Meet arrangement or is the establishment of a Mid-Span Fiber Meet arrangement conditional on the amount of traffic from one network to the other being roughly balanced?**

SPRINT: Establishment of a mid-span fiber meet should be allowed only when the amount of traffic originated on the network of both parties is roughly balanced.

¹ *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56.

AT&T: AT&T may require a mid-span fiber meet arrangement because as a CLEC, AT&T may choose any technically feasible method of interconnection under §252(c)(2) of the Act. The FCC determined in its *Local Competition Order*² that a mid-span fiber meet is a technically feasible method of interconnection. Mid-span fiber meet is defined as the interconnection between two LECs where each provides its own cable and equipment to the meet point of the cable facility. It is at this point that ownership and responsibility for each LEC's portion of the transmission facility is established. Further, Sprint, as the LEC, has a duty to provide mid-span fiber meet arrangements upon request under 47 C.F.R. §51.321(b)(2), unless Sprint proves with clear and convincing evidence that specific adverse impacts would result. Sprint asserts that a "balancing act" is required as to traffic before it must agree to mid-span fiber meet arrangements. However, there is no legal authority for this position under applicable law. The FCC recently adopted AT&T's position on this issue in the *Virginia Arbitration Order*.³

STAFF: Staff has no position at this time.

ISSUE 3: When establishing a Mid-Span Fiber Meet arrangement, should AT&T and Sprint equally share the reasonably incurred construction costs?

SPRINT: No. AT&T's proposal could require Sprint to absorb 50% of the cost of constructing a meet point interconnection between an AT&T switch in Atlanta and a Sprint Switch in Tallahassee. The Commission should adopt Sprint's position under which the parties each absorb 50% of the construction cost, subject to a limitation that Sprint not be required to construct facilities outside of its exchange boundaries.

AT&T: Yes. The FCC adopted virtually all of the AT&T position in the *Virginia Arbitration Order*, finding that "[i]n a meet point arrangement, each party pays its portion of the cost to build out the facilities to the meet point," and that it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement. In the *Virginia Arbitration Order*, the FCC adopted AT&T's language to split the cost of construction equally and the FCC added that maintenance costs and forward economic costs of imbedded facilities used to construct the mid-span fiber meet arrangement should be added as well.

STAFF: Staff has no position at this time.

² *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499 (1996) ("*Local Competition Order*").

³ *In the Matter of the Petition of ATCI Communications of Virginia, Inc., pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc.*, Memorandum Opinion and Order, CC Docket No. 00-251, released July 17, 2002. ("*Virginia Arbitration Order*")

ISSUE 4: Should certain traffic types be excluded from interconnection via a Mid-Span Fiber Meet arrangement.

SPRINT: The issue here is not traffic routing, but rather compensation for traffic routed. Any interconnection arrangement under Section 251(c)(2) of the 1996 Act can be used for the transmission and routing of telephone exchange and exchange access. Accordingly, local, ISP-bound, transit, and intraLATA/interLATA toll traffic (including translated 8YY) can be routed over a meet-point facility. However, a party should not charge the other for the costs of its portion of the meet point facility for non-transit Local Traffic or non-Local Traffic.

AT&T: No. There is no statutory, technical, or Commission authority to limit the types of traffic which can be exchanged over a mid-span fiber meet arrangement. Because both carriers will pay equally for the cost of the mid-span fiber meet arrangement, each carrier should be able to utilize the arrangement for any and all types of traffic. Further, § 251(c)(2)(A) of the Act requires the ILEC provide for . . . “transmission and routing of exchange service and exchange access,” without limitation as to the type or scope of traffic utilized in interconnection.

STAFF: Staff has no position at this time.

ISSUE 5: How should AT&T and Sprint define Local Calling Area for purposes of their interconnection agreement?

SPRINT: Sprint does not believe that the Commission has the authority to order the originating carrier’s default local calling area for the purposes of reciprocal compensation. Notwithstanding Sprint’s position on the legal basis for the Commission’s decision, serious implementation issues associated with the default local calling area established in the Commission’s Generic Reciprocal Compensation docket, must be addressed before Sprint can implement the default. Pending resolution of these issues, some of which must be considered on an industry-wide basis, Sprint’s local calling area as defined in its general exchange tariff should be approved as the Local Calling Area.

AT&T: The Commission should define local calling area consistently with its ruling in its *Florida Reciprocal Compensation Order*⁴ which found that the originating carrier’s retail local calling area should be used as the default local calling area for purposes of

⁴ *In Re: Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Florida PSC Docket No. 000075-TP, FL PSC Order PSC-02-1248-FOF-TP, September 10, 2002 (“*Florida Reciprocal Compensation Order*”).

reciprocal compensation. Sprint has presented no new evidence for the Commission to abandon its prior ruling.

STAFF: Staff has no position at this time.

ISSUE 6: How should AT&T and Sprint define Local Traffic for purposes of their interconnection agreement?

SPRINT: Local traffic should be defined as traffic that is originated and terminated within the Local Calling Area.

AT&T: The definition of Local Traffic should be consistent with the *FCC's ISP Remand Order*,⁵ and the D.C. Circuit's *Remand*⁶ of that *Order*, which provide that all telecommunications traffic is subject to reciprocal compensation in accordance with §251(b)(5) of the Act, except for that traffic which falls into the §251(g) "carve out" provisions. The terms "local" and "nonlocal" traffic used by Sprint have become irrelevant in the current regulatory environment. Therefore, AT&T's language (which is consistent with the *FCC's ISP Remand Order*, and the DC Circuit's *Remand* of this *Order*) should be utilized for purposes of defining Local Traffic in the interconnection agreement.

STAFF: Staff has no position at this time.

ISSUE 7: How should traffic originated and terminated by telephone and exchanged by the parties and transported over internet protocol (in whole or in part, and including traffic exchanged between the parties originated and terminated to enhanced service providers) be compensated?

SPRINT: Calls that are originated and terminated by telephone but are transmitted via the Internet network (VoIP) should be compensated in the same manner as voice traffic. If the end points of the call define the call as interstate toll, interstate access charges should apply. If the end points of the call define the call as intrastate toll, intrastate access charges should apply. If the end points of the call define the call as local, reciprocal compensation should apply. The fact that VoIP is a new technology is no reason for the

⁵ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, FCC Docket Nos.: 96-98, 99-68, Order on Remand and Report and Order, April 27, 2001, ("FCC ISP Remand Order").

⁶ *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir.)

Commission to abandon the traditional end-to-end analysis for determining appropriate compensation.

AT&T: This is not an appropriate issue in this arbitration. Previously, in the Commission's *Florida Reciprocal Compensation Order*, the Commission decided not to address compensation for voice over internet protocol ("VOIP) traffic finding that ". . . this issue is not ripe for consideration at this time."⁷ Thereafter, the Commission also declined to address whether VOIP traffic constitutes "telecommunications" under Florida law in its *CNM Networks, Inc. Order*.⁸ The reasoning behind the Commission decision was its recognition that the FCC was considering AT&T's VOIP Petition regarding compensation for VOIP traffic. AT&T's VOIP Petition has yet to be ruled upon by the FCC. Both AT&T and Sprint have had the opportunity to make comments regarding compensation for VOIP traffic in the context of AT&T's VOIP Petition. Therefore, it remains "administratively inefficient to make a determination on this issue while the FCC proceeding is underway and while the VOIP issue is not right for consideration."⁹

STAFF: Staff has no position at this time.

ISSUE 8: Should ISP-Bound Traffic be limited to calls to an information service provider or internet service provider which are dialed by using a local call dialing pattern?

SPRINT: The FCC-mandated ISP compensation scheme is limited to calls dialed with a local dialing pattern.

AT&T: No. The FCC has held that ISP-bound traffic is interstate in nature and thus presently falls under the jurisdiction of the FCC and is governed by the *FCC's ISP Remand Order*. In the *FCC's ISP Remand Order*, the FCC held that ISP bound traffic fell into the §251(g) "carve out" provisions, meaning that reciprocal compensation did not apply to this traffic. However, the *FCC's ISP Remand Order* was appealed to the DC Circuit which held that ISP-bound traffic did not fall into the §251(g) "carve out" provision. Notwithstanding this finding, the DC Circuit allowed the FCC's rate caps for ISP traffic to remain in effect pending further action by the FCC. Accordingly, the DC Circuit did not vacate the FCC's intercarrier compensation mechanism outlined by the FCC for

⁷ *Florida Reciprocal Compensation Order* at Page 37.

⁸ *In Re: Petition CNM Networks, Inc. For Declaratory Statement That CNM's Phone-To-Phone Internet Protocol (IP) Technology Is Not "Telecommunications" And That CNM Is Not A Telecommunications Company" Subject To Florida Public Service Commission Jurisdiction*, FL PSC Docket No. 021061-TP, Florida PSC Order PSC-02-1858-FOF-TP, December 31, 2002, at Page 1.

⁹ *Id.* at Page 1.

ISP-bound traffic. Thus, the *ISP Remand Order* continues to govern compensation for ISP-bound traffic. As a result, this Commission is required to implement the *FCC's ISP Remand Order*. Moreover, because this Commission has no jurisdiction over ISP-bound traffic, it cannot modify the *FCC's ISP Remand Order* by adopting Sprint's proposed language that ISP-bound traffic should be limited to calls dialed using a local call dialing pattern.

STAFF: Staff has no position at this time.

ISSUE 9: (a) **Should AT&T be required to compensate Sprint for the transport of ISP-Bound Traffic between Sprint's originating local calling area and a POI outside Sprint's local calling area?**

(b) **Do the compensation obligations change when a virtual NXX is used?**

SPRINT: (a) AT&T should be required to compensate Sprint for transport Sprint-originated ISP-bound traffic outside the Local Calling Area at TELRIC-based transport rates.

(b) No. AT&T should be required to compensate Sprint for the transport of ISP-bound virtual NXX traffic in the same manner as set forth in Issue 9(a), i.e., at TELRIC-based rates.

AT&T: No. AT&T should not be required to compensate Sprint for Sprint's originating traffic as has been previously discussed in Issue 1 of this proceeding. The law as provided in 47 C.F.R. § 51.703(b) clearly prohibits a LEC, such as Sprint, from assessing charges on any other telecommunications carrier for traffic that originates on the LEC network. Because there is no exclusion to this Rule, it applies to ISP-bound traffic, regardless of the "NXX" status of the traffic.

STAFF: Staff has no position at this time.

ISSUE 10: **When should either AT&T or Sprint be required to install and retain direct end office trunking between an AT&T switching center and a Sprint end office?**

This issue has been resolved by agreement of the parties and will not be arbitrated in this proceeding.

ISSUE 11: When should each Party be required to establish a direct interconnection for:
(a) Indirect Traffic?
(b) Transit Traffic?

SPRINT: When traffic levels reach a DS1 level, the carrier requesting interconnection (CLEC) should be required to establish a direct interconnection arrangement with the ILEC. Under existing FCC rules and orders, Sprint has the right to establish reasonable criteria for its transit service offering, and the criteria proposed by Sprint should be approved.

AT&T: § 251(a) of the Act places a duty on each telecommunications carrier to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. As a CLEC, federal rules provide AT&T broad discretion on the location and method employed to interconnect with an ILEC network. Further, Sprint cannot require direct interconnection when the Sprint end office subtends another ILEC tandem switch¹⁰. There is no functional difference between *indirect* and *transit* traffic. The Parties agree that, in definition, *indirect* traffic originates and terminates between AT&T and Sprint exchange customers and is routed through the *transit* service of a third party, such as that of BellSouth Telecommunications, Inc. *Transit* traffic originates and terminates between AT&T and a third party carrier subtending Sprint's tandem switch and is routed through Sprint's *transit* switch. AT&T and Sprint have agreed to use one-way, directionalized trunks wherein each party may determine, at its sole discretion, where and when to replace indirect interconnection with direct interconnection. The interconnection relationship between a CLEC and an ILEC requires flexibility with respect to network architecture in order to create a truly competitive environment. The Commission should adopt AT&T's proposed language because it promotes flexibility, rather than adopt the arbitrary threshold approach proposed by Sprint.

STAFF: Staff has no position at this time.

ISSUE 12: Should Sprint be required to continue to provide its DSL service when AT&T provides the voice service to the customer?

SPRINT: No. Nothing in the Act or other state or federal law allows the Commission to require Sprint to continue providing its retail FastConnect® service when a customer switches to AT&T for its voice service.

¹⁰ Tandem switch which carries traffic between end office switches exchanging smaller volumes of traffic and is also used for overflow traffic when direct routes are full.

AT&T: Yes. The Commission should require Sprint, as an ILEC, to continue to provide its retail DSL service to a customer who may choose to change its local service to AT&T. Allowing Sprint to disconnect its retail DSL service to the consumer as a result of the consumer's decision to select another provider of local service is discriminatory and violates both federal and Florida law. Sprint argues that there are other DSL alternatives available to the consumer, thus it should not have to continue to provide such service if the consumer wants AT&T for local service. This Commission has chosen a path of competition and consumer protection. Establishing a rule which allows an ILEC to decide how and when it will allow choice is bad public policy.

STAFF: Staff has no position at this time.

ISSUE 13: **What are the parties' rights and obligations following a Legally Binding Action (as defined by agreement of the parties in Section 1, Part B of the agreement) if such action is not stayed but still subject to review by the Commission, FCC or courts?**

This issue has been resolved by agreement of the parties and will not be arbitrated in this proceeding.

ISSUE 14: **Should the terms and conditions of the Performance Measures approved by the Commission be incorporated by reference into the agreement, or should separate terms and conditions be set forth in the agreement?**

This issue has been resolved by agreement of the parties and will not be arbitrated in this proceeding.

XIV. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES

Sprint has stated in its prehearing statement that the following decisions have a potential impact on our decision in this proceeding:

1. In the Matter of Triennial Review Proceeding, CC Docket Nos. 01-338, 96-98 and 98-147.
2. In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 96-98 and CC Docket No. 99-68, Order on Remand and Report and Order, FCC 01-131, Released April 27, 2001.
3. Sprint-Florida, Inc. v. Jaber, Florida Supreme Court Case No. SC03-235.

4. In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges, WC Docket No. 02-361.
5. In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92.

XV. POST-HEARING PROCEDURES

The Commission (or assigned panel of Commissioners) has the authority and discretion to render a bench decision at the time of the hearing or to render a decision without any post hearing submissions by the parties. Such a determination may be with or without the oral or written recommendation of the Commission staff, at the Commission's (or assigned panel's) discretion.

If the Commission (or assigned panel) does not make a bench decision at the hearing, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position. However, the position must be reduced to no more than 50 words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.


Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time, unless modified by the Presiding Officer.

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It is therefore,

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 31st day of July, 2003.


CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

(S E A L)

LHD

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.