ORIGINAL

BEFORE
THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Wireless One Network, L.P., for Arbitration of Certain Terms and Conditions of a Proposed Agreement with Sprint Florida, Incorporated Pursuant to Section 252 of the Telecommunications Act of 1996.	)	Docket No. 971194-TP

WIRELESS ONE'S MEMORANDUM IN OPPOSITION TO SPRINT'S MOTION TO STRIKE PORTIONS OF THE DIRECT AND REBUTTAL TESTIMONY OF FRANCIS J. HEATON

I. Introduction.

This motion, filed by Sprint Florida, Inc. ("Sprint") to strike portions of the direct and rebuttal testimony of Francis J. Heaton, represents nothing more than a reformulation of Sprint's continuing and self-serving attempts to exclude from the Commission's consideration in this proceeding all matters related to the Reverse Option charge – even matters that Sprint, itself, has placed in issue. Sprint continues to ignore that the Reverse Option charge always has been a term and condition of its interconnection with Wireless One, that the charge was the subject of negotiations between the parties long before Wireless One was forced to resort to relief under the Telecommunications Act of 1996 and, indeed, that it was Sprint's refusal to negotiate on this issue that forced Wireless One to seek the Commission's assistance in arbitrating the issue. As the attached letter reflects, Sprint removed the Reverse Option issue from the negotiations during a June 17, 1997 conference call and indicated its intention to continue charging the tariff rate of $0.0588. The reason for Sprint's refusal to concede these points, and the length to which it will go to prevent the elimination or repricing of the Reverse Option charge in this proceeding is evident – the longer it delays resolution of this vital issue to Wireless One, the longer it will be

able to recover access charges from Wireless One (or Sprint's customers) when the Federal Communications Commission ("FCC") has mandated transport and termination charges as their replacement. The Commission should reject Sprint's tactics not only for the benefit of Wireless One, but also for the benefit of Sprint's customers upon whom Sprint has indicated it may assess the Reverse Option.

Consistent with its pattern of attempting to exclude testimony on the sole basis that it harms its position, Sprint also seeks to strike Heaton's testimony related to Wireless One's Type 2B connections with Sprint and Sprint's lack of SS7 connectivity. Sprint attempts to achieve its goal by erroneously characterizing the testimony as presenting a new issue for the Commission's consideration, when such testimony clearly is offered to rebut the direct testimony of Sprint's witness, F. Ben Poag.

As it has time and again, Wireless One implores the Commission to reject Sprint's continuous self-serving attempts to limit the issues for consideration in this proceeding and address all issues on their merits to afford the parties and, ultimately, their customers the full relief to which they are entitled.

II. Sprint Has Placed in Issue Whether it Must Be Made Whole by the Elimination of the Reverse Option Charge; Thus, Repricing of the Charge is Properly Before the Commission.

It simply is amazing that Sprint continues to complain that the Commission is precluded from considering whether the Reverse Option charge should be repriced in this proceeding when Sprint, itself, placed this matter in issue. See Response at page 7 ("Granting this relief...would deprive Sprint of the ability to recover the costs incurred in terminating calls – unless the Commission were to allow Sprint to recover the costs elsewhere.") See, also, fn 4. Sprint continues to conveniently ignore that it is the petition ***and the response*** thereto that frame the

issues for arbitration pursuant to 47 U.S.C. §§ 252(b)(2), (3) and (4). Having been raised in Sprint's response to Wireless One's petition for arbitration, this issue is properly before the Commission and ripe for determination.

Absent any legal basis which would preclude the Commission from repricing the Reverse Option charge in this proceeding, Sprint relies on its version of the chronological order in which this issue was presented to the Commission, unconvincingly claiming that, after well over a year of negotiations on this issue, it has had insufficient time to formulate an appropriate response on the repricing issue. Sprint has offered no resolution on the repricing issue, beyond asserting that it must be made whole upon the transition to transport and termination charges (albeit in a future proceeding), because it wants to retain the Reverse Option charge which the transport and termination charges must replace for as long as possible.

To clarify Sprint's confused chronology of events: It always has been Wireless One's position (as stated in its petition for arbitration) that, because the FCC replaced the access charges recovered by the Reverse Option charge with local interconection rates for intraMATA calls, the Reverse Option should be wholly included within transport and termination charges. It is only in response to Sprint's contention that it would lose revenues for which it must be made whole if the Reverse Option were replaced that Wireless One offered alternatives for the Commission to consider if it determined that Sprint should receive additional charges for transporting traffic over the larger local calling area mandated by the FCC. These alternatives include subtracting the access component from the Reverse Option, resulting in a rate of $0.00294 per minute of use, or imposing a $0.004 additive rate, subject to true up, similar to that imposed in the BellSouth/Vanguard agreement.

Sprint's claim that it has had insufficient time to analyze the BellSouth/Vanguard agreement rings hollow when considering that Sprint raised the revenue recovery issue in this case. Indeed, the time allotted for discovery on this issue is considerably longer than that afforded by Sprint to examine its rebuttal witness, presented for the first time on October 28, 1997. It also is noteworthy that Sprint has not asserted the same claim with respect to the imposition of the alternative charge of $0.00294 per minute of use which is based upon information within Sprint's control.

Despite its contrived protestations, Sprint's only goal is to exclude from the Commission's consideration the issue of repricing the Reverse Option charge. It has no desire to address this factual issue and no desire for the Commission to consider the issue on its merits for, to do so, would the eliminate the exorbitant revenues and profits it otherwise will enjoy from the continued application of the charge.

III. Heaton's Testimony Concerning the Wireless One's Type 2B Connections With Sprint, and Sprint's Lack of SS7 Connectivity is Appropriate Rebuttal and May Not Be Stricken.

Sprint seeks to strike Heaton's testimony related to Wireless One's Type 2B connections with Sprint and Sprint's lack of SS7 connectivity by characterizing it as presenting a new issue for the Commission's consideration. See Heaton Rebuttal at p. 5, ll. 13-22; pp. 6-8; p. 9, ll. 1-4, 12-21; p. 10, ll. 1-9. This testimony clearly is offered in rebuttal to Poag's direct testimony in which he asserts that Wireless One elected the Reverse Option charge because it is unable to connect to Sprint's end offices. Mr. Poag testified:

> Companies such as Wireless One subscribe to [Reverse Option] in lieu of extending facilities directly to all end offices served by Sprint. In other words, Wireless One has the option of extending the facilities directly to an end office to afford Sprint's customers local calling to Wireless One customers or subscribing reverse toll

> billing and paying the associated toll charges in lieu of cost of direct connections.

See Poag Direct Testimony at 8. As Heaton's testimony demonstrates, Poag's assertions simply are untrue, which underlies the real reason that Sprint seeks to exclude this testimony. Wireless One does maintain connections with Sprint's end offices and it is Sprint's lack of SS7 connectivity that prohibits Sprint from delivering traffic to Wireless One's end offices.

IV. Conclusion.

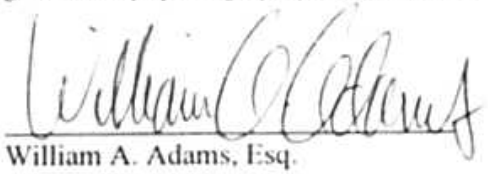
Sprint's motion to strike the portions of Heaton's rebuttal testimony on the basis that it addresses matters beyond the scope of arbitration is but another of Sprint's attempts to improperly limit the Commission's jurisdiction in this case. Sprint, itself, raised the issue regarding repricing of the Reverse Option charge and it is ripe for determination by the Commission. Heaton's testimony concerning Wireless One's Type 2B connections with Sprint and Sprint's lack of SS7 connectivity does not present a new issue for the Commission's consideration, but is proper rebuttal which shows the testimony presented by Sprint's witness Poag to be untrue, which is the real basis upon which Sprint seeks its exclusion.

Respectfully submitted,

William A. Adams
Dane Stinson
Laura A. Hauser (Florida Reg. No. 0782114)
ARTER & HADDEN
10 West Broad Street
Columbus, Ohio 43215
614/221-3155 (phone)
614/221-0479 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition was served upon the following persons by regular U.S. Mail or overnight delivery, postage prepaid, on this 13th day of November, 1997.



William A. Adams, Esq.

Beth Culpepper, Esq.
William Cox, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Charles J. Rehwinkel, Esq.
Sprint Florida, Inc.
1313 Blair Stone Road
MC FLTLHO0107
Tallahassee, Florida 32301

116530.1

ARTER & HADDEN
ATTORNEYS AT LAW
founded 1843

Cleveland
Dallas
Washington, D.C.

One Columbus
10 West Broad Street, Suite 2100
Columbus, Ohio 43215-3422
614/221-3155 *telephone*
614/221-0479 *facsimile*

Irvine
Los Angeles
San Francisco

Direct Dial: (614) 229-3278
Internet Address: wadams@arterhadden.com

June 18, 1997

Via Facsimile (407) 889-1274 and U.S. Mail

Mr. Brooks Albery
Sprint-Florida, Inc.
Box 165000 MC 5327
Altamonte Springs, FL 32716-5000

Re: Wireless One Interconnection Negotiations

Dear Mr. Albery:

This will confirm the discussions in the June 17, 1997 conference call with you, Alan Berg, Deb Terry, Betty Smith and Christine Carson for Sprint and Frank Heaton and me for Wireless One.

With regard to the reciprocal compensation bill and the 2B credit, Sprint will complete the process of analyzing the minute-of-use data in Frank Heaton's billing backup analysis which you received on June 10, 1997 and provide Wireless One with a specific written response by noon, Friday, June 20, 1997. We have scheduled a conference call for 3:00 p.m., Friday, June 20, 1997, in an effort to review your response and finalize these matters. We also will attempt to agree on a mechanism for calculating minutes for future reciprocal compensation billings.

With regard to SS7, Sprint agreed to provide us with the same arrangement provided to Palmer Wireless, Inc. in the interim agreement dated February 11, 1997. Specifically, Sprint agreed to waive the IX lease portion of the proposal previously sent to Frank Heaton from the STP to the Ft. Myers tandem for the duration of the Palmer interim agreement. You also agreed to check with your planning personnel to determine whether any plans exist to construct a new STP in Ft. Myers and to determine if month to month pricing is available for STP service.

With regard to the reverse charge option, Sprint disagreed with Wireless One's position outlined in my letter of June 11, 1997. Specifically, it is Sprint's position that the Telecommunications Act of 1996 and the FCC's Local Competition Order does not affect the relationship between Sprint and its customers. Rather, it only impacts the relationship between carriers. On that basis, you indicated that it is your intention to continue the reverse toll option charge of 5.88 cents/mou.

The logical consequence of your position is that Sprint must compensate Wireless One for all reverse charge option minutes of use terminating on Wireless One's network. Because all of the reverse charge option traffic is terminating on Wireless One's network at the Sprint Ft. Myers tandem and Wireless One is switching and transporting that traffic throughout its service area, Wireless One's switch is operating as a tandem and the higher Type 2A tariff rates must be paid to Wireless One until lower rates can be reached in these interconnection negotiations. Some state Commissions, like Ohio, have reviewed this issue and determined that, where a carrier's switch serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier is the incumbent LEC's tandem interconnection rate. See, e.g., *In the Matter of the Petition of MCI Telecommunications Corporation for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Ohio*, PUCO Case No. 96-88-TP-ARB (Arbitration Award at 18). Frank Heaton be sending you his computations of this issue. Sprint agreed to respond to these issues during the conference call this Friday at 3:00 p.m.

Very truly yours,

William A. Adams

cc: James A. Dwyer
Frank Heaton

103479.1