BEFORE
THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

| | | |
|---|---|---|
| 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 |

***MOTION FOR RECONSIDERATION AND REQUEST FOR ORAL ARGUMENT***

Contemporaneous with the filing of this Motion for Reconsideration and Request for Oral Argument, Wireless One Network, L.P. ("Wireless One") also has filed its Revised Prehearing Statement to address Staff's revised issue adopted by the Prehearing Officer in this matter. In revising its Prehearing Statement, Wireless One has attempted to construe Staff's issue consistent with the grounds the Prehearing Officer gave for her ruling. If Wireless One's construction of Staff's revised issue is accepted, as Wireless One in good faith believes it should be, Wireless One will withdraw this motion.

Pursuant to Rules 25-22.0376 and 25-22.038(4)(a), Fla. Admin. Code, Wireless One objects to and requests reconsideration of the Prehearing Officer's ruling, made orally at the prehearing conference held November 17, 1997, which adopted Staff's revision to the issues presented for arbitration by Wireless One's petition for arbitration and Sprint-Florida, Incorporated's response. Wireless One contends that the ruling violates 47 U.S.C. § 252(b)(4) and deprives it of its right to due process. Wireless One requests that oral argument be held before the Commission panel assigned to hear this proceeding prior to the commencement of hearing on November 24, 1997.

In support of its motion, Wireless One states that it recommenced interconnection negotiations with Sprint-Florida, Incorporated ("Sprint") on April 10, 1997, pursuant to 47 U.S.C. § 252. As a part of these negotiations, Wireless One sought, *inter alia*, to include Sprint's tariffed Reverse Option charge in the interconnection agreement, albeit as repriced under the dictates of federal law, as Sprint had agreed with respect to the other historic terms and conditions of the parties interconnection contained in tariffs. However, Sprint removed this issue from the negotiating table on June 17, 1997, forcing Wireless One to seek resolution of this issue with the Commission through arbitration process established by 47 U.S.C. § 252.

Wireless One filed its petition for arbitration, including the Reverse Option issue, with the Commission on September 12, 1997 and Sprint filed its response to the petition on October 7, 1997, the same date that direct prefiled testimony was filed pursuant to the Prehearing Officer's Order Establishing Procedure. Thereafter, at the request of the Commission's Staff ("Staff"), Wireless One and Sprint, attempted to a prepare a mutually agreeable definition of the scope of the Reverse Option issue for the Commission's consideration. Because the parties failed to reach an agreement, Staff requested that each submit a brief outlining their respective positions. On October 20, 1997, Wireless One filed its brief as requested and Sprint filed a motion for determination of the issues.

The Prehearing Officer did not rule on Sprint's motion or otherwise resolve this issue until the prehearing conference of November 17, 1997. In the meantime, and in reliance on the issues as framed in its petition and Sprint's response, Wireless One conducted the deposition of Sprint's witness, F. Ben Poag, on October 20, 1997; submitted prefiled rebuttal testimony on October 28, 1997; submitted its Prehearing Statement on November 7, 1997; and filed the

deposition of Poag on November 14, 1997. Sprint also filed its Prehearing Statement on November 7, 1997, as did Staff.

Each of the parties to the arbitration and Staff presented different language under which the Commission was to consider the Reverse Option issue. Wireless One's issue was formulated as follows:

> Now that the Federal Communications Commission has promulgated 47 C.F.R. 51.701(b)(2), should Sprint's Reverse Option charge be part of the interconnection agreement and included in local transport and termination rates, preventing the assessment of toll charges for land-to-mobile calls originating and terminating within a Major Trading Area? If so, what, if anything, should Sprint be able to charge Wireless One for costs associated with transporting local calls throughout the larger local calling area versus the traditional wireline local calling areas?

Sprint formulated the issue to read:

> Are all intraMTA calls originating on Sprint's network and terminating on Wireless One's network local traffic upon which no toll charges may be assessed?

And Staff proposed the following revision to the issue:

> With respect to land-to-mobile traffic only, do the reciprocal compensation rates negotiated by Wireless One, Inc. [sic] and Sprint-Florida, Inc., apply to intraMTA calls from the originating land line end-user to Wireless One's end office switch, or do these rates apply from the point of interconnection between Wireless One and Sprint to Wireless One's end office switch?

At the prehearing conference held November 17, 1997, the Prehearing Officer, over Wireless One's objection, adopted Staff's revised issue as the vehicle by which the Commission would consider the Reverse Option charge in this proceeding. The Prehearing Officer's ruling violated 47 U.S.C. § 252(b)(3) and (4) and Wireless One's due process rights, constitutes plain error, and must be overturned by the panel.

Congress' overriding preference in enacting 47 U.S.C. § 252 was that individual telecommunications carriers would negotiate their own terms and conditions of interconnection without governmental interference. Even when the State commission's involvement is required when the parties cannot reach agreement, Congress nevertheless left it to the private parties to the negotiations to present their issues to the Commission for resolution as an arbitrator in binding arbitration. See 47 U.S.C. § 252(b)(2)(A) ("A party that petitions a State commission under paragraph (1) shall...provide the State commission all relevant documentation concerning -- (i) the unresolved issues...") and 47 U.S.C. § 252(b)(3) ("*A non-petitioning party to a negotiation* under this section may respond to the other party's petition and provide such additional information as it wishes..."). (Emphasis added.) As neither the petitioner nor "a non-petitioning party" to the negotiations held in these proceedings, Staff was not entitled to submit its version of the issues to be resolved in this case. Its doing so was unlawful.

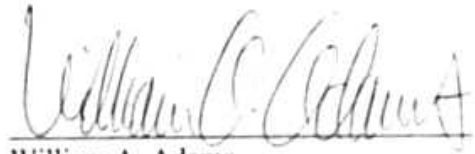
It was also unlawful, and much more prejudical to Wireless One's position, for the Prehearing Officer to adopt Staff's revised issue. 47 U.S.C. § 252(b)(4)(A) explicitly limits the State commission's consideration to the issues presented by the individual parties that were involved in the negotiations, in this case Wireless One and Sprint. See 47 U.S.C. 2529b)(4)(A) ("The State commission shall limit its consideration of any petition ... (and any response thereto) to the issues set forth in the petition and in the response..."). The Prehearing Officer's adoption of Staff's revised issue clearly violated the letter of the law, and also its spirit by not allowing Wireless One to place before the Commission the primary issue that it has been negotiating with Sprint since August 1996, effectively depriving Wireless One of its "day in court."

Moreover, the Prehearing Officer's ruling further deprives Wireless One of its due process rights by requiring it to address Staff's revised issue through testimony that was developed to address the issues as formulated by the parties to this proceeding. It is patently unfair that the Prehearing Officer required direct and rebuttal testimony and prehearing statements to be filed in this proceeding before ruling upon the scope of the issues under consideration. By adopting Staff's revised issue, which was submitted at the eleventh hour in this proceeding, the Prehearing Officer effectively has denied Wireless One the ability to address the issues before the Commission in this proceeding. This result is particularly ironic, considering that it is Wireless One's statutory right to seek arbitration on the issues that it wanted resolved through negotiations. Truly, the petition is no longer ours.

Wireless One respectfully submits that, when parties are unable to agree upon mutual language defining an issue to place before the Commission, the parties should be permitted to submit their respective versions of the issue they have been negotiating, in lieu of permitting a non-party's version of the issue to control. The Commission, sitting as an arbitrator, must resolve all of the merit issues presented. Wireless One urges the panel to remedy the plain error of the Prehearing Officer's ruling by so ordering.

As Wireless One explains in its revised prehearing statement, if the Commission agrees with Wireless One's interpretation of the Staff's issue, it agrees to withdraw this motion for reconsideration and request for oral argument.

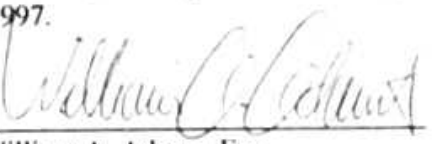
Respectfully submitted,



William A. Adams
Dane Stinson
Laura A. Hauser (Florida Reg. No. 0782114)
ARTER & HADDEN
10 West Broad Street
Suite 2100
Columbus, Ohio 43215
614/221-3155 (phone)
614/221-0479 (facsimile)

## *CERTIFICATE OF SERVICE*

I hereby certify that a copy of the foregoing Motion for Reconsideration and Request for Oral Argument was served upon the following by facsimile, overnight courier or regular U.S. mail, postage prepaid, on this 19th 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

*117187.2*