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 Filed: December 9, 1997

BRIEF OF SPRINT-FLORIDA, INCORPORATED

Pursuant to Order No. PSC-97-1227-PCO-TL, issued October 10, 1997, Sprint-Florida, Incorporated files this post hearing brief in this matter.

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ON BEHALF OF SPRINT-FLORIDA, INCORPORATED

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Key to Citation

As used herein:

"Act" or "The Act" shall mean the telecommunications Act of 1996.

"Ex.". shall mean exhibit.

"FCC" shall mean the Federal Communications Commission.

"First Report and Order" shall mean First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (Aug. 8, 1996).

"FPSC" or "Commission" shall mean the Florida Public Service Commission.

"MFS Order" shall mean *In re Petition by Metropolitan Fiber Systems of Florida, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with Central Telephone Company of Florida and United Telephone Company of Florida Concerning Interconnection and Resale under the Telecommunications Act of 1996, Docket No. 960838-TP (Order No. PSC-96-1532-FOF-TP, Issued December 16, 1996).*

"MCI Order" shall mean In re Petition by MCI Telecommunications Corporations for arbitration with United Telephone Company and Central Telephone Company of Florida concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996 (Order No. PSC-97-0294-FOF-TP (issued March 14, 1997).

"MTSO" shall mean Mobile Telephone Switching Office.

"Petition" shall mean the Petition filed by Wireless One Networks, L.P.

"Response" refers to the Response of Sprint-Florida, Incorporated.

"RTBO" shall mean Reverse Toll Billing Option under Sprint's General Exchange Tariff A25.I.8.

"Sprint" shall mean Sprint-Florida, Incorporated.

"Tariff" shall mean Sprint's General Exchange Tariff.

"T." shall mean the transcript of the official record.

"Wireless One" shall mean Wireless One Networks, L.P.

A. INTRODUCTION

Basic Position.

This federally mandated arbitration requires and allows for resolution of only two straightforward issues. The parties submitted two sets of language for inclusion in a substantially complete agreement. Selection of the appropriate language is the ultimate question for resolution. The evidence and the law require adoption of the Sprint language.

Sprint will address the issues in the reverse order contained in the prehearing order. In this specific case, the second (RTBO) issue is the more significant one. Both issues are significant from a policy, company-wide and industry-wide standpoint. A novel decision on either issue by the FPSC's could have far-ranging industry ramifications.

B. Reverse Toll Bill Option Tariff

(I) Issue 2:

With respect to land-to-mobile traffic only, do the reciprocal compensation rates negotiated by Wireless One, Inc. and Sprint-Florida, Inc. apply to intraMTA calls from the originating 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?

(II) Sprint's Position:

Federal law doesn't require Sprint to forego collecting voluntary payments made on behalf of Sprint customers. The FCC, solely for computing intercompany compensation (access charges versus local interconnection rates), defined areas larger than state-defined local calling scopes which determine application of toll charges. This federal definition leaves state ratemaking authority unaffected.[1]

As the issue is phrased, Sprint's position is that the negotiated reciprocal compensation rates can only apply from the point of interconnection to the Wireless One end office switch (wherever situated). This position is absolutely supported by FCC rules and supporting explanation. The corollary to this is that the happenstance of payment of the purely optional RTBO charges or the

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[1]Adherence to the post hearing position limitation of 50 words in no way constitutes a waiver of Sprint's fundamental position in this docket that the Commission's authority is circumscribed by the initial pleadings filed in this matter. No ratemaking decision can be made. The post-Petition claims of Wireless One give the FPSC authority to order the voluntary RTBO arrangement -- a creature of FPSC order -- to be forced into an agreement. The sole question before the FPSC is the lawfulness of the optional charge under Federal law.

fact of Wireless One's historically assumed obligation to pay them has no bearing on the lawfulness of the RTBO in this federally-mandated arbitration, since this is not a reciprocal compensation matter. The record in this case supports no other conclusion.

Two witnesses were heard on this issue: F. Ben Poag, Sprint's Director-Tariffs and Regulatory Management, who has a long and distinguished record appearing and testifying before the FPSC, and Frank Heaton, Wireless One's Director of External Affairs, with significant experience in regulatory matters with the New York PSC. Both have extensive regulatory experience. Both have extensive operational experience in operational aspects of the respective networks. Only Mr. Poag, however, has any understanding of the requirement and thrust of the FCC First Report and Order on this issue.

(III) Background

The RTBO is described by Mr. Poag as an arrangement that "allows Wireless One to pay the originating toll and ECS-type charges of Sprint's end user customers calls to Wireless One customers." (Poag, T. 381) Sprint's tariff A25.I.8 states:

> *At the option of the mobile carrier*, calls which originate from landline telephones may be billed at the mobile carrier at a per access minute usage rate [$.0588] . . . (Emphasis added)

It is this optional service that Wireless One is seeking to eliminate for all toll and local ECS-type calls within the Ft. Myers MTA.

The tariffed RTBO option has its origin in a 1988 FPSC order. See Order 20475, issued December 20, 1988. The optional charge was created as a result of a request by the CMRS carriers to establish a uniform dialing rate at "less than toll rates." (Order 20475 at 10) Thus the RTBO was not established as some sort of mandatory originating access charge. (Hence the optional aspect!) The FPSC noted in establishing the option that "The LECs have agreed to the concept of a uniform dialing rates for such calls at a rate less than toll rates." [Emphasis added]. (Again, no mention of the RTBO being an "originating" or any other kind of access charge.) The Commission also stated: "We further find that landline-originated toll calls, which would normally be billed to the LEC's landline subscriber, may be paid by the mobile carriers, at their option, at rates set forth below." Order 20475 at 10. Of course, later in the Order, the FPSC stated, after establishing the mandatory usage charges elsewhere, that:

> Additionally, we will approve a usage rate to be charged to mobile carriers, at their option, on landline-originated toll calls that would normally be billed to the LECs' subscribers. This rate is equal to the toll component of each LEC's composite usage rate. For illustrative purposes, these rates are 7.87¢ for Southern Bell and 10.49¢ for GTE Florida, United and Centel.

Id. at 20.

Similar language is contained in the 1995 order in Docket No. 940235, wherein the optional nature of the RTBO charge is reaffirmed in the most recent FPSC order confirming that the payment is voluntary. Significantly, the FPSC states that in the 1988 order:

> The Commission also approved an optional land-to-mobile usage rate for mobile carrier interconnection with LEC facilities. This option allows intraLATA direct dialed long distance calls and expanded local calling area calls from telephone numbers served by the LEC and terminating in an MSP network to be excluded from

> the originating customer's bill. The result is that the mobile carrier pays for the call instead of the landline caller.

Order No. FPSC-95-1247-1247-FOF-TL (October 11, 1995) at 3, 37. (There the relevant issue was whether the implementation of the option should be mandatory. The FPSC declined to make it mandatory.) The clear import of these two orders is that the RTBO option was voluntary, not an access charge and instead a response to a request for a uniform (RTBO) rate for calls that would otherwise be rated at the full toll price.

It must also be noted that the Sprint end users are obligated to pay any toll or ECS-type charges that they incur. (Tariff A2.D.3.a (. . . subscriber is responsible for all appropriate charges for completed calls . . .)) In fact the ECS tariffs explicitly require this as a condition of the service. (Tariff A3.C.3 (. . . landline-to-mobile [calls] will be billed at $.25 per call . . . or $.10/$.06 per minute . . . unless the mobile carrier subscribes to the reverse billing option.)) Thus any decision that the RTBO charge may not be billed to the wireless carrier would require that these calls be billed according to the tariff. The FCC recognizes this and explicitly acknowledges that end user pricing is unaffected by the reciprocal compensation requirements. In ¶1034 of the First Report and Order, the FCC notes:

> [R]reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call.

Poag, T. 381)

In this case, because Sprint refused to give away a service that replaced full toll charges for toll and ECS-type calls, an arbitration Petition has been

filed. Wireless One calculates that it will spend $480, 000 per year on this optional service. Solely because that is a significant cost, they are now pleading with the Commission for a hand out.[2] Because a half million dollars is a significant amount of money to Sprint as well. In this and other RTBO situations Sprint is vigorously contesting the claim.

Little evidence was offered at the hearing as to the policy reason for the Wireless One's subscription to the RTBO option, other than the fact that it prevents the assessment of a toll charge on Sprint customers placing land-to-mobile calls and, thus fosters the development of traffic on its network . . . " Petition at 5. This is nothing new. The Commission knew this in 1995. See Order FPSC-95-1247-1247-FOF-TL at 3, *supra*. Witness Heaton agreed that Wireless One subscribed to the RTBO so that "more traffic will flow onto [the Wireless One] network. (Heaton, T. 279). He also acknowledged that Wireless One received compensation from Wireless One customers for calls terminated to them. (Heaton, T. 312)

Apart from this evidence, Wireless One only submitted the bare assertion that the RTBO was a "term and condition of the interconnection relationship" between the two companies in support of its claim for entitlement to relief.[3] (Heaton, T. 225). Witness Heaton readily admits that other wireless carriers do not subscribe to the RTBO option. (Heaton, T. 279) Sprint Witness Poag confirmed this and testified that in those instances customers have not

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[2] Interestingly, wireless One recently signed an interconnection agreement with GTE Florida that did not preclude the payment of these same RTBO charges to GTEFL. Mr. Heaton admitted that the money was not as significant there. (Heaton, Exh. 5, p. 37-38) Obviously it's not really a matter of principle so much as one of money.

[3] Even this claim is extra-jurisdictional since Wireless One only asked the FPSC to find that the optional charge was unlawful. Sprint does not waive its objection to the FPSC adjudicating matters other than the lawfulness of the charge.

complained about those toll or ECS calls. (Poag, T. 395)

Wireless One nevertheless contends that the purely optional RTBO represents a "cost" of up to $40, 000 per month. (Heaton, T. 229). Coupled with the assertion that the optional charge is a "term and condition,' Wireless One seeks to lead the FPSC down the veritable garden path to the conclusion that the fact that the option that has been elected for the last seven-plus years, it must now be mandatorily provided free (or very close to it)!

If the election of the option is truly a term and condition, the only relevant dispute that could exist in a federally mandated, compulsory arbitration would be one where Sprint might seek to withdraw the availability of the option. This not being the case, there is truly nothing to arbitrate with respect to the RTBO being a term and condition. Sprint readily stipulates that it is not seeking to withdraw the option. A simple analogy illustrates Sprint's point. Assume Wireless One happened to subscribe to an 800 service as a part of the provision of service. Inbound calls would be free to the end user. The cellular provider would then pick up the tab. It would be ludicrous for that carrier to assert one day, say, seven years later, that the 800 service has become so important to the business that it must be provided free or at a steep discount not available to other subscribers. The FPSC must be careful not to allow such a nonsensical, real-life result to obtain here.

If Wireless One is to receive the requested relief, it must prove that it is entitled to it and that such a result is required by federal law. No such showing can be made. Federal law doesn't even concern itself with intrastate end users or a carrier's voluntary business decision to step into the shoes of the normally-billed subscriber. The only thing that Wireless One has done

approaching establishment of a "term and condition" is the unilateral building of its business around a voluntary billing arrangement. Because the bill that Wireless One has assumed responsibility for, especially with the acquisition of Palmer wireless, is now significant, the FPSC is asked to let them out of the deal.

(IV) Lawfulness is the sole issue for resolution.

Despite the above discussion about the facts surrounding this issue, as a jurisdictional matter, the FPSC has been asked by Wireless One to answer the sole question of whether the RTBO is lawful. (Petition at 3-4, 7-8) In an effort to resolve an issue-phrasing dispute between Wireless One and Sprint, the staff recommended that the original issue[4] in Wireless One's petition could be rephrased as an easily answered question. That is, for what aspect of a call are the local interconnection rates (tandem switching, transport and/or end office termination) intended to provide compensation? In other word, does the payment of local interconnection rates by Wireless One in any way also cover the cost Wireless One has historically incurred when it voluntarily opts into the RTBO tariff offering?

The answer is obvious on the basis of the call direction alone. The

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[4]Wireless One's Petition presented this issue:

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?.

As Sprint has emphatically pointed out numerous times, the FPSC's jurisdiction is strictly limited to the issue(s) presented in the Petition and Response. Sprint did not raise any issue in the Response. The existing issue merely restates the issues and does not enlarge the scope of the FPSC's jurisdiction.

reciprocal compensation required by the Act and FCC rule is intended to compensate the receiving provider for the cost of terminating calls from the other provider. Wireless One is obligated to pay Sprint for mobile-to-land (MTL) calls terminated on Sprint's network. This payment (from Wireless One to Sprint) is for the use of the Sprint network from the point of interconnection (POI) to the delivery of the call to the end-user's premises. Conversely, for land-to-mobile (LTM) calls, Sprint must pay Wireless One for the cost (Wireless One's network costs) of carrying the call from the POI to the point of termination to the Wireless One end user. Sprint compensates Wireless One for the use of the Wireless One network from the POI to the termination point. (Poag, T. 382; 397; 404; 452) On this point, Mr. Poag emphatically responded to questioning by Mr. Cox that:

> "[T]ransport and termination is from the point of interconnection between the two carriers down to the . . . end user's premise and that is all on the terminating side of the call. It has nothing to do with the originating side of the call . . . that is probably as big a line you can draw. I mean it is clear in the FCC's rules what transport and termination is applicable to."

(Poag, T. 452) Mr. Heaton grudgingly conceded that the FCC did not establish originating elements for purposes of local interconnection. (Heaton, T. 282-283)

Wireless One has offered absolutely no support for its assertion that the FCC has done something more than delineate when rates apply. Sprint is in total agreement with Wireless One that the FCC has defined a zone applicable to wireless providers that is different from one applicable to wireline providers for purposes of determining the type of intercompany compensation due. Wireless One can point to nothing demonstrating that the FCC purported to

create originating access charges or regulate the end user pricing established by state action, much less the voluntary assumption of such end user pricing terms by a CMRS carrier.

As noted above, Wireless One's first (and only jurisdictionally available) argument is that the FPSC must outlaw the RTBO charge because it is a "toll charge." Sprint clearly refuted this contention in its response in demonstrating that the FCC did not intend, nor did the language even suggest that this type of billing arrangement was impacted. Witness Poag did an excellent job of walking through the practical scope of the FCC orders that Wireless One cited in its Petition for the proposition that the RTBO must be outlawed. Mr. Poag demonstrated the simple and irrefutable point that the FCC never intended to address the RTBO issue in its First Report and Order. (Poag, T. 379) The FCC unequivocally limited the role of the MTA designation to providing a demarcation point for when local interconnection rates versus access charges apply. (Poag, T. 377-381) As Mr. Poag explains:

> Section XI of the order, of which Rule 51.701 is a derivative, addresses reciprocal compensation for transport and termination of local telecommunications traffic. It defines how LECs and other telecommunications carriers compensate each other for the transport and termination of local telecommunications traffic. The key phrase in Rule 51.701 is "transport and termination,", i.e., the rule applies to the termination of traffic between carriers not the origination of traffic by one carrier or the other.

(Poag, T. 378-379). The crucial phrase that makes the impact of 47 C.F.R. § 701 (b)(2) clear is ¶1036 of the First Report and Order which states :

> "Accordingly, traffic to or from a CMRS network that originates and terminates in the same MTA is subject to transport and termination rates under 251(b)(5), rather than interstate and intrastate access charges."

As this language makes clear, 47 C.F.R. § 701(b)(2) applies to direct interconnection relationships and the underlying termination costs between an LEC and the CMRS carrier. Nowhere does the FCC manifest an intention to encroach upon the intrastate-regulated matter of a local exchange carrier's business relationship with its toll customers. Yet, such encroachment is precisely what is being requested here. The FPSC should resist the invitation based on the record in this case.

Wireless One recognizes the weakness in its position that the RTBO is unlawful. Their case has been recast so many times that it is now a mere shadow of the initial filing.[5] The extra-jurisdictional theories of Wireless One are that the BellSouth/Vanguard negotiated agreement gives the FPSC a basis to reprice the RTBO, that the RTBO is really a term and condition and must be forced into the agreement, and finally that the RTBO is really mostly an originating access charge and that repricing must occur to a level that eliminates the alleged originating access portion. The Petitioner also urges that

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[5] Sprint filed a Motion to Strike (Second Motion) on November 6, that detailed the changes in position beyond the scope of the Petition. The chronology is as follows:

- On September 12, Wireless One filed its Petition, raising the issue of the lawfulness of the RTBO charge. Wireless One staked out a position that no RTBO charge was lawful.
- On October 2, Wireless One submitted a "clarification" that a LATA-wide additive would be "acceptable" to Wireless One. A new issue was proposed.
- On October 3, in a staff conference call Wireless One revealed for the first time that the BellSouth/Vanguard negotiated agreement had a $0.004 additive transport rate to which Wireless One would agree in lieu of the tariffed RTBO rate.
- On October 7, Wireless One submitted the testimony of Mr. Heaton attaching the BellSouth/Vanguard agreement and testifying that Wireless One would accept the selected provision of the BellSouth/Vanguard negotiated agreement establishing a "LATA-wide additive."
- On October 20, Wireless One took the deposition of Sprint witness Poag and inquired into the development of the RTBO rate and the cost-basis for intrastate access charges.
- On October 28, Wireless One submitted rebuttal testimony by Mr. Heaton asking the Commission in its order to "reduce the Reverse Option price" to $0.00294. Wireless One is still willing to incorporate the BellSouth/Vanguard agreement charge. Acceptance of that rate would be "subject to the true up as that agreement provides."
- Finally, on the stand, Mr. Heaton reversed the Petition stance and now claims that the toll charges in the RTBO are really access charges.

the FPSC consider a 360/Sprint negotiated agreement that it thinks eliminates the RTBO charge. Each of these positions will be addressed briefly. Response to them does not constitute a waiver of Sprint's objection. Sprint will not respond in this docket to the access charge issue because it was eliminated from consideration in this arbitration. Mr. Heaton's last minute effort to change the characterization of toll charges to access charges is extra-jurisdictional and Sprint objects to any action based upon that submittal.

(V) Negotiated Agreements: BellSouth/Vanguard; Sprint/360.

As Sprint stated in its Second Motion to Strike, Wireless One never raised in negotiations the issues of the so-called LATA-wide additive negotiated privately between BellSouth and Vanguard. The first time Sprint became aware of the Vanguard agreement in this context was on October 2, when Wireless One proposed the addition of an issue on the Vanguard additive. Sprint objected and it was withdrawn. Accompanying that proposed issue was a statement that "Wireless One wishes to clarify that a TELRIC-based additive rate is an acceptable manner to compensate Sprint for any additional costs associated with transporting calls throughout the larger MTA-based local calling area."

Sprint submits it would be contrary to the Act, grossly unfair and a denial of due process for an entirely new issue - the proposal to set a transport additive -- to be raised and considered when said issue was never raised in negotiations or in the Petition giving rise to the FPSC's exercise of Federal jurisdiction. Furthermore, witness Heaton, testified that he was not aware of

what transpired in the Vanguard/BellSouth negotiations. (Heaton, T. 287)[6] He could not show the Commission where the agreement provided that the additive replaces BellSouth's RTBO charge (Id.) even though he claims it is assessed "in lieu of toll charges." (Heaton, T. 289) Beyond the fact that it would be unlawful, the Commission should be extremely reluctant to take any action based on Mr. Heaton's "interpretation" of the Vanguard agreement. Interpretation of the agreement when the RTBO issue cannot be readily determined, implicates the rights of BellSouth. An incorrect determination would leave this case unresolved, pending redress of the affected party's rights. The only lawful course of action is to ignore the agreement.

In fact, Sprint urges the FPSC to ignore all negotiated agreements as a basis for action in this case. The agreements do not represent determinations by the FPSC of interconnection issues. The only determination the FPSC makes is that the privately negotiated deals do not violate the public interest or the Act. Each agreement has language that represents nothing more than what the companies are willing to agree to. Now that pick and choose-type "MFNing" is greatly diminished, less uniformity will exist in negotiated agreements in all likelihood.

For this reason, the testimony regarding the 360/Sprint agreement should be ignored. Mr. Poag testified that Sprint still bills the RTBO to 360 and that the language does not mean what is suggested by Mr. Heaton. (Poag, T. 394-395) In fact, witness Heaton simply chose to ignore the very language that supports the Sprint position in this case. (Heaton, T. 292) If anything, review of all the negotiated agreements can only demonstrate that there is no

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[6]Sprint submits that the transcript contains a typographic error at T. 287, l.5. The question passage should read "he is not aware". See, T. 286, l. 7 and surrounding context.

displacement of the RTBO with some other element of compensation. The FPSC would have to undertake a more generic determination of industry practice just to assess the state of RTBO tariffs.

(VI) RTBO/Tandem "interrelationship"

Sprint is compelled to address one other related RTBO issue. Mr. Heaton attempted to suggest that the routing of calls over 2B trunks would reduce his RTBO bill by [confidential] percent. (Heaton T. 245) However, upon cross-examination he admitted that the routing of calls has nothing to do with the rating. (Heaton, T. 297-298) He further agreed that the FPSC would have to redefine the calls as local or toll for the RTBO charges to go away and conceded that the routing would not affect the rating of those calls. (Heaton, T. 304) On this basis, the FPSC should not conclude that whether Sprint delivers calls via 2B trunks at cell sites or at the MTSO in any way affects the RTBO bill that Wireless One opts to pay.

(VII) Summary

The evidence and the law on this issue provide no basis for the FPSC to conclude that the RTBO rate is a component of, or included in the *terminating* reciprocal compensation rate elements established by federal law and stipulated in this case. The RTBO is a discounted toll charge. Sprint's tariffs require the end user originating the call to pay the charge unless a carrier agrees to pay them under the RTBO rate. There is not a lawful or jurisdictional basis for forcing the heretofore voluntary RTBO arrangement into an agreement. Neither is there such a basis for determining that the RTBO rate is an originating access charge. Nor is there such a basis to conclude that the

additional transport element should or may be established based on other negotiated agreements. As the Commission has already ruled, this proceeding will not involve rate setting. All rates have been stipulated. The FPSC only has a record basis for adopting the Sprint language.

B. Tandem Switching/Reciprocal Compensatiton

(I) Issue 1:

Should Sprint-Florida be required to pay Wireless One tandem interconnection, transmission and end office termination for calls originating on Sprint-Florida's network that terminate on Wireless One's network? If not, what are the appropriate charges?

(II) Sprint Position:

Sprint should only have to pay Petitioner for functions performed. Petitioner does not perform tandem switching or provide a transport function for Sprint-originated calls. Under the facts and the MCI and MFS precedents, Petitioner is only entitled to end office termination since it's the only function performed by Petitioner's network.

(III) Background

One way of framing this issue is that Wireless One has asked the FPSC to provide an opinion regarding how the Agreement ought to be applied with respect to the payment of reciprocal compensation. The language submitted by Sprint commits that Sprint will pay for the functionality actually provided. This is all that is required under the federal rules and the Act. Nevertheless, Wireless One has submitted testimony in an effort to convince the Commission that its network is functionally equivalent to Sprint's traditional network such that it is entitled to be paid tandem switching, transport and end office reciprocal compensation.

Sprint urges the FPSC to carefully consider the impact of what Wireless One is requesting. The witnesses for Wireless One present a narrowly focused, self-serving case. However, the testimony of the technical witness asks the FPSC to make a finding that would essentially apply to virtually all cellular providers operating with a MTSO (cellular switch) -- 400 or so nationwide. (Meyer, T. 185). Presumably it covers all Florida MTSOs. Certainly this arbitration is limited on its facts to the issues presented. Even so, the FPSC cannot ignore the fact that precedent will be established here and Wireless One has even invoked prior FPSC arbitration decisions in an effort to bolster its case. (Heaton, T. 230-231)

The presentation of evidence in this part of the case can be summarized as below. Wireless One presents two witnesses. Mr. Meyer is a technician with an "associate's degree" from a technical school known as "Brown Institute" in Ft. Lauderdale. (Meyer, T. 127) Although Mr. Meyer has several years of hands on technical experience with wireless technology, his wireline knowledge -- as discussed below -- is virtually nonexistent and anecdotal, (Meyer, T. 149; Exh. 4, pp.13-14; 75-76), stale, (Meyer, T. 143) and in many instances fundamentally mistaken (Meyer, T. 97; 103; 113; 141-154). Mr. Meyer's contention is that based on his limited knowledge of the Sprint system and his knowledge of the Wireless One system, the two systems are functionally related.

Wireless One's other witness is Francis J, Heaton, a business/economics/MBA-educated Director of External Affairs with a New York PSC background and no engineering experience. Mr. Heaton's role in this case on this issue was limited to describing the facilities that Wireless One owns, leases or purchases and providing testimony on the ultimate question of

functional equivalence.

Sprint provided the testimony of two witnesses. The first was Sandra Khazraee, Sprint's Regulatory Manager with at least 13 years of direct, hand-on engineering, extensive experience with Pacific Bell, Southern Bell and Sprint in outside plant, switching and network engineering. Though witness Khazraee readily admitted a limited knowledge and experience in wireless technology, her testimony on the wireless matters was essentially unchallenged. Witness Khazraee provided evidence demonstrating the functionality of the relevant Sprint facilities in rebuttal to the gross over-simplification and misinformation provided by witness Meyer. Witness Khazraee demonstrates the switching capability of the Sprint end office switch and the lack of the same functionality in the Wireless One cell sites.

F. Ben Poag testified for Sprint regarding the functionality of the respective networks from the perspective of his pricing and regulatory expertise. Mr. Poag's testimony illustrates the incongruity that would result from Wireless One being accorded functional equivalence in terms of reciprocal compensation. Mr. Poag testifies that the Wireless One contention that the two networks are equivalent would result in Sprint having to pay all three elements of compensation without giving Sprint the option of avoiding the transport and tandem switching elements by terminating directly to the cell site and the customers served there.

Wireless One's position has not been proven in this case. The Petitioner's case has been built largely, if not entirely upon the elevation of form over substance. Wireless One starts off by renaming the cell site as an "end office" and the MTSO as a "tandem switch." (Meyer, T. 136-137) Having so

conveniently renamed his network, witness Meyer seeks to describe the function of the components in terms of what the names suggest. Finally the re-christened cellular network is compared to the Sprint network that indisputably contains a tandem, transport and end office switching hierarchy (and actually performs those functions). Mr. Meyer's self-serving conclusion is that the two networks are indistinguishable. These conclusions are addressed below.

(IV) Cell Site is Incapable of Call Termination

The best way to approach this issue is to utilize Mr. Poag's testimony as an appropriate starting point. Sprint witness Poag testifies that the crucial determinant in assessing comparability is that Sprint cannot terminate a call to a Wireless One cell site in order to avoid the tandem switching and transport elements. (Poag, T. 387-388; 393-394; 399-400; 445-446). In his direct testimony, Mr. Heaton confirms this by calculating the compensation he feels is due Wireless One under the Wireless One position. He testifies that every call Sprint delivers to Wireless One would require payment of all three elements. In other words, all 1.8 million minutes of use for LTM calls would incur a tandem, transport and end office rate. (Heaton, T. 239; 298).

Wireless One witnesses acknowledge that even calls that would be delivered near the cell site would not be terminated there. All calls delivered via a 2B trunk connection at a cell site have to be transported by Wireless One to the MTSO and the sent back through whatever cell site used to get the call to the wireless subscriber. Meyer, T. 193-194; Heaton, T. 308) Oddly enough, Mr. Heaton, who is not the technician, testifies that Sprint does not terminate calls at Wireless One cell sites (Heaton, T. 299). Yet Mr. Meyer testified that

Sprint delivers calls from Sprint's end office into the Wireless One [cell site]. (Exh. 4, p. 23, ll. 15-16). Despite this not-so-minor discrepancy, both are in agreement that the delivery, real or imagined, of a call at a cell site would require the back hauling by Wireless One of the call to the tandem for delivery back at the cell site. (Heaton, T. 299; 308; Meyer, Exh. 4, pp. 23-32; T. 193-194) Sprint witness Poag testified that the change in the Sprint network routing required to deliver a call to a cell site just to have it then sent back to the MTSO by Wireless One is not economically efficient or secure. (Poag, T. 440-441; 446) Mr. Poag also testified that the lack of functional equivalence means that sprint is prevented from providing its own transport between sprint switches and the cell sites. This also fails to fulfill one of the key conditions to reciprocity under the FCC rules and Order -- transport alternatives. (Poag, T. 400)

The bottom line is that the cell site does not provide a real or practically secure or rational basis for Sprint to terminate calls. Wireless One did provide a late change to Mr. Heaton's testimony that the carrier would be willing to accept end office only compensation if Sprint were to deliver traffic at a cell site. (Heaton, T. 299; 241; 243). This about face was not explained at hearing. Mr. Poag testified that acceptance of Mr. Heaton's terms would cause Sprint to have to reconfigure its network inefficiently and to put unnecessary links in the call path. (Poag, T. 446-447). Significantly, Mr. Heaton hedged on this "offer" by suggesting that the single element pricing would only be temporary. (Heaton, T. 308-309)

The FPSC should not rely on such a nebulous basis for making a finding, remembering that Wireless One's requested finding is that functional equivalence exists, not that surrogate pricing can be arranged. Mr. Heaton's offer to accept end office-only compensation (albeit temporarily) is nothing

more than a tacit admission that functional equivalency does not exist. The evidence is overwhelming that the cell site does not provide the equivalent functionality of the Sprint end office switch. Mr. Heaton's change in testimony does not provide an evidentiary basis for the finding requested in the Petition. Delivery of calls at a cell site, assuming it could be done securely and efficiently, would in no way be a concession that a cell site is an end office and that calls delivered to a MTSO would require rating at all three elements.

(V) Cell Site is Not a Switch

The evidence is also undisputed that the cell site does not actually perform the switching function that the Sprint end offices perform. In fact the cell site performs no switching for purposes of call completion. (Meyer, Exh. 4, p. 47-48) Sprint witness Khazraee provided clear and undisputed expert testimony on the functions of the Sprint end office switches. She described all the functions that the Sprint switches actually perform. End office switching is defined as "the function of establishing a connection between two or more parties using the switching matrix of the end office." (Khazraee, T. 331) She describes the features that are resident in the end office switch and the call processing function that are independently performed there. (Khazraee, T. 334-336). In addition, the Sprint end office switch can establish interconnection from another carrier for direct termination to a subscriber served by that end office. (Khazraee, T. 337)

Mr. Meyer, on the other hand had to concede that virtually all call processing, set up and tear down and switching functions in the Wireless One network are located at the MTSO. (Meyer, T. 167-171; Exh. 4, pp. 45-48; 62-67). Mr. Meyer did try to suggest that the switching functions are dispersed in

the Wireless One network and not located just in the MTSO. This feeble effort is directly contradicted by the extensive testimony given in his deposition to the effect that the General Datacom TMS equipment only operates to reroute or maintain a call in the event of a failure. (Meyer, Exh 4, 24-25; 33; 35; 56-60 (confidential))[7] What's more, Mr. Meyer's deposition testimony that the so called "intelligent and dynamic routing" of the TMS nodes would not work if the MTSO failed, (Meyer, Exh. 4, p.35), squarely contradicts the claim at hearing that the TMS systems are not dependent on the MTSO. (Meyer, T. 172-172) Witness Khazraee testified that the same routing function is resident in the fiber optic rings deployed by Sprint. (Khazraee, T. 332-333) As she testified, this diversity and redundancy function is not switching. (Id.)

Other material contrasts in the network functionality is illustrated in the two testimonies. For instance, witness Khazraee testified that features such as call-waiting, call forwarding, three way calling and speed dialing are resident the Sprint end office switches. Mr. Meyer testified that the cell site could not provide custom calling features without the assistance of the MTSO. (Meyer, T. 188-189). He also initially testified that custom local area signaling services (CLASS) are an independent function provided solely within the cell site without any assistance from the MTSO (Meyer, T. 189). Then, minutes later, he did an about face and inexplicably testified that he doesn't know what "custom local area signaling service" is. (Meyer, T. 190). The record is devoid of any reliable evidence of what features the cell site does independently perform.

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[7]Sprint notes that the deposition of Mr. Meyer was corrected in a material way only when he took the stand. When the initial errata sheet was provided, the corrections were of non-substantive minutiae. For instance, "wave guide" was changed to "waveguide." (Exh. 4, errata) Curiously, after Sprint counsel objected to admission of the Meyer deposition until an opportunity to explore an aspect of it was given, (T. 78), when he took the stand, Mr Meyer corrected the 21 glaring instances of "DMS" to "TMS". Is it just happenstance that the term DMS is associated with a switching technology in the Nortel switches?

Mr. Meyer testified far more about what the cell site cannot do, though. He admitted that the cell site cannot independently determine the proper routing of a call for termination from the wireline network (Meyer, T. 170; Exh. 4, p.66). The cell site cannot establish a mobile-to-mobile call by itself. (Exh. 4, p. 67) Most significantly, he admits that a cell site cannot connect a subscriber directly to a trunk by itself. (Id.) In response to a question by FPSC attorney Cox, Mr. Meyer read a Bellcore definition of an end office that states that an end office "establishes line-to-line, line-to-trunk, and trunk-to-line connections." [Emphasis added] (Meyer, T. 197). The fact that the cell site cannot independently establish the line to trunk connection demonstrates that the cell site does not even meet his own Bellcore definition. Additionally, the cell site does not meet the definition of "switching capability" contained in FCC rule 47 C.F.R. § 319 (c)(1)(I) which provides that:

The local switching capability network element is defined as:

> (A) line side facilities, which include, but are not limited to, the connection between a loop termination at a main distribution frame and a switch line card;
>
> (B) trunk-side facilities, which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card; and
>
> (C) all features, functions and capabilities of the switch, which include, but are not limited to:
>
> > (1) the basic switching function of connecting lines to line, lines to trunks, trunks to lines and trunks to trunks, as well as the same basic capabilities made available to the incumbent LEC's customer, such as a telephone number, white page listing and dial tone; and
> >
> > (2) all other features that the switch is capable of providing, including, but not limited to custom calling custom local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by

the switch.

[Emphasis added] While it is true that this section of the FCC rules applies to unbundled network elements, the concept of switching should be consistent. At a minimum, §319 is instructive of the FCC's concept of what switching involves. Clearly, the cell site does not have it.

(VI) SS7 is Not an Issue

In an effort to obfuscate the issue of the lack end office switch functionality, Wireless One sought to introduce a question regarding the purported lack of SS7 delivery at the Sprint end offices. In his rebuttal testimony, Mr. Meyer tried to imply Sprint would have the ability to interconnect at the cell site if it was "capable of providing the SS7 signaling necessary for call origination and termination." (Meyer, T. 118) Upon cross examination by Mr. Cox, Mr. Meyer confessed that delivery of SS7 at the cell site instead of at the MTSO connection (where all CMRS carriers have to connect to receive it -- Poag. Exh. 3, p. 101-102) would not prevent the call from having to go to the MTSO first and then having to be resent to the cell site. (Meyer, T. 193-194) SS7 is truly a red herring here. Witness Heaton admitted that it is not an issue in the arbitration. (Heaton, T. 248; 304; Exh. 5, p.36) Mr. Poag confirmed that SS7 has nothing to do with Sprint's ability to route and terminate calls at either a cell site or a Sprint switch. (Poag, T. 437-438). Any delivery of calls via an SS7 capable trunk to Wireless One would cost Sprint more than $1 million (Poag, T. 438, Exh, 6 (listing the types of Ft. Myers LATA switches)) in the Wireless One service area unless a more economical solution is developed.

(VII) Cell Site is a Piece of the Loop

Virtually all the end office switching functions listed by witness Khazraee and the FCC definition clearly require direction and processing by the MTSO according to Mr. Meyer's testimony. This demonstrates that the cell site is nothing more than one of the facilities that participate in the delivery of a call once the essential switching functions have been performed by the MTSO. The FPSC has no record basis to establish with any certainty that a cell site is anything more than a way station on a cellular loop. Mr. Poag testified, based on his costing and pricing expertise, that the facilities beyond the cellular end office -- which is the MTSO -- are truly analogous to the local loop on the wireline network. Such facilities are excluded from switching costs in the LEC rates development. Therefore, Wireless One should not receive cost recovery in the reciprocal compensation environment. (Poag, T. 391; 393; 401) Mr. Heaton sought to limit the wireless One local loop to the piece of the transmission path between the cell site and the phone. (Heaton, T. 311) However, he gave no support or explanation for his conclusion.

The only credible evidence that makes practical sense is the testimony by Sprint witnesses that the cell site is most closely analogized to a subscriber line carrier (SLC) which makes connections, and for many of Sprint's customers, serves to terminate the call. The cell site described by Mr. Meyer is most akin to the SLC Mrs. Khazraee describes. Both facilities are controlled in the essential functions by the end office switch (MTSO in Wireless One's case). Like the SLC, a cell site cannot receive a direct interconnection for call termination, nor can it direct trunk to a Sprint end office switch to terminate traffic. MTL calls must go through the MTSO to terminate at a given Sprint end office. (Poag T. 387)

Since the cell site is neither an end office switch nor a provider of the equivalent functionality, the contention that the MTSO is a tandem switch should fall by the wayside. Nevertheless, Wireless One also contends that the switching functionality is less important than the fact that the cell site actually serves to terminate the call, and therefor claims that the definition of end office termination is met. (Meyer, T. 195) No support for this contention is found in the FCC rules, however. The FPSC would have to make a pioneering determination with very little evidentiary basis to reach a decision with enormous industry-wide ramifications. The FCC devoted significant discussion to the LEC-CMRS issue and never suggested therein that the existing CMRS technology should be presumed equal to the traditional wireline hierarchy. See, First Report and Order at, ¶¶ 1027-1118. Furthermore, the FPSC in the MFS order suggested that the presentation of evidence on "new technologies" might serve to require reciprocal compensation for transport and termination when a carrier deploys only one switch as Wireless One does with its MTSO. MFS Order at 5. No evidence was offered that its MTSO/cell site hierarchy constitutes "new technology."

(VII) The MTSO is Not a Tandem Switch

Wireless One's case is built around the claim of the cell site functioning as an end office and its essential role in terminating calls. Sprint agrees that a cell site is an essential piece of equipment for call termination. However, such a role has nothing to do with proving functional equivalence. As demonstrated above, that status is unproven and undeserved. More important, the call termination role of the cell site and the fact of the transmission between the MTSO and the cell site does not require the conclusion that tandem switching

occurs. Wireless One's burden all along has been to prove that its MTSO meets the tandem switching definition. Sprint submits that the Petitioner has not provided competent, substantial evidence to support a ground-breaking decision of far reaching application -- namely that a garden variety MTSO is a tandem switch when it switches a call to a cell site, instead of to another MTSO. This issue is discussed below.

Witness Meyer suggests that the MTSO is a tandem switch. His first claim is that this is verified by the fact that the switch he mistakenly thinks is Sprint's tandem switch (the DMS 100) and the alleged DMS-250 that Wireless One deploys are "the same." (Meyer T. 103). Mr. Meyer's testimony is not credible on this crucial component of the issue because he convincingly demonstrates his utter lack of knowledge of the Sprint network Despite his testimony that he is "familiar with the Sprint technology used in providing basic intra and interexchange services within the Ft. Myers LATA" (Meyer, T. 101) he is forced to admit his years of interaction with LEC personnel have not allowed him to identify the tandem switch that his network interconnects with. He makes the following incredible statement in response to a deposition question (Exh. 4, pp. 75-76):

> Q When you say that Sprint has a tandem switch that's a DMS-100, what is your basis for saying that?
>
> A Because we -- I've been working with Sprint United Telephone for about give or take 14 years, and in that time, I've dealt directly with your -- with Sprint's technical staff on correcting problems, correct the translation situations, correcting all the different things. In all this time, and we've gone through just about every kind of circuit and termination capability that is out there with data and voice capable speech, in all that time, we've been able to exchange notes, exchange translation capabilities, pretty much exchange troubleshooting. If we have a problem at the central office -- I

> remember one time we had a problem out in the Immokalee step office that was -- I don't know even know if it's automated yet. It wasn't at that time. And we had radio circuits going between there and we would call them up, say, "Hey, you've got a problem over here." We'd tell them exactly where it was. So this is our relationship to United Telephone and Sprint for all these years. So when you say, what's the basis of knowing if you have a DMS-100, it's because we've discussed it. It's common knowledge. It's the way that we've troubleshot for the years that I was involved in operations. And so that's how we know what kind of switching you have and the ability. Also I've -- I've also been somewhat involved, briefly skimmed with the Northern Telecom training out in Richardson and they provide for DMS-250 as well as DMS-100 in some of their classes.

Clearly, Mr. Meyer's knowledge of the Sprint network is minimal. Certainly his ability to give any sort of opinion as to what constitutes a tandem switch is highly questionable. As if all it takes to fix his mistake is to make a typographical correction, Mr. Meyer nonchalantly changed "100" to a "200" on the stand (Meyer, T). He then tried to suggest that Sprint gave him "incorrect data" (Meyer, T) and was forced to admit that the document he used to identify the DMS-100 as the Sprint tandem switch was provided to him by witness Heaton (Meyer, T). He looked at it no more than 10 minutes (T. 149) Throughout, witness Meyer asks the FPSC to accept his testimony that the Wireless One MTSO switch is a tandem switch that is "the same" as the DMS-100 that he later realizes it's not the Sprint tandem. Two points are made here. First, Mr. Meyer may not know what a tandem switch is. Second, he doesn't have any credible knowledge or familiarity of the Sprint network for purposes of advising the FPSC on matters of comparability.

The definition of and functionality of the tandem switch is no small issue. Mr. Meyer contends that the Wireless One MTSO is a "tandem Switch" just like 400 other MTSOs around the country. (Meyer, T) If this is so and the FPSC is

going to make a judgement about the MTSO in such a generic sense, the Commission should require something more than the defective comparison suggested by Mr. Meyer. Additionally, the FPSC should look closely at the claim by Wireless One that its MTSO has the capability to perform the tandem functions claimed. Mr. Meyer was somewhat hazy on whether the Wireless One switch is a DMS-MTX or a DMS-250. (Meyer, T) Sprint witness Khazraee, who has an extensive switching and network planning background suggested that the DMS-250 is an interexchange company product. (Khazraee, T.) Mr. Meyer appears to believe that "an interexchange company won't have a use for a DMS-250." (Meyer, T) Wireless One's assertions about the tandem switching capabilities of the DMS-250 in a cellular environment are based strictly on hearsay and a faulty comparison to the Sprint technology that Mr. Meyer knows precious little about. Sprint urges that the FPSC proceed cautiously in making any sweeping pronouncement about the so-called "tandem" functions performed by the MTSO. Any ruling will have a wide-ranging industry impact.

The bottom line is that Mr. Meyer's new-found belief that his MTSO is a tandem switch does not hold up to the light of day. The haste with which the Wireless One case was put together is illustrated by the comical collaboration of Mr. Meyer and Mr. Heaton to "identify" the Sprint tandem and then rush to compare their MTSO to it. As it turned out the DMS 100 is the Sprint end office switch.

(IX) Summary

Perhaps Mr. Meyer's initial conclusion was the correct one, after all. The record in this case only provides solid support that the MTSO functions more like an end office switch than a tandem. As demonstrated by Wireless One's

own technical witness, the MTSO performs all the essential call switching and feature provision. Each vital step in the cellular call is controlled by the MTSO. Failure of the MTSO will cripple the network. The testimony demonstrates that the MTSO and the Wireless network functions more as an end office/line concentrator hierarchy rather than a tandem/end office hierarchy.

D. Conclusion

The first issue addressed is the RTBO option. As demonstrated, this is not really a matter for arbitration. Sprint agreed to submit the issue of the lawfulness of the RTBO to the FPSC for a decision. It was not contemplated by Sprint or federal law that this arbitration would appear to involve the issues that Wireless One has sought to interject. Under the plain reading of the Act and the first Report and Order the RTBO cannot be affected by this arbitration process.

The reciprocal compensation (tandem switching) issue should also be resolved in Sprint's. The Commission has substantially decided this issue by requiring that tandem switching and transport be "actually performed" in order to entitle the interconnecting carrier to reciprocal compensation. See, *In re Petition by MCI Telecommunications Corporations for arbitration with United Telephone Company and Central Telephone Company of Florida concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996*, Order No. PSC-97-0294-FOF-TP (March 14, 1997), at p. 10.

For this reason, the payment of reciprocal compensation requested by Wireless One should not be required. The testimonies of all witnesses demonstrate that there is a material lack of symmetry in Wireless One's MTSO/cell site hierarchy. Such asymmetry would not give Sprint the same switching and transport choices that Sprint's network provides to Wireless One as required by 47 U.S.C. § 252. Wireless One's network is not the functional equivalent of Sprint's. The language submitted by Sprint should be approved. Under that provision, Sprint would pay wireless One for the functionality provided.

RESPECTFULLY SUBMITTED this 9th day of December 1997.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail or hand delivery (*) upon the following on this 9th day of December 1997.

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