AUSLEY & MCMULLEN
ATTORNEYS AND COUNSELORS AT LAW
227 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

ORIGINAL

February 13, 2001

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 000828-TP Petition of Sprint Communications Company Limited Partnership for Arbitration of Certain Unresolved Terms and Conditions of a Proposed Renewal of Current Interconnection Agreement with BellSouth Telecommunications, Inc.

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint Communications Company Limited Partnership are the original and fifteen (15) copies of its Posthearing Statement and Brief. We are also submitting the Brief on a 3.5" high-density diskette using Microsoft Word 97 format, Rich Text.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in this matter.

Sincerely,

J. Jeffry Wahlen

APP
CAF
CMP
COM
CTR
ECR
✓LEG
OPC
PAI
RCO
SEC
SER
OTH

Enclosures

cc: All parties of record
h:\data\jjw\sprint\000828 bayo.021301.doc

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Sprint Communications Company Limited Partnership for arbitration of certain unresolved terms and conditions of a proposed renewal or current interconnection agreement with BellSouth Telecommunications, Inc.	)	DOCKET NO. 000828-TP Filed: February 13, 2001

POSTHEARING STATEMENT AND BRIEF OF SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP

SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP ("Sprint" or the "Company"), pursuant to Order No. PSC-00-1823-PCO-TP, submits the following Posthearing Statement and Brief:

I.

Introduction and Background

This proceeding began on July 10, 2000, when Sprint filed its Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act"). Therein, Sprint requested arbitration of 29 issues in dispute between Sprint and BellSouth Telecommunications, Inc. ("BellSouth") relating to the re-negotiation of their initial interconnection agreement. During a conference on October 2, 2000, the parties identified a total of 35 issues, which were memorialized in the Order Establishing Procedure, No. PSC-00-1823-PCO-TP, issued October 5, 2000.

The final hearing was held in Tallahassee on January 10, 2001. Sprint sponsored four witnesses: Melissa Closz, Angela Oliver, Mark Felton and Michael

Hunsucker. BellSouth sponsored two: John Ruscilli and Keith Milner. As noted at the beginning of the final hearing [Tr. 6-7], the parties had resolved 25 of the 35 issues in this proceeding by the time of the hearing, leaving only ten issues to be decided: 3 (resale of custom calling features), 4 (combining UNEs), 6 (EELs), 7 (switching pricing), 8 (point of interconnection), 9 (local over access trunks), 22 (make ready work), 28A & B (two-way trunks), 29 (virtual point of interconnection) and 32 (reserved collocation space). Sprint's positions and the reasons the Florida Public Service Commission ("Commission" or "FPSC") should adopt those positions are set forth below. The portions of Sprint's positions indicated with an asterisk (*) are identified for the Staff Recommendation.

II.

Issues, Positions and Argument

Issue 3: Should BellSouth make its Custom Calling features available for resale on a stand-alone basis?

Position: * Yes. BellSouth must "offer for resale at wholesale rates *any* telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." BellSouth's Custom Calling Services are optional telecommunication services, and should be available on a stand alone basis to Sprint for resale.

Argument: BellSouth has agreed that it is technically feasible to provide Custom Calling Services ("CCS") for resale to Sprint on a stand-alone basis. [Tr. 529] During cross-examination, Mr. Ruscilli conceded that BellSouth would be required to offer CCS to Sprint for resale on a stand-alone basis if the Commission determines that CCS are "telecommunications services." [Tr. 524, lns 7-20] Thus, the critical inquiry here is

whether CCS are "telecommunication services" within the meaning of Section 251(c)(4)(1) of the Act, which states: "[An ILEC has a] duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."

The analysis begins with the statutory definition of "telecommunication service" in the Act. 47 U.S.C. §153(51) defines "telecommunications service" as "the offering of *telecommunications* for a *fee* directly *to the public*, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." (emphasis added) Clearly, BellSouth's CCS are "telecommunications." Mr. Ruscilli testified that BellSouth's CCS are provided "to the public" [Tr. 524], and that BellSouth charges a "fee" for those services [Tr. 527]. Thus, BellSouth's Custom Calling Services meet the three-pronged statutory test prescribed in the Act and qualify as "telecommunications services." Since they are "telecommunications services," BellSouth must make them available to Sprint for resale on a stand-alone basis.

The fact that CCS are "telecommunications services" under the Act is clear from BellSouth's tariff (Hearing Exhibit 4) and the testimony of the witnesses on this issue. Mr. Ruscilli agreed on cross-examination that Custom Calling Services are not a part of basic local service [Tr. 526], and that retail customers must pay extra to receive them [Tr. 526]. He also testified that Custom Calling Services are billed as a separate line item on an end-user's bill, and that CCS are sometimes combined and marketed as packages separate from basic local services [Tr. 527]. As Exhibit 4 shows, the portion of BellSouth's tariff addressing CCS is entitled "Custom Calling *Services,*" not "Custom Calling *Features*" or some other title suggesting that CCS are not telecommunications

services. The fact that BellSouth uses the term "service" in its tariff to describe CCS is a good indication that CCS are "telecommunications services."

Indeed, as noted in the testimony of Mr. Felton, Custom Calling Services are simply optional telecommunication services that provide additional functionality to basic telecommunications services, and BellSouth marketing activities confirm this. [Tr. 262] For example, in customer advertising on the BellSouth Internet website, BellSouth refers to dial tone as a "basic" service and Custom Calling Services as "optional" services. [Id.] Neither Congress nor the FCC made a distinction between "basic" and "optional" telecommunications services when it created the resale requirement. [Id.] In fact, in paragraph 871 of the First Report and Order in CC Docket 96-98 (issued August 8, 1996) ("Local Competition Order"), the FCC noted that they found "no statutory basis for limiting the resale duty to basic telephone services." [Id.] Thus, BellSouth is under no less of an obligation to offer for resale "optional" Custom Calling Services as it is to offer for resale "basic" local telephone service. [Id.]

BellSouth's argument that it should not be required to "disaggregate" services Custom Calling Services from basic local exchange service has no merit. Mr. Ruscilli agreed on cross-examination that CCS are not a part of basic local service, that customers must request and pay for them separately and that they are billed separately on the customer's bill. [Tr. 526-527] Since a customer requesting basic local service does not get CCS as part of basic local service, requiring BellSouth to provide CCS for resale on a stand-alone basis does not require BellSouth to "disaggregate" a retail service. Basic local service and CCS are separate and distinct services, so no disaggregation is required.

Importantly, BellSouth has not claimed that its Custom Calling Services do not meet the three-pronged statutory test for "telecommunications service" in the Act. Rather, BellSouth relies on language in its retail tariff as a means to prevent Sprint from reselling BellSouth's CCS on a stand-alone basis. Section A13.9.2B of its General Exchange Tariff (Hearing Exhibit No. 4) states: "Except where provided elsewhere in this Tariff, Custom Calling Services are furnished only in connection with individual line residence and business main service." BellSouth has conceded that this limitation language is not required by the Act [Tr. 528], any FCC rule or order [Tr. 528], any portion of Florida law [Tr. 528] or any rule or order of this Commission [Tr. 528]. BellSouth admits that this limitation language was added to its tariff by BellSouth of its own accord [Tr. 528-29]. BellSouth has admitted that the Commission has the power to require that the language be taken out of the tariff [Tr. 530].

While BellSouth cites "a practical foundation" for including this limitation language in BellSouth's retail tariff [Tr. 529], BellSouth has not articulated any technical, legal or practical reason for applying this limitation to a wholesale purchaser like Sprint. In the absence of an articulated rational reason to apply the language in BellSouth's retail tariff to Sprint's activities as a wholesale purchaser, the Commission should find that BellSouth is improperly attempting to impose a resale limitation on Sprint. In paragraph 939 of its Local Competition Order, the FCC found unequivocally not only that "resale restrictions are presumptively unreasonable," but also that "[i]ncumbent LECs can rebut this presumption [only] if the restrictions are narrowly tailored." [Tr. 262-263] The FCC explained that the presumption exists because the ability of ILECs to impose resale restrictions and limitations is likely to be evidence of market power, and may reflect an

attempt by ILECs to "preserve their market position." [Tr. 263] In this case, BellSouth's attempt to "tie" provision of local dial tone and Custom Calling Services by the same carrier evidences not only BellSouth's market power in Florida, but also represents a clear attempt to preserve its dominant market position in the burgeoning sub-market for Custom Calling Services. [Tr. 263] BellSouth has not shown that the restriction in its tariff is narrowly tailored and required by the Act; therefore, the Commission should rule that the restriction does not apply to resale by Sprint or violates the Act if it does.

BellSouth's apparent concern regarding a situation in which an ALEC other than Sprint purchases UNE switching for the customer to which Sprint resells a vertical feature has no merit. Mr. Felton's testimony clearly states that if an ALEC purchased UNE switching for a customer to which Sprint is reselling a vertical feature, Sprint would be required to terminate its delivery of the feature to that customer. [Tr. 287] Mr. Ruscilli correctly notes that a provider of service via UNEs has exclusive rights to the vertical services of local switching but his extension of this principle to resale is misguided. [Tr. 287] In that situation, the purchaser of UNE switching effectively becomes the "owner" of that network element and is, indeed, entitled to the exclusive use of all of the features and functions associated with it. [Tr. 287] If the customer continued to desire Sprint's service involving the vertical feature in question, Sprint would be required to negotiate with the switching "owner", the purchasing ALEC, for this purchase. [Tr. 287] While this situation might occur, it is not valid grounds for rejecting Sprint's position on this issue.

BellSouth's Custom Calling Services are "telecommunications services" within the meaning of the Act. They are (a) telecommunications that are (b) sold to the public

(c) for a fee. The limitation in Section A13.9.2B of BellSouth's retail tariff does not apply to Sprint, and cannot be applied to Sprint as a wholesale purchaser without violating Section 252(b) of the Act. Accordingly, Sprint requests that the Commission order BellSouth to make Custom Calling Services available for resale by Sprint on a stand-alone basis at the applicable wholesale discount, and adopt Sprint's proposed language as follows:

> "Resale of Custom Calling Services. Except as expressly ordered in a resale context by the relevant state Commission in the jurisdiction in which the services are ordered, Custom Calling Services shall be available for resale on a stand-alone basis."

Issue 4: **Pursuant to Federal Communications Commission ("FCC") Rule 51.315(b), should BellSouth be required to provide Sprint at TELRIC rates combinations of UNEs that BellSouth typically combines for its own retail customers, whether or not the specific UNEs have already been combined for the specific end-user customer in question at the time Sprint places its order?**

Position: * Yes, BellSouth should be required to provide to Sprint UNEs that are ordinarily combined in BellSouth's network in the manner in which they are typically combined. The Commission should order BellSouth to provide UNE combinations to Sprint that are "ordinarily combined" in BellSouth's network, subject only to technical feasibility limitations.

Argument: This issue addresses under what circumstances Sprint may obtain combined unbundled network elements (UNEs) from BellSouth. It is Sprint's position that the standard the Commission should employ in its ruling on this issue is one of comparability between an ILEC retail product and the UNE combination provided to Sprint. [Tr. 356] In other words, BellSouth should provide to Sprint those combinations that it currently combines in the ordinary course of business to serve retail customers in

Florida. [Tr. 357] BellSouth argues that it should only provide those UNEs that are already combined and providing service to a specific customer. [Tr. 515]

Sprint believes that the focus should be on the practical as well as the legal aspects of the issue. Nevertheless, there is certainly no legal authority that prevents the Commission from finding in Sprint's favor on this issue. Indeed, FCC Rule 51.315(b) clearly supports Sprint's position. BellSouth makes much of the FCC's decision to defer a ruling on the meaning of currently combines in its UNE Remand Order pending a ruling by the Eighth Circuit on issues related to unbundled network elements remanded from the U.S. Supreme Court. [Tr. 399][1] Contrary to BellSouth's assertions, the FCC's actions were not a rejection of Sprint's position regarding the appropriate meaning of the phrase "currently combines". Rather, they were a recognition by the FCC that imminent pending legal action could affect their decision.

The Eighth Circuit initially vacated several provisions of FCC Rule 51.315, including paragraphs (b) through (f). Paragraph (b) provides that an ILEC may not separate currently combined UNEs. Paragraph (c) through (h) required ILECs to combine UNEs in any manner requested by an ALEC, whether the UNEs were actually combined, currently combined or never before combined. Neither rule clearly addresses the intermediary question of the scope of the phrase "currently combines" as it relates to UNEs that BellSouth typically combines for its retail customers. It is this issue Sprint that is asking the Commission to decide.

[1] See, paragraph 479 of the FCC's UNE Remand Order, FCC Order No. 99-238, Third Report and Order in Docket No. 96-98 (issued Nov. 5, 1999). See also, AT&T v. Iowa Utilities Board, 525 U.S. 366 (1998) and Iowa Utilities board v. FCC, 120 F.3d 753 (8th Cir. 1997).

The Eighth Circuit issued its remand decision on July 18, 2000.[2] However, the court did not address the meaning of "currently combines" in Rule 51.315 (b) in its decision, as anticipated. Therefore, the phrase remains undefined on the federal level and begs for Commission action to resolve the gap left in the law when the U.S. Supreme Court ruled to overturn the Eighth's Circuits initial vacation of Rule 51.315 (b), but left the vacation of Rule 51.315 (c)-(h) undisturbed.[3]

As Mr. Hunsucker made clear, Sprint is not asking that the Commission require BellSouth to provide "new" combinations of UNEs to Sprint. [Tr. 380] Sprint agrees that the Eighth Circuit clearly held such a requirement to be unsupported by the provisions of the Telecommunications Act when it vacated Rule 51.315 (c)-(h). What Sprint is suggesting is that, if BellSouth is ordinarily and typically combining UNE's on a retail basis to provide service to their end users, then BellSouth should provide these same combinations to Sprint as an ALEC, whether or not such UNEs are already actually combined and providing service to a specific customer. [Tr. 380]

On a practical level, restricting the provision of combined UNEs to only those combinations BellSouth is already using to provide service to a specific customer makes no sense, because Sprint may circumvent this limitation. Through a costly and burdensome process of first ordering service for an end user via resale and then subsequently converting that service to UNEs, Sprint can obtain the combinations it seeks even with the limitation proposed by BellSouth. [Tr. 373-374] Mr. Ruscilli acknowledges that Sprint may obtain UNE combinations in this way. [Tr. 530].

---

[2] Iowa Utilities Board v. FCC, 219 F.2d 744 (8th Cir. 2000).

[3] Sprint has filed a Motion for Reconsideration of the FCC's UNE Remand Order. One of the issues for which reconsideration is requested is the meaning of the phrase "currently combines." Sprint's Motion for Reconsideration is identified as Late-filed Exhibit 3 in the record of this proceeding.

Mr. Ruscilli also admits that Sprint incurs additional costs when Sprint is forced to obtain UNE combinations in this manner. [Tr. 531]

The Commission has the authority to decide this issue, pending inconsistent future action by the FCC or a federal court. At this time, no specific federal ruling on this issue is imminent. If the Commission defers its ruling until the FCC acts and in the interim adopts BellSouth's position regarding the meaning of "currently combines", as BellSouth suggests and as the Commission did in the Intermedia arbitration [Tr. 482][4], it will allow to stand a scheme that imposes unnecessary economic and administrative burdens on Sprint and BellSouth. Such a decision would require both Sprint and BellSouth to perform work related to multiple service orders and impose on Sprint unnecessary additional costs in order to provide competitive service to Florida customers. [Tr. 362]

Sprint asks the Commission to decide in favor of increasing competition for local service in Florida by interpreting "currently combined" to mean "ordinarily and typically combined" in BellSouth's network. Such a public policy decision, which is well within the Commission's authority under the Telecommunications Act, the FCC rules, and relevant judicial opinions, will ensure that Sprint will not need to pass the uneconomic costs it incurs onto its end users, thereby reducing Sprint's ability to compete effectively with BellSouth. [Tr. 372, 375]

[4] In Re: Petition of BellSouth Telecommunications, Inc. for Section 252(b) Arbitration of Interconnection Agreement with Intermedia Communications, Inc., Order No. PSC-00-1519-FOF-TP.

Issue 6: Should BellSouth be required to universally provide access to EELs that it ordinarily and typically combines in its network at UNE rates?

Position: * Yes. BellSouth should be required to universally provide Sprint with access to EELs that BellSouth ordinarily and typically combines in its network.

Argument: This issue is related to Issue 4, because it addresses the circumstances under which a particular type of UNE combination – known as an EEL - must be provided by BellSouth to competing carriers. The acronym "EEL" stands for "enhanced extended loop", which is simply a combination of loop and transport UNEs. [Tr. 359] The provision of EELs allows an ALEC to order loops from multiple ILEC wire centers and combine loops with transport to deliver loops from multiple wire centers to a collocation site or sites. [Tr. 359] This eliminates the need for multiple collocations with an ILEC [Tr. 359], and promotes efficient market entry by new local competitors.

The provisioning of EELs by ILECs was addressed by the FCC in its the Third Report and Order in Docket No. 96-98 (issued November 5, 1999) ("UNE Remand Order"). Paragraph 480 of that Order states in part that:

> To the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form. They further state that, *** in specific circumstances, the incumbent is presently obligated to provide access to the EEL. In particular, the incumbent LECs may not separate loop and transport elements that are currently combined and purchased through the special access tariffs. Moreover, requesting carriers are entitled to obtain such existing loop-transport combinations at unbundled network element prices.

Thus, under the FCC's order, it is readily apparent that ILECs have the obligation to provision EELs to CLECs at this time. [Tr. 360] Therefore, the Commission should order BellSouth to universally provide access to EELs that it ordinarily and typically

combines in its network at UNE rates. [Tr. 360] The proper meaning of "ordinarily combined" is discussed under Issue 4, above.

Contrary to the testimony of Mr. Ruscilli, BellSouth is attempting to rewrite the FCC's rules on this issue, not Sprint. While the FCC rules allow BellSouth to provide EELs in a certain geographic area to obtain the FCC's exemption from providing access to unbundled local switching, that provision does not eliminate the general rule that incumbent LECs like BellSouth must provide UNE combinations to Sprint that are "ordinarily combined" in BellSouth's network. While BellSouth would like the exception to swallow the general rule, the general rule still stands and BellSouth's "change-the-rules" argument lacks merit.

Indeed, as was the case with Issue 4, this is a situation where the practical realities must guide the Commission's decision. Even if BellSouth is correct and "currently combined" means "actually combined," ALECs will be allowed to purchase loops and transport (EELs) from BellSouth's special access tariff and then purchase them as UNEs after they are "actually combined." [Tr. 532-533] However, as noted by Mr. Hunsucker and conceded by Mr. Ruscilli, this approach results in unnecessary ordering, billing and conversion activity that increases entry costs and time intervals for ALECs, and imposes unnecessary costs on ILECs like BellSouth. [Hunsucker, Tr. 362-363; Ruscilli, 532-534] A court should not interpret a statute or rule to impose an unreasonable or absurd result, and neither should this Commission. Holly v. Auld, 450 So. 2d 217 (Fla. 1984). The Commission should order BellSouth to universally provide access to EELs that it ordinarily and typically combines in its network at UNE rates. [Tr. 360]

Issue 7: In situations where an ALEC's end-user customer is serviced via unbundled switching and is located in density zone 1 in one of the top fifty Metropolitan Statistical Areas ("MSAs") and who currently has three lines or less, adds additional lines, should BellSouth be able to charge market-based rates for all of the customer's lines?

Position: * No. The FCC has not ruled upon the specific situation described above; therefore, it is not appropriate for BellSouth to implement a more costly pricing structure with regard to Sprint's existing customers whose telecommunications needs grow along with their businesses.

Argument: Based on the direct testimony, this issue had two parts: (a) whether the threshold for market-based UNE switching prices in certain parts of the top 50 MSAs should be four (4) or forty (40) access lines, and (b) how to price UNE switching for the lines below the threshold when Sprint serves a customer in density zone 1 in one of the top fifty (50) Metropolitan Statistical Areas ("MSAs")[5] and the customer adds a line that takes the total number of lines above the threshold. However, in his rebuttal testimony, Mr. Felton agreed for purposes of this proceeding that the appropriate threshold is four (4) lines [Tr. 290], and noted on cross-examination that Sprint has requested the FCC to reconsider its ruling on the proper threshold. [Tr. 333] Sprint's Motion for Reconsideration to the FCC was filed as Late-Filed Exhibit 3 on January 11, 2001, and shows Sprint's position before the FCC. As of the filing of this brief, Sprint's motion has not been addressed by the FCC, and Sprint cannot predict when the FCC will do so.

The second part of this issue remains before the FPSC for decision, namely, how to price UNE switching for the first three lines when Sprint serves a customer in density zone

[5]Miami, Ft Lauderdale and Orlando are the cities in BellSouth's Florida territory that are in the top fifty MSAs. [Tr. 300]

1 in one of the top fifty (50) MSAs and the customer adds a fourth line. [Tr. 271] The parties agree that the first three line must be priced based on TELRIC when there are no more than three lines, but disagree on what happens when a fourth lines is added. BellSouth asserts that UNE switching for the first three lines can be re-priced at market based rates when the customer adds a fourth line. [Tr. 300] Sprint asserts that UNE switching for the first three lines remain at TELRIC-based prices when a fourth line is added. [Tr. 300] Sprint's position should prevail for two reasons.

First, FCC Rule 51.319(c)(1)(B) sets out a narrowly tailored exception to an ILEC's obligation to unbundle local circuit switching. [Tr. 272] The FCC did not address the issue of pricing for local circuit switching for existing lines when a customer goes from 1-3 lines to 4 lines or higher. [Tr. 272] BellSouth has cited no authority from the applicable rule or the attendant discussion in paragraphs 290-298 of the UNE Remand Order to re-price the first three lines when the customer adds a fourth or additional lines.

Second, BellSouth's proposal serves to increase the costs to Florida ALECs, which in turn will serve to discourage the proliferation of competition and deny Florida consumers its benefits. [Tr. 301] In the absence of express guidance from the FCC on this issue, this Commission should adopt a policy that advances the prospects for competition. Sprint's position would promote competition by keeping the cost of the first three lines constant, and should be adopted by the Commission.

Issue 8: Should BellSouth be able to designate the network Point of Interconnection ("POI") for delivery of BellSouth's local traffic?

Position: * No. Sprint should have the ability to designate the point of interconnection for both the receipt and delivery of local traffic at any technically feasible

location within BellSouth's network. This right includes the right to designate the POI in connection with traffic originating on BellSouth's network.

Argument: While BellSouth has attempted to complicate this issue by proposing a "virtual point of interconnection" (See Issue 29), the resolution of Issue 8 is simple, because both parties agree. The direct testimony of Mr. Ruscilli states: "BellSouth agrees that Sprint can choose to build its own facilities to connect with BellSouth at a single, technically feasible point in the LATA selected by Sprint." [Tr. 414] As noted by Ms. Closz, the FCC's Local Competition Order clearly states that the specific obligation of ILECs to interconnect with local market entrants pursuant to Section 251(c)(2) of the Act includes the new entrant's right to designate the point or points of interconnection at any technically feasible point within the ILEC's network:

> The interconnection obligation of section 251(c)(2) allows competing carriers to choose the most efficient points at which [6] to *exchange* (emphasis added) traffic with incumbent LECs, thereby lowering the competing carriers' cost of, among other things, transport and termination of traffic.
>
> * * *
>
> Of course, requesting carriers have the right to select points of interconnection at which to *exchange* (emphasis added) traffic with an incumbent LEC under Section 251(c)(2).
>
> See Local Competition Order, at Paragraphs 172, 220, n. 464.

Thus, Congress and the FCC clearly intended to give ALECs the flexibility to designate the POI for the receipt and delivery of local traffic so that the ALEC can minimize entry costs and achieve the most efficient network design. [Tr. 020] This right is not given to the incumbent carrier, only to new entrants. [Tr. 020] As a new local entrant, Sprint's right to designate the point of interconnection so as to lower its costs,

including its cost of transport and termination of traffic, includes the right to designate the point of interconnection associated with traffic that originates on BellSouth's network that Sprint must terminate. [Tr. 020]

Based on the testimony of Mr. Ruscilli and Ms. Closz, and the relevant portions of the Act and FCC orders, the Commission should find that Sprint can designate the POI, and adopt Sprint's position on this issue. BellSouth's arguments about cost recovery and the virtual POI are addressed under Issue 29, below.

Issue 9: Should the parties' Agreement contain language providing Sprint with the ability to transport multi-jurisdictional traffic over a single trunk group, including an access trunk group?

Position: * Yes. It is technically feasible for BellSouth to transport multi-jurisdictional traffic over the same trunk groups (including access). BellSouth should allow Sprint to route (00-) traffic that terminates in Bell's local calling area over all access trunk groups, and such traffic should be considered local for compensation purposes.

Argument: This issue has been substantially narrowed by the parties. Ms. Oliver explained during her summary that the parties have agreed that routing multi-jurisdictional traffic over access trunks is technically feasible. [Tr. 220] Although technically feasible, BellSouth believes that there may be cost associated with the implementation of this arrangement. [Tr. 220] Sprint has agreed to work with BellSouth to identify an accurate estimate of the reasonable implementation costs. [Tr. 220-221] Sprint requests that the Commission's final order in this docket acknowledge Sprint's right to petition the Commission to determine such costs in the future if the parties are unable to agree. [Tr. 221]

The portion of this issue remaining for decision involves compensation for (00-) calls that originate and terminate in the same BellSouth local calling area. [Tr. 221-222] Under Sprint's proposal, such calls should be considered local and reciprocal compensation should apply. [Tr. 222] BellSouth asserts that access charges should apply for all (00-) traffic. [Tr. 222]

Sprint's position on this issue should prevail for several reasons. First, Mr. Ruscilli agreed on cross examination that the jurisdiction of a call should be determined by its originating and terminating points, and that a call that originates and terminates in BellSouth's local calling area should be considered local. [Tr. 537-538] He also agreed that when a BellSouth customer places a (00-) call that is routed to Sprint and terminates in the same local calling area, it would be considered local. [Tr. 538] Consistent with Mr. Ruscilli's testimony and long-standing regulatory policy, calls that originate and terminate in the same local calling area should be considered local.

Second, BellSouth has not identified any material technical or policy reason that defeats Sprint's proposal. Mr. Ruscilli admitted on cross-examination that the (00-) dialing pattern has been around for many years, and that BellSouth does not have to create a new path to complete the call. [Tr. 538-539] He also agreed that it would be possible to use a Percentage Local Usage ("PLU") with audit rights in favor of BellSouth to jurisdictionalize the traffic for compensation purposes, and that BellSouth would not object to that approach. [Tr. 541] Sprint's proposal is technically feasible.

Third, while it has expressed a "policy" concern that Sprint's proposal would merely move local traffic from BellSouth to Sprint, BellSouth admits that Sprint's proposal could allow Sprint to become a "dial-around" local carrier [Tr. 539], and that

Sprint's proposal could result in the development of new products and service, which is one of the benefits of competition. [Tr. 542] Sprint has testified that it plans to offer enhanced services using the (00-) dialing pattern. [Tr. 202-203] Since there are no material technical or billing obstacles, the Commission should (a) affirm the long-standing regulatory policy that the originating and terminating points of a call determines its jurisdiction and (b) rule that (00-) calls that originate and terminate in the same BellSouth local calling area should be considered "local" and that reciprocal compensation should apply.

Issue 22: Should Sprint be required to pay the entire cost of make-ready work prior to BellSouth's satisfactory completion of the work?

Position: * No. Sprint should be allowed to pay a portion of the costs up-front, and the remainder upon BellSouth's satisfactory completion of the work. Paying the entire costs up-front would deprive Sprint of its primary recourse in the event that the work is not performed in a satisfactory manner.

Argument: The parties' draft interconnection Agreement provides the following definition for make-ready work:

> Make-ready work includes, but is not limited to, clearing obstructions (e.g., by rodding ducts to ensure clear passage), the rearrangement, transfer, replacement, and removal of existing facilities on a pole or in a conduit system where such work is required solely to accommodate Sprint's facilities and not to meet BellSouth's business needs or convenience.

[Tr. 027] During its negotiations with BellSouth, Sprint advocated a common-sense and equitable resolution to the issue of payments for make-ready work whereby Sprint would pay for half of the charges for make-ready work performed by BellSouth prior to the performance of any such work, and half of the charges upon satisfactory completion

of the work. [Tr. 028; 074]. Alternatively, Sprint offered to post a performance bond in order to guarantee that BellSouth would receive full payment when the work was completed in a satisfactory manner. [Tr. 084]

In contrast, BellSouth's position is that the *entire* cost of make-ready work should be paid in advance, and further, that BellSouth will not even schedule the work to be done until payment in full has been received. [Tr. 028] BellSouth appears to insist upon its proposed payment method because this is the way BellSouth has traditionally handled such payments, and it is what BellSouth has required other requesting carriers to do. [Tr. 573]

As indicated in Sprint's testimony in this proceeding, it is both reasonable and common in situations involving contracted work for the party contracting the work to provide a portion of payment in advance, and the remainder of the payment upon satisfactory completion of the work. [Tr. 082] If Sprint is required to pay for all of the work in advance, Sprint will lose its most effective leverage tool with BellSouth in order to insure that the work being done is fully completed and is satisfactory. [Tr. 028] Without the ability to partially withhold payment, Sprint will be reduced to making personal appeals to BellSouth management as the only available course of action to remedy the situation. Sprint's witness testified that such escalations would require substantial time and effort for both parties. [Tr. 179]

During the hearing in this docket, BellSouth's witness strongly suggested that adoption of Sprint's proposal could cause problems with other ALECs in Florida due to Section 252(i) adoptions of Sprint's agreement. BellSouth's witness indicated that ALECs could adopt Sprint's contract language on make-ready work and then launch

challenge after challenge of the quality of the make-ready work performed by BellSouth as a means to delay payment. [Tr. 605] Nevertheless, BellSouth's witness conceded that Sprint's suggested solution, i.e., adding contract language to the effect that an ALEC's creditworthiness was a substantial factor in determining whether an ALEC could utilize the 50/50 payment option [Tr. 083-84], might assist in ameliorating this concern. [Tr. 614]

Sprint's request is reasonable, simple from an operational viewpoint, and practical. Accordingly, Sprint requests that the Commission adopt Sprint's proposed language as follows:

> Fifty percent (50%) of all charges for Make-Ready Work performed by BellSouth are payable in advance, with the amount of any such advance payment to be due within sixty (60) calendar days after receipt of an invoice from BellSouth. BellSouth will begin Make-Ready Work required to accommodate Sprint after receipt of Sprint's initial make-ready payment. Sprint will pay the remaining fifty percent (50%) of charges for Make-Ready Work upon completion of Make-Ready Work.

Issue 28a: Should BellSouth be required to provide Sprint with two-way trunks upon request?

Position: * Yes. BellSouth should provide two-way interconnection trunking upon Sprint's request, subject only to technical feasibility. Two-way trunking in the context of the parties' interconnection agreement includes "two-way" trunking and "SuperGroup" interconnection trunking.

Argument: There is no dispute on this issue. FCC Rule 51.305(f) states, "If technically feasible, an incumbent LEC shall provide two-way trunking upon request." Paragraph 219 of the Local Competition Order states:

> where a carrier requesting interconnection pursuant to section 251 (c) (2) does not carry a sufficient amount of

> traffic to justify separate one-way trunks, an incumbent LEC must accommodate two-way trunking upon request where technically feasible. Refusing to provide two-way trunking would raise costs for new entrants and create a barrier to entry. Thus, we conclude that if two-way trunking is technically feasible, it would not be [18] just, reasonable, and nondiscriminatory for the incumbent LEC to refuse to provide it.

BellSouth has testified that it is required to provide two-way trunking upon request. [Tr. 503] Ms. Oliver testified for Sprint that BellSouth should provide two-way interconnection trunking upon Sprint's request subject only to technical feasibility. [Tr. 204] In the absence of a dispute between the parties and in light of the applicable FCC rule, the Commission should rule that BellSouth is required to provide two-way interconnection trunking upon request by Sprint, subject only to technical feasibility. Whether BellSouth must use the two-way trunks requested by Sprint to deliver its local calls to Sprint is addressed under Issue 28(b), below.

Issue 28b: Should BellSouth be required to use those two-way trunks for BellSouth originated traffic?

Position: * Yes. If BellSouth refuses to use two-way trunks, the trunks cease to be two-way trunks. This effectively denies Sprint the opportunity to use two-way trunks and eliminates the efficiencies that were intended and are inherent in two-way trunking arrangements.

Argument: BellSouth's position is that it is not obligated to use the two-way trunks, but instead, should be able to unilaterally reserve for itself the option to use one-way trunks to deliver its originating traffic to Sprint. [Tr. 207]. However, as noted by Ms. Oliver, if BellSouth refuses to use two-way trunks, the trunks effectively cease to be two-way trunks, thereby denying Sprint the opportunity to use two-way trunks. [Tr. 207] This eliminates the efficiencies that were intended and are inherent in two-way trunking

arrangements [Tr. 207], and is inconsistent with the Act, the FCC rules, and relevant FCC orders.

As noted in Issue 28(a), above, BellSouth is obligated to provide two-way trunking to Sprint upon request consistent with FCC Rule 51.305 (f) and paragraph 219 of the Local Competition Order. [Tr. 208] Practically speaking, BellSouth's refusal to use two-way trunks when requested by Sprint will require Sprint to operate one-way trunks, which is precisely what the FCC was trying to avoid in the sections referenced above. [Tr. 208]

Sprint's right to request and use two-way trunking for interconnection is clearly established in paragraph 219 of the FCC's Local Competition Order. That paragraph does not refer to BellSouth as the carrier that may lack sufficient traffic volumes to justify one-way trunks. [Tr. 208] Paragraph 219 uses the phrase "carrier requesting interconnection pursuant to section 251 (c)(2)" to describe the carrier whose traffic volumes matter and that gets to choose the type of trunking for interconnection. In the context of local competition, the "carrier requesting interconnection" refers to ALECs like Sprint, not ILECs like BellSouth. Thus, paragraph 219 gives the new entrant the power to choose and permits the ALEC, not BellSouth, to use one-way trunks if so warranted by the ALEC's traffic.

A practical example illustrates the issue here. During cross-examination, Mr. Ruscilli answered questions about a hypothetical situation in which the engineers decide that traffic volume and patterns between the companies warrant a twenty (20) trunk group of trunks. [Tr. 546] Under Sprint's approach, BellSouth must provide and use the 20 trunk group of trunks deemed appropriate by the engineers. However, under

BellSouth's proposal, BellSouth wants the right to unilaterally decide that it will send its originating traffic to Sprint exclusively over a set of one-way trunks with say 15 trunks in the group. [Tr. 546-547] Under that scenario, Sprint will be using more space on its switch (i.e., ports) than is necessary [Ruscilli, Tr. 547], thereby eliminating the efficiencies inherent in two-way trunking.

The FCC rules and the Local Competition Order are very clear. The new entrant may request and the incumbent must provide two-way trunking where technically feasible. While BellSouth purportedly seeks to put a "measure of reason into this process" [Ruscilli, Tr. 549, Ins 12-13], what BellSouth really seeks is the power to unilaterally reject two-way trunking when BellSouth decides that one-way trunking would be better for BellSouth. [Tr. 549] This is an area where the FCC's rules and orders defer to the new entrant. Sprint has shown how giving BellSouth a unilateral right to cease using two-ways trunks can result in the inefficient use of Sprint's switching capacity. The Commission should adopt Sprint's position and rule that BellSouth must provide *and use* two-way interconnection trunking upon request by Sprint, subject only to technical feasibility.

Issue 29: Should BellSouth be allowed to designate a virtual point of interconnection in a BellSouth local calling area to which Sprint has assigned a Sprint NPA/NXX? If so, who pays for the transport and multiplexing, if any, between BellSouth's virtual point of interconnection and Sprint's point of interconnection?

Position: * No. ALECs have the right to establish network points of interconnection ("POI") for the exchange of traffic with the ILEC, and an ILEC may not assess charges on an ALEC for local LEC originated traffic. BellSouth's proposal improperly forces Sprint to pay to transport BellSouth-originated calls to the POI.

Argument: BellSouth has conceded under Issue 8 that Sprint has the right under the Act and relevant FCC orders to designate the point of interconnection between the parties. This concession is consistent with FCC's Local Competition Order, which states:

> The interconnection obligation of section 251(c)(2) allows competing carriers to choose the most efficient points at which [6] to *exchange* (emphasis added) traffic with incumbent LECs, thereby lowering the competing carriers' cost of, among other things, transport and termination of traffic.
>
> * * *
>
> Of course, requesting carriers have the right to select points of interconnection at which to *exchange* (emphasis added) traffic with an incumbent LEC under Section 251(c)(2).
>
> See Local Competition Order, at Paragraphs 172, 220, n. 464.

While BellSouth has conceded that Sprint can decide where the POI will be, it has proposed an end-run around the applicable FCC rules and orders in the form of a "virtual POI." Under BellSouth's proposal, BellSouth will be allowed to pretend that Sprint has established a physical POI within each of BellSouth's local calling areas and be authorized to charge Sprint to transport BellSouth's originating local traffic from BellSouth's pretend POIs to Sprint's physical POI. This proposal should be rejected for the following reasons.

First, BellSouth has failed to identify any relevant legal authority supporting its proposal to establish "pretend" points of interconnection. The Local Competition Order clearly gives new entrants the right to determine placement of the POI so that the new entrant and the incumbent carrier can exchange local traffic. As the quoted language above indicates, the FCC gave the POI placement decision to the new entrant so that

the new entrant could lower its costs of transporting and terminating traffic. Allowing BellSouth to charge Sprint to transport BellSouth's originating traffic from BellSouth's "pretend" POI to Sprint's physical POI would defeat the expressed purpose of vesting the POI placement decision with the new entrant.

Second, the FCC's rules specifically prohibit incumbent LECs from imposing transport costs on new entrants. FCC Rule 51.703(b) clearly states that "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." BellSouth's proposal would assess a charge other than reciprocal compensation on Sprint to terminate traffic originating on BellSouth's network, which is prohibited by FCC Rule 51.703(b).

Third, BellSouth's proposal is inconsistent with the definition of point of interconnection agreed to by the parties in their interconnection agreement. That definition states:

> A Point of Interconnection is the physical telecommunications interface between BellSouth and Sprint's interconnection functions. It establishes the technical interface and point of operational responsibility and defines the point at which call transport and termination reciprocal compensation responsibility begins. The primary function of the Point of Interconnection is to serve as the termination point for the interconnection service. (emphasis added) [Tr. 057-058]

By attempting to create "pretend" points of interconnection, BellSouth is attempting to circumvent this definition of POI by changing the point at which reciprocal compensation responsibility begins from the physical POI to the various "virtual" POIs established by BellSouth. If BellSouth's proposal prevails, it will defeat the definition of POI already agreed to by the parties in their agreement.

Finally, this is not a case where Sprint is attempting to shift costs to BellSouth as claimed by Mr. Ruscilli. Rather, as noted by Ms. Closz, BellSouth's proposal is an attempt to shift transport costs for certain BellSouth originating traffic from BellSouth to Sprint. [Tr. 059] Ms. Closz testified and the Commission well knows that BellSouth has an extensive telecommunications network in Florida, and that it likely has facilities already in place over which BellSouth can transport its originating traffic to the Sprint designated POI without incremental facilities cost. [Closz, Tr. 136-138]

As discussed in Ms. Closz's direct and rebuttal testimony, paragraphs 172, 220 and footnote 464 of the Local Competition Order allow "competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby *lowering the competing carriers' cost* (emphasis added) of, among other things, transport and termination of traffic." [Tr. 047, 059-060] Clearly, the emphasis in the FCC's Order is on minimizing ALEC entry costs such that ALECs may achieve the most efficient network design. [Tr. 059-060] This is logical since emerging ALEC networks would by design be impossibly challenged to achieve the same cost advantages and efficiencies enjoyed by ILECs due to the ILEC's transport volumes and ubiquity. [Tr. 060] BellSouth seems to imply that Sprint is unreasonably attempting to minimize its own network costs when in fact, BellSouth is trying to lower its costs at Sprint's expense. [Tr.060] For these reasons, the Commission should reject BellSouth's virtual POI proposal and adopt Sprint's position on Issue 29.

Issue 32: Upon denial of a Sprint request for physical collocation, what justification, if any, should BellSouth be required to provide to Sprint for space that BellSouth has reserved for itself or its affiliates at the requested premises?

Position: * Upon denial of a Sprint request for physical collocation, BellSouth should provide justification for the reserved space based on a demand and facility forecast which includes, but is not limited to, three to five years of historical data and forecasted growth, in twelve month increments, by functional type of equipment (e.g., switching, transmission, power, etc.). Such information would be subject to appropriate proprietary protections.

Argument: This issue addresses whether, when BellSouth denies Sprint's request for physical collocation at BellSouth's premises, it may be required to provide, upon Sprint's request, justification for any space reserved for its own future use, including demand and facilities forecasts based on three to five years of historical data and forecasted growth. BellSouth takes the position that it cannot be required to provide any information other than what the Commission has specifically required ILECs to provide in its PAA and Generic Collocation Orders (Order No. PSC-1744-PAA-TP and Order No. PSC-0941-FOF-TP, respectively). Sprint's position is that nothing in these orders provides that the required information is exclusive. Therefore, the Commission may require the interconnection agreement between the parties to allow Sprint to obtain the additional information it needs to adequately assess BellSouth's denial of space, when BellSouth's reservation of space for its own future use is a factor in the denial.

The PAA Collocation Order sets forth the procedures ILECs must follow in Florida when an ALEC's request for collocation is denied due to lack of space. The PAA Collocation Order requires an ILEC to provide to the ALEC who was denied space,

as well as Commission staff, detailed floor plans of the premises where space was denied. A tour of the premises must be conducted within ten days after the denial of space. Twenty days after the denial, the ILEC must file a Petition for Waiver of Physical Collocation Requirements with the Commission. The PAA Collocation Order provides that the ILEC must submit the following information with the Petition:

1. Central Office Language Identifier, where applicable.

2. Identity of the Requesting ALEC(s), including the amount of space sought.

3. Total amount of space at the premises.

4. Floor Plans, including measurements of the ILEC's premises showing:

    a. Space housing ILEC network equipment nonregulated services space, or administrative offices;

    b. Space housing obsolete or retired equipment;

    c. Space that does not currently house ILEC equipment or administrative offices but is reserved by the ILEC for future use, including the intended purpose of each area and the forecasted year of use;

    d. Space occupied by collocators for the purpose of network interconnection or access to unbundled network elements;

    e. Space, if any, occupied by third parties for other purposes, including identification of the uses of such space;

    f. Remaining space, if any;

    g. Identification of switch turnaround plans and other equipment removal plans and timelines, if any;

    h. Central office rearrangement/expansion plans, if any; and

i. Description of other plans, if any, that may relieve space exhaustion.

5. Floor loading requirements

Twenty days after the tour, the ILEC must submit a post-tour report summarizing the results of the tour and providing information to substantiate the denial. If the ALEC disagrees with the ILEC's denial of space, it may also submit a post-tour report detailing its findings and reasons for challenging the denial. The Commission staff then prepares a recommendation to the Commission for action on the Petition, based on the information staff has acquired on the tour and in the post-tour reports.

The PAA Collocation Order is silent regarding whether Commission staff or the ALEC who was denied space may request additional information from the ILEC to assist in evaluating the denial. BellSouth's position is that this silence should be interpreted to mean that it cannot be required to provide any other information [Tr. 585]. Sprint believes that, since the goal of the PAA Order is to provide a mechanism through which staff and the requesting ALEC may obtain sufficient information to adequately assess the validity of an ILEC's denial of space, any information that is necessary for such an evaluation should be made available by the ILEC, if requested by the ALEC or Commission staff.

Significantly, the Commission recognized when it issued the PAA Collocation Order that it lacked sufficient knowledge and experience regarding collocation to initiate a rulemaking proceeding at that time. (PAA Collocation Order at page 6.) This finding suggests that, as knowledge and experience is gained over time, the Commission may identify modifications to its original guidelines. The information that Sprint has determined is necessary to evaluate BellSouth's denial of space is based on just such

knowledge and experience gained through its efforts to obtain collocation space. [Tr. 61, 62] Therefore, Sprint's request to obtain demand and facilities forecasts from BellSouth to evaluate the appropriateness of its denial of a Sprint request for physical collocation space is entirely consistent with the waiver procedures established in the PAA Collocation Order.

BellSouth also argues that since a subsequent Commission order (the Generic Collocation Order) specifically addresses issues involving an ILEC's ability to reserve space at its premises for its own future use, but did not require ILECs to provide the information requested by Sprint, the provision of such information is prohibited by the Order. [Tr. 585] However, as Ms. Closz stated in her testimony, the focus of the reservation of space issue, as framed by the Parties and the Commission in the generic collocation proceeding, was the appropriate length of time that an ILEC could reserve space for future use. [Tr. 95] As Mr. Milner indicated, Sprint did present testimony in the generic proceeding regarding the need for demand and facilities forecasts. [Tr. 585] However, the Commission did not reject Sprint's proposal, as BellSouth suggests, rather the Commission did not address Sprint's recommendation in its findings. While Mr. Milner's statement that Sprint did not request reconsideration on this point is also true, it is irrelevant. [Tr. 585] Sprint viewed the issue as addressed by the Commission to ultimately concern only the appropriate time frame for reservation of space and was satisfied with the Commission's decision in this regard.[6] While the 18-month limitation on reservation of space goes a long way to ensure that an ILEC will not abuse its ability

[6] See Sprint's Response to GTE's Petition for Reconsideration and BellSouth's Motion for Reconsideration and Clarification at pp. 7-8.

to reserve some amount space for its own use, it does not completely address the possibility of abuse by the ILEC.

The justification of the space BellSouth is reserving for its own use that Sprint is requesting is necessary to adequately evaluate BellSouth's denial of space when BellSouth has indicated space is unavailable because it is designated for its own future use. [Tr. 32] Sprint can use this information to determine whether it disagrees with BellSouth's denial (as required by the PAA Collocation Order) and can include its evaluation of this information in its post-tour report.[7]

The demand and facilities information that Sprint is asking the Commission to allow it to obtain when BellSouth denies Sprint's application for physical collocation space is also consistent with the FCC's order implementing the collocation requirements of the Act, including the Local Competition First Report and Order in Docket No. 96-98 and the Advanced Services First Report and Order in Docket No. 98-147. In paragraph 585 of its Local Competition First Report and Order, the FCC specifically recognized that ILECs have the incentive and the capability to impede competitive entry by minimizing the space that is available for collocation by competitors.

The FCC Orders support the need to closely scrutinize BellSouth's reservation of space for its own needs, because of the recognized incentive that ILECs have to prevent collocation.

Sprint urges the Commission to recognize Sprint's legitimate need for BellSouth to provide demand and facilities forecasts to justify BellSouth's reservation of space

[7] The PAA Collocation Order recognizes that information that an ILEC provided coincident with a denial of physical collocation space may be proprietary. Sprint agrees that the demand and facilities forecasts it is requesting are proprietary and should be subject to appropriate protective agreements.

when it denies Sprint physical collocation at its premises. Sprint requests that the Commission require the Parties to include in their interconnection agreement Sprint's language embodying this requirement.

Issue A: **[LEGAL ISSUE] What is the Commission's jurisdiction in this matter?**

Position: * The Commission has jurisdiction over this Petition pursuant to Section 252 of the Act.

Argument: There does not appear to be a dispute over this issue. In Section 252 (b) Congress created an arbitration procedure for requesting telecommunications carriers and ILECs to obtain an interconnection agreement through "compulsory arbitration" by petitioning a "State commission to arbitrate any open issues" unresolved by negotiation under Section 252(a) of the Act. In accordance with these provisions, the Commission has jurisdiction to resolve all of the issues presented to it for arbitration. Section 252 (c) and (e) of the Act set forth the time frames for Commission action and the criteria upon which the Commission's arbitration decision must be based.

Issue B: **Are there any decisions or pending decisions of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter?**

Position: * While motions for reconsideration are pending before the FCC that relate to Issues 4 and 6, it is unclear when those motions will be decided; therefore, the Commission should not defer its decision on Issue 4 and 6.

Argument: During the arbitration hearing, the Commissioners requested that the parties' briefs include a discussion of any pending decisions by the FCC or any court that might affect the Commission's ability to resolve any of the issues in this docket. [Tr. 340] As noted within the discussion of the issues, Sprint has filed a Motion for

Reconsideration of the UNE Remand order (Late-filed Exhibit 3) that, if ruled on by the FCC, could impact the Commissions decision on Issues 4 and 6. Specifically, Sprint has requested the FCC to reconsider the issue of the definition of "currently combines" in Rule 51.315(b) and to determine that currently combines means "ordinarily and typically" combines, consistent with the position Sprint has taken in this arbitration. This motion was filed over a year ago, and to date, Sprint has had no indication from the FCC when, or even if it will render a decision on the Motion. This same issue is a subject of an appeal of the Eighth Circuit's July 18, 2000, ruling, that was recently granted certiorari by the U.S. Supreme Court.[8] Once again, the time frame for a ruling by the U.S. Supreme Court is unknown.

Because it is uncertain when any federal action may be taken on the issue of the definition of "currently combines", Sprint believes that the Commission should not defer a decision on Issues 4 and 6 pending the outcome of the federal proceedings. Instead, Sprint urges the Commission to render a decision reflecting Sprint's position, so that the parties will have guidance on this issue during what could turn out to be a lengthy interim. The Agreement will include a mutually agreed upon reopener provision that will allow the Parties to revisit provisions of the agreement if necessitated by federal administrative or court action that conflicts with the language ordered by the Commission. [Tr. 338, 339]

In addition to the issue regarding the definition of "currently combines," Sprint's Motion for Reconsideration of the UNE Remand Order requests that the FCC reconsider its determination that 4 lines or more is the appropriate threshold to distinguish between the mass market and medium and large business customers for the

[8] 2001 U.S. Lexis 950; 69 U.S.L.W. 3495

purposes of determining when an ILEC must provide switching as an unbundled network element at cost-based rates. While an FCC decision on this issue might affect the application of the Commission's decision on Issue 7, regarding what rate applies to the number of lines below the threshold when the threshold is reached, the specific issue Sprint has requested the FCC reconsider is not an issue in this arbitration. Once again, Sprint would note that FCC has given Sprint no indication when it might act on Sprint's Motion for Reconsideration.

DATED this 13th day of February, 2001.

SUSAN S. MASTERTON
P.O. Box 2214
Tallahassee, FL 32316-2214
850.599.1560

WILLIAM R.L. ATKINSON
Mailstop NO802
3100 Cumberland Circle
Atlanta, GA 30339
404.649.6221

and

J. JEFFRY WAHLEN
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302
850.425.5471

ATTORNEYS FOR SPRINT
COMMUNICATIONS COMPANY
LIMITED PARTNERSHIP

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 (*) this 13th day of February, 2001, to the following:

Tim Vaccaro *
Division of Legal Services
Florida Public Service Comm.
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Nancy B. White
Kip Edenfield
c/o Nancy H. Sims
BellSouth Telecommunications
150 S. Monroe St., Suite 4000
Tallahassee, FL 32301-1556

F. B. (Ben) Poag
Sprint-Florida, Inc.
(MC FLTLHO0107)
P. O. Box 2214
Tallahassee, FL 32316-2214

Attorney

h:\data\jjw\sprint\000828 brief.doc