

E. EARL EDENFIELD, JR.
General Attorney

BellSouth Telecommunications, Inc
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0763

June 17, 2002

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket No.: 020415-TP
Petition for Declaratory Statement Regarding Sprint PCS'
Service Request**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth's Response to Sprint's Motion to Dismiss and Opposition to Petition for Declaratory Statement, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



E. Earl Edenfield, Jr.

Enclosures

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER - DATE

06281 JUN 17 02

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 020415-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

(*) Electronic Mail and Federal Express this 17th day of June, 2002 to the

following:

Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Monica M. Barone, Esq. (*)
Legal and Regulatory Affairs
Sprint PCS
6391 Sprint Parkway
Mail Stop: KSOPHT0101-Z2060
Overland Park, KS 66251
Tel.: (913) 315-9134
Fax.: (913) 315-0785
mbaron02@sprintspectrum.com

Kenneth A. Hoffman, Esq. (*)
Rutledge, Ecenia, Purnell & Hoffman
215 South Monroe Street
Suite 420
Tallahassee, FL 32302
Tel.: (850) 681-6788
Fax: (850) 681-6515
Represents NE Telephone
Ken@Reuphlaw.com

Susan S. Masterton
Sprint
P.O. Box 2214
Tallahassee, FL 32316-2214
Tel. No. (850) 599-1560
Fax. No. (850) 878-0777
Susan.masterton@mail.sprint.com


E. Earl Edenfield Jr. (EA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Declaratory Statement before)
the Florida Public Service Commission by)
BellSouth Telecommunications, Inc.)
regarding Sprint PCS' Service Request)
_____)

Docket No.: 020415-TL

Filed: June 17, 2002

**BELLSOUTH'S RESPONSE TO SPRINT'S MOTION TO DISMISS AND OPPOSITION
TO PETITION FOR DECLARATORY STATEMENT**

On June 4, 2002, Sprint Corporation, on behalf of Sprint Spectrum, L.P., d/b/a Sprint PCS ("Sprint"), filed a Motion to Dismiss and Opposition to Petition for Declaratory Statement ("Motion to Dismiss"). Sprint's Motion to Dismiss is directed towards the Petition for Declaratory Statement ("Petition") filed by BellSouth Telecommunications, Inc. ("BellSouth") on May 10, 2002 and generally alleges that the Florida Public Service Commission ("Commission") lacks the subject matter jurisdiction to consider the Petition. For the reasons set forth below, the Commission should deny Sprint's Motion to Dismiss.

ARGUMENT

In support of its Motion to Dismiss, Sprint makes a number of allegations (many of which conflict with each other or are inaccurate) designed solely to make this issue appear to be more complex than it actually is. Simply put, this dispute between Sprint and BellSouth involves a conflict between a state tariff and the limitations on a Commercial Mobile Radio Service ("CMRS") provider's right to establish points of interconnection and assign virtual NXX codes outside of the incumbent local exchange company's ("ILEC") franchised service territory. Although not in the context of CMRS traffic, this Commission has previously determined that it has the jurisdiction to address issues concerning virtual NXX codes and points of

interconnection. (*See*, FPSC Docket No. 000075-TP) Contrary to Sprint's assertion, the Commission's jurisdiction over these issues extends to CMRS providers as well.

Sprint's contention that the Commission lacks the subject matter jurisdiction to consider this Petition because the Federal Communications Commission ("FCC") has "preempted states over LEC-CMRS interconnection" is ridiculous. (Motion to Dismiss at 7) Sprint is well aware that this Commission has subject matter jurisdiction over interconnection and intercarrier compensation issues between ILECs and CMRS providers. In fact, Sprint has asked the Commission to exercise subject matter jurisdiction over a Section 252 arbitration proceeding between Sprint and BellSouth which involved issues concerning interconnection and the payment of intercarrier compensation resulting from that interconnection. (*See*, FPSC Docket No. 000761-TP) Thus, Sprint's actions are inconsistent with its position that the Commission is without subject matter jurisdiction to address the issues presented in this Petition.

Even more damaging to Sprint's argument that the FCC has exclusive jurisdiction over interconnection issues between ILECs and CMRS providers is the fact that Sprint (ILEC) has a tariff nearly identical to the BellSouth A35 Tariff that is at issue in this proceeding. At best, it is disingenuous for Sprint to challenge the Commission's jurisdiction to consider issues arising from a tariff when Sprint (ILEC) has a nearly identical tariff that was filed with, and approved by, the Commission. Also instructive is the fact that Sprint acknowledges that it "recently amended its Virtual Rate Center Tariff (containing language similar to BellSouth's current VDE Tariff) to eliminate restrictions relating to routing and rating points in different exchange areas involving a different ILEC." Obviously, Sprint (ILEC) recognized that its tariff, which virtually had the same language as BellSouth's A35 tariff, precluded NXX assignments in the manner in which Sprint is requesting – otherwise there would have been no need to modify the tariff.

Further, Sprint (ILEC) modifying the tariff is an acknowledgment that this issue is within the subject matter jurisdiction of the Commission. If the FCC had exclusive jurisdiction over this issue, then Sprint (ILEC) should have either withdrawn its tariff as irrelevant or declined to modify it claiming that the Commission could not enforce it anyway.

In support of its Motion to Dismiss, Sprint also contends that BellSouth has, in the past, allowed NXX codes to be assigned in the manner requested by Sprint. Contrary to Sprint's assertion, BellSouth has never knowingly allowed such NXX arrangements. By way of history, when BellSouth had responsibilities for numbering assignment, BellSouth would not allow NXX codes to be assigned in the manner requested by Sprint because such an assignment would be contrary to the A35 tariff. However, after the FCC relieved the BellSouth (and the other ILECs) of numbering administration responsibilities in 1998, BellSouth had no control over the assignment of NXX codes.¹ After BellSouth was relieved of numbering administration responsibilities, the new numbering administrator apparently made NXX assignments that were used by CMRS providers in a manner similar to that proposed by Sprint. BellSouth was unaware of these NXX assignments until, as irony would have it, Sprint (ILEC) sent an e-mail² to BellSouth complaining that:

. . . BellSouth (ILEC) has allowed four wireless providers to have a Starke Virtual Rate Center (VRC) on their Type 2A interconnection trunks at the Jacksonville Access Tandem. Further, BellSouth has allowed one CLEC to also have a Starke VRC in the Jacksonville tandem. (This is a violation of Sprint and BellSouth tariffs, because it is taking away access revenue from Sprint and also causing Sprint to incur additional expenses on EAS trunks and toll trunks with no additional compensation).

¹ In 1998, the FCC chose NeuStar as the numbering administrator.

² A copy of the March 8, 2000 email from Sprint (ILEC) to BellSouth is attached hereto.

Equally ironic is the fact that Sprint (PCS) was one of the four wireless carriers that Sprint (ILEC) was complaining had violated BellSouth's A35 tariff by assigning NXX codes outside of BellSouth territory. (*See*, March 8, 2000 e-mail)

In essence, Sprint is attempting to avoid the expenses of interconnecting with the independent ILECs ("ICO") network, but instead leveraging BellSouth's network to achieve a pseudo-presence in the ICO's territory. While the 1996 Act allows Sprint to interconnect with an ILEC at any technically feasible point on the *ILEC's network*, it does not allow Sprint (or any CMRS provider) to manipulate the NXX numbering codes in such a manner as to avoid interconnection, and the resulting compensation, with the ICOs.³ (*See*, First Report and Order, FCC 96-325, ¶1009) This avoidance of compensation and imposition of additional trunking expenses noted by Sprint (ILEC) in the March 8, 2000 e-mail to BellSouth is precisely what Sprint is attempting to do now. As noted above, the Commission has already determined (in the context of wireline traffic) that virtual NXXs cannot be used to avoid toll obligations. Thus, the Commission should not allow Sprint to assign virtual NXX codes outside of BellSouth's service territory.

Finally, in its Motion to Dismiss, Sprint acknowledges that BellSouth has agreed to provision the NXX code requests from the CMRS providers while BellSouth pursues this Petition. Notwithstanding, the Motion to Dismiss is replete with insinuations and allegations that BellSouth ceased or refused to process the NXX codes. (Motion to Dismiss at 9-10, 14) To be clear, all of Sprint's numbers have been loaded with the NXXs designated by Sprint. However,

³ Sprint's contention that it does not use virtual NXX codes is simply wrong. Because Sprint has not assigned CLLI codes to the cell towers in the ICO's territory, and is not interconnected to a central office in the ICO's territory, Sprint's assignment of an NXX code to that cell tower is, in fact, a virtual NXX code.

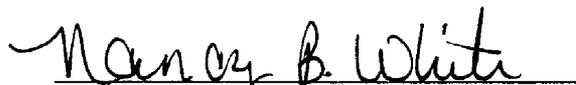
because Sprint's routing and rating points associated with the NXXs involve areas in which BellSouth does not provide local service, issues regarding appropriate billing and compensation have arisen. These matters fall within the purview of this Commission and are properly before this Commission through BellSouth's Petition.

CONCLUSION

BellSouth will carry traffic and recognize the NXX assignments of Sprint and other CMRS providers that require BellSouth to route traffic in a manner inconsistent with its rating points until such time as the Commission rules on this Petition. Nevertheless, the Commission should note that these arrangements result in, at a minimum, inappropriate intercarrier compensation (including reciprocal compensation, access charges and/or inter-company settlements) and appear to be directly contrary to BellSouth's A35 tariff. When a CMRS provider does not interconnect directly with the independent ILEC and insists that BellSouth arrange for the transmission of these local calls with rate centers within the ICO's calling area and routing points within BellSouth's calling area, then all parties are not compensated correctly for the costs incurred for provision of the service. Thus, the Commission should deny Sprint's Motion to Dismiss and rule on BellSouth's Petition.

Respectfully submitted this 17th day of June 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE (CKA)
JAMES MEZA III
150 West Flagler Street, Suite 1910
Miami, FL 33130
(305) 347-5558

R. Douglas Lackey

R. DOUGLAS LACKEY
E. EARL EDENFIELD JR.

(LA)

Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0747

450462

ATTACHMENT A

-----Original Message-----

From: Jack.Burge@mail.sprint.com
[mailto:Jack.Burge@mail.sprint.com]
Sent: Wednesday, March 08, 2000 2:28 PM
To: Gene Lunceford
Cc: joanne.fallis@mail.sprint.com;
barbara.green@mail.sprint.com;
stephen.a.harvey@openmail.mail.sprint.com;
al.lubeck@openmail.mail.sprint.com; paul.milhan@mail.sprint.com;
scott.stringer@openmail.mail.sprint.com;
denise.m.vidal@openmail.mail.sprint.com
Subject: Virtual Rate Center Issue between Sprint and BellSouth
in Florida

Gene,

As I discussed with you earlier on the phone, BellSouth (ILEC)
has

allowed four wireless providers to have a Starke Virtual Rate
Center

(VRC) on their Type 2A interconnection trunks at the
Jacksonville Access Tandem. Further, BellSouth has allowed one
CLEC to also have a Starke VRC in the Jacksonville tandem. (This
is a violation of Sprint and BellSouth tariffs, because it is
taking away access revenue from Sprint and also causing Sprint
to incur additional expenses on EAS trunks and toll trunks with
no additional compensation).

Sprint discovered this when these translation changes were sent
via the LERG (Local Exchange Routing Guide) update process.
The approximate dates of these inappropriate VRC implementations
were:

Alltel Mobile- September 1998
Sprint PCS- April 1999
Powertel-May 1999
Delta Com (CLEC) -???
TSR- March 2000

The BellSouth tariff reference is :
General Subscriber Service Tariff , A35. Interconnection of
Mobile
Services, A35.1.1.R.2.

The four wireless carriers are Sprint PCS, Alltel Mobile,
Powertel and
TSR Wireless.

Issues:

Starke has EAS to the ALLTEL (ILEC) exchanges of Waldo and Booker. Waldo and Brooker are in a different LATA than Starke and Jacksonville, therefore ALLTEL does not have any trunk groups that go between Waldo/Booker and Jacksonville. Consequently, land to mobile calls originating from Waldo and Brooker, terminating to one of these Starke VRCs, are routed over the EAS trunks to Sprint's Starke central office. Sprint then routes the calls over the Starke to Jacksonville toll trunk group. BellSouth picks up the calls in Jacksonville and then routes them over the wireless carrier's Type2A interconnection trunks to the wireless carrier's switch.

Action Required by BellSouth:

BellSouth should rescind these VRCs as they are in violation of both Sprint and BellSouth tariffs. Alltel (ILEC) would need to establish trunks between Waldo/Brooker and Jacksonville. Sprint would then block these codes from coming across the EAS trunk group between Waldo/Brooker and Starke. BellSouth should calculate the lost revenues that Sprint is due for loss access revenue. . . .
Let me know if you need additional information??
Thanks
Jack

Starting on December 13, 1999, my new location:

Jack Burge
Mailstop: KSOPHM0310-3A500
6480 Sprint Parkway
Overland Park, KS 66251
voice: 913-315-7850
fax: 913-315-0628
jack.burge@mail.sprint.com