

ORIGINAL

WOMBLE
CARLYLE
SANDRIDGE
& RICE

PROFESSIONAL LIMITED
LIABILITY COMPANY

One Atlantic Center
1201 West Peachtree Street
Suite 3500
Atlanta, GA 30309

Telephone: (404) 872-7000
Fax: (404) 888-7490
Web site: www.wcsr.com

RECEIVED FPSC
JUL 10 2003
Loretta A. Cecil
Direct Dial: (404) 888-7387
Direct Fax: (404) 870-4826
E-mail: lcecil@wcsr.com

COMMISSION
CLERK

July 10, 2003

VIA FEDERAL EXPRESS

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

DISTRIBUTION CENTER
03 JUL 10 PM 1:32

Re: Petition by AT&T Communications of the Southern States, LLC
And TCG South Florida for Arbitration of Interconnection
Agreement with Sprint-Florida, Incorporated Under the
Telecommunications Act of 1996
Docket No.: 020396-TP
3

Dear Mrs. Bayo: *mas*

Please find enclosed for filing in your office the original and fifteen (15) copies of AT&T Communications of the Southern States, LLC and TCG of South Florida (collectively "AT&T") Pre-Hearing Statement in the above referenced docket.

Please stamp two (2) copies of the Pre-Hearing Statement in the usual manner and return to us via our courier.

If you have any questions, please do not hesitate to contact me at 404-888-7437.

Sincerely yours,

Loretta A. Cecil / MAR

Loretta A. Cecil

Enclosure(s)

AUS _____
CAF _____
CMP _____
COM 3
CTR _____
ECR _____
GCL _____
OPC _____
MWS _____
SEC 1
OTH _____

DOCUMENT NUMBER-DATE

GEORGIA / NORTH CAROLINA / SOUTH CAROLINA / VIRGINIA / WASHINGTON, D.C. 06112 JUL 10 03

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | | |
|---|---|----------------------|
| In Re: Petition for Arbitration of Unresolved |) | |
| Issues Resulting from Negotiations with |) | Docket No. 030296-TP |
| Sprint-Florida, Inc. for Interconnection |) | |
| Agreement by AT&T Communications of |) | Filed: July 10, 2003 |
| The Southern States, LLC d/b/a AT&T and |) | |
| TCG South Florida |) | |
| |) | |

PRE-HEARING STATEMENT OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC, AND TCG SOUTH FLORIDA

Pursuant to Florida Public Service Commission ("Commission") Order PSC-03-0692-PCO-TP dated June 9, 2003, AT&T Communications of the Southern States, LLC and TCG South Florida (collectively "AT&T") hereby submit the following Pre-Hearing Statement regarding the Petition filed by AT&T against Sprint-Florida, Incorporated ("Sprint") in this proceeding.

A. AT&T WITNESSES:

Direct:

David L. Talbott – Issue 1-14

Rebuttal:

David L. Talbott – Issue 1-9, Issue 11

Jay M. Bradbury – Issue 12

AT&T reserves the right to call additional witnesses to respond to Commission or Sprint inquiries not addressed in AT&T's Direct and Rebuttal Testimony, as well as any new issues that may be designated by the Pre-Hearing Officer at the Pre-Hearing Conference to be held on July 24, 2003.

DOCUMENT NUMBER-DATE
06112 JUL 10 8
FPSC-COMMISSION CLERK

B. AT&T TESTIMONY EXHIBITS

Direct:

David L. Talbott – None.

Rebuttal:

- (1) David L. Talbott Rebuttal Exhibit 1 – POI At Terminating Switch
- (2) David L. Talbott Rebuttal Exhibit 2 – POI Distant to Terminating Switch
- (3) David L. Talbott Rebuttal Exhibit 3 – AT&T POI At Terminating Switch
- (4) David L. Talbott Rebuttal Exhibit 4 – AT&T POI Not At Terminating Switch

AT&T reserves the right to file additional exhibits in support of any Testimony which AT&T subsequently files to respond to Commission or Sprint inquiries not presently addressed in AT&T's Direct and Rebuttal Testimony, as well as any new issues which may be designated by the Pre-Hearing Officer at the Pre-Hearing Conference to be held on July 24, 2003. AT&T also reserves the right to introduce exhibits for cross examination, impeachment, or for any other purposes authorized by the Commission's rules or the Florida Rules of Civil Procedure.

AT&T HEARING EXHIBITS:

- (1) Any Exhibits attached to AT&T Direct and Rebuttal Testimony;
- (2) Any discovery responses provided by AT&T to Sprint or Commission Staff, and all discovery responses provided by Sprint to AT&T or Commission Staff;
- (3) Any testimony, pleadings or summary of ex parte discussions filed by Sprint with any State Commission or the FCC;
- (4) Contract language exchanged between AT&T and Sprint relative to interconnection negotiations in dispute between the Parties;

- (5) Matrixes or other summary documents of various “red-lined” versions of contract language exchanged between AT&T and Sprint relative to interconnection negotiations in dispute.

C. STATEMENT OF BASIC POSITION:

Sprint is attempting to limit the competitiveness of today’s marketplace by forcing AT&T to work within an outdated “traditional telephony paradigm” regarding network interconnection and related compensation issues. The Commission should rejected Sprint’s outdated paradigm in resolving the Issues set forth in AT&T’s Petition.

D. STATEMENT OF ISSUES AND POSITIONS:

Issue 1: What are each Party’s rights and obligations with respect to establishing a point of interconnection (POI) to the other Party’s network and delivery of its originating traffic to such POI?

AT&T Witness: David L. Talbott

AT&T Position: §251(c)(2) of the Telecommunications Act of 1996¹ (“Act”) requires Sprint, as an incumbent local exchange carrier (“ILEC”), to provide interconnection at any technically feasible point on its network. AT&T, as a competing local exchange carrier (“CLEC”), must interconnect directly or indirectly with another telecommunications carrier under § 251(a)(1) of the Act. The transport of originating traffic by the ILEC and the CLEC to the point of interconnection is the responsibility of each originating Party. AT&T has the *right* under §251(c)(2) to select where it chooses to interconnect with the ILEC. AT&T has the *obligation* to pay for its originating traffic to the point of interconnection. Sprint has the *right* to designate an independent point of interconnection for Sprint originated traffic as long as both Parties agree to the location. The *obligations* of Sprint to provide for originating traffic to the point of interconnection and to allow interconnection at any technically feasible point are required pursuant to 47 C.F.R. §51.305(a)(2).

Issue 2: May AT&T require the establishment of a mid-span fiber meet arrangement or is the establishment of a mid-span fiber meet arrangement conditional on the amount of traffic from one network to the other being roughly balanced?

¹ *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56.

AT&T Witness: David L. Talbott

AT&T Position: AT&T may require a mid-span fiber meet arrangement because as an CLEC, AT&T may choose any technically feasible method of interconnection under §252(c)(2) of the Act. The FCC determined in its *Local Competition Order*² that a mid-span fiber meet is a technically feasible method of interconnection. Mid-span fiber meet is defined as the interconnection between two LECs where each provides its own cable and equipment to the meet point of the cable facility. It is at this point that ownership and responsibility for each LEC's portion of the transmission facility is established. Further, Sprint, as the LEC, has a duty to provide mid-span fiber meet arrangements upon request under 47 C.F.R. §51.321(b)(2), unless Sprint proves with clear and convincing evidence that specific adverse impacts would result. Sprint asserts that a "balancing act" is required as to traffic before it must agree to mid-span fiber meet arrangements. However, there is no legal authority for this position under applicable law. The FCC recently adopted AT&T's position on this issue in the *Virginia Arbitration Order*.³

Issue 3: When establishing a mid-span fiber meet arrangement, should AT&T and Sprint equally share the reasonably incurred construction costs?

AT&T Witness: David L. Talbott

AT&T Position: Yes. The FCC adopted virtually all of the AT&T position in the *Virginia Arbitration Order*, finding that "[i]n a meet point arrangement, each party pays its portion of the cost to build out the facilities to the meet point," and that it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement. In the *Virginia Arbitration Order*, the FCC adopted AT&T's language to split the cost of construction equally and the FCC added that maintenance costs and forward economic costs of imbedded facilities used to construct the mid-span fiber meet arrangement should be added as well.

Issue 4: Should certain traffic types be excluded from interconnection via a mid-span fiber meet arrangement?

² In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15499 (1996) ("*Local Competition Order*").

³ In the Matter of the Petition of AT&T Communications of Virginia, Inc., pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., Memorandum Opinion and Order, CC Docket No. 00-251, released July 17, 2002. ("*Virginia Arbitration Order*")

AT&T Witness: David L. Talbott

AT&T Position: No. There is no statutory, technical, or Commission authority to limit the types of traffic which can be exchanged over a mid-span fiber meet arrangement. Because both carriers will pay equally for the cost of the mid-span fiber meet arrangement, each carrier should be able to utilize the arrangement for any and all types of traffic. Further, § 251(c)(2)(A) of the Act requires the ILEC provide for . . . “transmission and routing of exchange service and exchange access,” without limitation as to the type or scope of traffic utilized in interconnection.

Issue 5: How should AT&T and Sprint define Local Calling Area for purposes of their interconnection agreement?

AT&T Witness: David L. Talbott

AT&T Position: The Commission should define local calling area consistently with its ruling in its *Florida Reciprocal Compensation Order*⁴ which found that the originating carrier's retail local calling area should be used as the default local calling area for purposes of reciprocal compensation. Sprint has presented no new evidence for the Commission to abandon its prior ruling.

Issue 6: How should AT&T and Sprint define Local Traffic for purposes of their interconnection agreement?

AT&T Witness: David L. Talbott

⁴ *In Re: Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Florida PSC Docket No. 000075-TP, FL PSC Order PSC-02-1248-FOF-TP, September 10, 2002 (“*Florida Reciprocal Compensation Order*”).

AT&T Position: The definition of Local Traffic should be consistent with the FCC's *ISP Remand Order*,⁵ and the D.C. Circuit's *Remand*⁶ of that *Order*, which provide that all telecommunications traffic is subject to reciprocal compensation in accordance with §251(b)(5) of the Act, except for that traffic which falls into the §251(g) "carve out" provisions. The terms "local" and "nonlocal" traffic used by Sprint have become irrelevant in the current regulatory environment. Therefore, AT&T's language (which is consistent with the FCC's *ISP Remand Order*, and the DC Circuit's *Remand* of this *Order*) should be utilized for purposes of defining Local Traffic in the interconnection agreement.

Issue 7: **How should traffic originated and terminated by telephone and exchanged by the parties and transported over internet protocol (in whole or in part, and including traffic exchanged between the parties originated and terminated to enhanced service providers) be compensated?**

AT&T Witness: David L. Talbott

AT&T Position: This is not an appropriate issue in this arbitration. Previously, in the Commission's *Florida Reciprocal Compensation Order*, the Commission decided not to address compensation for voice over internet protocol ("VOIP") traffic finding that ". . . this issue is not ripe for consideration at this time."⁷ Thereafter, the Commission also declined to address whether VOIP traffic constitute "telecommunications" under Florida law in its *CNM Networks, Inc. Order*.⁸ The reasoning behind the Commission decision was its recognition that the FCC was considering AT&T's VOIP Petition regarding compensation for VOIP traffic. AT&T's VOIP Petition has yet to be ruled upon by the FCC. Both AT&T and Sprint have had the opportunity to make comments regarding compensation for VOIP traffic in the context of AT&T's VOIP Petition. Therefore, it remains "administratively inefficient to make a determination on this issue while the FCC proceeding is underway and while the VOIP issue is not right for consideration."⁹

⁵ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, FCC Docket Nos.: 96-98, 99-68, Order on Remand and Report and Order, April 27, 2001, ("FCC *ISP Remand Order*").

⁶ *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir.)

⁷ *Florida Reciprocal Compensation Order* at Page 37.

⁸ *In Re: Petition CNM Networks, Inc. For Declaratory Statement That CNM's Phone-To-Phone Internet Protocol (IP) Technology Is Not "Telecommunications" And That CNM Is Not A Telecommunications Company" Subject To Florida Public Service Commission Jurisdiction*, FL PSC Docket No. 021061-TP, Florida PSC Order PSC-02-1858-FOF-TP, December 31, 2002, at Page 1.

⁹ *Id.* at Page 1.

Issue 8: Should ISP-Bound Traffic be limited to calls to an information service or internet service provider which are dialed by using a local call dialing pattern?

AT&T Witness: David L. Talbott

AT&T Position: No. The FCC has held that ISP-bound traffic is interstate in nature and thus presently falls under the jurisdiction of the FCC and is governed by the *FCC's ISP Remand Order*. In the *FCC's ISP Remand Order*, the FCC held that ISP bound traffic fell into the §251(g) "carve out" provisions, meaning that reciprocal compensation did not apply to this traffic. However, the *FCC's ISP Remand Order* was appealed to the DC Circuit which held that ISP-bound traffic did not fall into the §251(g) "carve out" provision. Notwithstanding this finding, the DC Circuit allowed the FCC's rate caps for ISP traffic to remain in effect pending further action by the FCC. Accordingly, the DC Circuit did not vacate the FCC's intercarrier compensation mechanism outlined by the FCC for ISP-bound traffic. Thus, the *ISP Remand Order* continues to govern compensation for ISP-bound traffic. As a result, this Commission is required to implement the *FCC's ISP Remand Order*. Moreover, because this Commission has no jurisdiction over ISP-bound traffic, it cannot modify the *FCC's ISP Remand Order* by adopting Sprint's proposed language that ISP-bound traffic should be limited to calls dialed using a local call dialing pattern.

Issue 9: (a) Should AT&T be required to compensate Sprint for the transport of ISP-Bound Traffic between Sprint's originating local calling area and a POI outside Sprint's local calling area?

(b) Do the compensation obligations change when a virtual NXX is used?

AT&T Witness: David L. Talbott

AT&T Position: No. AT&T should not be required to compensate Sprint for Sprint's originating traffic as has been previously discussed in Issue 1 of this proceeding. The law as provided in 47 C.F.R. § 51.703(b) clearly prohibits a LEC, such as Sprint, from assessing charges on any other telecommunications carrier for traffic that originates on the LEC network. Because there is no exclusion to this Rule, it applies to ISP-bound traffic, regardless of the "NXX" status of the traffic.

Issue 10: When should either AT&T or Sprint be required to install and retain direct end office trunking between an AT&T switching center and a Sprint end office?

AT&T Position: This Issue has been resolved between the Parties and will not be arbitrated in this proceeding.

Issue 11: When should each Party be required to establish a direct interconnection for (a) Indirect Traffic? (b) Transit Traffic?

AT&T Witness: David L. Talbott

AT&T Position: § 251(a) of the Act places a duty on each telecommunications carrier to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. As a CLEC, federal rules provide AT&T broad discretion on the location and method employed to interconnect with an ILEC network. Further, Sprint cannot require direct interconnection when the Sprint end office subtends another ILEC tandem switch¹⁰. There is no functional difference between *indirect* and *transit* traffic. The Parties agree that, in definition, *indirect* traffic originates and terminates between AT&T and Sprint exchange customers and is routed through the *transit* service of a third party, such as that of BellSouth Telecommunications, Inc. *Transit* traffic originates and terminates between AT&T and a third party carrier subtending Sprint's tandem switch and is routed through Sprint's *transit* switch. AT&T and Sprint have agreed to use one-way, directionalized trunks wherein each party may determine, at its sole discretion, where and when to replace indirect interconnection with direct interconnection. The interconnection relationship between a CLEC and an ILEC requires flexibility with respect to network architecture in order to create a truly competitive environment. The Commission should adopt AT&T's proposed language because it promotes flexibility, rather than adopt the arbitrary threshold approach proposed by Sprint.

Issue 12: Should Sprint be required to continue to provide its DSL service when AT&T provides the voice service to the customer?

AT&T Witness: Jay M. Bradbury

AT&T Position: Yes. The Commission should require Sprint, as an ILEC, to continue to provide its retail DSL service to a customer who may choose to change its local service to AT&T. Allowing Sprint to disconnect its retail DSL service to the consumer as a result of the consumer's decision to select another provider of local service is discriminatory and violates both federal

¹⁰ Tandem switch which carries traffic between end office switches exchanging smaller volumes of traffic and is also used for overflow traffic when direct routes are full.

and Florida law. Sprint argues that there are other DSL alternatives available to the consumer, thus it should not have to continue to provide such service if the consumer wants AT&T for local service. This Commission has chosen a path of competition and consumer protection. Establishing a rule which allows an ILEC to decide how and when it will allow choice is bad public policy.

Issue 13: What are the Parties' rights and obligations following a Legally Binding Action (as defined by agreement of the Parties in Section 1, Part B of the agreement) if such action is not stayed but still subject to review by the Commission, FCC or courts?

AT&T Position: This Issue has been resolved between the Parties and will not be arbitrated in this proceeding.

Issue 14: Should the terms and conditions of the Performance Measures approved by the Commission be incorporated by reference into the agreement, or should separate terms and conditions be set forth in the agreement?

AT&T Position: This Issue has been resolved between the Parties and will not be arbitrated in this proceeding.

E. QUESTION OF LAW(S) AT ISSUE:

AT&T Position: As set forth above.

F. POLICY QUESTIONS AT ISSUE:

AT&T Position: As set forth above.

G. STIPULATED ISSUES:

AT&T Position: Issues 10, 13 and Issue 14 have been resolved between the Parties.

H. PENDING MOTIONS:

AT&T Position: None at this time.

I. CLAIMS OR REQUESTS FOR CONFIDENTIALITY:

AT&T Position: AT&T currently does not have any claims or requests for confidentiality in this proceeding. AT&T reserves the right for to make

claims or requests for confidentiality pending on-going discovery in this proceeding.

J. REQUIREMENTS SET FORTH IN THIS ORDER THAT CANNOT BE COMPLIED WITH:

AT&T Position: AT&T will comply with the requirements set forth in Order PSC-03-0692-PCO-TP.

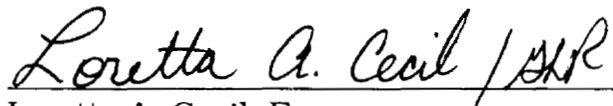
K. ANY DECISIONS OR PENDING DECISION OF THE FCC OR ANY COURT THAT HAS OR MAY PREEMPT OR OTHERWISE IMPACT THE COMMISSION'S ABILITY TO RESOLVE ANY OF THE ISSUES PRESENTED OR THE RELIEF REQUESTED IN THIS MATTER:

AT&T Position: AT&T is unaware of any decision or pending decision of the FCC or any other court that has or may preempt the Commission's ability to resolve any of the issues presented for the relief requested in this proceeding.

L. OBJECTIONS TO WITNESS QUALIFICATION AS AN EXPERT:

AT&T Position: AT&T has no objections to the qualifications of the witnesses in this proceeding.

Respectfully submitted this the 10th day of July, 2003.



Loretta A. Cecil, Esq.
Florida Bar No. 358983
Womble Carlyle Sandridge & Rice PLLC
1201 West Peachtree Street
Suite 3500
Atlanta, GA 30309
(404) 888-7437 (telephone)
(404) 870-4826 (facsimile)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Pre-Hearing Statement on behalf of AT&T Communications of the Southern States, LL C and TCG South Florida (collectively "AT&T") was furnished via electronic delivery and First-Class U. S. Mail to the following parties of record on this 10th day of July, 2003:

Ben Poag/Susan Masterton
Sprint Telecommunications, Inc.
1313 Blairstone Road
Tallahassee, FL 32301-3021

Janet Luehring, Esq.
Sprint Telecommunications, Inc.
6480 Sprint Parkway
Overland Park, KS 66251

Mitch Menezes, Esq.
AT&T
1875 Lawrence Street
Suite 1575
Denver, CO 80202-1847

Roxanne Douglas, Esq.
AT&T
1200 Peachtree Street, NE
Suite 8100
Atlanta, GA 30309

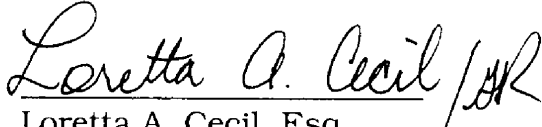
David Eppsteiner, Esq.
AT&T
Suite 8100
1200 Peachtree Street, NE
Atlanta, GA 30309

J. Jeffry Wahlen, Esq.
Ausley & McMullen
P. O. Box 391
Tallahassee, FL 32301
227 South Calhoun Street
Tallahassee, FL

Kenneth A. Schifman, Esq.
General Attorney Sprint
6450 Sprint Parkway
Overland Park, KS 66251

Ms. Lisa Riley
AT&T
1200 Peachtree Street, NE
Atlanta, GA 30309

Tracy Hatch, Esq.
AT&T
101 N. Monroe Street
Suite 700
Tallahassee, FL 32301


Loretta A. Cecil, Esq.