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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
REBUTTAL TESTIMONY
OF
PETER SYWENKI
DOCKET NO. 041464-TP

SECTION I - INTRODUCTION

Q. Please state your name, title and business address.

A. My name is Peter Sywenki. I am Director – Regulatory Policy, for Sprint Corporation. My business address is 6450 Sprint Parkway, Overland Park, Kansas 66251.

Q. Are you the same Peter Sywenki that filed direct testimony in this proceeding on May 9, 2005?

A. Yes.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to address the direct testimony of FDN Witness Kevin P. Smith with respect to the following issues: Issue No. 5 Definition of Local Traffic, and Issues 35 through 39 Interconnection and Intercarrier Compensation. Specifically, I address Mr. Smith’s erroneous and unsupported contention that Sprint’s access charges are a competitive barrier for FDN, I address his erroneous and unsupported contention that FDN be permitted a

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1 different intercarrier compensation scheme than other carriers, and I explain why
2 his reference to an intercarrier compensation agreement between FDN and
3 BellSouth provides no basis for determining intercarrier compensation between
4 FDN and Sprint. In addition, I address Mr. Smith's contentions regarding the
5 establishment of interconnection points and intercarrier compensation for VNXX
6 and VoIP traffic. The Commission should adopt Sprint's contract provisions to
7 ensure appropriate intercarrier compensation based on the existing definitions of
8 local and long distance traffic and to ensure efficient establishment of
9 interconnection points.

10
11 **SECTION II – DISCUSSION OF UNRESOLVED ISSUES IN FDN's DIRECT**
12 **TESTIMONY**

13
14 **Q. In his testimony, Mr. Smith complains about the level of competition in**
15 **Sprint territory. Do you agree with his complaint?**

16 **A.** No. Mr. Smith's own testimony shows that competition is rapidly expanding in
17 Sprint's territory. In his reference to the last PSC competition report, he shows
18 that CLEC market share in Sprint's territory has doubled in just two years (Smith
19 at page 5, lines 1-4). A cursory review of current facts readily demonstrates that
20 competition is indeed taking a firm hold and is rapidly expanding in Sprint's
21 territory. For example, in spite of the fact that there have been 74,000 residential
22 housing starts in Sprint's territory over the past year, Sprint experienced a
23 reduction in residential access lines of nearly [REDACTED] lines, approximately [REDACTED]

1 lines lost per day, over this period. For 2005, through May Sprint has lost nearly
2 █████ residential lines, an average of █████ lines per day. And, for the first 19
3 days of June, Sprint is experiencing an average loss of █████ lines per day.
4 Moreover, line losses do not capture the impact of losses from competitive long
5 distance service substitution. In addition to the loss of long distance and access
6 revenue when Sprint loses a line to a competitor, the popularity of wireless, email,
7 instant messaging, and other forms of internet and long distance communication
8 have all contributed to the rapid erosion of long distance and switched access
9 minutes and revenue. Even if a customer maintains a line with Sprint, customers
10 have many choices and are exercising these choices for their long distance
11 communications needs. Despite ongoing, significant reductions in long distance
12 rates which would tend to stimulate usage, Sprint's originating intrastate switched
13 access minutes have declined by nearly █████ since 2001 in Florida. These
14 numbers clearly show that long distance is fully competitive and the line loss data
15 shows that local competition is rapidly expanding. Finally, Mr. Smith's
16 comparison of the level of competition in Sprint territory to that found in
17 BellSouth territory is of no value. Sprint's service territory is much more rural
18 than BellSouth's. In the words of FDN's witness, "Sprint does not serve as many
19 large urban centers as does BellSouth" and "in the initial phases of competition, at
20 least, the influx of CLECs focused on larger urban areas." (Smith at page 5, lines
21 14-16). Given these obvious and undisputed differences between Sprint and
22 BellSouth service territories, FDN's comparison is meaningless. Despite FDN's
23 attempt to downplay the level of competition in Sprint territory, the evidence

1 clearly demonstrate that competition in Sprint territory is robust and rapidly
2 expanding.

3

4 **Q. How do you respond to FDN's contention that high access charges are a**
5 **competitive barrier?**

6 **A.** I disagree. First of all, the growth of competition in Sprint's territory shown
7 above belies FDN's assertion that Sprint's access charges are a competitive
8 barrier. In fact, high access charges and other implicit subsidies actually provide
9 competitive advantages to new entrants because they can concentrate on serving
10 high volume users and consumers of non-basic services that generate
11 disproportionately greater amounts of access revenue and other subsidies.
12 Moreover, access charges are not a competitive barrier because both new entrants
13 and incumbents are entitled to assess the same access charges. The competitive
14 barrier for new entrants is low prices for basic local residential service, and it
15 would appear that FDN is not interested in providing this service anyway. FDN's
16 website shows two offers of residential service, "FDN Rez Pac" for \$29.99 per
17 month and "FDN Rez Pac Plus" for \$33.99 per month. Both offers are bundles
18 that require the customer to take several features and include long distance
19 service. There are no offers on the website for standalone basic local service and
20 based on a call to FDN customer service, "FDN Rez Pac" is their lowest price
21 residential service. Unless FDN wishes to serve customers that only take basic
22 local service, the current access and local rate structure present no competitive
23 barrier to FDN.

1 **Q. Has the Commission already addressed the issue of whether intrastate access**
2 **charges present a barrier to competition?**

3 **A.** Yes. As the Commission has already found, permitting incumbents to increase
4 basic local residential rates “will make the residential market more economically
5 attractive for CLECs, which should lead to an increase in choice of providers.
6 This will be accomplished by increasing in the short term the rate at which
7 residential services can be offered by competitors, leading to increased profit
8 margins for CLECs serving residential customers.” (FL PSC Order No. PSC-03-
9 1469-FOF-TL Dockets Nos. 030867-TL, 030868-TL, 030869-TL, 030961-TI,
10 Page 28). Obviously, the Commission correctly understands that a competitive
11 barrier caused by the current regulatory rate structure exists in the residential
12 market for basic local services and the Commission correctly understands that the
13 cause is low incumbent rates for basic local service and that the remedy is
14 increased incumbent rates for basic local residential service. In order to eliminate
15 implicit subsidies, both the Florida legislature and the Commission have taken
16 reform steps and as I indicated in direct testimony, Sprint has consistently
17 supported reform efforts in Florida and at the federal level. Consistent with
18 Florida law, Sprint filed and the Commission approved a rate rebalancing petition
19 that would allow Sprint to significantly lower Sprint’s intrastate access charges
20 while simultaneously increasing basic local rates on a revenue neutral basis. This
21 is the appropriate approach and the Commission should reject FDN’s incorrect
22 assertions about access charges.

23 **Q. Is FDN’s proposal for defining local traffic competitively-neutral?**

1 **A.** No. FDN is not looking to lower a barrier to competition as it implies, nor is its
2 proposal competitively-neutral. FDN is looking for discriminatory treatment in
3 inter-carrier compensation. It wants its intraLATA long distance traffic to be
4 subject to lower reciprocal compensation rates while all other carriers are subject
5 to access charges for this traffic. FDN does not even attempt to hide the fact that
6 it wants discriminatory treatment, stating “the issue FDN presents is within the
7 context of a specific arbitration between two carriers, not a rule case.” FDN fails
8 to provide any coherent rationale why it should be afforded discriminatory
9 treatment and essentially admits its proposal would provide FDN an advantage
10 over other carriers. (Smith at page 7, lines 8-19) The Commission has already
11 rejected FDN’s discriminatory proposal to define local traffic as LATA-wide,
12 stating, “A LATA-wide wholesale calling regime appears to discriminate against
13 IXCs. While ALECs and ILECs would exchange all traffic in a LATA at
14 reciprocal compensation rates, IXCs would continue to pay originating and
15 terminating access charges for carrying traffic over some of the same routes.” (In
16 re: Investigation into appropriate methods to compensate carriers for the exchange
17 of traffic subject to Section 251 of the Telecommunications Act of 1996, Docket
18 No. 000075-TP (Phases II and IIA), Order No. PSC-02-1248-FOF-TP, ISSUED:
19 September 10, 2002, Page 52). Moreover, FDN’s proposal for LATA-wide local
20 calling in the context of this arbitration is even more discriminatory because it
21 would not only discriminate against IXCs which was a reason for the
22 Commission’s rejection, but it would also discriminate against other CLECs that
23 are not a party to this arbitration and would, therefore, continue to be subject to

1 access charges. The Commission should again reject FDN's discriminatory
2 proposal and adopt Sprint's competitively-neutral proposal to use the same
3 definition of local traffic that applies to all carriers.

4
5 **Q. FDN references interconnection terms it has with BellSouth whereby the**
6 **parties agree to reciprocal compensation for calls over local trunks within**
7 **the LATA. Should the Commission consider this relevant?**

8 **A.** No. I have not seen the referenced terms, so I can't speak to the specifics of that
9 agreement. Also, it would not be appropriate to consider just one provision from
10 another contract without an understanding of all of the puts and takes that went
11 into the entirety of the contract. Regardless, there are a number of fundamental
12 differences between BellSouth and Sprint that would make such a compensation
13 arrangement between FDN and BellSouth irrelevant to traffic exchange and
14 compensation between FDN and BellSouth. First, as FDN recognizes, Sprint's
15 intrastate access rates are higher than BellSouth's rates (Smith at page 4, lines 6-
16 7) because Sprint's service territory is more costly to serve than BellSouth's
17 service territory since Sprint does not serve as many large urban centers as
18 BellSouth (Smith at page 5, line 14-15). Therefore, Sprint is more heavily reliant
19 on support from access charges than is BellSouth. Second, BellSouth's local
20 calling scopes are larger than Sprint's and FDN likely has more customers
21 residing within BellSouth's local calling scopes than it has residing within
22 Sprint's local calling scopes. This means that if there were LATA-wide calling, a
23 greater proportion of traffic exchanged between FDN and BellSouth is going to be

1 within BellSouth's local calling area than is the case for traffic exchanged
2 between Sprint and FDN. In summary, BellSouth would not face the same
3 exposure to reduced access revenue under a LATA-wide-local compensation
4 scheme as Sprint faces. Due to these fundamental differences, any compensation
5 arrangement between BellSouth and FDN should have no bearing on intercarrier-
6 compensation between FDN and Sprint. Again, if the Commission thought that
7 LATA-wide was the right basis for determining inter-carrier compensation for all
8 carriers, it would have adopted that in its generic proceeding. The Commission
9 correctly rejected LATA-wide in the generic proceeding and it should reject it in
10 this arbitration as well.

11
12 **Q. How do you respond to the FDN statement that "the local toll calling areas**
13 **established by an ILEC are artificial boundaries."?**

14 **A.** The existing Commission-approved boundaries that delineate long distance calls
15 subject to access charges from local calls subject to reciprocal compensation form
16 the basis of Sprint's regulated retail and wholesale rate structure. The existing
17 Commission-approved distinction between local and long distance calls is based
18 on boundaries that have been established with regard to Sprint's historical
19 regulated service territory and under the oversight of the Commission. If FDN
20 wishes to negatively portray the existing Commission-approved boundaries as
21 "artificial" because they are, at least in part, a product of regulation, the
22 boundaries that FDN suggests (i.e., LATAs) are certainly every bit as "artificial"
23 because LATA lines are entirely a government creation. Moreover, using FDN

1 “logic”, if we’re going to redraw the boundary lines for determining when access
2 applies and when reciprocal compensation applies, instead of using the artificial
3 LATA lines, why not use state lines? Why stop there? We might as well use the
4 domestic US borders, or North America, or even the entire planet. Ultimately, it
5 probably makes sense to eliminate all traffic distinctions for the purposes of inter-
6 carrier compensation. The FCC has a proposed rulemaking underway that is
7 exploring proposals to eliminate traffic distinctions and to create a uniform
8 system of inter-carrier compensation, interconnection, and universal service
9 which would eliminate this issue altogether. However, in the meantime until such
10 reform is complete, FDN’s proposal to use its proposed artificial boundaries
11 solely for the traffic it exchanges with Sprint should be rejected because it creates
12 discrimination problems, universal service support erosion problems, and
13 necessitates billing system modifications for the benefit of one carrier. Until such
14 reform is completed, continuing to use the existing, commission-approved
15 boundaries as Sprint proposes will ensure competitive-neutrality among carriers
16 and will not threaten the erosion of universal service support. The Commission
17 should reject FDNs attempt to redraw the intercarrier compensation boundary line
18 in this arbitration.

19
20 **Q. Please respond to the statement that “FDN does not believe Sprint is**
21 **somehow entitled to [access] revenue from FDN and its customers” on**
22 **intraLATA long distance calls.**

1 A. Sprint is entitled to access charge revenue for intraLATA long distance calls just
2 as FDN is entitled to access charges for such calls.
3

4 Q. **Please comment on FDN's insistence on tying the establishment of**
5 **interconnection points to the definition of local traffic.**

6 A. These are separate and distinct issues. The definition of local traffic for purposes
7 of determining the appropriate form of intercarrier compensation, reciprocal
8 compensation or access charges, is based on the geographic originating and
9 terminating points of the call. This is the case regardless of the location or
10 number of interconnection points connecting the FDN and Sprint network. With
11 respect to the establishment of interconnection points, in order to avoid
12 unnecessary, duplicative tandem switching and additional transport costs, FDN
13 should establish interconnection trunking to each tandem to which FDN will be
14 exchanging traffic with customers served by the end offices that subtend those
15 tandems. Sprint's proposal for tandem interconnection is reasonable because it
16 provides a reasonable allotment of transport obligations between Sprint and FDN.
17 Tandem interconnections are the most highly utilized form of interconnection in
18 the industry today because tandems are traffic aggregation points. Moreover,
19 Sprint's tandem interconnection proposal is reasonable because it provides FDN
20 parity with Sprint since Sprint does not use tandem-to-tandem routes for its own
21 local traffic. Sprint's interconnection proposal is appropriate regardless of the
22 definition of local traffic.
23

1 **Q. FDN states that its concern about VNXX is a lack of reciprocity. How do you**
2 **respond?**

3 A. VNXX is typically used by CLECs to allow customers to dial-up a distant ISP
4 using a local dialing pattern. The use of a VNXX is not part of Sprint's business.
5 To the extent FDN uses VNXX, Sprint's proposed language is consistent with the
6 Commission's rulings that such calls are not local calls and are not subject to
7 reciprocal compensation.

8
9 **Q. FDN suggests that the Commission should defer resolution on the treatment**
10 **of VoIP traffic. How do you respond?**

11 A. The Commission should reject this "do nothing" suggestion because it will
12 increase Sprint's exposure to access arbitrage, it will lead to further dispute and
13 litigation, and it is not competitively-neutral. If left unresolved, FDN will
14 unilaterally determine that its VoIP traffic is not subject to access charges. A
15 better course of action would be to resolve this issue by ruling that both VoIP and
16 non-VoIP traffic be treated the same for intercarrier compensation purposes. This
17 approach would ensure competitive neutrality among technologies and carriers,
18 would avoid regulatory arbitrage, and, assuming compliance with the ruling,
19 avoid costly disputes and litigation.

20
21 **Q. Does this conclude your testimony?**

22 A. Yes.

23