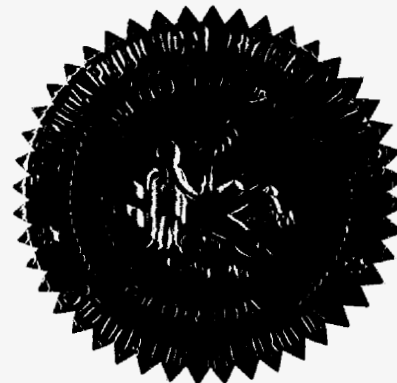


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041464-TP

In the Matter of:

PETITION FOR ARBITRATION OF CERTAIN
UNRESOLVED ISSUES ASSOCIATED WITH
NEGOTIATIONS FOR INTERCONNECTION,
COLLOCATION, AND RESALE AGREEMENT
WITH FLORIDA DIGITAL NETWORK, INC.
D/B/A FDN COMMUNICATIONS, BY
SPRINT-FLORIDA, INCORPORATED.



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PROCEEDINGS: PREHEARING

BEFORE: COMMISSIONER J. TERRY DEASON
 Prehearing Officer

DATE: Monday, July 18, 2005

TIME: Commenced at 1:30 p.m.
 Concluded at 2:10 p.m.

PLACE: Betty Easley Conference Center
 Room 152
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
 Official FPSC Hearings Reporter
 (850) 413-6732

DOCUMENT NUMBER-DATE

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FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

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14 Florida Public Service Commission Staff.

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P R O C E E D I N G S

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2 COMMISSIONER DEASON: Call the prehearing conference
3 to order.

4 Could I have the notice read, please.

5 MS. SCOTT: Pursuant to notice issued June 29th,
6 2005, this time and place has been set for a prehearing
7 conference in Docket Number 041464-TP, petition for arbitration
8 of certain unresolved issues associated with negotiations for
9 interconnection, collocation and resale agreement with Florida
10 Digital Network, Inc., doing business as FDN Communications by
11 Sprint-Florida, Incorporated.

12 COMMISSIONER DEASON: Thank you.

13 Take appearances.

14 MS. MASTERTON: Susan Masterton representing Sprint.

15 MR. FEIL: Matthew Feil with FDN Communications. And
16 on the phone, I hope, is Michael Sloan with the law firm of
17 Cole, Raywid & Braverman, also representing FDN.

18 MR. SLOAN: I'm here. Thank you, Matt.

19 COMMISSIONER DEASON: Very good. Mr. Sloan, I assume
20 you can hear us okay?

21 MR. SLOAN: I can. Thank you, Commissioner.

22 COMMISSIONER DEASON: Okay.

23 MR. SLOAN: Can you hear me?

24 COMMISSIONER DEASON: Yes, very well.

25 MR. SLOAN: Excellent.

1 COMMISSIONER DEASON: Staff, preliminary matters?

2 MS. SCOTT: Kira Scott on behalf of the Florida
3 Public Service Commission.

4 MR. FORDHAM: Lee Fordham representing the
5 Commission.

6 COMMISSIONER DEASON: Preliminary matters.

7 MS. SCOTT: Yes, Commissioner. There's an
8 outstanding motion by FDN. It is a motion to compel that was
9 filed June 29th.

10 COMMISSIONER DEASON: What is the parties' pleasure
11 to addressing this? Are you willing to address it at this
12 time, or --

13 MR. FEIL: Commissioner, given the opportunity, I
14 would like to take two minutes to address it.

15 COMMISSIONER DEASON: Okay. Ms. Masterton, you're
16 prepared to respond, I take it?

17 MS. MASTERTON: Yes, I am.

18 COMMISSIONER DEASON: Okay.

19 Mr. Feil, please proceed.

20 MR. FEIL: The motion to compel basically covers two
21 categories of discovery request. One category is UNE
22 rate-related questions which pertain to Issue Number 34 in the
23 proceeding, and the other category is FDN's Interrogatories
24 Number 91 and 92.

25 With respect to the first category, I don't want to

1 be too redundant of what is in the pleadings themselves. In a
2 nutshell, FDN believes it has a right to see Sprint's cost
3 support pursuant to the FCC's rules, whether it's something FDN
4 requested through discovery or otherwise. FDN believes that it
5 has the right to arbitrate Sprint's proposed rates under
6 Section 252 of the Telecommunications Act, notwithstanding
7 whether there was a prior generic proceeding, a prior
8 arbitration between those two parties, or if the rates were
9 incorporated from another agreement pursuant to arbitration
10 between Sprint and yet a third party. We believe that our
11 discovery is material and relevant to Issue Number 34 in that
12 respect.

13 And, lastly, relative to the UNE rate category of
14 discovery questions, to the extent that Issue Number 34 is now
15 recast to be more in line with the question of whether or not
16 the Commission should impose the generic docket rates on FDN,
17 FDN maintains its discovery is still relevant and material to
18 this new issue.

19 FDN believes that it is not appropriate to impose the
20 generic docket rates in this proceeding because primarily those
21 inputs and assumptions used into that Sprint cost study are
22 dated and stale, and many of the discovery requests under this
23 category, if you review them, FDN requests current data and
24 recent projections, and FDN is asking for the opportunity to
25 review that information so that it can defend itself on the new

1 issue, pursuant to the prehearing officer's July 8th order.

2 The second category of discovery requests,
3 Interrogatories Number 91 and 92 asks Sprint a question, and
4 Sprint's response basically is, well, this is information that
5 FDN should already have. I maintain that that is not a valid
6 discovery objection. Even if I have the information Sprint
7 says that I have, I'm still entitled to see Sprint's view of
8 the information and compare the two. That is still a relevant
9 and material inquiry.

10 And then, lastly, if the motion to compel is granted
11 consistent with what is in the pleading itself, FDN would
12 request the opportunity to present additional testimony on the
13 subject, and postpone or continue a portion of the hearing as
14 necessary.

15 COMMISSIONER DEASON: Ms. Masterton.

16 MS. MASTERTON: Yes, thank you, Commissioner.

17 Sprint's position is that the order on Sprint's
18 motion to strike FDN's testimony relating to revisiting the
19 cost studies presented in the generic UNE docket resolves or
20 makes moot the discovery questions related to the UNE rates, as
21 Mr. Feil referred to them.

22 Basically, all of those questions were geared towards
23 revisiting the cost studies and reexamining information that
24 has already been examined and ruled on by this Commission in
25 the generic UNE rate order. And as the Commission has ruled

1 that that is not a valid subject of inquiry in this proceeding,
2 then those questions become moot.

3 As far as the other two issues, Interrogatories 91
4 and 92, what FDN has requested is information that can be
5 ascertained from business records. And the rules of discovery
6 allow a party to refer another party to its records in order to
7 get that information if it doesn't impose any more burden on
8 the requesting party than it would on the party who the
9 interrogatory is directed to.

10 In this case, FDN already has those business records
11 in its possession, or records of its own that reveal the same
12 information. It's requesting the amount of intrastate access
13 charges that FDN paid to Sprint, and the number of circuits
14 that FDN is purchasing from Sprint as UNEs in particular, over
15 particular routes. And so Sprint believes it has properly
16 objected to those discovery requests since FDN can ascertain
17 that information from its own records with no additional burden
18 than the burden on Sprint, and perhaps a somewhat lesser burden
19 since Sprint's information applies to all of the carriers that
20 do business with it. And, in addition to identifying FDN, it
21 would have to extract those records from its other carrier
22 records, as well.

23 Thank you.

24 COMMISSIONER DEASON: Mr. Feil, do you want to close?

25 MR. FEIL: With respect to Ms. Masterton's allegation

1 that our discovery requests in the UNE rate category are geared
2 to revisiting, I disagree. If you look at the discovery
3 requests themselves, some of them are in reference or based on
4 the only cost model that we had, which was a nonproprietary
5 version of the old Sprint cost model. We did not have the
6 benefit of any other Sprint cost model. And as I mentioned in
7 my direct argument, many of the questions that we asked are
8 asking for recent information, current projections, cost
9 information over the last three years, and so forth.

10 With respect to the Interrogatory 91/92 category,
11 it's like if Sprint had a witness and I asked the witness
12 whether or not the light was red or the light was green. And
13 Sprint says, well, you know whether or not the light was red or
14 green, so I'm not going to answer your question.

15 I'm entitled to know whether or not in Sprint's view
16 the light is red or green. If they are talking about
17 extracting information, well, you know, FDN would have to
18 extract that information from its records, too. That is not a
19 relevant discovery objection.

20 That's all.

21 COMMISSIONER DEASON: Mr. Feil, I have a question for
22 you. As it pertains to the discovery which concerns cost
23 studies, and therefore Issue 34, explain again to me how that
24 is relevant for this proceeding, considering the ruling that
25 has been made previously?

1 MR. FEIL: Considering the ruling that has been made
2 previously, if the Commission has, in effect, recast or
3 reframed the issue as to whether or not -- reframed it as
4 follows, whether or not it is appropriate for the Commission to
5 impose the generic docket rates at the conclusion of this
6 proceeding, our position is that it is not appropriate, because
7 the rates approved in that proceeding were based on stale and
8 dated information.

9 I hope I stated that succinctly, I'm sorry.

10 COMMISSIONER DEASON: And if that is the case, what
11 is the alternative, what is the recourse?

12 MR. FEIL: The appropriate recourse would -- well, as
13 to FDN, the recourse we are suggesting is that the Commission
14 give us the opportunity to look at that discovery and support
15 our position that that information is stale and dated. And if
16 the Commission determines it's not current, the Commission
17 could either just deny Sprint's proposed rates, that it is not
18 appropriate to implement those, and could give FDN the
19 opportunity to arbitrate the rates, or it could initiate a
20 generic proceeding, if it chose to do so.

21 COMMISSIONER DEASON: Staff, do you have anything to
22 add?

23 MS. SCOTT: No, we don't have anything to add, unless
24 you're asking if we have a recommendation of some sort.

25 COMMISSIONER DEASON: No, I'm not going to make a

1 ruling at this point. I'll take it under advisement. But if
2 you have anything to add in terms of your own position, that's
3 fine, or if you just want to -- I will anticipate asking you
4 questions before I make my ruling. And if you just want to
5 wait and do it at that time, that will be sufficient.

6 MS. SCOTT: Yes, Commissioner.

7 COMMISSIONER DEASON: Okay. Are there any other
8 preliminary matters we need to address before we review the
9 draft prehearing order?

10 MS. SCOTT: There is an outstanding confidentiality
11 matter, Sprint's request for confidential classification.
12 Other than that, there's nothing else.

13 COMMISSIONER DEASON: Is there anything controversial
14 concerning that request?

15 MS. SCOTT: No, sir.

16 COMMISSIONER DEASON: What stage is it in in its
17 consideration?

18 MS. SCOTT: It will be dealt with by a separate
19 order.

20 COMMISSIONER DEASON: Very well.

21 Ms. Masterton, do you have any question about that?

22 MS. MASTERTON: No. I was just going to say it
23 wasn't due until Friday. We just filed it on Friday, so the
24 staff just got it.

25 COMMISSIONER DEASON: Mr. Feil, do you have any

1 concern about that?

2 MR. FEIL: No, sir. I did want to mention one other
3 quasi-preliminary matter. With respect to your July 8th order,
4 a motion for reconsideration would be due today. We do intend
5 on filing one today. It's not here and filed yet, but I just
6 wanted to bring that to your attention.

7 COMMISSIONER DEASON: Very well.

8 Okay. Let's proceed through the draft prehearing
9 order. I understand there is a more current version of the
10 draft prehearing order which I have in front of me, but I have
11 reviewed a previous version and have some notes on it, so that
12 is the version I'm going to be working from. So if I need to
13 be updated at some point -- I will try to coordinate between
14 the two, but if there is something that has been updated that
15 I'm not aware of, please feel free to bring that to my
16 attention.

17 MS. SCOTT: Okay, Commissioner.

18 MR. SLOAN: Commissioner, could I ask you to speak
19 more directly into the microphone.

20 COMMISSIONER DEASON: Sure. That's a switch.
21 Normally it's the Commissioners that are asking people to do
22 that. I'll --

23 MR. SLOAN: I actually just sort of presumed that was
24 the problem, but I heard you much better there. Thank you.

25 COMMISSIONER DEASON: Is this better?

1 MR. SLOAN: Much better. Thank you.

2 COMMISSIONER DEASON: Very well. I think part of the
3 problem is sometimes I deflect my head towards staff, who are
4 sitting to my left, and it may have some affect on the
5 efficiency of the microphone.

6 MR. SLOAN: I really appreciate the effort. Thank
7 you.

8 COMMISSIONER DEASON: Okay. As is customary, at
9 least in my prehearing conferences, I wish to proceed through
10 the draft prehearing order section-by-section and will proceed
11 in fairly rapid fashion. If there are any questions, concerns,
12 clarifications, issues that need to be dealt with, we will
13 certainly take the necessary time to do that. So please bring
14 anything to my attention. And as we proceed, I may have some
15 questions, as well.

16 So with that, we will begin with Section I, the
17 conduct of proceedings. Section II, case background.
18 Section III, confidential information. Section IV,
19 post-hearing procedures. Section V, prefiled testimony and
20 exhibits. Section VI, order of --

21 MS. MASTERTON: Excuse me. On the prefiled
22 testimony, I just wanted to mention that as a result of the
23 order that was issued on July 8th, and I guess according to Mr.
24 Feil there is going to be a motion of reconsideration of that,
25 there is some additional testimony both of Mr. Feil's

1 witnesses, but also Sprint's witnesses that would likely be
2 stricken, if that order stands. And Mr. Feil and I have
3 discussed that, and we have agreed to work that out between us
4 prior to the hearing and depending on the ultimate outcome of
5 that issue.

6 COMMISSIONER DEASON: Okay. Let me ask this
7 question. I know there is going to be a reconsideration filed.
8 Staff, when would that be taken up by the Commission, do you
9 know? The reason I'm asking the question is how is this going
10 to effect the hearing? How do we proceed for the hearing,
11 realizing there is going to be a reconsideration filed, and the
12 timing of that, and then the timing of this hearing, how are we
13 going to proceed?

14 MR. FEIL: Commissioner, if I may, I didn't mean to
15 catch everybody off guard. But our intention, at least in the
16 motion, aside from asking for reconsideration we may be asking
17 for other relief. But one of the things we will be suggesting
18 in the motion is that if the Commission cannot hear it at a
19 special agenda or special hearing, and if the August 2nd
20 agenda is not in sufficient time, then we'll ask that the
21 Commission hear it at the beginning of the August 4th hearing.

22 And if that is the only time the Commission can hear
23 it, then whatever appropriate relief is due, depending on how
24 the Commission rules on that motion in the way of continuance
25 or what have you, the Commission can deal with it at the

1 commencement of the hearing.

2 COMMISSIONER DEASON: Well, is there -- and, staff,
3 help me with the procedure. Is there a response anticipated on
4 the reconsideration?

5 MS. SCOTT: Yes, Commissioner, it must be dealt with
6 prior to hearing. Typically, it is taken to agenda. But
7 looking at the schedule, I don't think it would be able to --
8 we would be able to take it to an agenda before the hearing.

9 COMMISSIONER DEASON: Ms. Masterton, when do you
10 anticipate filing a response?

11 MS. MASTERTON: Well, I mean, I haven't even been
12 served with it yet.

13 COMMISSIONER DEASON: I understand.

14 MS. MASTERTON: I guess I'm assuming Matt plans to
15 serve it by e-mail, which would make the response due next
16 Monday. And, you know, I'm not sure I could commit to having
17 it done prior to that. I could make every effort, but I have
18 other things in other proceedings that are also due.

19 COMMISSIONER DEASON: So it is due a week from today,
20 is that correct?

21 MS. MASTERTON: Yes. Seven days is my understanding
22 of the amount of time that we would have, served by e-mail, to
23 respond to it.

24 COMMISSIONER DEASON: Staff, if you get the response
25 a week from today, I understand that is past the time that you

1 would normally file a recommendation for the August 2nd
2 agenda. Is it conceivable you could get authorization to file
3 a late recommendation, and have it taken up on August the 2nd?

4 MS. SCOTT: Yes, we can make every endeavor to do
5 that, sir.

6 COMMISSIONER DEASON: It probably would be preferable
7 to do that as opposed to taking it up as a first order of
8 business on the 4th, which is the first day of hearing. So I
9 would encourage you to endeavor to do that. And if I can
10 assist in trying to get that on the August 2nd agenda, let me
11 know.

12 MS. SCOTT: Okay, Commissioner.

13 COMMISSIONER DEASON: And, Ms. Masterton, if you find
14 that you can file it earlier, please do so, but you are under
15 no obligation to do that.

16 MS. MASTERTON: I will try. And if I can, I will.
17 But, as you say, I do have to juggle some things, so --

18 COMMISSIONER DEASON: I understand. Okay.

19 MR. FEIL: Commissioner, consistent with what
20 Ms. Masterton said relative to prefiled testimony, my intention
21 would be to cooperate with her and plan for a contingency of if
22 the motions are granted or the motions are denied, what
23 testimony should stay, what testimony should go, and try to
24 arrive at a stipulation in that regard, with the understanding
25 that if the motions are denied, the stipulation would be to

1 strike this testimony, leave that testimony, but with the
2 understanding that FDN is not waiving any of its rights
3 relative to its position by virtue of doing so, rather just
4 being done for the efficient administration of the hearing.

5 COMMISSIONER DEASON: And I guess my question for
6 staff is that can the prehearing order be worded such that
7 other Commissioners are alerted to the reconsideration and the
8 fact that there is the potential for testimony to be stricken,
9 depending upon the resolution of the reconsideration, so that
10 they can be prepared adequately for hearing?

11 MS. SCOTT: Yes, Commissioner, that can be done.

12 COMMISSIONER DEASON: I would request that you do
13 that, then. And assuming, just for the sake of argument at
14 this point, that if the reconsideration is denied, assuming we
15 take it at the August 2nd agenda and that it is denied, that
16 when the hearing begins the parties will be in agreement as to
17 what testimony is included and what testimony would be
18 excluded, is that correct?

19 MR. FEIL: We will strive to do so, yes, sir.

20 MS. MASTERTON: Yes. I feel fairly certain that we
21 will be able to work that out.

22 COMMISSIONER DEASON: Okay. And then, of course, if
23 the reconsideration is sustained and the ruling is overturned,
24 then all testimony that has been filed would be subject to
25 presentation at the hearing, is that correct?

1 MR. FEIL: Yes. But it would also almost have to
2 come with the motion, a response to the discovery, and a
3 postponement of at least that issue, Issue Number 34, for the
4 hearing.

5 COMMISSIONER DEASON: Okay. Once again, Section V,
6 prefiled testimony. Any other questions or clarifications?

7 Section VI, order of witnesses. I understand that
8 there is a question about some witnesses' testimony, and to the
9 extent of that testimony, depending upon the reconsideration,
10 but the order, there is no problem with the order as laid out
11 in the draft, is that correct?

12 MS. MASTERTON: (Indicating yes.)

13 MR. FEIL: Other than that I don't know if Mr. Smith,
14 who has direct and rebuttal, would have direct and rebuttal
15 taken at the same time. That may be more efficient.

16 COMMISSIONER DEASON: Okay. Right now Mr. Smith is
17 listed as direct and rebuttal. Is his rebuttal testimony
18 dependent upon the reconsideration?

19 MR. FEIL: No, sir, I don't believe so.

20 COMMISSIONER DEASON: Do the parties anticipate
21 taking rebuttal and direct simultaneously?

22 MS. MASTERTON: That was my understanding, yes.

23 MR. FEIL: Yes.

24 COMMISSIONER DEASON: Staff, that is your
25 understanding, as well?

1 MS. SCOTT: Yes, it is, Commissioner.

2 COMMISSIONER DEASON: Okay. If we could just make a
3 notation of that in the prehearing order somewhere, that would
4 be sufficient.

5 MS. SCOTT: Okay.

6 MS. MASTERTON: Can I just say something? I assume,
7 by the way, that Sprint's witnesses were listed, that they do
8 have both direct and rebuttal, and that is what is supposed to
9 be indicated here, correct?

10 MS. SCOTT: Yes, that's correct.

11 MR. SLOAN: Susan, I'm sorry, I couldn't hear
12 anything you just said.

13 MS. MASTERTON: I guess I was just -- I hadn't
14 realized that the FDN witnesses were done somewhat differently
15 from the Sprint witnesses. I just assumed listing my three
16 witnesses that had both, that that was both, and Staff
17 confirmed that that was the case.

18 MR. SLOAN: Thank you.

19 COMMISSIONER DEASON: Staff, you probably could just
20 make a notation in parenthesis that it is direct and rebuttal.
21 I'm sure that would probably clarify it.

22 MS. SCOTT: Okay, Commissioner.

23 COMMISSIONER DEASON: For those witnesses that have
24 both. Section VII, basic positions.

25 Section VIII, issues and positions. We will go

1 issue-by-issue, but I have a preliminary question. To the
2 parties' credit, there are a number of issues which have been
3 resolved. I want to congratulate them for being able to
4 resolve those.

5 The question I have, is there a continued need to
6 have those listed in the prehearing order, or is it done just
7 for information and for ease of numbering since there have
8 already been some numbers assigned, or what is the reason for
9 continuing to list all the resolved issues?

10 MS. SCOTT: There is no need for these issues that
11 are resolved to be in the prehearing order. That's at your
12 discretion, if you would like them listed or not.

13 COMMISSIONER DEASON: I would take input from the
14 parties. Is there a preference?

15 MS. MASTERTON: Sprint is okay with taking them out.
16 I think you preserved the numbering because the testimony and
17 all was filed with the original numbering. But as far as just
18 deleting the ones that have been resolved and only showing the
19 ones that are still open, that's fine with Sprint.

20 COMMISSIONER DEASON: Mr. Feil.

21 MR. FEIL: No preference, whatever your pleasure is.

22 COMMISSIONER DEASON: Staff, let me ask this. Would
23 it be to, the issues that are still in dispute, to just have
24 them listed and have them retain their original issue number,
25 and just make a notation that the other issues have been

1 resolved and they are not listed in the prehearing order.

2 MS. SCOTT: That can be done, Commissioner.

3 COMMISSIONER DEASON: Any objection to doing that?

4 MR. FEIL: No, sir.

5 COMMISSIONER DEASON: No objection. Okay. It will
6 just shorten the prehearing order to some extent, and the
7 Commissioners preparing for hearing can go ahead and
8 concentrate on those issues.

9 With that, the first unresolved issue is Issue 5.
10 The next unresolved issue, according to my draft, is Issue 21.
11 Issue 22. Issue 23.

12 MS. SCOTT: Commissioner, Issue 23 is actually
13 resolved.

14 COMMISSIONER DEASON: Okay. Let me take a moment
15 just to review this. Is this something that -- explain to me
16 how it has been resolved, please.

17 MS. SCOTT: According to Sprint and FDN by e-mail to
18 staff, it had been resolved. Their issue statements or their
19 position statements that they submitted to me were somewhat
20 similar, and staff felt that it was a resolved issue.

21 COMMISSIONER DEASON: So there is really nothing at
22 issue. Do the parties agree with that?

23 MR. FEIL: Yes, sir.

24 MS. MASTERTON: Yes.

25 COMMISSIONER DEASON: Very good. Issue 24.

1 Issue 25. Issue 27. Issue 29. Issue 30.

2 I have a question on Issue 30. Mr. Feil, your
3 position is basically the position that you are taking on
4 Issue 34?

5 MR. FEIL: Yes, sir.

6 COMMISSIONER DEASON: And I guess maybe I'm jumping
7 the gun a little bit, but let's go ahead and address Issues 30
8 and 34 for just a moment. I understand, I suppose that you
9 need to reserve your position dependent upon the outcome of the
10 reconsideration, is that what you are doing at this point?

11 MR. FEIL: That is what we would wish to do, yes,
12 sir.

13 COMMISSIONER DEASON: Staff, my concern is that the
14 Commissioners preparing for hearing have all the information in
15 front of them. Could we make a notation that there has been a
16 ruling concerning Issue 34 in testimony, and that the positions
17 are being preserved for purposes of reconsideration? Is there
18 any objection to doing that?

19 MR. FEIL: No, sir, I don't believe so.

20 COMMISSIONER DEASON: Ms. Masterton?

21 MS. MASTERTON: Sprint has no objection.

22 MS. SCOTT: That can be done, Commissioner.

23 COMMISSIONER DEASON: Let's do that, then.

24 Any other concerns with Issues 30 or 34?

25 Hearing none, Issue 36. I might have a question on

1 36.

2 MS. SCOTT: Commissioner, you skipped Issue 35.

3 COMMISSIONER DEASON: Did I skip 35? My draft shows
4 that Issue 35 has been resolved.

5 MS. MASTERTON: I think Sprint had thought it was
6 resolved, but FDN had stated a position, and we subsequently
7 discussed that at the request of staff, and we decided that it
8 had not yet been resolved.

9 COMMISSIONER DEASON: I see that as an update on the
10 draft. Obviously, then, we would continue to list Issue 35 and
11 state the positions. For Issue 36, I'm just trying to
12 understand the distinction between Sprint's position and FDN's
13 position.

14 Mr. Feil, your client's position is that the local
15 calling area for intercarrier compensation purposes should be
16 the LATA, correct?

17 MR. FEIL: Correct.

18 COMMISSIONER DEASON: And, Sprint, what is your
19 position?

20 MS. MASTERTON: Our position is that it should be
21 Sprint's local calling area.

22 COMMISSIONER DEASON: But, see, your position doesn't
23 state that. You are just saying a minimum of one point of
24 interconnection per LATA.

25 MS. MASTERTON: Well, I think our position on the

1 local calling area is stated in an earlier issue. I think in
2 FDN's mind those two issues are interrelated. In Sprint's mind
3 they are not. So that is why we haven't restated that in these
4 issues related to interconnection and POIs.

5 COMMISSIONER DEASON: Okay. Staff, could you just
6 add a sentence to Sprint's position which clarifies that?
7 Here, again, this is just a concern for Commissioners preparing
8 for hearing to have a full understanding of that.

9 MS. SCOTT: Yes, Commissioner.

10 COMMISSIONER DEASON: Any problem with that
11 clarification?

12 MS. MASTERTON: No, but I would like to see what
13 staff says, just to make sure we agree with how they phrase it.

14 COMMISSIONER DEASON: Let me recast that request.

15 Ms. Masterton, will you submit that to staff, that
16 clarification.

17 MS. MASTERTON: Yes, Commissioner, we will do that.

18 COMMISSIONER DEASON: And, staff, once you receive
19 that, share that with Mr. Feil. And then if there is no
20 objection, include that.

21 MS. SCOTT: Okay, Commissioner.

22 COMMISSIONER DEASON: Okay. Issue 37. I just have a
23 notation in the margin here that I have a question. As it
24 pertains to Issue 37, is the only thing at issue the definition
25 of local traffic, or is it more than that?

1 MR. FEIL: I think that is essentially correct; yes,
2 sir.

3 COMMISSIONER DEASON: And, here again, that goes to
4 the question of LATA versus how Sprint defines local traffic?

5 MR. FEIL: LATA, or originating carrier, or whatever
6 the record supports. Sprint's position is that it should be
7 Sprint's retail local calling area. But you are correct in
8 that it does pertain to the definition of the traffic.

9 COMMISSIONER DEASON: For my own edification, I just
10 wanted to make sure that was the case.

11 MS. MASTERTON: That's correct.

12 COMMISSIONER DEASON: Okay. Issue 38. I have a
13 question on Issue 38, as well. I guess I'm trying to determine
14 what is really at issue in Issue 38. And, Sprint, are you
15 seeking a nonreciprocal arrangement? Because FDN's position is
16 that it should be reciprocal, so what is the problem with that?

17 MS. MASTERTON: Our position is based on the fact
18 that we don't have virtual NXX traffic. That is a creature of
19 CLECs. We are governed by rules that prevent us from doing
20 that.

21 COMMISSIONER DEASON: Okay. So you are saying
22 reciprocity is impossible because of how you define the
23 traffic?

24 MS. MASTERTON: I would say reciprocity is
25 unnecessary because of how we define the traffic.

1 COMMISSIONER DEASON: Mr. Feil, is that your
2 understanding, as well?

3 MR. FEIL: Well, perhaps Sprint needs to educate me a
4 little bit more about that. But we are, hopefully, going to
5 have another negotiation call this week, and maybe sew up that
6 issue.

7 COMMISSIONER DEASON: That would be wonderful, okay.
8 But, staff, you have no problem, assuming this matter is not
9 resolved, you have no problem with the positions as stated,
10 correct?

11 MS. SCOTT: No, sir.

12 COMMISSIONER DEASON: Okay. Issue 39.

13 Issue 62. My version shows that Sprint's position is
14 forthcoming. I assume it has been updated at this point?

15 MS. SCOTT: It has --

16 MS. MASTERTON: I'm sorry, I just wanted to comment
17 that this was an issue that wasn't included in the original
18 procedural order, and it is something that came out through
19 testimony. So I don't know if anything, I guess, needs to be
20 done officially to add this as an issue to be considered other
21 than including it in the prehearing statement. But we did
22 provide our position.

23 COMMISSIONER DEASON: Mr. Feil, do you have an
24 objection to the inclusion of this issue?

25 MR. FEIL: I was the one who wanted the inclusion of

1 the issue, yes.

2 MS. MASTERTON: We don't object. It was something
3 that FDN raised in their testimony.

4 COMMISSIONER DEASON: Okay.

5 All right. That's the last issue that I have in my
6 draft. All right. We can proceed then to Section IX, the
7 exhibit list. Is anything in this list contingent upon the
8 reconsideration?

9 MR. FEIL: Probably the last exhibit in the chart
10 there, Commissioner, Doctor Ankum's AHA-2, I'm not sure whether
11 or not that will be -- well, it may be necessary just in terms
12 of preserving FDN's position on the record. I guess we would
13 probably proffer that --

14 COMMISSIONER DEASON: Proffer that exhibit?

15 MR. FEIL: Yes, sir.

16 COMMISSIONER DEASON: Very well.

17 Section X, proposed stipulations. There are none
18 other than the fact that there have been a great number of
19 issues that have been resolved. I suppose they don't have to
20 be shown as stipulations. Since they are resolved, they are
21 actually not going to be part of the arbitration?

22 MS. MASTERTON: That's my understanding.

23 MR. FEIL: Yes, sir.

24 COMMISSIONER DEASON: Very well. And, then under
25 Section XI, pending motions, I think we have addressed the

1 motion to compel, is that correct? Is this the same motion to
2 compel that we just talked about earlier today?

3 MS. SCOTT: Yes, Commissioner.

4 COMMISSIONER DEASON: It is the same? Okay.

5 Is there any other outstanding discovery motions
6 that we have not yet addressed?

7 MR. FEIL: None. But to the degree that our motion
8 for reconsideration may overlap with this motion to compel, and
9 that there is other outstanding discovery, which when it gets
10 answered it gets answered. There may be future motions.

11 COMMISSIONER DEASON: But nothing at this point?

12 MR. FEIL: Correct.

13 COMMISSIONER DEASON: Okay. Section XII,
14 confidentiality matters. I think we have already addressed one
15 such matter, and that it will be dealt with in due course,
16 correct?

17 MS. SCOTT: Yes, Commissioner.

18 COMMISSIONER DEASON: Section XIII, decisions.
19 Sprint, you have nothing to add for that particular section, I
20 take it?

21 MS. MASTERTON: No, we don't.

22 COMMISSIONER DEASON: And then that brings us to
23 Section XIV, rulings. And I guess my question at this point,
24 staff, is just for the edification of other Commissioners,
25 should there be a description of the ruling which is going to

1 be the subject of the reconsideration, is that appropriate for
2 this particular section or not?

3 MS. SCOTT: I believe so, yes. It would be
4 appropriate for this particular section.

5 COMMISSIONER DEASON: That may be helpful.

6 Opening statements, if any. Are opening statements
7 anticipated?

8 MS. MASTERTON: Mr. Feil and I haven't had an
9 opportunity to discuss that. As far as Sprint is concerned, I
10 mean, I'm not sure that we feel that ten minutes of opening
11 statements is necessary, but I will let Mr. Feil --

12 MR. FEIL: I would like the opportunity to do an
13 opening statement. I will be surprised if I take the full ten
14 minutes, but I at least would like that placekeeper there.

15 COMMISSIONER DEASON: Okay. And ten minutes is
16 sufficient?

17 MR. FEIL: Yes, sir.

18 COMMISSIONER DEASON: Okay. We will show that
19 opening statements will be permitted and that they shall not
20 exceed ten minutes.

21 Is there anything else that we need to address at
22 this point?

23 MS. SCOTT: No, Commissioner.

24 MR. FEIL: I don't think so, no, sir.

25 COMMISSIONER DEASON: Anything from the parties?

1 MS. MASTERTON: Nothing for Sprint.

2 COMMISSIONER DEASON: Okay. Let me reiterate, I
3 congratulate the parties on being able to resolve a great
4 number of issues. And that is certainly to your credit, and it
5 is appreciated. And we will look forward to addressing a
6 reconsideration; and if we have the hearing on the 4th, look
7 forward to an efficient, thorough hearing.

8 MR. FEIL: Thank you.

9 MS. MASTERTON: Thank you.

10 COMMISSIONER DEASON: Thank you all.

11 (The prehearing concluded at 2:10 p.m.)

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STATE OF FLORIDA)

CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 21st day of July, 2005.



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