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Sent: Friday, July 22, 2005 3:27 PM
To: Filings@psc.state.fl.us
Subject: 041269-TP
Attachments: 041269-TP Sprint's Response to Bellsouth.pdf

Filed on behalf of:

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Docket No. 041269-TP

Title of filing:

Sprint's Response to Bellsouth Telecommunications, Inc.'s Motion for Summary Final Order or, in the alternative, Motion for Declaratory Ruling.

Filed on behalf of: Sprint

No. of pages: 8

Description: Sprint's Response to Bellsouth Telecommunications, Inc.'s Motion for Summary Final Order or, in the alternative, Motion for Declaratory Ruling.

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July 22, 2005

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

Re: Docket No. 041269-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint Communications Company Limited Partnership is Sprint's Response to Bellsouth Telecommunications, Inc.'s Motion for Summary Final Order or, in the alternative, Motion for Declaratory Ruling.

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

Please acknowledge receipt of this filing by stamping and initialing a copy of this letter and returning same to my assistant. If you have any questions, please do not hesitate to call me at 850/599-1560.

Sincerely,

A handwritten signature in black ink that reads "Susan S. Masterton".

Susan S. Masterton

Enclosure

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**CERTIFICATE OF SERVICE
DOCKET NO. 041269-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail this 22nd day of July, 2005 to the following:

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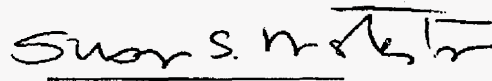
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Susan S. Masterton

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Establish Generic)
Docket To Consider Amendments)
to Interconnection Agreements)
Resulting from Changes in Law, by)
BellSouth Telecommunications, Inc.)
_____)

Docket No.: 041269-TP

Filed: July 22, 2005

SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP'S
RESPONSE TO BELL SOUTH TELECOMMUNICATIONS, INC.'S
MOTION FOR SUMMARY FINAL ORDER OR, IN THE ALTERNATIVE,
MOTION FOR DECLARATORY RULING

Sprint Communications Company Limited Partnership ("Sprint") submits this Response to the Motion for Summary Judgment, or in the Alternative, Motion for Declaratory Ruling ("Motions") filed by BellSouth Telecommunications, Inc. ("BellSouth") with the Florida Public Service Commission ("Commission") on July 15, 2005, and respectfully requests that the Commission deny BellSouth's Motions to the extent requested below. By offering comments only on the BellSouth arguments identified below, Sprint does not waive objections to other legal arguments included in BellSouth's Motions and reserves the right to address BellSouth's other legal arguments later if necessary.

Issue No. 5 --TRRO/Final Rules -- "Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?"

Regarding the Federal Communications Commission's ("FCC's") impairment thresholds for high capacity loops such as DS1 loops and dedicated transport, BellSouth restates the above-referenced issue as "should an HDSL-capable copper loop be counted, for the purpose of determining the number of business lines in a wire center, as one business line, or should it be counted on a 64 kbps equivalency, which means it should be counted as 24 business lines."

Motions at 8. BellSouth answers this question by stating that HDSL-capable copper loops

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should be counted for purposes of the threshold as 24 business lines, citing footnote 634 of the Triennial Review Order (“TRO”).¹

Sprint has no comment regarding BellSouth’s specific legal argument on counting HDSL-capable cooper loops as 24 business lines for purposes of determining whether the “no impairment” threshold has been reached in a particular wire center. Sprint strongly objects, however, to any suggestion that because the non-impairment threshold has been reached in a given wire center with regard to DS1 loops, HDSL-capable copper loops would also be unavailable to CLECs in that wire center. The FCC has never established a specific use restriction involving CLEC access to copper loops for HDSL.² Sprint reads BellSouth’s Motions on HDSL-capable copper loops as not reaching this specific issue. However, Sprint understands that it is BellSouth’s position that a finding of no impairment in a wire center would relieve it of providing HDSL-capable loops in that wire center. To the extent BellSouth intended to request that the Commission rule as a matter of law that CLECs cannot obtain access to HDSL-capable copper loops in wire centers where the non-impairment threshold for DS1 loops applies, Sprint objects for the reasons set forth herein and asks the Commission to deny BellSouth’s request for a summary final order.

Issue No. 1 - TRRO/Final Rules – “What is the appropriate language to implement the FCC’s transition plan for (1) switching, (2) high capacity loops and (3) dedicated transport

¹ 18 FCC Rcd 16978, *corrected by errata*, 18 FCC Rcd 19020, *vacated and remanded in part, aff’d in part, USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *cert. denied*, 125 S. Ct. 313 (2004).

² See the following examples of use restrictions included in the FCC’s rules: 47 C.F.R. Section 51.309(a) states that an ILEC cannot oppose limitations or restrictions on requests for or the use of UNEs except as provided in Section 51.318 (EEL use restrictions); Section 51.309(b) states that a CLEC cannot use a UNE exclusively for interexchange or mobile wireless services; Section 51.309(c) states that CLECs have exclusive use of a UNE when they lease it, and ILECs still have the obligation to maintain, repair or replace; Section 51.309(d) states that CLECs can use a UNE for any telecommunications service if it is not exclusively being used to provide interexchange or mobile wireless services.

as detailed in the FCC's Triennial Review Remand Order ("TRRO"), issued February 4, 2005?"

Issue No. 10 – TRRO/Final Rules – “What rates, terms and conditions, if any, should apply to UNEs that are not converted on or before March 11, 2006, and what impact, if any, should the conduct of the parties have upon the determination of the applicable rates, terms, and conditions that apply in such circumstances?”

In its Motions at pages 45-47, BellSouth discusses its interpretation of the Triennial Review Remand Order (“TRRO”)³ with regard to the transition period for former unbundled network elements (“UNEs”). Specifically, BellSouth requests that the Commission declare that the transition periods for former UNEs will end on March 10, 2006 or September 10, 2006, depending on the type of former UNE.⁴

Sprint has no comment on BellSouth’s legal argument regarding the dates on which the FCC’s transition periods for the initial embedded base of UNEs with a finding of non-impairment end. However, the TRRO does not address transition periods for wire centers that subsequently attain non-impairment status. Accordingly, Sprint objects to BellSouth’s proposed abbreviated time period for CLECs to transition affected UNEs to alternate services in those wire centers where BellSouth subsequently demonstrates, wire center by wire center, that the non-impairment threshold has been reached. BellSouth apparently proposes an unworkable 90-day transition period for all UNEs as the thresholds are met in given wire centers. As wire centers and routes subsequently meet FCC thresholds, thus removing a CLEC’s access to unbundled network elements, Sprint believes the parties can and should apply the transitional language included in the TRRO for the embedded base of affected UNEs.

³ *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04313 and CC Docket No. 01-338, *Order on Remand*, FCC 04-290 (released February 4, 2005).

⁴ Sprint assumes for purposes of its Response that BellSouth is not interpreting the March 10, 2006 and September 10, 2006 deadlines as absolute and that no transition whatsoever will be allowed for wire centers that subsequently attain non-impairment. To the extent BellSouth contends that the deadlines are absolute, Sprint respectfully requests the opportunity to supplement this Response.

The FCC explicitly established a twelve-month transition for DS1 and DS3 loops and for DS1 and DS3 transport. The FCC found “that the twelve-month period provides adequate time for both competitive LECs and incumbent LECs to perform the tasks necessary to an orderly transition, including decisions where to deploy, purchase, or lease facilities.” TRRO, Paragraph 143 (emphasis added). The FCC also established an eighteen-month transition for dark fiber loop and dark fiber transport. The FCC determined that a longer period was warranted for dark fiber since ILECs do not generally offer dark fiber as a tariffed service and “because it may take time for competitive LECs to negotiate IRUs or other arrangements with incumbent or competitive carriers.” TRRO, Paragraph 144.

Absent new evidence and findings, the Commission should not adopt a different timeline with regard to wire centers or routes that sometime in the future attain non-impairment status. The fact that a CLEC knows the ILEC could declare sometime in the future that the status of a wire center has changed does not provide the type of advance warning a CLEC needs to adequately transition UNEs to alternate ILEC services, alternative providers, or self-provided services. The data at the wire center level is not generally available for CLECs to monitor ILEC wire center status, and ILECs typically would not provide any advance warning that non-impairment status was imminent.

Sprint also objects to BellSouth’s proposed deadline of ten business days for CLECs to cease ordering affected UNEs once BellSouth sends notice letters to carriers advising that non-impairment criteria have been met in a given wire center. Under BellSouth’s proposal, a carrier could only place new orders after the ten days if it self-certifies that it has conducted an analysis for the wire center in question, and it disagrees with a finding of non-impairment. Sprint believes a thirty-day period in which CLECs could conduct an analysis is more consistent with the TRRO. The proposed ten-day period would not give Sprint and other CLECs sufficient time

to review BellSouth's claim regarding the status of a wire center and to determine whether the CLEC will self-certify its disagreement or stop placing orders. As stated above, the data needed to review an ILEC's claim regarding the status of a wire center is not generally available and CLECs may in fact have to request additional information from the ILEC in conducting their "reasonably diligent inquiry". See TRRO, at Paragraph 234. Sufficient time, such as Sprint's proposed thirty-day period, must be provided to allow for correspondence between the parties in resolving these and related issues.

To the extent BellSouth is requesting in its Motions that the Commission rule as a matter of law and adopt all of BellSouth's proposed transition timelines, including the unrealistic 90-day and 10-day periods discussed above, Sprint requests that the Commission deny BellSouth's request for partial summary judgment on Issue Nos. 1 and 10.

Issue Matrix No. 19(a) - Sub-Loop Concentration – "What is the appropriate ICA language, if any, to address sub loop feeder or sub loop concentration?"

Sprint has no comment at this time regarding BellSouth's Motions at pages 37-38, dealing with what is now Issue No. 19(a), Sub Loop Concentration. Sprint wishes to clarify, however, that BellSouth's Motions do not address in any way subparts (b) and (c) of Issue 19 as included in the parties' Joint Issues Matrix filed with the Commission.⁵ These sub parts pertain to CLEC access to sub loop in multi-unit premises. Subsequent to the filing of BellSouth's Motions, subparts (b) and (c) were added to the Joint Issues Matrix at Sprint's request. Should BellSouth attempt to amend its original Motions to include Issues 19(b) and 19(c), Sprint would

⁵Issue No. 19, including sub parts (b) and (c), reads as follows:
TRO – SUB-LOOP CONCENTRATION: a) What is the appropriate ICA language, if any, to address sub loop feeder or sub loop concentration? b) Do the FCC's rules for sub loops for multi-unit premises limit CLEC access to copper facilities only or do they also include access to fiber facilities? c) What are the suitable points of access for sub-loops for multi-unit premises?