BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Wireless One Network, L.P., d/b/a Cellular One of Southwest Florida for arbitration with Sprint-Florida, Incorporated pursuant to Section 252 of the Telecommunications Act of 1996.	DOCKET NO. 971194-TP ORDER NO. PSC-97-1466-PHO-TP ISSUED: November 21, 1997

Pursuant to Notice, a Prehearing Conference was held on Monday, November 17, 1997, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

William A. Adams, Esquire; Dane Stinson, Esquire; Laura Hauser, Esquire, Arter & Hadden, One Columbus Circle, 10 West Broad Street, Suite 2100, Columbus, OH 43215-3422.
On behalf of Wireless One Network, L.P..

Charles J. Rehwinkel, Esquire, 1313 Blairstone Road, MC FLTLHO0107, Tallahassee, FL 32301.
On behalf of Sprint-Florida, Incorporated.

Beth Keating, Esquire; William P. Cox, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act concerns interconnection with the incumbent local exchange carrier, while Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements reached through compulsory arbitration. Specifically, Section 252(b)(1) states:

> (1) Arbitration.-During the period from the 135th day to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

On April 10, 1997, Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida (Wireless One) and Sprint-Florida, Inc. (Sprint) entered into negotiations regarding Wireless One's request for interconnection arrangements with Sprint. The parties were unable to reach final agreements on certain issues. Thus, on September 12, 1997, Wireless One filed a petition for arbitration of issues not resolved in its negotiations with Sprint. Thereafter, the key procedural events were established and the hearing was set for November 24, 1997, by Order No. PSC-97-1227-PCO-TP issued October 10, 1997.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the

information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be

presented by written exhibit when reasonably possible to do so.

5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all

parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

WITNESS	APPEARING FOR	ISSUE NO.
DIRECT AND REBUTTAL		
John Meyer	Wireless One	Issue 1
Francis J. Heaton	Wireless One	All
Sandra Khazraee*	Sprint	Issue 1
F. Ben Poag	Sprint	All

* Rebuttal only.

V. BASIC POSITIONS

WIRELESS: Two issues are presented for determination in this arbitration proceeding: (1) whether the Reverse Option charge should be repriced as a part of the interconnection agreement now that the Federal Communications Commission ("FCC") has declared an MTA-wide local calling area and has eliminated access charges as a means of carrier-to-carrier compensation for the exchange of intraMTA traffic; and (2) whether Wireless One should receive tandem switching, transport and end office termination rates for Sprint originated calls terminating on Wireless One's network. The parties disagreed considerably over the precise formulation of the language representing the first issue, but are in agreement as to the language of the second issue, as set forth below. The Prehearing Officer adopted language proposed by Staff to formulate the first issue. Wireless

One objects to the Prehearing Officer's adoption of Staff's issue, as set forth in the Motion for Reconsideration accompanying this Revised Prehearing Statement. Wireless One addresses Staff's revised issue in this revised statement only to comply with the directive of the Prehearing Officer and does not waive any rights to seek regulatory and judicial review of the Prehearing Officer's improper ruling limiting the scope of this proceeding.

Issue 1 (as revised by Staff):

Should Sprint be required to pay Wireless One tandem interconnection, transport, and end office termination rates for calls originating on Sprint's network and terminating on Wireless One's wireless network? If not, what are the appropriate elements of compensation?

Issue 2:

With respect to land-to-mobile traffic only, do the reciprocal compensation rates negotiated by Wireless One, Inc. [sic] and Sprint-Florida, Inc., apply to intraMTA calls from the originating land line end-user to Wireless One's end office switch, or do these rates apply from the point of interconnection between Wireless One and Sprint to Wireless One's end office switch?

It is Wireless One's position that its wireless network is functionally equivalent to Sprint's traditional wireline tandem/transport/end office hierarchy and that it is entitled to be compensated at Sprint's tandem, transport, and end office rates for transporting and terminating Sprint originated calls at its wireless tandem office. Sprint has focused the determinative question on this issue to be whether Wireless One's end office are functionally equivalent to Sprint's end offices. On this narrower issue, Wireless One submits that the only distinctions between the parties' end offices are necessitated by the fundamental differences of providing wireless versus wireline communications services to their end users. These fundamental differences do not alter the fact that the end offices of both parties provide the only means by which a call may

be originated by or terminated to an end user and, thus, that they are functionally equivalent.

As to the second issue, Wireless One's position is that the Telecommunications Act of 1996 and the Federal Communications Commission order implementing it permits a Commercial Mobile Radio Service provider to replace its currently tariffed terms and conditions of interconnection with an agreement crafted to meet the needs of the involved parties. Staff's revised issue limits the Commission's inquiry in this proceeding to the carrier-to-carrier charges affected by Wireless One's decision to forego the current tariffed terms and conditions of its interconnection with Sprint in favor of an individually negotiated agreement. The revised issue divides the carrier-to-carrier charges at issue into those that compensate Sprint for transporting calls (1) from the point of interconnection between the parties to Wireless One's end office, and (2) from Sprint's end user to the point of interconnection. As to the first prong of this issue, neither Sprint nor Wireless One has ever disputed that the reciprocal compensation rates already negotiated as a part of the interconnection agreement apply, in lieu of the tariffed rates, to intraMTA traffic transported between the point of interconnection and the point of termination.

The dispute as to this issues lies in the second prong, and whether the tariffed Reverse Option charge (by which Wireless One compensates Sprint for transporting calls from its end users to the point of interconnection) should be included and repriced in this interconnection agreement. It is Wireless One's position that the Reverse Option charge is, and always has been, a term and condition of the parties' interconnection under which Wireless One compensates Sprint for transporting calls from its end users to the point of interconnection. Thus, this carrier-to-carrier charge is subject to repricing in this interconnection agreement, just as the charges that already have been negotiated for transporting Sprint's calls from the point of interconnection to Wireless One's end office. Because the Federal Communications Commission's rules prohibit the recovery of access charges for this exchange of

intraMTA traffic, the Reverse Option charge must be repriced in the interconnection agreement by eliminating the access component. This results in a Reverse Option charge, applicable to Wireless One only, of $0.00294 per minute of use. In the alternative, Wireless One would be willing to incorporate the $0.004 per minute of use "additive rate" contained in the BellSouth/Vanguard interconnection agreement, subject to true up as that agreement provides. The Reverse Option tariff rate would continue to apply to interMTA traffic exchanged between the two networks. Because the Reverse Option would be part of the interconnection agreement, Sprint would be recovering its costs related to providing the traffic in the interconnection relationship with Wireless One, as it has always done in the past.

SPRINT: Sprint's basic position is that this hearing can and should be a straightforward arbitration. There are only two issues to be resolved. Sprint urges the Commission to keep in mind that the parties have submitted two sets of language to insert into a substantially complete interconnection agreement. Selection of the respective contract provisions is the ultimate question for resolution. The only factual dispute presented is whether Wireless One's network is functionally equivalent to Sprint's tandem and end office hierarchy, such that Sprint will be obligated to pay reciprocal compensation for the performance, if any, of tandem switching and transport. The evidence in this case demonstrates that Wireless One is not entitled to be compensated at any more that the stipulated end office rate because its network does not contain the required elements and does not perform the required actual or equivalent functions.

The other issue submitted for arbitration is whether the FPSC, acting as an arbitrator, must require Sprint, in a compulsory arbitration, to forego the collection from Wireless One of purely intrastate, tariffed charges that Wireless One voluntarily pays on behalf of Sprint's customers. These charges would otherwise be billed to end users. It is Sprint's position that neither the FCC or Federal law requires such a result. If the Commission determines that such a result is not required, it need not and should not act any further. The Commission

should resist any effort by Wireless One to turn this narrowly limited compulsory arbitration into a rate setting hearing. The parties have not submitted a factual dispute for the Commission on this issue.

STAFF: Staff has no position at this time.

VI. ISSUES AND POSITIONS

ISSUE 1: Should Sprint be required to pay Wireless One tandem interconnection, transport, and end office termination for calls originating on Sprint's network and terminating on Wireless One's wireless network? If not, what are the appropriate elements of compensation?

POSITION:

WIRELESS: Sprint does not dispute that Wireless One provides transmission facilities; nor does it dispute that Wireless One's DMS250 switch performs switching functions. However, Sprint refuses to concede that the DMS250 is a tandem switch because, to do so, would admit that Wireless One has other facilities which perform end office termination functions, which is the ultimate factual question on the issue on network functional equivalency.

That the DMS250 performs tandem switching functions is indisputable. A tandem office is one that provides trunk-to-trunk interconnections to end offices, interexchange carriers' points of presence, and other carriers' tandem and end offices (collectively "the tandem interconnections"). An end office makes the connection to the end user. Wireless One's DMS250 is a tandem switch because, like Sprint's DMS200 tandem switch, it makes only the tandem interconnections and, indeed, is incapable of providing line termination to the end user on its own.

Wireless One's and Sprint's end offices are functionally equivalent because each serves the purpose of providing line termination to the end user, something which no other facility in either party's network (including the DMS200 or DMS250) is capable of doing. However, Sprint claims that the end offices are not functionally equivalent because (1) Wireless One's end offices lack a call processor, (2) Sprint is unable to terminate calls at Wireless One's end offices and (3) Wireless One's end offices are more akin to a line concentrator. Each of these unfounded contentions are rebutted below.

i. Call Processor

Because of the technological distinctions between Wireless One's wireless network and Sprint's wireline network, the call processor cannot be housed in each of Wireless One's end offices and instead must be housed at a single central location. Wireless One's and Sprint's common vendor, Northern Telecom, dictated this condition since it does not manufacture call processors for cellular offices.

The call processor may be housed in Sprint's end office because the fixed location of wireline end users enables Sprint to connect them via dedicated hardline facilities to a particular end office. By contrast, the mobile nature of a wireless end user prevents service by dedicated lines or end offices because the end user will be traveling through areas served by multiple end offices. Thus, the technology of a wireless network requires the mobile end user to "register" his or her location with a central call processor. Once that registration is made, the central call processor provides relevant information to all end offices in the end user's vicinity so that the end user may be connected to the end office in the area with the best available radio frequency for call origination and termination purposes. The wireless end office is required to originate the call, terminate the call, and provide the interface to the mobile unit for call requirements and features.

Just as these functions cannot be handled by Wireless One's DMS250 alone, Sprint's DMS200 cannot terminate a call to its wireline end users without its end offices. Whether the call processor is placed at a common central location in the wireless network, or at multiple individual locations in the wireline network, does not change the fact that the end offices of each network function to terminate calls to their respective end users. This distinction recognizes nothing more than that a different technology must be employed to serve mobile wireless customers than fixed wireline customers.

ii. Termination at Wireless One's End Offices

Wireless One adamantly disagrees with Sprint's position that Sprint cannot terminate calls to Wireless One's end offices. Sprint could deliver traffic to Wireless One's end offices once it chooses to provided distributed NXX codes, as discussed previously, and provides the SS7 signaling necessary for call origination and termination. Because Wireless One considers its end offices to be the functional equivalent of the wireline end offices, Wireless One would charge Sprint symmetrical end office termination rates if Sprint were to terminate traffic at Wireless One's end office.

To terminate a call from a Sprint end office to a Wireless One end office, a voice path (or trunk termination) and a SS7 end-to-end signaling connection is needed. Sprint is able to provide the voice path via their end offices; however, Sprint has not equipped its Ft. Myers LATA end offices to deliver SS7 signaling, including Automatic Number Identification ("ANI"). However, it may be technically feasible to deliver the SS7 signal over the tandem interconnection, where it passes now, and send the voice traffic over the end office interconnection.

iii. Line Concentrator

Sprint's characterization of Wireless One's end offices merely as line concentrators is untrue. While a wireline

network can operate without a line concentrator, a cellular network cannot operate without its end office.

The purpose of a line concentrator on Sprint's network is to enable it to provide service to a local community without 100% dedicated circuitry back to the serving end office. This "point-to-point" connecting device is functionally similar to the "remote transponders" that Wireless One uses in its wireless network as a means of serving customers beyond the reliable coverage area of the primary antennae system of its serving end office. Both mechanisms are an extension of the end office.

Sprint's interconnection to these outside service extension devices relies on the Nortel LCM (Line Concentrator Module) at the end office; whereas the Wireless One interconnection to such devices relies on the Nortel LIM (Line Interface Module) at the end office. The end offices, which provide for multi-point connectivity, are required for line termination to the end user, with or without this auxiliary equipment.

Resolution of this issue of functional equivalency involves a determination of the appropriate legal standard by which to determine whether Wireless One should receive tandem interconnection, transport and end office termination rates for Sprint originated calls terminating on Wireless One's network. Sprint relies on the physical absence of various equipment and features from Wireless One's end offices that are present in Sprint's end offices to support its position that Wireless One is not entitled to the tandem switching and transport rates in this proceeding. It is Wireless One's position that such an "apples-to-apples" comparison of the two end offices runs afoul of the FCC's rules governing CMRS interconnection which explicitly provide that a non-LEC end office need not be identical to the LEC's, but only that it be an "equivalent facility." See 47 C.F.R. §§ 51.701(c) and 51.701 (d). In this vein, the FCC specifically recognized in its order adopting these rules that wireless networks may perform functions equivalent to those performed by the traditional tandem/transport/end office hierarchy of an incumbent LEC's network and, thus, that wireless providers could be entitled to the LEC's tandem,

transport and end office rates for terminating calls originating on the LEC's network. See *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 (August 8, 1996) ("Local Competition Order"), ¶ 1090.

Wireless One's position is that its network is functionally equivalent to Sprint's traditional transport/tandem/end office hierarchy (pursuant to 47 C.F.R. § 51.701(c) and (d)) and that it is entitled to receive reciprocal and symmetrical tandem interconnection, transport and end office termination rates from Sprint pursuant to 47 C.F.R. § 51.711(a)(1) when Sprint is terminating traffic to Wireless One's tandem. As stated previously, if Sprint were to terminate traffic to Wireless One's end offices, Wireless One would only charge the end office termination rate.

SPRINT: Sprint's position is that Sprint is not required to pay Wireless One for functions the Wireless One network does not perform. Wireless One does not perform tandem switching or provide a transport function for calls originated by Sprint customers. The only factual issue to be determined is whether Wireless One's network is functionally equivalent to Sprint's tandem and end office hierarchy. The only policy/legal question to resolve is which of the proposed clauses to insert into the arbitration agreement. Sprint submits that the following language is appropriate based upon the evidence in this case and the mandate of Federal law.

> For all land-to-mobile traffic that Company terminates to Carrier, Company will pay for the functionality provided.

The Commission has already decided that a company is not entitled to reciprocal compensation for functions they do not actually provide. See, *In re Petition by MCI Telecommunications Corporations for arbitration with United Telephone Company and Central Telephone Company of Florida concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications*

Act of 1996, Order No. PSC-97-0294-FOF-TP (March 14, 1997), at p. 10.

STAFF: Staff has no position at this time.

ISSUE 2: With respect to land-to-mobile traffic only, do the reciprocal compensation rates negotiated by Wireless One, Inc. and Sprint-Florida, Inc., apply to intraMTA calls from the originating land line end-user to wireless One's end office switch, or do these rates apply from the point of interconnection between Wireless One and Sprint to Wireless One's end office switch?

POSITION:

WIRELESS: Wireless One has always elected Sprint's Reverse Option charge for land-to-mobile call completions. It has been in place consistently since the initial physical interconnection of the two networks. Sprint has never charged its customers an intraLATA toll charge for any land-to-mobile calls since cellular operations commenced in 1990. The Reverse Option charge is part of the same mobile services section of Sprint's tariff that has governed the rest of the parties' interconnection relationship over the years, is an integral part of the interconnection relationship, and should be included with the other terms and conditions of the interconnection relationship that now will be governed by agreement rather than tariff. As such, the Reverse Option for intraMTA calls must be repriced consistent with the terms of the Telecommunications Act of 1996 and the Federal Communications Order implementing it - by removing the access component to the charge.

It is Sprint's position that the Reverse Option charge is not a term of interconnection, but that Wireless One chooses the Reverse Option charge in lieu of extending its facilities to Sprint end offices, which would afford Sprint customers the ability to place a local call to Wireless One customers. Sprint's allegations simply are untrue. Wireless One does maintain direct two-way end office interconnections with Sprint. Learning of these connections for the first time during his deposition, Mr.

Poag created Sprint's alternative argument that Sprint does not send any traffic over these interconnections because Wireless One does not have locally rate centered NXX codes in certain wireline local calling areas. This argument is also without merit and ignores that Sprint simply may reprogram its switches to recognize Wireless One's NXX codes over all of the end office interconnections. The provision of such "distributive NXX codes" would allow land-to-mobile calls from a Sprint exchange with a Type 2B end office interconnection to Wireless One to be terminated over the end office interconnection and allow for the traffic to be transported by Wireless One to its customer, wherever located. Thus, Sprint's own actions, or inaction, has prevented the Sprint from terminating calls at Wireless One's end offices, with the ulterior motive to require Wireless One to pay the Reverse Option charge.

The basis upon which the Reverse Option charge must be repriced is a legal issue explained in more detail below. However, the level of that charge is a factual question which requires that the charge be repriced at $0.00294 per minute of use. This rate represents the current Reverse Option tariff rate of $0.0588 per minute of use, less the current cost of originating access. Alternatively, Wireless One would be willing to incorporate the $0.004 per minute of use "additive rate" contained in the BellSouth/Vanguard interconnection agreement, subject to true up as that agreement provides.

Staff's revised issue raises the legal question as to the basis upon which the Reverse Option must be repriced. Sprint maintains that the Reverse Option appropriately would be the subject of a subsequent proceeding. However, as explained above, the second prong of Staff's revised issue places before the Commission all carrier-to-carrier charges in Wireless One's and Sprint's interconnection relationship. This would include Wireless One's compensation to Sprint for transporting calls from Sprint's end users to the parties point of interconnection.

As explained above, the Reverse Option charge is inextricably linked to the terms and conditions of Wireless One's interconnection with Sprint. Wireless One Exhibit 2.0R at 14, *et seq.* Wireless One historically has paid Sprint, as a term of interconnection, originating access charges through the tariffed Reverse Option for delivering land-to-mobile toll calls to it throughout the Ft. Myers LATA. Now that the FCC has eliminated access charges as the means of compensation for the exchange of intraMTA traffic, the Reverse Option charge must be repriced to exclude the access component.

Sprint's recovery of these charges through the repriced Reverse Option charge in the interconnection agreement, rather than under the tariffed Reverse Option, falls squarely within the scope of this arbitration proceeding and does not impermissibly intrude upon the Commission's intrastate tariffing authority. Indeed, inclusion of Wireless One's Reverse Option obligation in the interconnection agreement does not affect Sprint's state-approved tariffs any more than replacing the present tariff rates for mobile-to-land terminations with lower rates in the same interconnection agreement for which revenue recovery has not been cited as an issue. The relationship between Sprint and Wireless One simply is being modified from one based on tariff to one based on contract. Moreover, the Reverse Option tariff rate still will apply to Sprint's calls terminated on Wireless One's network on an interMTA basis.

The second question is whether 47 C.F.R. § 51.701(b)(2) prohibits carriers from recovering access as a means of compensation for the exchange of intraMTA traffic. It is Wireless One's position that all CMRS calls originated and terminated in an MTA are considered as local in nature under 47 C.F.R. § 51.701(b)(2) and that no access charges may be assessed for such calls. This rule is supported by the Local Competition Order at ¶¶ 1036, 1043 ("[T]raffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under [47 U.S.C.] section 251(b)(5), rather than interstate or intrastate access charges.")

The Commission has recognized Wireless One's position that all intraMTA land-to-mobile calls are local and that intraLATA access charges do not apply in other interconnection agreements. *Interconnection Agreement between BellSouth Telecommunications, Inc. and Vanguard Cellular Financial Corp.*, Docket 970228-TP (FJH Exhibit 1.8).

Even more significantly, the United States Court of Appeals for the Eighth Circuit upheld the FCC's jurisdiction to expand the LEC-CMRS local calling area and to require that LECs and CMRS providers be reciprocally compensated for the exchange of intraMTA traffic though transport and termination charges only, citing 47 U.S.C. §§ 152(b) and 332. It stated:

> Because Congress expressly amended section §152(b) to preclude state regulation of entry of and rates charged by Commercial Mobile Radio Service (CMRS) providers, see 47 U.S.C. §§ 152(b) (exempting the provisions of section 332), 332(c)(3)(A), and because section 332(c)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to CMRS providers.

It is Wireless One's position that the FCC's expansion of the local calling area for CMRS calls to include the entire MTA ultimately precludes Sprint from charging access rates for all calls originated and terminated between networks within the MTA. The Commission must re-price the Reverse Option charge, for purposes of this interconnection agreement, as the means for compensating Sprint for transporting intraMTA calls from its end users to the point of interconnection by removing the access component of the charge.

SPRINT: Sprint's position is that the real issue is whether the purely intrastate RTBO (Reverse Toll Option) charge imposed pursuant to tariff approved by the FPSC is lawful

under the mandate of the FCC and the Telecommunications Act of 1996. Put another way, must the FPSC, acting as an arbitrator, require Sprint, in compulsory arbitration, to forego the collection of the RTBO charges that Wireless One voluntarily pays on behalf of Sprint's customers. There is no factual dispute here. This is strictly a legal/policy issue. The Commission should only consider properly submitted testimony that describes the policy/legal reasons for the charge and its propriety in an interconnection environment. For purposes of computing the transaction costs between interconnecting companies (access charges vs. local interconnection rates), Federal law has defined a local calling area that is larger than the local calling area that defines toll calling for purposes of what end users (or their voluntary surrogate) pay. This Federal definition was never intended to interfere with or preempt the state of Florida's authority to determine the end user rates.

Because Sprint has satisfied its federally-mandated obligation and agreed to pay the stipulated local interconnection rates, this is essentially a non-issue. The following language should be ordered in the agreement:

> "Local Traffic" for purposes of the establishment of interconnection *and not for the billing of customers under this Agreement*, is defined as telecommunications traffic between an LEC and CMRS provider that, at the beginning of the call originates and terminates within the same Major Trading Area, as defined in 47 C.F.R. Section 24.202(a); provided however, that consistent with Sections 1033 et seq. of the First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (Aug. 8, 1996), hereinafter the "First Report and Order," the Commission shall determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under Section 251(b)(5), consistent with the Commission's

> historical practice of defining local service areas for wireline LECs. (See, Section 1035, First Report and Order). (Emphasis added) [Agreement at pp. 21-22]
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> IntraLATA toll traffic. *For the purposes of establishing charges between the Carrier and the Company*, this traffic is defined in accordance with Company's then-current intraLATA toll serving areas to the extent that said traffic does not originate and terminate within the same MTA. (Emphasis added) [Agreement at p. 34]
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> The italicized portions highlight the distinction between Sprint and Wireless One's positions.

STAFF: Staff has no position at this time.

VII. EXHIBIT LIST

WITNESS	PROFFERED BY	I.D. NUMBER	DESCRIPTION
Francis J. Heaton	Wireless One	_____ (FJH - 1)	A map of Sprint's tandems and end offices in the Ft. Myers LATA.
Francis J. Heaton	Wireless One	_____ (FJH - 2)	Confidential: A map of Wireless One's tandems and end offices in its serving area.

WITNESS	PROFFERED BY	I.D. NUMBER	DESCRIPTION
Francis J. Heaton	Wireless One	(FJH - 3)	Confidential: A map showing Wireless One's cellular end offices that directly connect to Wireless One's proprietary microwave transmission facilities.
Francis J. Heaton	Wireless One	(FJH - 4)	Confidential: A map including everything in Exhibit FJH-3 plus all cellular end offices connected by leased lines.
Francis J. Heaton	Wireless One	(FJH - 5)	Section A25 of Sprint's General Exchange Tariff.
Francis J. Heaton	Wireless One	(FJH - 6)	The Draft Commercial Mobile Radio Services Interconnection Agreement between Wireless One and Sprint.

WITNESS	PROFFERED BY	I.D. NUMBER	DESCRIPTION
Francis J. Heaton	Wireless One	(FJH - 7)	Interconnection Agreement between Sprint-Florida, Inc. and 360 Communications Company, Docket No. 970967.
Francis J. Heaton	Wireless One	(FJH - 8)	Interconnection Agreement between BellSouth Telecommunications, Inc. and Vanguard Cellular Financial Corp.
Francis J. Heaton	Wireless One	(FJH - 9)	Deposition of F. Ben Poag, including the exhibits to the deposition.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

None.

IX. PENDING MOTIONS

A. Wireless One's Motion for Reconsideration and Request for Oral Argument on Prehearing Officer's Ruling on Sprint's Motion for Determination of Issues and Request for Oral Argument, filed November 20, 1997.

B. Sprint's Motion to Strike portions of the rebuttal testimony of Frank Heaton and John Meyer, filed November 6.

C. Sprint's Motion to Strike portions of direct and rebuttal testimony of Francis J. Heaton (Second Motion), filed November 7.

Since the date of the prehearing conference, Wireless One has filed a Motion for Reconsideration of the Prehearing Officer's decision to approve the wording of Issue 2 in this proceeding as proposed by Staff. That Motion shall be heard at the commencement of the hearing. Because a decision on Sprint's outstanding Motions to Strike are in part related to the scope of Issue 2, those decisions will be deferred for a ruling by the Presiding Officer after the Commission has addressed Wireless One's Motion for Reconsideration.

X. RULINGS

A. Sprint's Motion to Strike Wireless One's Improper Response to Sprint's October 20, 1997, Motion.

Motion was withdrawn by Sprint at the Prehearing Conference.

B. Sprint's Motion for Determination of Issues and Request for Oral Argument.

Wireless One's proposed issue shall not be included in this proceeding. The ultimate dispute to be resolved in this arbitration proceeding relates to which part of the land-to-mobile call the parties' negotiated transport and termination rates cover. This is an issue that directly relates to the interconnection between these two companies and one that is within the scope of an arbitration proceeding under the

Telecommunications Act of 1996. The Commission should not consider testimony or any other evidence regarding Sprint's ability to assess toll charges on its customers under state tariffs in this proceeding. Therefore, the two issues for this proceeding shall be those specified in the body of this Order.

The Request for Oral Argument on this motion at the Prehearing Conference was granted.

C. Sprint's Request for Opening Statements at the Hearing

At the Prehearing Conference, Sprint requested that both parties be allowed to make opening statements at the hearing in this proceeding. This motion is hereby granted, and opening statements shall be limited to five minutes for each party.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 21st day of November, 1997.

Susan F. Clark, Commissioner
and Prehearing Officer

(S E A L)

WPC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.