

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by Orlando Telephone Company for approval of arbitration concerning complaint against Sprint-Florida, Incorporated regarding enforcement of interconnection agreement.

DOCKET NO. 990884-TP
ORDER NO. PSC-00-0533-PHO-TP
ISSUED: March 15, 2000

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on February 28, 2000, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

David B. Erwin, Esquire, 127 Riversink Road,
Crawfordville, FL 32327
On behalf of Orlando Telephone Company

Charles J. Rehwinkel, Esquire, P. O. Box 2214, MC
FLTLHO0107, Tallahassee, FL 32301-2214
On behalf of Sprint-Florida, Inc.

Diana W. Caldwell, Esquire, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee,
Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE
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II. CASE BACKGROUND

Orlando Telephone Company (OTC) filed a Request for Arbitration Concerning a Complaint Against Sprint-Florida Incorporated (Sprint) Regarding Enforcement of Interconnection Agreement on July 7, 1999. On July 28, 1999, Sprint filed its Answer. The complaint relates to whether OTC is due terminating access revenues from Sprint under the Interconnection Agreement between the companies. The matter has been set for hearing.

III. 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, 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.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

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

- a) 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.

- b) 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.
- c) 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.
- d) 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.
- e) 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's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall 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. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, 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 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

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.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

| <u>Witness</u> | <u>Proffered By</u> | <u>Issues #</u> |
|-----------------|---------------------|-----------------|
| <u>Direct</u> | | |
| Herb Bornack | OTC | 1, 3a, 3b, 4, 5 |
| Jerry Locke | OTC | 1, 3a, 3b, 4, 5 |
| Joan Seymour | Sprint | 1, 3a, 3b, 4, 5 |
| <u>Rebuttal</u> | | |
| Jerry Locke | OTC | 1, 3a, 3b, 4, 5 |
| Don Lee | OTC | 3b, 5 |

VII. BASIC POSITIONS

OTC: OTC and Sprint are parties to an interconnection agreement under which there is a bona fide dispute about the proper payment of terminating access revenue due OTC. The Commission has jurisdiction to resolve the dispute now. Sprint is obligated to have provided calling data to OTC to have allowed OTC to bill terminating access at OTC's terminating access rate or to pay terminating access revenue to OTC at OTC's FCC tariffed interstate terminating access rate.

SPRINT: Sprint's basic position is that the interconnection agreement between Sprint and OTC does not entitle OTC to additional payment by Sprint for calls routed to OTC in an interim number portability environment.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: Is the complaint filed by Orlando Telephone Company premature in light of the March 15, 1999, letter agreement and the pending proceeding(s) at the FCC?

POSITIONS

OTC: No.

SPRINT: This Commission should not be holding a hearing at this time on this issue. OTC agreed in March 1999 that the resolution of the interstate portion of the compensation dispute resubmitted by OTC to the Commission in this Docket would be guided by the resolution of the issue [of CLEC access charge levels] in FCC Docket CCB/CPD No. 98-63. (That case and the issue regarding the level of CLEC access charges was effectively transformed by the FCC into a rulemaking proceeding in *its Access Charge Reform Fifth Report and Order, and Notice of Further Rulemaking*, FCC 99-206, adopted August 5, 1999). For this reason, this case should not be heard at this time, since OTC has agreed to await resolution at the FCC level and have it guide resolution before the FPSC.

STAFF: Staff takes no position at this time.

ISSUE 2: What is the legal significance, if any, of the fact that Orlando Telephone Company had no terminating access rates on file with the FCC at the time of execution of the interconnection agreement?

POSITIONS:

OTC: None.

SPRINT: The fact that OTC had no access tariff (or any tariff) on file at the time of execution of the interconnection agreement indicates that there was no intent on OTC's part to seek Sprint's assistance in developing IXC billing capabilities or to impose any obligation on Sprint for Sprint to pay OTC access charges for RCF's

traffic above the tariffed rates that Sprint billed and collected IXCs.

STAFF: Staff takes no position at this time.

ISSUE 3: (a) Does the interconnection agreement between Orlando Telephone Company and Sprint govern the compensation relationship between Orlando Telephone Company and Sprint?

POSITIONS

OTC: Yes.

SPRINT: Generally, yes. However, the agreement does not impose any requirement on Sprint to bill on OTC's behalf for access, develop a capability for capturing billing data in an interim number portability environment or pay OTC terminating access compensation for calls for which OTC did not provide a terminating access function to Sprint when Sprint routed those calls to OTC via RCF in an INP environment.

STAFF: Staff takes no position at this time.

(b) If so, what should be the terminating access rate that Sprint is required to use to compute payments to Orlando Telephone Company for termination of interstate long distance calls through Remote Call Forwarding, during the period of February 1998 through November 1998?

POSITIONS

OTC: The terminating access rate of OTC, as provided by Section IV, D, 2 of the interconnection agreement between the parties.

SPRINT: Since the agreement does not provide for Sprint to pay OTC's rate for a service that OTC does not provide to Sprint, the only obligation Sprint has in an INP environment is to remit whatever Sprint receives in

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access charges from the IXC that is terminating the call that is routed to OTC for delivery to the customer.

STAFF: Staff takes no position at this time.

ISSUE 4: Does a "bona fide dispute" pursuant to section XVI.B.1. at page 35 of the Agreement exist between Sprint and Orlando Telephone Company?

POSITIONS

OTC: Yes.

SPRINT: No.

STAFF: Staff takes no position at this time.

ISSUE 5: What relief, if any, is Orlando Telephone Company entitled to?

POSITIONS

OTC: OTC is entitled to receive payment from Sprint for 3,526,908 terminating MOUs at the terminating interstate tariffed access rate of OTC of \$0.082916 per MOU less \$59,814.74 already paid, for a total payment of \$232,622.36, plus interest.

SPRINT: OTC is not entitled to any relief (including interim payments) as a result of the complaint filed in this matter.

STAFF: Staff takes no position at this time.

IX. EXHIBIT LIST

| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|-----------------|---------------------|-----------------|---|
| <u>Direct</u> | | | |
| Jerry Locke | OTC | _____ (JL-1) | Letter to FCC, dated 12/4/97. |
| | | _____ (JL-2) | FCC terminating access tariff |
| | | _____ (JL-3) | E-mail from J. Locke to J. Seymour, dated 2/26/98 |
| | | _____ (JL-4) | Table of O r l a n d o T e l e p h o n e C o m p a n y ' s M O U s and Sprint's interstate access rates |
| | | _____ (JL-5) | Restrictive endorsement on settlement check |
| | | _____ (JL-6) | E-mail from J. Seymour to J. Locke, dated 2/16/99 |
| <u>Rebuttal</u> | | | |
| Don Lee | OTC | _____ (DL-1) | Martin and Associates, Inc. brochure |

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

X. STIPULATIONS

There have been no facts formally stipulated by the parties, but based on the pleadings, there is no disagreement that the number of Minutes of Use (MOUs) for the period in question is 3,526,908 and the relevant interstate amount paid OTC by Sprint to date is \$59,814.74.

It is therefore,

ORDERED by Commissioner J. Terry Deason, 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 J. Terry Deason as Prehearing Officer, this 15th day of March, 2000.



J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

DWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

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Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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.