

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of Sprint Communications Company Limited Partnership against BellSouth Telecommunications, Inc. regarding failure to comply with interconnection agreement.

DOCKET NO. 000636-TP
ORDER NO. PSC-00-1988-PHO-TP
ISSUED: October 26, 2000

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on October 23, 2000, in Tallahassee, Florida, before Commissioner Lila A. Jaber, as Prehearing Officer.

APPEARANCES:

Charles J. Rehwinkel, Esquire, and Susan S. Masterton, Esquire, 1313 Blair Stone Road, Tallahassee, FL 32316
On behalf of Sprint Communications Company Limited Partnership

Michael P. Goggin, Esquire, and E. Earl Edenfield, Jr., Esquire, BellSouth Telecommunications, Inc., 150 South Monroe Street, Room 400, Tallahassee, FL 32301
On behalf of BellSouth Telecommunications, Inc.

Tim Vaccaro, 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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FPSC-RECORDS/REPORTING

II. CASE BACKGROUND

On May 24, 2000, Sprint Communications Company Limited Partnership (Sprint) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) for alleged failure to comply with the provisions of the BellSouth/Sprint interconnection agreement. Accordingly, this matter has been scheduled for an administrative 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. **However, oral summaries shall be limited to five minutes.** 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>		
Richard A. Warner	Sprint	1
Melissa L. Cloz	Sprint	1
Jerry Hendrix	BellSouth	1
David Scollard	BellSouth	1
<u>Rebuttal</u>		
Melissa L. Cloz	Sprint	1
Jerry Hendrix	BellSouth	1
Richard McIntire	BellSouth	1

VII. BASIC POSITIONS

SPRINT: Sprint's basic position on the issue in this docket is that under the plain meaning of the terms of the Interconnection Agreement between Sprint and BellSouth, ISP-bound traffic is local traffic for the purposes of reciprocal compensation. Because the meaning of local traffic as defined in the Interconnection Agreement is unambiguous, it is Sprint's position that, as a matter of law, the Commission should, consistent with prior decisions, order BellSouth to pay Sprint reciprocal compensation for such traffic under the terms of their Interconnection Agreement.

BELLSOUTH: The issue in this docket represents a specific dispute between BellSouth and Sprint Communications Company Limited Partnership ("Sprint") as to the proper interpretation of the provisions of the Interconnection Agreement between BellSouth and Sprint

("BellSouth/Sprint Agreement"). BellSouth's position is a rational and reasonable interpretation of the BellSouth/Sprint Agreement and should be sustained by the Commission.

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: Under their Florida Interconnection Agreement, are Sprint Communications Company Limited Partnership and BellSouth Telecommunications, Inc. required to compensate each other for delivery of traffic to Internet Service Providers (ISPs)? If so, what actions, if any should be taken?

POSITIONS

SPRINT: In the Parties' Interconnection Agreement, Local Traffic is defined as

any telephone call that originates and terminates in the same LATA and is billed by the originating Party as a local call, including any call terminating in an exchange outside of BellSouth's service area with respect to which BellSouth has a local interconnection agreement with an independent LEC, with which Sprint is not directly interconnected.

When BellSouth originates a call to an ISP that is a Sprint local service customer, BellSouth bills that call as a local call. Clearly, BellSouth's originated IPS-bound traffic fits the plain meaning of the definition of local traffic set forth [in] the Parties' Interconnection Agreement. The Commission

has consistently determined that ISP traffic is local traffic for the purposes of reciprocal compensation under the terms of interconnection agreements with substantially equivalent relevant provisions to the provisions in the Parties' Agreement.

Since the Interconnection Agreement is unambiguous as to whether ISP-bound traffic is included in the definition of local traffic for the purposes of reciprocal compensation, it is Sprint's position that, as a matter of law, it is unnecessary for the Commission to consider the Parties' intent regarding the treatment of ISP-bound traffic as local traffic. However, Sprint's position is that nothing that occurred during the negotiations of the Parties' Interconnection Agreement demonstrates an intent to exclude ISP-bound traffic from the definition of local traffic for the purposes of reciprocal compensation.

Because the plain meaning of the Parties' interconnection agreement includes ISP-bound traffic under the definition of local traffic for the purposes of reciprocal compensation, it is Sprint's position that it is due reciprocal compensation for ISP-bound traffic for which it has billed to BellSouth, and that BellSouth has refused to pay, dating back to the first bill Sprint submitted to BellSouth in April 1999 for local interconnection usage beginning in January 1998.

BELLSOUTH: No. The plain language of the contract clearly states that reciprocal compensation will only apply to local traffic. Under the provisions of the 1996 Act and FCC rules, only local traffic is subject to reciprocal compensation obligations. Thus, reciprocal compensation is clearly not applicable to ISP-bound traffic. In addition to being contrary to the law, treating ISP-bound traffic as local for reciprocal compensation purposes is contrary to sound public policy.

As ISP traffic is clearly interstate, the only issue arguably remaining is whether BellSouth voluntarily

agreed to pay reciprocal compensation for ISP traffic under the reciprocal compensation provisions of the BellSouth/Sprint Agreement. At the time of the execution of the BellSouth/Sprint Agreement, BellSouth had stated publicly and repeatedly that reciprocal compensation was not due for ISP traffic under the provisions of BellSouth's interconnection agreements. Thus, Sprint was well aware that the reciprocal compensation language in the BellSouth/Sprint Agreement did not encompass interstate traffic such as that bound for the Internet through ISPs. Notwithstanding this knowledge, Sprint executed the BellSouth/Sprint Agreement and now seeks to be compensated for ISP traffic. The Commission should reject Sprint's interpretation of the BellSouth/Sprint Agreement and rule that reciprocal compensation is not due for ISP traffic.

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>		
Richard A. Warner	Sprint	_____ (RAW-1) (Confidential)	Interconnec- tion Usage Invoices to BellSouth and Disputed Descriptions
Jerry Hendrix	BellSouth	_____ (JDH-1)	BellSouth's comments in CC Docket 96-263 dated April 23, 1997

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

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no requests for confidentiality pending at this time.

It is therefore,

ORDERED by Commissioner Lila A. Jaber, 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 Lila A. Jaber as Prehearing Officer, this 26th Day of October, 2000.



LILA A. JABER
Commissioner and Prehearing Officer

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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.

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.