

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by XO Florida, Inc. for arbitration of certain unresolved issues in negotiations for interconnection and resale agreement with Sprint-Florida, Incorporated.

DOCKET NO. 030467-TP
ORDER NO. PSC-03-0865-PCO-TP
ISSUED: July 24, 2003

ORDER ESTABLISHING PROCEDURE

On May 29, 2003, XO Florida, Inc. (XO) filed a petition for arbitration of certain unresolved issues in negotiations for interconnection and resale agreement with Sprint-Florida, Incorporated (Sprint). On the same date, Sprint filed a duplicate petition. On June 6, 2003, Sprint filed a letter it had received from XO, which stated that XO planned to file an amended petition and that Sprint would withdraw the petition it had submitted. On June 13, 2003, XO filed its amended petition, resolving the differences between the two petitions. On June 23, Sprint filed its response to XO's petition. An issue identification meeting was held on July 16, 2003. At the conclusion of the issue identification meeting, the parties agreed to all of the issues except Issues 25, 26, and 27. The disagreement was brought to me for resolution and is addressed herein.

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 regards interconnection with the incumbent local exchange carrier and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

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

(1) Arbitration. - During the period from the 135th to 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.

DOCUMENT NUMBER-DATE

06664 JUL 24 8

FPSC-COMMISSION CLERK

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 nine months after the date on which the local exchange carrier received the request under this section. Staff counsel advises that the parties are in the process of filing waivers of the nine-month statutory requirement for Commission resolution of unresolved issues.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

Section 252(b)(4)(A) provides that this Commission shall limit its consideration of any petition to the issues set forth in the petition and in the response, if any. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and all administrative rules applicable to this Commission.

The scope of this proceeding shall be based upon the issues raised by the parties up to and during the prehearing conference, unless modified by the Commission.

Discovery

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for January 28 and 29, 2004. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by January 21, 2004. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be

numbered sequentially within a set, and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 75, and requests for production of documents, including all subparts, shall be limited to 25.

Any party intending to provide information pursuant to a discovery request, which it is aware is deemed, or might be deemed, confidential by another party in this proceeding, shall notify that party prior to submitting such information for the purpose of ensuring conformance with this Commission's rules regarding the handling of such information and continued confidential treatment pending a formal ruling by the Commission. 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 made a part of the evidentiary record 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 period set forth in Section 364.183(4), Florida Statutes.

Parties shall avail themselves of the liberal discovery allowed by this Order within the time frames set forth above. Parties are cautioned against conducting discovery during cross-examination at the hearing.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of the Commission Clerk and Administrative Services, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

If a demonstrative exhibit or other demonstrative tools are to be used at hearing, they must be identified by the time of the Prehearing Conference.

Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of the Commission Clerk and Administrative Services by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all

other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below:

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon;
- (i) a statement identifying the party's pending requests or claims for confidentiality;

- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore;
- (k) a statement identifying any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter; and
- (l) Any objections to a witness's qualifications as an expert must be identified in a party's Prehearing Statement. Failure to identify such objection may result in restriction of a party's ability to conduct voir dire.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held on January 12, 2004 at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number, and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes of Use by Time of Day

Tentative Issues

As stated in the case background, at the issue identification meeting for this docket, the parties agreed on all issues except Issues 25, 26 and 27. XO does not think the issues should be included because they were not discussed in the parties' pre-petition negotiations. Sprint, on the other hand, thinks they should be included because they were contained in Sprint's response to the petition and because Sprint believes resolution of the issues is necessary to the development of the companies' interconnection agreement.

Upon consideration, I find that Issues 25, 26, and 27 should be included in the issues to be resolved in this arbitration. Section 252(4) of the Telecommunications Act of 1996 states:

(4) ACTION BY STATE COMMISSION. -

The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

Issues 25, 26 and 27 were included in Sprint's response to the petition. Further, in the interest of economy, it would seem better to resolve these issues at this time, rather than opening another docket to resolve a possible dispute of these issues in the future. Accordingly, Issues 25, 26, and 27 will be included for the purposes of the hearing. Prefiled testimony and prehearing statements shall address the issues set forth in Appendix "A".

Controlling Dates

The following dates have been established to govern the key activities of this case.

- | | |
|------------------------------------|----------------------------|
| 1) Direct testimony and exhibits | October 1, 2003 |
| 2) Rebuttal testimony and exhibits | November 5, 2003 |
| 3) Prehearing Statements | December 30, 2003 |
| 4) Prehearing Conference | January 12, 2004 |
| 5) Hearing | January 28 and
29, 2004 |
| 6) Briefs | February 27, 2004 |

Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183(2), Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use

any proprietary confidential business information, as that term is defined in Section 364.183(3), 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. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

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. 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. 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 the Commission Clerk and Administrative Services' confidential files.

Post-Hearing Procedure

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 in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

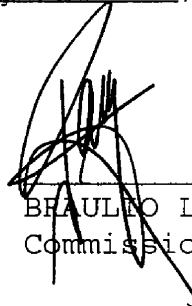
ORDER NO. PSC-03-0865-PCO-TP
DOCKET NO. 030467-TP
PAGE 10

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.

Based upon the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 24th day of July, 2003.


for Commissioner Braulio L. Baez

BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

LHD

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.

ORDER NO. PSC-03-0865-PCO-TP
DOCKET NO. 030467-TP
PAGE 11

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; or (2) 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 the Commission Clerk and Administrative Services, 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.

Attachment A
Tentative Issues List

- ISSUE 1: What should be included in the definition of a non-standard, non-voice grade loop? *
- ISSUE 2: How should the parties compensate each other for interconnection facilities?
- ISSUE 3: Is Sprint entitled to discontinue services to XO?
(The parties have reached agreement on this issue.)
- ISSUE 4: What is the appropriate term of the Agreement and under what circumstances should the Agreement remain in effect after the expiration of that term?
- ISSUE 5: Should either party be authorized to collect a security deposit?
- ISSUE 6: Should either party be required to obtain consent from the other party prior to making any public statements about the Agreement?
- ISSUE 7: Should the Act prevail in the event of a conflict with the provisions of the Agreement?
(The parties have reached agreement on this issue.)
- ISSUE 8: Under what circumstances, if any, can Sprint reclaim loop facilities it is providing to XO?
- ISSUE 9: Can Sprint refuse to pay reciprocal compensation for traffic to end users that are physically located outside of the local calling area in which their NPA/NXX is homed?
- ISSUE 10: How should compensation for traffic transmitted without CPN be determined?
- ISSUE 11: Under what circumstances, if any, is Sprint obligated to construct UNEs?

- ISSUE 12: Under what circumstances, if any, should loop conditioning charges apply to DS1 loops?
- ISSUE 13: Under what circumstances should Sprint be allowed to apply cooperative testing charges when Sprint is ready to test and XO is not available?
(The parties have reached a resolution on this issue.)
- ISSUE 14: What are appropriate procedures for Sprint to provide and take back dark fiber?
(The parties have reached agreement on this issue.)
- ISSUE 15: What rights, if any, does Sprint have beyond those established by the FCC to audit XO's local usage on EELs?
- ISSUE 16: What are the appropriate terms and conditions for constructing interconnection meet point arrangements?
- ISSUE 17: Is XO entitled to tandem reciprocal compensation rates for terminating traffic originated by Sprint?
- ISSUE 18: When should the parties use a PLU (Percent Local Usage), rather than CPN, for billing purposes?
- ISSUE 19: When is Sprint entitled to charge XO for testing associated with activation of LNP?
- ISSUE 20: What terms and conditions for collocation should be included in the agreement?
- ISSUE 22: What language should be included for indemnification?
(The parties have reached agreement on this issue.)
- ISSUE 24: Under what circumstances, if any, can Sprint charge for tag and label service?
- ISSUE 25: What is the appropriate form of intercarrier compensation for phone-to-phone traffic exchanged between the parties and transmitted in whole or in part over the internet network?

ORDER NO. PSC-03-0865-PCO-TP
DOCKET NO. 030467-TP
PAGE 14

- ISSUE 26: Should a direct connection be required when transit traffic volumes reach a DS1 equivalent?
- ISSUE 27: Should a direct connection be required when indirect traffic volumes reach a DS1 equivalent?
- ISSUE 29: What process should apply if XO accesses CPNI from Sprint without proper authorization from the end-user?