BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Sprint Communications Company Limited Partnership d/b/a Sprint for arbitration with BellSouth Telecommunications, Inc. concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996.	DOCKET NO. 961150-TP ORDER NO. PSC-97-0122-FOF-TP ISSUED: February 3, 1997

The following Commissioners participated in the disposition of this matter:

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APPEARANCES:

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On behalf of BellSouth Telecommunications, Inc.

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On behalf of the Commission Staff

FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

Part II of the Federal Telecommunications Act of 1996 (Act) provides for the development of competitive markets in the telecommunications industry. Section 251 of the Act addresses 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 at 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.

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 15, 1996, Sprint Communications Company, L.P. (Sprint), formally requested negotiations with BellSouth Telecommunications, Inc. (BellSouth), under Section 251 of the Act. On September 20, 1996, Sprint filed a Petition for Arbitration under the Telecommunications Act of 1996.

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order in CC Docket No. 96-98 (Order). The Order established the FCC's rules and requirements for interconnection, unbundling and resale based on its interpretation of the 1996 Act. This Commission appealed certain portions of the FCC's rules and Order, and requested a stay pending that appeal. On October 15, 1996, the Eight Circuit Court of Appeals granted a stay of those portions of the FCC's rules and Order implementing Section 252(i) and the pricing provisions of the Act.

By the date of the hearing, December 3, 1996, Sprint and BellSouth had reached agreement resolving most of the issues in Sprint's arbitration petition. Accordingly, our determination is limited to those issues the parties were unable to resolve. Those issues include service standards, indemnification, customer service records, misdirected service calls, points of interconnection, and jurisdictionally mixed traffic. Having considered the evidence presented at hearing, the posthearing briefs of the parties, and the recommendations of our staff, our arbitration decision is set forth below.

I. Service Standards

In this section we address service standards for services provided for resale and for unbundled network elements. Sprint witness Hunsucker states that Sprint requires operational or service parity with BellSouth so that Sprint has the ability to provide service to its local service end users under terms and conditions and at rates at least equal to BellSouth. He also states that Sprint, as a customer of BellSouth, expects a quality of service that meets or exceeds its expectations. Sprint believes that BellSouth and Sprint should work together to establish service objectives and performance levels to accomplish Sprint's objectives. Sprint maintains that these performance levels should be designed to encourage BellSouth to "strive for continued improvement." We note that Sprint did not provide specific lists of performance standards or Direct Measures of Quality (DMOQs) in this proceeding.

BellSouth witness Scheye states that "BellSouth will provide the same quality of services to Sprint and other ALECs that it provides to its own customers for comparable services." Witness Scheye goes on to say that BellSouth "agrees that it is appropriate to jointly develop quality measurements over time as experience is gained," and that BellSouth does not "envision differing quality standards."

Paragraph 970 of the FCC Order states:

> We conclude that service made available for resale be at least equal in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier directly provides the service, such as end users. Practices to the contrary violate the 1996 Act's prohibition of discriminatory restrictions, limitations, or prohibitions on resale. This requirement includes differences imperceptible to end users because such differences may still provide incumbent LECs with advantages in the marketplace. Additionally, we conclude that incumbent LEC services are to be provisioned for resale with the same timeliness as they are provisioned to that incumbent LEC's subsidiaries, affiliates, or other parties to whom the carrier directly provides the service, such as end users.

At Paragraph 313, the Order states:

> Accordingly, we require incumbent LECS to provide access and unbundled elements that are at least equal-in-quality to what the incumbent LECs provide themselves, and allow for an exception to this requirement only where it is technically infeasible to meet. We expect incumbent LECS to fulfill this requirement in nearly all instances where they provision unbundled elements because we believe the technical infeasibility problem will arise rarely.

Section 51.311 of the FCC's rules addresses nondiscriminatory access to unbundled network elements and also discusses service quality:

> (b) Except as provided in paragraph (c) of this section, to the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must prove to the state commission that it is not technically feasible to provide the requested unbundled network element, or to provide access to the requested unbundled network element, at a level of quality that is equal to that which the incumbent LEC provides to itself.

Upon consideration, we believe that performance standards, service restoration intervals, and quality assurance parameters between Sprint and BellSouth are necessary to ensure fair competition. The parties in this proceeding appear to agree that performance standards should be jointly developed. We concur. Neither party, however, has proposed specific standards in this proceeding. Since we believe the parties should jointly develop performance standards, we will not set specific standards in this proceeding. Rather, we find that BellSouth shall provide services for resale and access to unbundled network elements to Sprint, that are at least equal in quality to those that it provides to itself and/or its affiliates, subsidiaries, or any other party. Sprint

and BellSouth shall jointly develop and implement specific processes and standards that will ensure that Sprint receives services for resale, interconnection, and unbundled network elements that are equal in quality to those that BellSouth provides itself and its affiliates. These processes and standards should be included, as completely as possible, in the arbitrated agreement submitted for approval in this proceeding.

II. Indemnification

Sprint has requested that language be inserted into its agreement with BellSouth that requires BellSouth to indemnify Sprint "for any forfeitures or civil penalties or other regulator-imposed fines" that are caused by BellSouth's failure to meet Commission imposed or agreed upon service standards. In support of this position, Sprint witness Hunsucker argues that if Sprint is required to meet the same service quality standards as BellSouth, and if it is unable to meet those standards because of a failure on the part of BellSouth, then it should not be required to bear the "punitive burdens" resulting from failures beyond its control and within the control of BellSouth.

BellSouth witness Scheye states that the issue of financial penalties and other liquidated damages is not subject to arbitration under Section 251 of the Act, and to the extent that Sprint attempts to include penalties in its request for arbitration of service standards, the Commission should dismiss that portion of the issue. He asserts that there is inadequate experience to determine the need for such penalties, and that its experience in the provision of access would indicate that they are not needed. According to witness Scheye, carriers have adequate regulatory recourse if a problem arises that cannot be handled between themselves.

Upon consideration, we find that BellSouth's position regarding liquidated damages is correct. We have limited our consideration to the items enumerated in Sections 251 and 252, and matters necessary to implement those items. We will not arbitrate issues regarding liquidated damages or other indemnification provisions in this proceeding. This is not to imply that we believe that the agreements should not contain such provisions. Rather we do not believe that we have the authority to require that this be done. Further, we do not believe that we may arbitrate a liquidated damages provision under state law. If we were to impose a liquidated damages provision, we would be, in effect, awarding damages to one party for a breach of contract. The Commission lacks the authority to award money damages. Southern Bell

Telephone and Telegraph Company v. Mobile America Corporation, 291 So.2d 199, 202 (Fla. 1074). If we cannot award money damages directly, we cannot do so indirectly by imposing a liquidated damages arrangement on the parties. Moreover, it is axiomatic that parties to a contract may stipulate in advance to an amount to be paid or retained as liquidated damages in the event of a breach. Poinsettia Dairy Products v. Wessel Co., 166 So. 306 (1936); Southern Menhaden Co. v. How, 70 So. 1000 (1916).

III. Customer Service Records

As the incumbent monopoly local exchange carrier (ILEC), BellSouth has been the sole custodian of local customer service records (CSR). Following entry into the local market by the ALECs, each local service provider will be maintaining and updating its local customer service records. If a customer changes local service providers, his customer service records should be made available to the new carrier. In this fashion, the change can be as "seamless" as possible, similar to what occurs when a customer changes long distance carriers today.

Sprint will be one of the first ALECs to enter BellSouth's market. With no demonstrable customer base, Sprint has little if any local service CSR to exchange with BellSouth. On the other hand, BellSouth has CSR for every end user taking local service in its territory. Sprint witness Hunsucker asserts that Sprint will need this information to smoothly transfer service, in order that the customer not be inconvenienced during the transfer.

BellSouth and Sprint have agreed to the electronic interfaces for the functions of pre-ordering, ordering and provisioning, maintenance, and billing data. The parties have also agreed to protect one another's customer proprietary network information (CPNI). BellSouth and Sprint state that they will not use this CPNI for their individual marketing purposes or otherwise.

According to an exhibit attached to witness Hunsucker's rebuttal testimony, it appears the parties have agreed to a blanket letter of authorization. However, Sprint raised an argument for a blanket letter of authorization in its brief. Therefore, it is unclear whether an agreement exists. Sprint contends that the remaining question concerns when in the ordering process Sprint should obtain access to CSR information. BellSouth states that the only remaining issue is how the CSR information is to be provided.

In its brief, Sprint argues that once it has obtained a customer, BellSouth should provide the local features, products,

services, elements, and combinations that were previously provided to that customer during the preording and ordering process. According to Sprint, this applies to all orders and all elements.

Sprint contends that it is essential to have access to BellSouth's CSR data bases during the pre-ordering phase. According to Sprint, this access is crucial to its ability to provide prompt and efficient service to it's new customers. Witness Hunsucker argues that Sprint must have order status at its disposal at each and every stage of the ordering phase of the customer transaction. He states that access to "as is" customer information is essential to the smooth and accurate initial transaction with its customers. Witness Hunsucker argues that the inability to "see" and offer its customer the service he or she has with BellSouth at the time of sale creates an unlevel playing field.

BellSouth witness Calhoun states that at this time BellSouth cannot provide Sprint on-line electronic access to newly converted Sprint customer service records without also giving Sprint access to all other customer service records in its data base, including the records of BellSouth customers and other ALEC customers. Witness Calhoun states that BellSouth only objects to providing on-line access to CSR data. Witness Calhoun explains that this is because all of BellSouth's customer records, as well as resellers' records, are contained in this data base. BellSouth argues that without knowing in advance which customer's record Sprint would want to view, there would be no way to restrict Sprint to viewing just that customer's account. Witness Calhoun states that if on-line access were given to any customer's record, then Sprint would be free to look at all customers' records, which would jeopardize the privacy of the customers' data. BellSouth contends that Sprint has other sources from which it can derive customer access information, including marketing directly to the customer, who certainly knows what services he or she wants or uses.

BellSouth argues that permitting unrestricted and unprotected access would directly conflict with the Florida Statues. Section 364.24(2) specifically prohibits disclosure of customer account information. Witness Calhoun also contends that the FCC Order supports BellSouth's request to protect customers' proprietary information. Witness Calhoun cites paragraph 284, which provides:

> ...to the extent new entrants do not need access to all the proprietary information contained within an element in order to provide a telecommunication service, the Commission and the states may take action to

> protect the proprietary information. For example, to provide a telecommunications service, a new entrant might need access to information about a particular customer that is in an incumbent LEC database. The database to which the new entrant requires access, however, may contain proprietary information about all of the incumbent LECs' customers. In this circumstance, the new entrant should not have access to proprietary information about he incumbent LEC's other customers where it is not necessary to provide service to the new entrants' particular customer. Accordingly, we believe the Commission and the states have the authority to protect the confidentiality of proprietary information in an unbundled network element, such as a database, where that information is not necessary to enable a new entrant to offer a telecommunications service to its particular customer.

Witness Calhoun states that BellSouth is simply asking the Commission to support its efforts to protect customers' proprietary information. He states that BellSouth has actively pursued other means of ensuring that Sprint and other ALECs can obtain customer service records.

Upon consideration, we find that the Act requires the disclosure of customer service records or customer proprietary network information. Section 222(c)(2) states:

> A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to a person designated by the customer.

In addition, Sections 222(d) and 222(d)(1) state:

> (d) EXCEPTIONS.--Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents--
>
> (1) To initiate, render, bill, and collect for telecommunications services.

The FCC's Order also refers to access to customer proprietary network information, although it does not fully address the issue. At paragraph 492 the FCC states:

> We also conclude that access to call-related databases as discussed above, and access to the service management system discussed below, must be provided to, and obtained by, requesting carriers in a manner that complies with section 222 of the Act. Section 222, which was effective upon adoption, sets out requirements for privacy of customer information. Section 222(a) provides that all telecommunications carriers have a duty to protect the confidentiality of proprietary information of other carriers, including resellers, equipment manufacturers, and customers. Section 222(b) requires that telecommunications carriers that use proprietary information obtained from another telecommunications carrier in providing any telecommunications service shall use that information only for such purpose, and shall not use such information for its own marketing purposes. Sections 222(c) and (d) provide protection for, and limitations on the use of, and access to, customer proprietary network information (CPNI).

We note that the FCC has also initiated a proceeding to clarify the obligations of carriers with regard to section 222(c) and (d). (See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer information, Notice of Proposed Rule Making, CC Docket No. 96-115, FCC 96-221, released May 17, 1996.) The FCC has not issued a final order in this docket.

Upon review, we find that Section 222 of the Act and Section 364.24(2), Florida Statutes, protect customer proprietary network information. In particular, Section 222(b) imposes on all carriers the obligation to use customer account information responsibly; that is, only for provisioning telecommunications services from which the CPNI is derived. Thus, we believe that the ILECs need not be the sole guardians of the customer's privacy. The ALECs have that duty as well. In addition, Section 222(d)(1) provides for access to CPNI for purposes of initiating telecommunication services without mention of customer approval. Accordingly, we

find that the blanket letter of authorization satisfies this section.

We also find that CSRs should contain, at a minimum, information on the customer's current level of service. We believe that it is the record identifying what services the customer is taking at the time a request to change carriers is made, not the historical activity records, that should be made available to facilitate an "as is" change. A customer record containing historic information goes beyond what is required for a competitor to provide the current level of service. Therefore, we find that customer records made available by competitors to each other need only contain the information on the customer's current level of service, unless the current provider chooses to make available additional information.

We recognize BellSouth's concern that providing direct, on-line access to its customer service records allows Sprint or any other ALEC free access to all BellSouth customer records. We do not believe, however, that on-line access should be denied to Sprint because BellSouth cannot at this time technically devise a way to provide CSR data without also giving access to all other customer records in its data base. We do not believe the alternatives that BellSouth has proposed provide for a level playing field in this competitive market. In order to compete effectively, new entrants must have immediate access to customer information. If BellSouth wants to prevent disclosure of all customer information it should continue to work toward devising a method to prevent access to all customer information.

In addition, we do not believe that paragraph 284 of the FCC's Order prevents us from requiring BellSouth to provide CSR data. The Order simply states that the ILEC must provide access to the necessary customer information for the provision of telecommunications service. It does not state that the CSR information should not be provided at all if the data contains more information than the new entrant needs to do business.

Upon consideration, then, we find that BellSouth shall provide direct on-line customer service records to Sprint for pre-ordering purposes. Sprint shall issue a blanket letter of authorization to BellSouth which states that it will obtain the customer's permission before accessing customer service records. BellSouth shall not require Sprint to obtain prior written authorization from each customer before providing customer service records. The customer records must contain, at a minimum, information on the customer's current level of service. BellSouth and Sprint are not required to make available any additional information.

IV. Misdirected Service Calls

Sprint witness Hunsucker states that there will be instances where a Sprint customer mistakenly calls BellSouth for various service related inquiries. He contends that by avoiding customer contact by BellSouth, "Sprint can guard against any competitive bias that would inevitably find its way into the customer contact."

Sprint asserts that an automated process should be developed so that BellSouth can transfer misdirected calls to Sprint. Sprint states that there could be some costs associated with developing such a process, and Sprint will pay its fair share. The record reflects that BellSouth is currently looking into the possibility of an automated arrangement for handling misdirected calls but nothing has been developed yet.

BellSouth witness Calhoun states that its customer service representatives have been trained to advise the customer that its service is provided by another carrier and that the customer should contact its service provider with any questions or problems. She maintains that if the customer indicates that he or she does not know how to contact their service provider, BellSouth will provide a contact number if one has been furnished by the ALEC. In addition, witness Calhoun asserts that BellSouth has a toll free number available to which ALECs can direct misdirected calls placed by BellSouth's end users.

Sprint believes that if BellSouth's proposal is used, BellSouth should volunteer Sprint's contact number to the customer. In addition, Sprint is concerned with the possibility of BellSouth engaging in marketing practices with misdirected Sprint customers. BellSouth states that its employees are instructed not to market BellSouth services to the end user of another carrier.

Upon consideration of the evidence, we agree that an automated arrangement for handling misdirected calls should be developed. Absent such a process, BellSouth shall refer any misdirected Sprint customer to Sprint and offer the customer the appropriate Sprint contact number. We believe this approach is preferable to imposing on the customer the burden of requesting a contact number.

V. Points of Interconnection

Sprint requests that it be allowed to establish at least one point of interconnection per LATA within BellSouth's serving territory. Witness Hunsucker states that the ability to establish one or more points of interconnection in a LATA provides Sprint the

flexibility to design an efficient network. Witness Hunsucker adds that this is common practice for telecommunications companies exchanging local and toll traffic today.

Both Sprint and BellSouth agree that this type of arrangement is technically feasible, but BellSouth has some concerns with having one point of interconnection per LATA. BellSouth asserts that due to traffic volume, many LATAs within BellSouth's network are served by more that one access tandem. BellSouth witness Atherton explains that BellSouth's network is designed so that each access tandem serves a separate distinct group of local switching offices. Witness Atherton points out that if all traffic were delivered to a single access tandem in a LATA with multiple access tandems, local calls could traverse up to four different switches, two tandems and two end offices, in order to reach its destination. He states that this scenario could introduce dialing delays, additional points of failure and congestion in the network. According to witness Atherton, BellSouth believes that separate trunk groups to each access tandem will provide Sprint's customers with the best level of service.

Sprint acknowledges BellSouth's concerns and responds that anytime calls are routed through multiple switches there are more opportunities for failure and dialing delay, but that the same risk is involved when a call is placed from California to New York. In addition, Sprint does not believe congestion will be a problem because Sprint's customers will be former BellSouth customers. Sprint maintains that if Sprint adds customers that are new to the area then BellSouth's concerns are unfounded because those customers would have been there for BellSouth to serve whether or not Sprint was present. Sprint agrees with BellSouth that a local call may end up traversing multiple offices. Sprint adds that if this is the case it would pay the appropriate charges.

Upon consideration of the evidence, we agree with the companies that it is technically feasible for Sprint to have one point of interconnection per LATA within BellSouth's service territory. We also agree with BellSouth's concerns on dialing delays and introducing additional opportunities for failure. We believe, however, that Sprint should have the flexibility and the associated responsibility to establish as many interconnection points within BellSouth's territory as needed. Accordingly, we find that Sprint shall be allowed to establish at least one point of interconnection per LATA for routing local traffic within BellSouth's serving territory.

Sprint also requests that it be allowed to interconnect at any technically feasible point within BellSouth's network, including

mid-span or mid-air meets. Witness Hunsucker asserts that the ILECs have traditionally interconnected with each other via mid-span meets or collocation arrangements.

BellSouth does not believe that mid-span meets are appropriate. BellSouth admits that it has mid-span meet arrangements with other incumbent LECs today, but claims that the company is in the process of reviewing these arrangements for appropriateness. BellSouth witness Atherton asserts that mid-span meets compromise BellSouth's ability to retain control of its network because of the different equipment types and configurations required to interconnect with new entrants. Witness Atherton claims that the consequences would be increased costs and decreased network efficiencies.

The FCC stated that mid-span meets "... are commonly used between neighboring LECS for the mutual exchange of traffic, and thus, in general, we believe such arrangements are technically feasible." FCC Order 96-325 at ¶ 553.

Upon consideration, the record demonstrates that mid-span meets are technically feasible. BellSouth acknowledges that it currently has these types of arrangements in place with other incumbent LECs. Therefore, BellSouth shall interconnect with Sprint at any technically feasible point within BellSouth's network serving territory, including mid-span meets.

VI. Jurisdictionally Mixed Traffic

Sprint requests that it be permitted to ship local, toll and wireless traffic to BellSouth over the same trunking facilities. Sprint witness Hunsucker states that it is technically feasible to mix different traffic types on a single trunk or trunk group.

Although BellSouth admits that Sprint's proposal is technically feasible, it opposes Sprint's offer for billing reasons. BellSouth believes that local and intraLATA toll traffic should be segregated from other traffic types via a separate trunk group. Witness Atherton explains that by using separate trunk groups, BellSouth and Sprint can accurately measure and rate traffic for intercompany billing purposes.

Witness Hunsucker asserts that segregating traffic across various trunk groups would result in higher network costs and reduced network efficiencies for BellSouth and Sprint. Further, according to witness Hunsucker, Sprint believes that jurisdictional use factors could be developed by the companies that would enable

BellSouth to bill the appropriate rates. Witness Hunsucker points out that it is common practice for neighboring LECs to bill based on measurements from the sending company. Witness Hunsucker states that Percent Interstate Usage factors are used today to identify interstate and intrastate access minutes and that this same type of arrangement could be applied to identify local traffic. In addition, he states that Sprint will share billing records and allow BellSouth reasonable audit rights to ensure the accuracy of the factors.

BellSouth states that its proposal will help avoid billing disputes. Witness Atherton believes that Sprint's position will result in arbitrary and potentially inaccurate estimates for measuring and billing traffic.

Upon consideration of the evidence, we find that Sprint shall be allowed to jurisdictionally mix traffic over the same trunking facilities. This is appropriate since these types of arrangements are in place today. We also find that Sprint shall report traffic to BellSouth using percentage factors. Further, Sprint shall grant BellSouth reasonable audit rights to ensure the accuracy of the factors. We note that it is unclear from the record whether or not usage factors would have to be developed for BellSouth's proposal. Finally, Sprint shall share the necessary billing records with BellSouth.

VII. Miscellaneous

A. Most Favored Nations Status

Section 252(i) of the Act), provides:

> (i) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS.-
> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement provided under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

Sprint argues that any price, term or condition offered to any carrier by BellSouth should be made available to Sprint on a Most Favored Nations basis.

Sprint argues that the Commission should adopt the FCC's interpretation of Section 252(i) and find that Sprint is entitled to non-discriminatory treatment by BellSouth and can "pick and choose" those rates, terms and conditions offered by BellSouth to Sprint's competitors, which Sprint deems more appropriate than those offered to Sprint. Sprint claims that this interpretation of Section 252(i) will "ensure non-discriminatory treatment of all competing ALECs." Sprint cites paragraph 1310 of the FCC's Order in support of its interpretation of Section 252(i). Sprint, however, acknowledges that this portion of the FCC's order has been stayed by the Eighth Circuit Court of Appeals, pending a final decision on the merits. Sprint, nonetheless, maintains the FCC has applied the correct interpretation of Section 252(i), and asserts that nothing in the Eighth Circuit Stay would prohibit the Commission from adopting this interpretation.

Sprint states there are five reasonable restrictions that should be applied when determining which rates, terms and conditions should be available to other competing local providers. First, where cost-based volume discount levels are offered, Sprint must attain the specific volume levels to obtain the discount. Second, where term discounts based only on the length of the service contract are offered, Sprint must contract to the same length of time in order to obtain the discount. Third, Sprint must accept different prices if there are significant differences in a service or facility, such as an operational support interface. Fourth, Sprint must purchase all necessary elements when feature and function availability demand it, such as the need to purchase local switching in order to obtain call waiting. Fifth, Sprint can only obtain geographically deaveraged rates within the identical geographic area over which the cost was calculated.

Sprint argues that Section 252(i) does not require the requesting carrier to adopt an entire agreement. Sprint cites the FCC's order which provides: "Requiring requesting carriers to elect entire agreements, instead of the provisions relating to specific elements, would render as mere surplusage the words "any interconnection, service, or network element."

BellSouth argues that to allow a requesting carrier to pick and choose individual rates, terms, and conditions for a given service or from a given agreement would "eviscerate the statutory scheme of final agreements freely negotiated and arbitrated by the parties." BellSouth would allow Sprint and other requesting ALECs to adopt either an entire agreement entered into with another ALEC, or all of the rates, terms, and conditions of a specific category of service from an agreement.

BellSouth argues that the Eighth Circuit Stay decision specifically stayed enforcement of the portion of the FCC's order interpreting Section 252(i). BellSouth argues that the Eighth Circuit Stay decision determined the FCC's pick and choose interpretation was contrary to the intent of Congress and would result in a destabilization of the arbitration and negotiation processes.

BellSouth asserts that the Commission should reject Sprint's pick and choose interpretation of Section 252(i), "or at least reserve a determination on this issue until the Eighth Circuit rules definitively on this issue."

Upon consideration, we find that since BellSouth is required to comply with the terms of section 252 under the Act, there is no need for us to impose this requirement on BellSouth in this proceeding. Further, it is unnecessary to interpret Section 252(i) in this proceeding. Specifically, 47 U.S.C. § 252(c), Standards for Arbitration, provides in pertinent part:

> In resolving ... any open issues and imposing conditions upon the parties to the agreement, a State Commission shall -
>
> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251;
>
> (2) establish any rates for interconnection, services, or network elements according to subsection (d)...

This section does not require this Commission to make a determination regarding Section 252(i). Accordingly, we find that a Most Favored Nations clause is not a matter to be arbitrated, nor that resolution of this issue is necessary to the implementation of an arbitrated agreement.

B. Arbitrated Agreement Approval Standard

Section 252 sets forth the procedures for negotiation, arbitration and approval of agreements. Specifically, Sections 252(a)(1) and 252(a)(2) address the procedures for agreements arrived at through negotiation, and Section 252(b) addresses the procedure for agreements arrived at through compulsory arbitration. Section 252(e)(1) provides that any agreement adopted by negotiation or arbitration shall be submitted for approval to this

Commission, and Section 252(e)(4) provides the time period in which this Commission must act on negotiated and arbitrated agreements.

Section 252(e)(2) states that this Commission may only reject:

> (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that -
>
> > (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
> >
> > (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or
>
> (B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

Thus, the Act establishes different standards for approval depending on whether the agreement is arrived at through negotiation or arbitration.

In addition to the above, Section 252(e)(4), Schedule for Decision, provides in pertinent part:

> If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a), or within 30 days after submission of an agreement adopted by arbitration under subsection (b), the agreement shall be deemed approved.

BellSouth argues that the standards in subsections 252(e)(2)(A) and (B) apply not only to complete agreements but also to "any portion thereof" adopted through negotiation or arbitration. Therefore, according to BellSouth, the Commission should apply two different standards to a single agreement that involves both resolved and unresolved issues. BellSouth argues that the resolution of any negotiated issues should be approved

under the standards in Section 252(e)(2)(A) and arbitrated issues under 252(e)(2)(B). BellSouth's argument focuses on the nature of the issues rather than the type of agreement that results.

Sprint cites Section 251(e)(1) which provides that "[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State Commission." Sprint further cites the portion of 251(e)(1) which provides that "[a] State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies." Sprint concludes that the Commission should approve the arbitrated agreement between the parties.

We note that the Act contemplates different mechanisms under which the parties can submit agreements. Under Section 252(a)(1), the parties may negotiate and enter into a binding agreement which shall be submitted to the State for approval. Under Section 252(b), the parties may petition the State commission to arbitrate any open issues. Section 252(b) contemplates that there will be resolved issues as well as unresolved issues. This section requires the petitioner to provide all relevant documentation concerning "any other issue discussed and resolved by the parties."

BellSouth asserts that the standards in subsections 252(e)(2)(A) and (B) apply not only to complete agreements but also to "any portion thereof" adopted through negotiation or arbitration. We believe this phrase allows the Commission to reject a portion of a submitted agreement rather than rejecting the entire agreement itself. BellSouth's interpretation also appears inconsistent with the schedule for state action in Section 252(e)(4). That section states that if the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a), or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b), the agreement shall be deemed approved. Under BellSouth's interpretation, the negotiated provisions would have to be approved within 90 days and the arbitrated provisions within 30 days.

Since the agreement between BellSouth and Sprint will result from an arbitration pursuant to Section 252(b), the agreement shall be approved under the standards in Section 252(e)(2)(B). The arbitrated agreement shall consist of the Commission's decision regarding the unresolved issues as well as the issues resolved by the parties.

D. Post-Decision Procedures

BellSouth states that the first step is to determine whether the parties must negotiate a comprehensive agreement once this Commission has resolved the unresolved issues identified in this proceeding. The Order will provide a basis for Sprint to enter the market. BellSouth states that if, however, a comprehensive agreement is necessary, the Commission should determine how long the parties will have to negotiate.

BellSouth proposes that the parties submit agreements incorporating the Commission's decision within 60 days after the Order is issued. BellSouth requests 60 days because of the likelihood that there will be a need to address the fine points of many technical and operational issues, even if these issues are covered in a general sense by the Order.

BellSouth asserts that the more difficult question concerns what to do if no agreement is reached. BellSouth contends that the suggestion the Commission simply pick the agreement it believes is closest to the Commission's Order is not supported by the authority granted to this Commission in Section 252. Specifically, BellSouth argues that there is nothing in Section 252 that suggests that this Commission can select a contract unilaterally submitted by one party when there is, in fact, no agreement. BellSouth proposes that if the parties are unable to reach an agreement, then the differences should be mediated. Failing this, the parties should seek clarification on any issue that has been the subject of arbitration, but on which there is still no agreement. Any items that cannot be agreed upon and which have not been arbitrated, must be submitted for arbitration.

Sprint proposes that the deadline for filing an agreement should be 14 days from the date of the issuance of the Order reflecting the Commission's decisions on the issues in this proceeding. If no agreement is reached, Sprint proposes that the parties should file their respective proposed contractual language for each issue that remains unresolved within 20 days after the issuance of the Order. The Commission should then adopt on an issue-by-issue basis the proposed contractual language that best reflects the Commission's determinations in its Order.

Upon consideration of the arguments presented, we find that the Act gives us the role under the provisions of Sections 252(b),(c),(d) and (e) both to arbitrate the unresolved issues and approve the agreement that results. Section 252(e)(1) states that any agreement adopted by negotiation or arbitration must be approved by the state commission. Section 252(e)(2)(B) sets out

the grounds for rejection of an agreement adopted by arbitration. Finally, Section 252(e)(4) provides that the state commission must act to approve or reject the agreement adopted by arbitration within 30 days of its submission by the parties or it shall be deemed approved. The Act gives state commissions considerable flexibility to fashion arbitration procedures that will be compatible with the commissions' processes and accomplish the policy purposes of the Act.

Accordingly, we find that the parties shall submit a written agreement memorializing and implementing our decisions herein within 30 days of issuance of our arbitration order. Further, we will review the agreement pursuant to the standards in Section 252(e)(2)(B) within 30 days after they are submitted. If the parties cannot agree to the language of the agreement, each party should submit its version of the agreement within 30 days after issuance of the arbitration order. We will choose the language that best incorporates the substance of our arbitration decision.

VIII. Conclusion

We have conducted the arbitration of the unresolved issues in this proceeding pursuant to the directives and criteria of 47 U.S.C. §§ 251 and 252. We believe our decision is consistent with the terms of Section 251, the provisions of the FCC's implementing Rules that have not been stayed pending appeal, and the applicable provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each and all of the specific findings herein are approved in every respect. It is further

ORDERED that BellSouth Telecommunications, Inc. and Sprint Communications Company, Limited Partnership shall jointly develop and implement specific processes and standards that will ensure that Sprint receives services for resale, interconnection, and unbundled network elements that are equal in quality to those that BellSouth provides to itself and its affiliates. These processes and standards shall be included, as completely as possible, in the arbitrated agreements submitted for approval in this proceeding. It is further

ORDERED that BellSouth shall provide direct on-line customer service records to Sprint for pre-ordering purposes as set forth in the body of this Order. It is further

ORDERED that Sprint shall issue a blanket letter of authorization to BellSouth as set forth in the body of this Order. It is further

ORDERED that BellSouth shall refer any misdirected Sprint customer to Sprint and offer to provide the customer with the appropriate Sprint contact number as set forth in the body of this Order. It is further

ORDERED that Sprint shall be allowed to establish at least one point of interconnection per LATA for routing local traffic within BellSouth's serving territory. It is further

ORDERED that BellSouth shall interconnect with Sprint at any technically feasible point within BellSouth's network serving territory, including mid-span meets as set forth in the body of this Order. It is further

ORDERED that Sprint shall be allowed to jurisdictionally mix traffic over the same trunking facilities as set forth in the body of this Order. It is further

ORDERED that the parties shall submit a written agreement memorializing and implementing our decisions in this proceeding within 30 days of the date this Order is issued as set forth in the body of this Order. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 3rd day of February, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

MMB

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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).