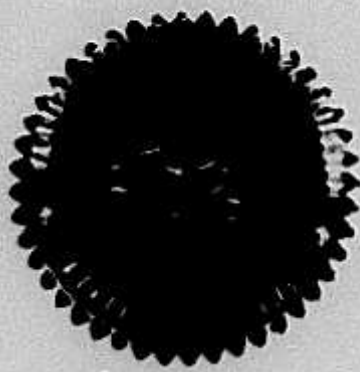


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :
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Petition for arbitration, :
pursuant to Section 252(b) of :
the Communications Act of 1934 :
as amended by the Telecommuni- :
cations Act of 1996, of rates, :
terms, and conditions for :
interconnection and related :
arrangements with Sprint- :
Florida, Incorporated by SBC :
Telecom Inc. :

DOCKET NO. 970242-79



PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER J. TERRY DEASON
Prehearing Officer

DATE: Monday, April 21, 1997

TIME: Commenced at 9:30 a.m.
Concluded at 11:07 a.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting

DOCUMENT NUMBER - DATE
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1 **APPEARANCES:**

2 **RICHARD M. RINDLER, Swidler & Berlin,**
3 **Chartered, 3000 K Street, N. W., Suite 300,**
4 **Washington, D. C. 20007, appearing on behalf of EMC**
5 **Telecom Inc.**

6 **JOHN P. FONS, Ausley & Mcullen, 227 South**
7 **Calhoun Street, Post Office Box 391, Tallahassee,**
8 **Florida 32302, appearing on behalf of Sprint-Florida**
9 **Incorporated.**

10 **CHARLES PELLEGRINI, Florida Public Service**
11 **Commission, Division of Legal Services, 2540 Shunard**
12 **Oak Boulevard, Tallahassee, Florida 32399-0850,**
13 **appearing on behalf of the Commission Staff.**

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P R O C E E D I N G S

(Hearing convened at 9:30 a.m.)

COMMISSIONER SEASON: Call the prehearing conference to order. Could I have the notice read, please?

MR. PELLEGRINI: Pursuant to notice dated April 8th, 1997, this time and place have been set for a prehearing in Docket No. 970242 TP, petition for arbitration pursuant to Section 252(b) of the Communication Act as amended by the Telecommunications Act of 1996, of rates, terms and conditions for interconnection and related arrangements with Sprint-Florida, Incorporated by KMC Telecom, Inc.

COMMISSIONER SEASON: Take appearances.

MR. RINDLER: Richard Rindler law firm of Swidler and Berlin, 3000 K Street, Washington, D.C. on behalf of the petitioner.

MR. FONS: John P. Fons of the law firm of Ausley McMullen, Post Office Box 391, Tallahassee, Florida 32302, appearing on behalf of Sprint-Florida, Incorporated.

MR. PELLEGRINI: Charles Pellegrini on behalf of Commission Staff, 2540 Shumard Oak Boulevard, Tallahassee, Florida.

COMMISSIONER SEASON: Thank you.

1 Are there any preliminary matters,
2 Mr. Pellegrini?

3 MR. PELLEGRINI: Commissioner Deason, yes.

4 We've had extensive discussions with the
5 parties concerning the procedural approach in this
6 docket. At this point we are still under an
7 arbitration proceeding. However, it is my
8 understanding that the parties would wish to address
9 you at this point, and I think it would be appropriate
10 to do so as a first matter.

11 COMMISSIONER DEASON: Mr. Rindler.

12 MR. RINDLER: Commissioner Deason, we filed
13 an arbitration petition. We are prepared to proceed
14 in that mode. We, however, are prepared to proceed in
15 that alternative mode if the Commission Staff believes
16 that it would be a more effective way to deal with the
17 252(i) issue. Our willingness to do that would be
18 dependent upon some assurance that the time frames
19 would be not changed significantly. And we believe
20 that since the issue that would be dealt with in the
21 recast 252 proceeding, 252(i), is the same issue that
22 was raised in the 252 arbitration proceeding that the
23 Commission, in order to also assure the timeliness of
24 the it, should take the record as it stands.

25 COMMISSIONER DEASON: Mr. Fons.

1 MR. POWB: Commissioner Deasen, we are
2 concerned at this point that what RMC has filed is not
3 an arbitration proceeding. We do not believe that it
4 would be appropriate for this Commission to decide a
5 252(1) issue under an arbitration proceeding.

6 We would be perfectly willing if RMC were to
7 amend its petition and recast it under 252(1), and we
8 would be provided our opportunity to respond to such
9 an amended petition. And then after we have responded
10 to that amended petition would then be appropriate for
11 the parties to sit down and try to work out an
12 appropriate procedure for the conclusion of that
13 proceeding.

14 I don't think that it would be appropriate
15 for us today to decide that an amended petition,
16 whatever it is, is filed and I haven't seen it --
17 would then be appropriate to take the record in this
18 particular proceeding and merely fold it in and go
19 about our business as if nothing has happened.

20 Something has happened. Something dramatic
21 has happened in this case, and that is that it's
22 become very clear that this is not an arbitration
23 proceeding and under 252(1) we don't know what RMC is
24 going to say. And until we see what they have to say
25 I'm not at all prepared to agree to any procedure and

1 thereby waive any of my client's right.

2 COMMISSIONER SEASON: Mr. Rindler, do you
3 have a response?

4 MR. RINDLER: I believe a reading of the
5 petition and and the testimony that went along with
6 the petition, including the papers that have been
7 filed in connection with various motions before the
8 Commission, make it clear that from Day One the issue
9 of opt-in was the only issue in this case. That's not
10 news. That's not dramatically different. That's been
11 the same thing since Day One. It's not different than
12 it was when they responded to the petition; they did
13 not raise this issue. It's not different than when
14 they filed the direct testimony; it wasn't any
15 different. They filed a letter, April 10th,
16 identifying the issues, it was no different.

17 I believe the issue in this case has been,
18 and will be, whether it's in this form or another
19 form, whether or not the only provision which the
20 parties have not agreed to, to opt into, be allowed to
21 opt into, is one in which Sprint is in a position to
22 refuse to allow a party to opt into to complete the
23 agreement.

24 COMMISSIONER SEASON: When you use the
25 terminology "opt in" are you referring to what is

1 contained within Section 252(i)?

2 MR. RINDLER: Yes. 252(i) is written --
3 because this is an opt-in to the entire agreement;
4 this is not a pick-and-choose issue.

5 COMMISSIONER DEASON: Do you read 252(i) to
6 contemplate that it in and of itself is an
7 arbitratable issue?

8 MR. RINDLER: I'm not quit sure I understand
9 "in and of itself," Commissioner.

10 COMMISSIONER DEASON: Well, you have filed
11 an arbitration proceeding. My understanding is all
12 the issues have been resolved with the exception of
13 the opting in of 252(i); that being the payment
14 arrangement for the interconnection concerning tandem
15 switching and transport and the question of whether
16 those services, if you want to label them that, are
17 actually being performed by KNC. Now I understand
18 that's the issue. Is that correct?

19 MR. RINDLER: I believe that's the issue,
20 Your Honor. I think that the way of looking at it is
21 that the parties have agreed to opt in as a way of
22 reaching the 251-252 agreement as the entire
23 agreement. Sprint, however, from the beginning --
24 this is not a change, I would be the first to say --
25 took the position that one provision of that agreement

1 was not available to KMC.

2 COMMISSIONER DEASON: And that one provision
3 being?

4 MR. RINDLER: That one provision being the
5 one you described.

6 COMMISSIONER DEASON: Okay.

7 MR. RINDLER: I would, however note, just
8 footnote on that, that since the time the petition was
9 filed the Commission ruled in the NFS case and dealt
10 with the transport issue. And since that issue would
11 be opted into, the transport issue is not an issue in
12 this case.

13 So I think the issue is how do we complete
14 the agreement? How do we deal with that one provision
15 that's not there? We believe that the way that we
16 deal with it is opt in.

17 COMMISSIONER DEASON: Let me ask you this
18 question: You agree that this is an arbitration
19 proceeding, and that normally if an issue is not
20 agreed to prior to arbitration, that the issue is
21 presented to the Commission, the Commission takes
22 evidence, arbitrates the question and makes a decision
23 and then the parties are bound by that. That is the
24 normal procedure, is it not?

25 MR. RINDLER: I'm not quite sure whether

1 there's too much we can say in this Act that's normal.
2 I'm not sure that I'm aware of the situation
3 where the Commission was asked to, in an arbitration
4 or in any other forum -- determined that it should
5 approve an agreement, create an agreement, assist the
6 parties in creating an agreement in a opt-in process.
7 I'm not sure the Commission dealt with that issue yet.

8 I know that in the AT&T case it did
9 determine that because the provision was in another
10 agreement, that even though the Commission on the
11 merits would have gone the other way, which is the
12 dark fiber case.

13 COMMISSIONER BARNOR: Do you agree then that
14 the question of allowing a party to opt in, as you
15 phrase it, that that question has never been
16 arbitrated by the Commission before?

17 MR. RINDLER: It's hard for me to answer
18 that because the AT&T case was an arbitration case.
19 In the context of the AT&T case the Commission said
20 that 352(1) requires GTE to provide dark fiber to
21 AT&T. So those are the facts.

22 COMMISSIONER BARNOR: Staff, what is your
23 recollection of the AT&T case to which Mr. Rindler
24 refers?

25 MR. PALMISTO: I think essentially what

1 Mr. Rindler said is correct.

2 My reading of that case is that the
3 Commission determined that dark fiber was not a
4 network element to be unbundled but in as much as the
5 parties -- not the parties, but in as much as -- there
6 had been a prior agreement making dark fiber available
7 under certain limited connections, that provision
8 ought to be made available to AT&T and NCI, and that's
9 what the Commission decided.

10 MR. FOSS: Commissioner, I think there is a
11 major distinction, though.

12 In the AT&T/GTE arbitration proceeding AT&T
13 did not ask that it be allowed to opt into an
14 agreement that GTE had previously entered into with
15 Intermedia. Indeed, if there was ever a case of pick
16 and choose, this was a case in which pick and choose
17 was undertaken in this Commission. Because in that
18 case they only took one provision out of the ICI
19 agreement and said it was applicable.

20 I think that a more relevant case is the
21 fact that in the NCI/Sprint arbitration that was just
22 completed this very issue of tandem switching was
23 arbitrated. And in that case the Commission decided
24 that Sprint did not have to compensate NCI for tandem
25 switching because NCI did not provide that

1 functionality.

2 The Commission in that case did not reach
3 outside of the Sprint/NCI case and into the Sprint/NFS
4 case where Sprint had erroneously agreed to compensate
5 NFS for tandem switching.

6 So in that case the Commission did not pick
7 and choose and they could have done it had they done
8 it the way they did it in the AT&T/GTE case. And
9 moreover, in the Sprint/NCI arbitration that was no
10 request by NCI to opt in to a provision in the NFS
11 agreement.

12 So I think there's a big distinction here.
13 Those were arbitration proceedings. This is allegedly
14 an arbitration proceedings but it's not with regard to
15 the provision of either an unbundled element,
16 interconnection or resale. It's rather KMC is asking
17 the Commission to make a decision under 252(1) and
18 that's not an arbitration proceeding.

19 COMMISSIONER DEASON: Staff, what are the
20 time frames? If we proceed under arbitration what are
21 the time constraints under which the Commission must
22 proceed in processing this case?

23 MR. PELLEGRINI: That's something we really
24 have to be concerned with.

25 Presently this docket is scheduled for

1 hearing next Monday, the 28th of April. The matter is
2 set for the agenda conference on June 10th, which as I
3 recall is one or two days prior to the expiration of
4 the nine-month clock. So we need to determine, it
5 seems to me rather quickly, if not today, if we're
6 going to proceed under arbitration or going to go down
7 some other path.

8 **COMMISSIONER DEASON:** Okay. And
9 Mr. Rindler, I understand that one of your concerns is
10 that whatever the Commission does that you be afforded
11 the opportunity to have this case concluded under the
12 time frames as contemplated and just described by
13 Staff.

14 **MR. RINDLER:** Yes, sir. I wouldn't say I'm
15 insisting upon the exact date but within that time
16 frame.

17 **COMMISSIONER DEASON:** Let me ask. Staff, if
18 we decide to go forward with the arbitration and
19 arbitrate this issue on its merits and take the
20 evidence we can proceed and conclude this case within
21 the time frames you've just specified.

22 **MR. PELLICORINI:** Yes, sir.

23 **COMMISSIONER DEASON:** Okay. And if we opt
24 for some other type procedure, well, then, these time
25 frames could not be met.

1 **MR. PELLASCHINI:** If we would opt for a
2 procedure outside of arbitration we wouldn't be faced
3 with a statutory deadline. That would cease to be a
4 problem.

5 **COMMISSIONER BEASON:** I'll put the parties
6 on notice what my concern is, is that we have
7 processed a number of arbitration proceedings and we
8 all know they are under very strict time constraints.

9 I think the Staff, with the cooperation of
10 the parties and by an extremely large amount of hard
11 work by our Staff, we've been able to complete those.

12 I am reluctant at this point to expand this
13 or modify this case in any way and try to abide by
14 some type of time schedule as we currently have it
15 contemplated.

16 If the parties wish to proceed with this as
17 an arbitration, and take evidence on the one
18 outstanding issue and let this Commission decide that
19 issue on the merits, we will decide this case in the
20 time frames as required in the federal law.

21 If we deviate from that, well, then those
22 time frames are not going to be met. And it seems to
23 me there are a number of options.

24 One would be to take the question of opting
25 in and the applicability of 252(i) as a legal issue

1 which could be briefed by the parties. I do not think
2 that there's any outstanding issues of fact which we
3 would need witnesses and evidence to address.

4 We could do that, I suppose, in this docket
5 but the time frames which apply to arbitration would
6 not apply to that proceeding and the addressing of
7 that legal issue.

8 Or we can simply -- if you do not wish to go
9 to arbitration, you could be allowed to withdraw your
10 arbitration and file whatever you think is appropriate
11 to get the issue of opting in before the Commission.
12 And I'm not here today to tell you how you should get
13 that before the Commission. The question has not been
14 before the Commission before except in the very
15 limited context as you and Mr. Fons have described.
16 And whether that is applicable here today I have my
17 doubts.

18 So, Mr. Rindler, those basically are the
19 options before you. I think the question is before
20 you. You need to let the Prehearing Officer know how
21 you wish to proceed.

22 MR. PELLEGRINI: Just one point. Staff
23 believes that if we were to proceed under 120.57(2),
24 an informal hearing, that we could bring a
25 recommendation to that same agenda conference on June

1 10. We wouldn't be under the statutory constraint but
2 we could still meet that time.

3 COMMISSIONER DEASON: It seems to me you're
4 going to have to allow the parties an opportunity to
5 brief this matter.

6 MR. PELLEGRINI: Yes.

7 COMMISSIONER DEASON: And the more time you
8 allow the parties, hopefully the better product the
9 staff is going to have to be able to analyze, make
10 your own review and your own study of the law and then
11 make your recommendation to the Commission. I don't
12 want to rush it.

13 MR. PELLEGRINI: No, I think the present
14 briefing schedule would be adequate under those
15 circumstances, as a matter of fact.

16 COMMISSIONER DEASON: Under that scenario,
17 when would you anticipate parties filing briefs on the
18 legal issue? Under the same schedule for briefing.

19 MR. PELLEGRINI: Under the present schedule,
20 and I can tell you what that is in just a moment.

21 MR. FONS: Briefs are due according to the
22 CSAR on May the 9th.

23 COMMISSIONER DEASON: Let me ask the
24 parties, assuming that we go this, and I'm not saying
25 this is the route we're going to go, but just assuming

1 for the sake of argument that we spin this basically
2 into a 120.57(2) proceeding, Mr. Rindler, can you
3 provide your brief by May the 9th on that question?

4 MR. RINDLER: Yes, Your Honor.

5 COMMISSIONER DEASON: Mr. Fons.

6 MR. FON: Commissioner Deason, I don't know
7 what we're spinning it into. Are we spinning it into a
8 252(i) proceeding or are we going to continue down a
9 252(b) or (c) arbitration proceeding in which case I
10 think there may be material issues at dispute --
11 material issues of fact in dispute. So until I know
12 precisely what we're doing, I can't commit to
13 anything.

14 COMMISSIONER DEASON: Okay.

15 MR. RINDLER: Commissioner, just one further
16 point. It would be KNC's position that there are no
17 material issues of fact in the arbitration proceeding
18 at this time.

19 COMMISSIONER DEASON: Describe those to me
20 because that was not my understanding.

21 MR. RINDLER: My understanding -- as KNC
22 sees the issue of whether or not the NPS provision is
23 available to it as all of the other NPS provisions
24 were available to it, there's no dispute if you look
25 at the response to the petition, to anything except

1 whether or not there was a timely filing, which they
2 did not object to, simply noted. Everything else was
3 agreed to, including that this was an opt-in issue.

4 I really don't know that I could identify
5 right now any issue that requires a factual
6 determination. And one of the issues if we proceed
7 down the arbitration route is whether or not, in fact,
8 a hearing is necessary.

9 COMMISSIONER BARNETT: Well, I suppose -- I'm
10 a little confused when you say that there is an issue
11 of fact concerning whether the NPS provisions are
12 available to FMC.

13 MR. SIMPSON: I'm sorry, I didn't say that
14 was an issue of fact.

15 COMMISSIONER BARNETT: I thought you said --
16 you said that there are material issues of fact and I
17 asked you to call me what those are.

18 MR. SIMPSON: No, Your Honor, I said there
19 were not.

20 COMMISSIONER BARNETT: Oh, I'm sorry. Okay.
21 There are no material issues.

22 MR. SIMPSON: That would be our position.
23 COMMISSIONER BARNETT: Okay.

24 It seems to me that we need to get this
25 matter addressed before we proceed any further because

1 if we start looking at other things it may be moot
2 depending on how we decide this matter.

3 MR. PELLEGRINI: Precisely.

4 COMMISSIONER DEASON: I'm going to ask the
5 parties if you have any concluding comments to make
6 them and I'm going to call a recess, meet with Staff
7 and discuss this a little bit further and be prepared
8 to make a decision today as to how we're going to
9 proceed further, and then whether we need to go
10 further with this prehearing conference. Mr. Rindler.

11 MR. RINDLER: One question I would raise
12 simply is whether it would be useful and appropriate
13 to determine the issue pending a motion to strike
14 certain testimony in the Prehearing Order before you
15 make that further determination, in that it is
16 possible that the rebuttal testimony may have raised a
17 question of fact. It also raises the issue of an
18 interest of a third party not here in this proceeding.

19 COMMISSIONER DEASON: I understand. And
20 depending on how we proceed we may or may not get to
21 that issue. Mr. Foss.

22 MR. FOSS: Commissioner Deason, I have
23 nothing further to offer except that I think there may
24 be material issues in dispute, depending upon which
25 way the Commission decides, this proceeding needs to

1 go forward. And moreover, that we will be a happy to
2 work with the Staff and Mr. Rindler to come up with
3 some stipulated, agreed upon procedure depending upon
4 if the Commission indicates how it believes this
5 proceeding ought to go. If it continues to be a
6 252(b), then we'll just go ahead on arbitration. In
7 that case we may need the additional testimony.

8 **COMMISSIONER DEASON:** Okay. We're going to
9 stand in recess until 10:30.

10 (Brief recess.)

11 - - - - -

12 **COMMISSIONER DEASON:** Call the prehearing
13 conference back to order.

14 I believe where we are at this point, after
15 hearing the argument this morning, and the rather
16 unique character of this case, and after conferring
17 with Staff, I believe that we basically have two
18 options in front of us. And basically that,
19 Mr. Rindler, it's going to be your decision as to how
20 you want to proceed in this case. It is your
21 petition.

22 The Commission is fully prepared to go
23 forward with an arbitration proceeding. If we do that
24 it is my decision that we will process this as an
25 arbitration. The one outstanding issue concerning the

1 reciprocal compensation for tandem switching will be
2 an issue that the Commission will take evidence on.
3 We will arbitrate that issue based upon its merit and
4 we will make a decision and it would be my
5 understanding that that decision then would be binding
6 on the parties.

7 That is one course of action and is
8 something that KNC certainly has a right to pursue and
9 the Commission is prepared to go that route.

10 If it is not KNC's desire to go that way,
11 the only other option that I know of at this point
12 would be to give KNC the opportunity to amend its
13 petition. If that choice is taken, then after the
14 amended petition is received, obviously Sprint would
15 have an opportunity to respond to that.

16 It would be my desire to have that response
17 done on an expedited basis, probably in the
18 neighborhood of ten days as opposed to the customary
19 20, but then it would proceed on its own time
20 schedule.

21 Staff would process it, but I am confident
22 that it would not be processed within the time frames
23 as currently are contemplated with the arbitration
24 proceeding. It would be impossible to do so.

25 Also, Mr. Rindler, if you decide to go

1 forward with the arbitration, then I will need to rule
2 on the motion to accept late filing and then I will
3 also need to rule on the motion to strike rebuttal
4 testimony. But I will rule on those only if we decide
5 to proceed with arbitration as I have described it.

6 If you need any additional time to consider
7 that, I will be more than happy to provide that to you
8 and call another recess. If you're prepared to go
9 forward at this point, I await your decision.

10 MR. RINDLER: Is there a third option? Can
11 I ask a question?

12 COMMISSIONER SEASON: You may ask a
13 question, certainly.

14 MR. RINDLER: With respect to option two,
15 I'm not quite sure I understand that procedure of it.
16 Would one -- would I be amending the present petition
17 to turn it into something else? Or would I be filing
18 a new petition? What do you contemplate,
19 Commissioner?

20 COMMISSIONER SEASON: Well, I'm certainly
21 not here to tell you how to represent your client
22 before the Commission. I think that's your decision
23 to make. I don't know. We're plowing new ground
24 here. We have not at this point processed a petition
25 under 251(i). Now you want to characterize it, I

1 guess, you would be free to do that. But I would want
2 to stress one thing and that is that we would no
3 longer be processing it under the current arbitration
4 and the time frames contemplated in that. It would be
5 a new ball game, so to speak. And I would think you
6 would be free to ask for an informal proceeding in
7 that amended petition. If you want to limit it to a
8 question of the legal issue and how it applies to the
9 applicability of 252(i) in your circumstance, I would
10 think you would be free to do that.

11 I would also contemplate that Staff would
12 make themselves available to offer whatever insight
13 into this process and I would certainly encourage you
14 to discuss the matter with Sprint. It may be
15 advantageous for all involved to do that if you choose
16 to amend your petition.

17 **MR. SINDLER:** That's where I get lost is
18 "amend the petition." Does this proceeding continue
19 on but amended in both the relief and the statutory
20 time frames under which it exists?

21 **COMMISSIONER DEASON:** Perhaps the choice of
22 terminology, "amending the petition" is inappropriate.
23 More likely it would be more accurate to say that
24 you're going to be filing an entirely new proceeding
25 in this arbitration as we know it, and the time frames

1 as contemplated would dissolve.

2 MR. BINDER: Thank you.

3 COMMISSIONER SEASON: Staff, do you have
4 anything to add?

5 MR. PELLEGRINI: I would think at a minimum
6 the amended petition would remove us from an
7 arbitration proceeding; would convert the arbitration
8 proceeding to the seeking of relief pursuant to 252(i)
9 as a minimum.

10 CHAIRMAN SEASON: That's what I contemplate.
11 Somehow we kind of got stuck on the terminology of
12 "amending the petition." I would envision it as a new
13 petition seeking relief under a new section of the
14 federal law, a section we've not yet dealt with. Now
15 we would proceed from that point, we would be plowing
16 new ground. We would try to handle it as promptly and
17 expeditiously as possible, but I think that it would
18 not be subject to the strict time frames as are
19 contemplated within an arbitration proceeding as we
20 have historically done then.

21 MR. BINDER: Not to continue to push it, if
22 I may, let's accept that the time frames don't apply.
23 If one of the issues we discussed in issues
24 identification discussions were amending or converting
25 the existing pleading, so that it is a 252(i)

1 pleading, remains the same docket, doesn't change the
2 docket, and the record in it is the record in it
3 that's presently in the 252 proceeding, which allows
4 the matter to proceed more expeditiously I would
5 think.

6 **COMMISSIONER BROWN:** Well, we actually have
7 not done anything in this docket except that there has
8 been prefiled testimony and there's been a motion to
9 strike concerning some of that testimony which has not
10 yet been dealt with.

11 When you use the terminology "converting the
12 existing proceeding" we have no record to convert
13 over. We have some preliminary filings. That
14 testimony has not been accepted into the record. We
15 don't even know what testimony will be accepted into
16 the record. So I'm not sure what you -- when you use
17 the terminology "convert the existing proceeding,"
18 what you anticipate to gain by that and what would
19 save time and effort on part of the parties and this
20 Commission.

21 **MR. BINKLER:** Your Honor, what I would
22 contemplate would be that, in fact, the preliminary
23 pleadings would be still in the docket, which have
24 been converted or amended, and that the -- we would
25 proceed, in effect, on the schedule we're on. I don't

1 believe -- and I think we could with further
2 discussion come to an agreement that there are no
3 material issues of fact so there would be no need for
4 an evidentiary hearing. And we would just go on not
5 the same schedule in the sense of the statutory
6 requirements to have a decision by whatever date it
7 is, but in the sense of what is left in this case is
8 to file briefs. Whether it is now called a 252(1) or
9 an arbitration, although it affects the timing, I
10 don't think has any other effect on the record.

11 COMMISSIONER SANSON: Mr. Pons.

12 MR. PONS: I want to be as cooperative as I
13 can be, but until I see their 252(1) petition and see
14 what they have alleged in there I can't in any way
15 commit to a particular course of action.

16 I will -- Sprint will be very cooperative.
17 We think that if we can stipulate to the facts after
18 the pleadings have been closed, then I think we could
19 proceed to a briefing schedule as opposed to a
20 hearing. But again, that's going to be driven by
21 whatever is filed by KMC.

22 COMMISSIONER SANSON: Staff, do you have
23 anything to add?

24 MR. PALLANIS: Well, in the first place,
25 to address the point that Mr. Rindler raised, what I

1 envision is that Staff would proceed on the basis --
2 would formulate its recommendation on the basis of the
3 legal argument, on the basis of the legal briefs.
4 There in effect would be no evidentiary record.
5 Present prefiled testimony would not become record
6 evidence.

7 **COMMISSIONER DEASON:** Mr. Rindler, it seems
8 to me that one of your biggest concerns are the time
9 frames involved in trying to get a decision as quickly
10 as possible and I understand that. But I think the
11 burden is upon you to frame your petition under 252(i)
12 the way you see appropriate.

13 If it is such that there are no issues of
14 fact, and it is a strictly a legal issue which needs
15 to be briefed, perhaps that can be done on a very
16 expedited time schedule and a decision can be made
17 quickly.

18 I, at this point, do not see any necessity
19 in converting the existing proceeding to a different
20 proceeding. I think it would be cleaner to have you
21 file your petition, whatever form it may take and
22 whatever relief you may request, and give Sprint an
23 opportunity to respond to that and go anew from that,
24 realizing if it can be done quickly, it will be
25 handled as quickly as possible.

1 But I cannot sit here today and tell you
2 precisely what time schedule it would be handled, even
3 if I had the authority to do so, when we all realize
4 that the schedules for such are set by the Chairman.

5 That's where we are at this point. If you
6 do need some additional time I will be more than glad
7 to provide that to you. But a decision will be made
8 today as to how we're going to proceed.

9 MR. RINDLER: Thank you. I would like some
10 additional time.

11 COMMISSIONER BEASON: How much time do you
12 need, Mr. Rindler?

13 MR. RINDLER: 11:00.

14 CHAIRMAN JOHNSON: Oh, certainly. We'll
15 take a recess until 11:00.

16 MR. RINDLER: Yeah.

17 (Brief recess taken.)

18 - - - - -

19 COMMISSIONER BEASON: Call the prehearing
20 conference back to order. Mr. Rindler?

21 MR. RINDLER: Commissioner, I've given this
22 as much thought as I could in the amount of time I
23 asked for.

24 I am concerned about the way the issue has
25 been framed in terms of the arbitration, and I think

1 It raises factual issues that were not in the
2 petition. It was not an issue identified in the
3 petition.

4 But given this Commission's prior position
5 on that particular issue, I do not think I could
6 advise my client to go the route of arbitration
7 because appeal from your decision, if it were to be
8 consistent with prior rulings, would probably take me
9 longer than reaching the merits of the issue the
10 client is interested in, which is its right to opt in.

11 Accordingly, at this point, whatever we
12 want -- withdraw the petition for arbitration and we
13 will pursue with staff and with Sprint a method of
14 filing a 252(1) motion, petition or whatever the
15 appropriate procedural form we decide it should be.
16 And we will hopefully get that resolved on the basis
17 of legal issues and have it resolved expeditiously.

18 ~~COMMISSIONERS SENATORS:~~ Thank you,

19 Mr. Rindler.

20 I understand the reason for your decision,
21 and I would encourage you, as you have indicated that
22 you will do, is to work with staff and with Sprint. I
23 would also encourage Sprint, as I'm sure they will do,
24 to work with you. And as I understand it, given where
25 we are at this point that when you file your petition

1 concerning the applicability of 252(i), that normally
2 Sprint would be allowed 20 days to respond. I believe
3 that it would be appropriate to shorten that time
4 period to ten days, unless there's a strenuous
5 objection from Mr. Fons.

6 MR. FONTS: There is no strenuous objection
7 but we would like to leave the option open if we find
8 we couldn't do it in ten days we may come back and ask
9 for longer.

10 COMMISSIONER SEASON: You may certainly do
11 so if you find that would be the situation.

12 Is there anything else we need to address at
13 this time?

14 MR. VELLERINI: There's nothing else before
15 us, Commissioner. We'll meet with Mr. Rindler at his
16 convenience.

17 COMMISSIONER SEASON: Thank you,
18 Mr. Rindler. It was not my intention to put you under
19 a strict time period on that, but I think we need to
20 make a decision today and you asked for 11:00 and
21 that's what I gave you.

22 MR. RINDLER: Yes, Your Honor. I didn't
23 mean to suggest anything else. I appreciate your
24 efforts.

25 COMMISSIONER SEASON: Very well. This

1 prehearing conference is adjourned.

2 (Whereupon, the hearing concluded at

3 11:07 a.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Prehearing
6 Conference in Docket No. 970242-TP was heard by the
7 Prehearing Officer at the time and place herein
8 stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 30 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 21st day of April, 1997.

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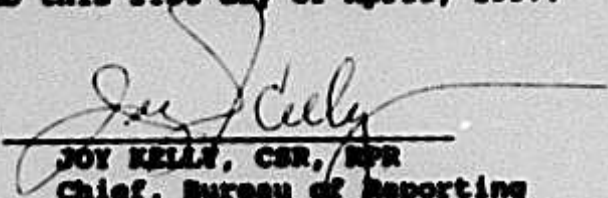
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