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June 26, 1997

VIA FEDERAL EXPRESS

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Florida Public Service Commission
Director, Division of Records and Reporting
101 East Gaines Street
Tallahassee, Florida 32301

Re: *Wireless One Network, L.P. v. Sprint Florida, Incorporated*

To the Director:

Please find enclosed for filing the original and ten copies of Wireless One Network's:

- Complaint and/or Petition for Arbitration against Sprint Florida, Incorporated; 06468-97
- Memorandum in Support of the Complaint and/or Petition; and 06469-97
- Motion for Admission Pro Hac Vice. 06470-97

Pursuant to Rule 25-22.028, Florida Administrative Code, a double-sided, high-density diskette containing each of the above documents is enclosed. The documents were formatted as WordPerfect for Windows documents under the Windows 95 operating system.

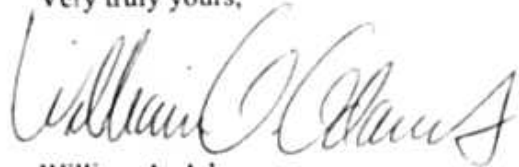
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Director, Division of Records and Recordkeeping
June 26, 1997
Page 2

Please date stamp and return three copies of each document in the enclosed self-addressed envelope.

Very truly yours,

A handwritten signature in cursive script, appearing to read "William A. Adams".

William A. Adams

enclosures

cc: James A. Dwyer
Frank ' .caton
Alan Berg, Esq.

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FILE COPY

BEFORE
THE FLORIDA PUBLIC SERVICE COMMISSION

Wireless One Network, L. P.,)
)
 Complainant/Petitioner,)
)
 v.)
)
 Sprint Florida, Incorporated,)
)
 Respondent.)

Docket No. 990788

**MEMORANDUM IN SUPPORT OF
COMPLAINT AND/OR PETITION FOR ARBITRATION
AND EXPEDITED HEARING**

I. Introduction

This proceeding presents novel issues not previously addressed by the Florida Public Service Commission ("FPSC"), but which are readily resolved by the plain language of the Telecommunications Act of 1996. As the complaint and petition¹ filed concurrently with this memorandum reveals, Wireless One Network, L. P. ("Wireless One") currently is engaged in interconnection negotiations with Sprint Florida, Incorporated ("Sprint"), and has been since August 2, 1996. During the progress of these

negotiations, Wireless One learned that Sprint had entered into an interim interconnection

Wireless One has styled this action as a complaint and/or petition for arbitration due to lack of guidance in the Telecommunications Act and the FPSC's rules as to the appropriate mechanism for a third party to obtain the terms and conditions of an existing interconnection agreement. Indeed, in its order implementing the Act, the Federal Communications Commission urged state commissions to establish an expedited process for the adoption of such agreements outside of the confines of the negotiation and arbitration procedures set forth in 47 U.S.C. § 252. See *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 (August 8, 1996), ¶ 1321. Accordingly, Wireless One seeks to invoke the FPSC's complaint jurisdiction over Sprint, on an expedited basis pursuant to Fl. St. § 364.058. In addition, Wireless One has included the information required in a petition for arbitration under 47 U.S.C. 252(b)(2)(A) should the FPSC choose to treat this matter consistent with the procedure for arbitration.

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agreement with Palmer Wireless, Inc. ("Palmer"), and that Sprint intentionally failed to submit the agreement to the FPSC for approval in violation of 47 U.S.C. § 252(e).² Indeed, Sprint not only has failed to submit the agreement for the FPSC's approval, but also has refused to make the terms and conditions of the agreement, once finally discovered, available to Wireless One upon its request, in violation of 47 U.S.C. § 252(i). Wireless One is compelled to seek the FPSC's intervention to protect its right to non-discriminatory terms and conditions for interconnection as mandated by the Telecommunications Act of 1996.

II. Sprint's Refusal to File the Interim Palmer Interconnection Agreement and Make it Available to Wireless One Violates 47 U.S.C. §§ 252(h) and (i).

No doubt exists that, by refusing to file the negotiated interim Palmer interconnection agreement, Sprint violated the express provisions 47 U.S.C. § 252(e), which provides:

(1) Approval Required. -- *Any* interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(Emphasis added.) The language of this statute does not distinguish between interconnection agreements arrived at through negotiation or arbitration, nor between agreements negotiated on an interim or permanent basis. Rather, it explicitly requires

² Sprint acknowledged during a meeting with FPSC staff on April 30, 1996, that it had entered into an interim agreement with Palmer and had not submitted it to the FPSC. Despite Staff's strenuous objections to Sprint's withholding the agreement, Sprint has yet to submit it, making its unlawful conduct even more egregious.

that *ANY* interconnection agreement be filed with the State commission. Sprint's failure to submit the interim Palmer interconnection agreement for the FPSC's approval is a clear violation of this statute, and the FPSC should so find.

Nor is there any doubt that Sprint violated the express terms of 47 U.S.C. § 252(i), which provides:

AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS.--A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved 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.

The plain and unambiguous language of this statute requires, at a minimum, that the local exchange carrier make the entirety of an existing interconnection agreement available to third parties upon their request. As discussed subsequently, the only debate as to the construction of this statute centers on the Federal Communication Commission's interpretation that a requesting carrier may "pick and choose" among the individual provisions of subsequently approved interconnection agreements to revise its existing agreement. Indeed, even the ILECs agree that they must make available the entirety of existing agreements to requesting third parties, which is precisely what Wireless One is seeking.³

³ See, e.g., *In Re: Petition by Metropolitan Fiber Systems of Florida, Inc. for Arbitration with BellSouth Telecommunications, Inc. Concerning Interconnection Rates, Terms, and Conditions, Pursuant to the Federal Telecommunications Act of 1996*, Docket No. 960757-TP, Order No. PSC-96-1084-PHO-TP (August 22, 1996).

Interestingly, Sprint's affiliate, Sprint Communications Company, L.P., has gone so far as to urge the FPSC to permit third parties to "pick and choose" individual provisions of subsequently negotiated agreements to revise their previously negotiated agreements. See, e.g., *In Re: Petition by Sprint Communications Company Limited Partnership d/b/a Sprint for Arbitration with BellSouth*

Sprint's deliberate refusal to present the interim agreement to the FPSC for approval prevented the FPSC from approving and filing it under 47 U.S.C. §§ 252(e) and (h) before the effective date of March 1, 1997. Sprint's refusal, in turn, directly deprived Wireless One of the ability to obtain the same terms and conditions of the agreement as of the same date, under 47 U.S.C. § 252(i).⁴ Accordingly, Wireless One requests that the FPSC approve the interim Palmer interconnection agreement in this proceeding, order that it be made available to Wireless One effective March 1, 1997, and order that Sprint refund, with interest, the overpayments Wireless One has made for interconnection since March 1, 1997.

III. Disposition of this Proceeding as an Arbitration Leads to the Same Result.

Should the FPSC wish to process this proceeding as a request for arbitration, the sole issue would be whether Sprint must make the terms of the interim Palmer interconnection agreement available to Wireless One pursuant to 47 U.S.C. § 252(i).

Sprint's only position offered in negotiations on the interim interconnection agreement is that it does not agree with Wireless One's interpretation of § 252(i). Because of the abundance of authority as to the incumbent LEC's obligations under §

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 (February 3, 1997); In Re: Petition by Sprint Communications Company Limited Partnership d/b/a Sprint for Arbitration with GTE Florida Incorporated Concerning Interconnection Rates, Terms and Conditions, Pursuant to the Federal Telecommunications Act of 1996. Docket No. 961173-TP, Order No. PSC-97-0230-FOF-TP (February 26, 1997).

⁴ For these reasons, Sprint also should be estopped from arguing, should it be so bold, that the interim agreement is not available to Wireless One because it has not been "approved" by the FPSC.

252(i), Sprint likely will raise the dilatory argument that the Commission cannot order it to make the interim agreement available to Wireless One because the United States Court of Appeals for the Eighth Circuit has stayed the FCC's formal rule implementing the statute.⁵ See Iowa Utilities Board vs. FCC, 1996 WL 589204 (8th Cir. 1996).

However, the Eighth Circuit's stay in no manner affects Sprint's obligation to provide the entire interim Palmer interconnection agreement to Wireless One. In Iowa Utilities Board, the petitioners argued that the FCC's rule should be stayed because it would allow carriers to pick and choose the lowest-priced individual elements and services from any number of prior approved agreements. Moreover, they argued that, if a new carrier reached an improved agreement, the prior carriers would demand that their agreements be similarly improved, destabilizing the whole process. The court stayed this rule finding only that it "will operate to further undercut any agreements that are actually negotiated or arbitrated." 1996 WL 589204, *5. Thus, the Court's reason for issuing the stay went to the rule's effect on the finality of existing agreements if carriers could

⁵ When the Federal Communications Commission ("FCC") issued its interconnection rules in August, it implemented § 252(i) with the following rule:

Availability of Provisions of Agreements to Other Telecommunications Carriers Under Section 252(i) of the Act.

(a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.

automatically modify and amend their negotiated or arbitrated agreements merely by the LEC entering into a subsequent agreement with a third party. These problems are not applicable to Wireless One, which merely is attempting to adopt in its entirety an initial and interim interconnection agreement that Sprint provided to another CMRS provider.

Moreover, the Eight Circuit's decision stayed only the FCC's rule interpreting 47 U.S.C. § 252(i), leaving to the states the obligation to interpret the statute. Wireless One urges the FPSC to use its authority to interpret § 252(i) consistent with its plain meaning and find that Sprint is obligated thereunder to make the terms of the interim Palmer interconnection agreement available to Wireless One forthwith.⁶

IV. This Case Should Be Considered on an Expedited Basis.

The F. SC has recognized that the time constraints imposed by the Telecommunications Act of 1996 warrants that arbitration proceedings be conducted on an expedited basis pursuant to Fl. St. § 364.058.⁷ The interim nature of the

⁶ Wireless One is cognizant that the FPSC has refused to construe 47 U.S.C. § 252(i) in the context of an arbitration proceeding. However, the FPSC's previous consideration of this issue went to whether a most favored nation ("MFN") clause should be included in the particular interconnection agreement under consideration. See *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 (February 3, 1997); *In Re: Petition by Sprint Communications Company Limited Partnership d/b/a Sprint for Arbitration with GTE Florida Incorporated Concerning Interconnection Rates, Terms and Conditions, Pursuant to the Federal Telecommunications Act of 1996*, Docket No. 961173-TP, Order No. PSC-97-0230-FOF-TP (February 26, 1997). This is not the issue to be resolved in this proceeding. Wireless One is not seeking inclusion of a MFN clause in any agreement. Rather, it is merely seeking a determination as to Sprint's present obligations under the statute to provide it with the same terms and conditions of interconnection that it provided to another telecommunications carrier. This issue is ripe for the FPSC's determination.

⁷ See, e.g., *In Re: Petition by American Communications Services, Inc. and Its Local Exchange Operating Subsidiaries in Florida for Arbitration of Unresolved issues in Interconnection negotiations with GTE Florida Incorporated, Pursuant to the Telecommunications Act of 1996*, Docket No. 961537-TP, Order No. PSC-97-0266-PHO-TP (March 11, 1997).

interconnection agreement that Wireless One seeks, as well as the narrowly tailored issue presented, offers an even stronger basis for expedited hearing in this proceeding. Accordingly, Wireless One requests that this matter be conducted as an expedited proceeding pursuant to Fl. St. § 364.058.

Respectfully submitted,



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Dane Stinson, Esq.

Laura A. Hauser (Florida Reg. No. 0782114)

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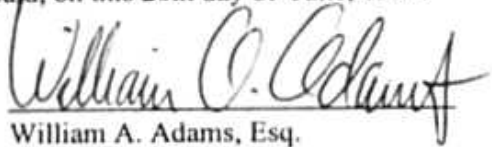
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Complaint and/or Petition for Arbitration and Expedited Hearing was served upon the following party by ordinary U.S. Mail, postage prepaid, on this 26th day of June, 1997.


William A. Adams, Esq.

Alan Berg, Esq.
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Apopka, Florida 32703