ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Wireless One Network, L.P. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with Sprint-Florida, Incorporated Pursuant to Section 252 of the Telecommunications Act of 1996	))))))	Docket No. 971194-TP Filed: October 7, 1997

RESPONSE OF SPRINT-FLORIDA, INCORPORATED

Sprint-Florida, Incorporated ("Sprint-Florida" or "Sprint"), pursuant to 47 U.S.C. § 252(b)(3), hereby files its Response to the Petition of Wireless One for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 ("Petition"). Sprint-Florida responds as follows:

Respondent is :

Sprint-Florida, Incorporated
555 Lake Border Drive
Apopka, Florida 32703

Respondent is represented by :

Charles J. Rehwinkel
General Attorney
1313 Blair Stone Rd.
MC FLTLHO0107
Tallahassee, Florida 32301

Service may be made at the above location.

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ANSWER

1. Paragraph 1 of the Petition is admitted.

2. Paragraph 2 of the Petition is admitted.

3. Paragraph 3 of the Petition is admitted.

4. Paragraph 4 of the Petition is admitted.

5. Paragraph 5 of the Petition is admitted.

6. Paragraph 6 of the Petition is denied.

7. Paragraph 7 of the Petition is admitted only to the extent that it constitutes Wireless One's position; in all other respects it is denied.

8. Paragraph 8 of the Petition is denied insofar as it alleges that Sprint's position is unlawful. Sprint's position is articulated below.

9. Sprint-Florida is without sufficient information to admit or deny Paragraph 9 of the Petition.

10. Paragraph 10 of the Petition is admitted.

11. Paragraph 11 of the Petition is admitted only to the extent it constitutes Wireless One's position; in all other respects it is denied.

12. Paragraph 12 of the Petition is denied insofar as it alleges that Sprint's position is unlawful. Sprint's position is articulated below.

13. Paragraph 13 of the Petition is admitted.

Argument

I. Introduction

Sprint's position in the negotiation leading up to the arbitration filing has been that the two issues now before the Commission are ones that have either been decided by the Commission or involve the purely intrastate matter of the application of a lawful, valid tariff. Wireless One has raised its issues in a manner that can be dealt with by the Commission in a fairly simple and straightforward manner to the extent the issues are matters of interconnection and thus the proper subject of an arbitration pursuant to 47 U.S.C. § 252. Both issues raised by Wireless One should be resolved in Sprint's favor. Sprint addresses the issues as they are preliminarily identified, without conceding that all the issues are properly phrased.[1]

II. What is the definition of "local traffic for purposes of determining the applicability of reciprocal compensation.

Because this issue does not involve an issue of interconnection, but rather involves matters of intrastate tariff interpretation and the billing arrangement between Sprint and its end user customers, it is not truly a matter for arbitration in the strictest sense. However, because Wireless One has attempted to portray the issue as one of interconnection, the issue must be disposed of either by a decision in this proceeding or in an appropriate proceeding whereby the validity of the tariff is directly challenged by complaint or upon the Commission's own motion. It is Sprint's view that the preferred approach would be for Wireless One to challenge the tariff in a proceeding where all affected parties were given the right to participate. Nevertheless, since the issue has

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[1] Sprint believes that the following issue needs to be added to this docket to properly frame the jurisdictional concerns:

> Whether the FPSC has jurisdiction to decide, or should decide, within an arbitration proceeding, held pursuant to the Telecommunications Act of 1996, whether Sprint-Florida can charge its own customers for toll/usage charges.

been raised in the negotiation process, Sprint has not objected to being a party to requesting the Commission to arbitrate this issue[2].

As indicated in the Petition, the positions of Sprint on the definition of local traffic (and the related issue of intraLATA toll traffic) are as set out below:

> "Local Traffic" for purposes of the establishment of interconnection *and not for the billing of customers under this Agreement*, is defined as telecommunications traffic between an LEC and CMRS provider that, at the beginning of the call originates and terminates within the same Major Trading Area, as defined in 47 C.F.R. Section 24.202(a); provided however, that consistent with Sections 1033 et seq. of the First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (Aug. 8, 1996), hereinafter the "First Report and Order," the Commission shall determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under Section 251(b)(5), consistent with the Commission's historical practice of defining local service areas for wireline LECs. (See, Section 1035, First Report and Order). (Emphasis added) [Agreement at pp. 21-22]
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> IntraLATA toll traffic. *For the purposes of establishing charges between the Carrier and the Company*, this traffic is defined in accordance with Company's then-current intraLATA toll serving areas to the extent that said traffic does not originate and terminate within the same MTA. (Emphasis added) [Agreement at p. 34]

The practical import of the issue as posed is whether the federal definition of "local traffic" impacts the applicability of Sprint's tariff A25.I.8 which governs the provision of reverse toll bill option (RTBO) service. RTBO is a means of facilitating the delivery

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[2] In the agreement attached to the Petition, Sprint has agreed to the following language:

> The parties are unable to agree on a definition of "Local Traffic" and request that the Florida Public Service Commission arbitrate this disagreement between the Parties."

In accord with this agreement, Sprint does not seek a partial dismissal of the Petition. However, the Petition raises a matter not contemplated by Sprint, in the suggestion by Wireless One that assessment of toll charges to Sprint's customers would be unlawful. Sprint is compelled to suggest that a federally mandated arbitration is not the appropriate forum for making that decision.

of certain land line traffic to customers of CMRS providers for the benefit of the CMRS provider. Simply put, the subscriber (here Wireless One) agrees to step into the shoes of the customer originating the call -- who would otherwise incur a toll charge to complete it -- and pays what amounts to a discounted toll (or ECS-type) charge. Were the CMRS provider to not subscribe to the tariff, Sprint would bill that customer for the toll call. Where the CMRS provider has agreed to shoulder that obligation, Sprint becomes foreclosed from recovering from the caller any of Sprint's cost of terminating that call. Sprint vigorously disputes Wireless One's position on this issue because it is wrong legally as well as from a matter of fairness.
The FCC Competition order and the associated rule 47 C.F.R. § 51.701(b)(2) are cited by Wireless One to support its position that it should be relieved from paying for toll traffic delivered to it under the RTBO arrangement. Wireless One even suggests in this arbitration, dealing solely with interconnection between Sprint and Wireless One, that these federal provisions would prohibit the LEC from billing the LEC's own customer -- with whom Wireless One has no relationship. As discussed below, this notion is misplaced. The scope of the FCC rules are limited solely to the determination of when local interconnection rates versus access charges apply. Any enlargement of that scope would constitute an infringement upon the FPSC's intrastate regulatory jurisdiction.

Wireless One acknowledges that the RTBO arrangement benefits it by "foster[ing] the development of traffic on its network". Now, citing federal regulations, Wireless One contends that this traffic is local to the extent that it is within the MTA and therefor there is no basis upon which Sprint can bill anyone -- Wireless One or the originating customer -- for these calls. Because the FCC regulations regulate interconnection for purposes of deciding when reciprocal payment obligations arise (as opposed to access charges) for the use of facilities, Wireless One's contention is wrong.

On its face, 47 C.F.R. § 701(b)(2) applies to direct interconnection relationships between an LEC and the CMRS carrier. Nowhere does the FCC manifest an intention to encroach upon the intrastate-regulated matter of a local exchange carrier's

business relationship with its toll customers. Yet, such encroachment is precisely what is being requested here. The FPSC should resist the invitation.

If, in the context of the arbitration, the FPSC were to decide that the Act and FCC rules forbid Sprint from charging Wireless One the RTBO rate specified in the tariff, that tariff will no longer be in force at least as to Wireless One. Central to the dispute between the parties is the language in the tariff section A25.I.8, which reads:

> *At the option of the mobile carrier*, calls which originate from landline telephones may be billed at the mobile carrier at a per access minute usage rate [$.0588]... (Emphasis added)

Wireless One now seeks to withdraw from the option. Backing out of the bargain means losing the benefit of that bargain as well. Clearly, this issue is one of customer billing and should be decided as such. The FPSC should recognize that Sprint will be obligated to pay local interconnection rates for local calls and access charges for toll calls as required. These are what are required by the Act and implementation rules. There is no dispute on this point (except as set out in the next issue regarding the functionalities Wireless One actually provides) and thus there is really nothing to arbitrate on this issue.

As an alternative position[3], if the request of Wireless One is granted to the extent that the RTBO charge is eliminated, Sprint contends that this tariff will no longer apply to Wireless One since Wireless One would effectively no longer be seeking to exercise the option under the tariff. Under this situation, the only tariffs governing the calls originated by Sprint's customers will be the various toll or other usage tariffs.[4] The provisions of the Act do not contemplate that this arbitration can affect

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[3]As stated repeatedly, Sprint does not concede that this is a proper issue for resolution in this proceeding. However, this aspect of Wireless One's position is addressed as a precaution.

[4]Sprint-Florida does not eagerly seek this result. Customer upset may occur if Wireless One stops paying their toll/usage bills. Nevertheless, absent cost recovery provided from another revenue source in

the validity or applicability of those tariffs since they are not a matter of interconnection. This is so because Wireless One has chosen to insert itself into the shoes of the individual customers who would otherwise be billed by Sprint the applicable tariffed usage (toll or ECS-type) rates.

The Petition unequivocally claims a federal right to pay nothing under the RTBO tariff, then makes the astounding claim that the imposition of the tariffed charges upon Sprint's own customers would be "unlawful". Petition at 7-8. The Commission has been presented with a classic situation of "wanting the cake and being able to eat it too". Granting this relief, besides being potentially unlawful, would deprive Sprint of the ability to recover the costs incurred in terminating the calls -- unless the Commission were to allow Sprint to recover the costs elsewhere. Of course such an endeavor on the Commission's part would only highlight the non-interconnection, non-arbitration nature of this aspect of the proceeding.

In fact, granting such relief would create the untenable situation where only Sprint would be deprived of recovering its costs through established retail rates. Wireless One's approach would create a disparity in cost/cost recovery relationships. Sprint's position (the existing RTBO environment) and the Sprint alternative position provide the only scenarios where both companies are given the opportunity to recover costs from their own customers.

The situation presented by Wireless One's Petition starkly illustrates why this is an intrastate matter and not one of an arbitration conducted under the auspices of federal law or regulation. Failure to recognize that this is an issue between Sprint and its customers (a relationship Wireless One has voluntarily interjected itself into) could create the situation where the FCC dictates the level of intrastate end-user

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another docket, application of existing tariffs would be Sprint's only lawful option.

rates for toll and local service.[5] The FPSC cannot regulate the rates that Wireless One charges its customers. The Commission can and must, in the exercise of its lawful jurisdiction, provide Sprint the opportunity to recover its costs.

In sum, Sprint urges that the Commission deny the Petition on the issue of local traffic and adopt Sprint's position. Sprint offers the testimony of Mr. Poag on this issue to explain Sprint's position on the issues of the RTBO and its relationship to the definition of local traffic.

III. Should Sprint-Florida be required to pay Wireless One tandem interconnection, transmission and end office termination for calls originating on Sprint-Florida's network that terminate on Wireless One's network? If not, what are the appropriate charges?

Wireless One contends that it is entitled to reciprocal compensation for providing functionalities equivalent to the tandem switching and transport functionalities performed by Sprint. Sprint vigorously disagrees with this assertion.

In the first instance, the Commission has decided this issue by requiring that tandem switching and transport be "actually performed in order to entitle the interconnecting carrier to reciprocal compensation. See, *In re Petition by MCI Telecommunications Corporations for arbitration with United Telephone Company and Central Telephone Company of Florida concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996*, Order No. PSC-97-0294-FOF-TP (March 14, 1997), at p. 10. There is no factual dispute on this point. Wireless One admits that it does not perform these functions. On this basis the decision should be straightforward and the Wireless One position should be denied.

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[5] Sprint offers a service called SmallTalk ® that imposes a usage rate of $.10 for all calls over 30 in a month on customers for local calls. These calls are "untimed local usages calls". Wireless One does not currently pay these charges under A25.1.8. Even so, they claim that "the imposition of ...untimed local calling charges would contravene the general intent of the Act..." Under this theory, there can be no distinction made between usage-based charges assessed under an ECS-type plan (and which are currently billed to Wireless One) and SmallTalk ® charges for purposes of implementing Wireless One's proposal.

Wireless One claims, however, that it should be accorded a special status that distinguishes its circumstances from MCI's. Aside from Wireless One's status as CMRS carrier, Sprint can discern no basis for discriminating between the two companies. Of course Sprint does not agree that the CMRS status is a rational or lawful basis for differential treatment.

Should the Commission entertain the notion that a CMRS carrier should for some reason be treated differently from a landline carrier like MCI, Sprint submits that the network description offered in the Petition and information known to Sprint about the Wireless One network does not support the payment of reciprocal compensation. To the best of Sprint's knowledge and belief, there is a material lack of symmetry in Wireless One's MTSO/cell site hierarchy. Such asymmetry would not give Sprint the same switching and transport choices that Sprint's network provides to Wireless One as required by 47 U.S.C. § 252. For this reason, the payment of reciprocal compensation requested by Wireless One should not be required. Sprint offers the testimony of Mr. Poag on this issue to demonstrate Sprint's position and to explain our understanding at this point of the reasons why Wireless One's network is not the functional equivalent of Sprint's.

Because Wireless One admits that it does not actually perform the tandem switching function, the Commission should insist that the carrier shoulder a heavy burden of proving that its network perform functionalities requiring the payment of reciprocal compensation. Fairness requires nothing less. If Sprint is to pay for the functionalities Wireless One claims to provide, it should be the beneficiary of such functionalities. Wireless One must demonstrate that its network provides the substantial, effective equivalent of tandem switching, transport and end office termination. To date and throughout negotiations no such demonstration has been made. The absence of such a showing creates a disparity that undermines the concept of reciprocal compensation.

III. Conclusion

In sum, Sprint urges that the Commission deny the petition and find that Sprint is not required to pay reciprocal compensation as requested by Wireless One. Sprint's position should be adopted as contained on page 36 of the Agreement as follows:

> For all land-to-mobile traffic that Company terminates to Carrier, Company will pay for the functionality provided.

WHEREFORE, Sprint-Florida requests that the Commission resolve this Arbitration proceeding as set forth herein and incorporate Sprint's positions into the Agreement.

RESPECTFULLY SUBMITTED this 7th day of September, 1997.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Response of Sprint-Florida has been served by Overnight Delivery or hand delivery (*) upon the following on this 7th day of October, 1997.

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