

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 20, 1997

MOTION FOR DETERMINATION OF ISSUES AND REQUEST FOR ORAL ARGUMENT

Pursuant to agreement among counsel and staff, Sprint-Florida, Incorporated ("Sprint") hereby files its Brief in the form of a Motion for a determination by the Prehearing Officer of the proper scope of this federally mandated arbitration proceeding. If oral argument is not deemed possible at this time, Sprint requests that a decision in this matter be held over until argument can be made at the prehearing conference scheduled for November 17, 1997. Sprint's preference is that argument be held sooner rather than later so that the scope of the proceeding may be defined. In support, Sprint states as follows:

1. The heart of the matter before the Commission is whether an arbitration conducted by the Florida Public Service Commission pursuant to the directives of the Telecommunications Act of 1996 may or should include a determination of purely intrastate matters of an incumbent local exchange carrier's billing arrangement with its customers pursuant to tariff. Sprint's adamantly held view is that an arbitration is strictly limited to the matters of interconnection in dispute between the parties and that the state Commission does not have authority to combine arbitration determinations with purely local matters of tariff application. Because the Commission has consistently held that participation in an arbitration proceeding is strictly limited to the arbitrating parties, and because the exclusive method of review of an arbitration determination is in United States District Court, the Florida Public Service Commission should not allow the scope of this proceeding to be broadened to having the Commission make a determination of either the

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allowable rate to be charged under a state tariff or the applicability of intrastate toll and local usage rates to be paid by Sprint's end user customers. Sprint has reiterated the central point on this issue as contained in the response filed on October 7.

2. The practical import of the issue as raised in this arbitration is whether the federal definition of "local traffic" impacts the applicability of Sprint's tariff A25 which governs the provision of Reverse Toll Bill Option (RTBO) service. RTBO is a means of facilitating the delivery of certain land line traffic to customers of CMRS providers. 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 charge. Were the CMRS provider to not subscribe to the tariff, Sprint would bill that customer for the toll or local call pursuant to intrastate tariffs. Where the CMRS provider has agreed to shoulder that obligation, Sprint becomes foreclosed from recovering from the caller at least the cost of terminating that call.

3. Wireless One cites the FCC Competition order and the associated rule 47 C.F. R. § 51.701(b)(2) to support its position that it should be relieved from paying for toll traffic delivered to it under the RTBO arrangement. Wireless One then suggests in this arbitration, supposedly 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 -- if the Commission were to determine that Sprint could no longer apply the RTBO charge (to which Wireless One has historically agreed to pay).

4. Despite the lack of a customer relationship, Wireless One seeks to have the Commission make a determination on the applicability of the intrastate toll and local (ECS and SMALLTALK®) tariffs in a proceeding where no other intervenors would be allowed and in which state court review would be precluded as a matter of federal law. 47 U.S.C. § 252(e)(6). Because federally mandated arbitrations involve a marked departure from traditional notions of due process and open access to the administrative hearing process, reviewable in state court, the Commission must take the narrow approach to the scope of arbitration that has been followed in each arbitration held to date.

5. For this reason, Sprint requests that the prehearing officer decline to allow issues to be submitted to the panel hearing this case that would contemplate the adjudication of the applicability of Sprint's intrastate tariffs to Sprint's customers. As required by law, the scope of this arbitration can be no greater than as set forth in the petition and responses filed in this proceeding.

The prehearing officer has already ruled on this point in the Order on Prehearing Procedure. Order No. PSC-97-1227-PCO-TP (Issued October 10, 1997) at 2. Beyond that this arbitration should not be conducted for matters that are not lawfully within the scope of the federal mandate. Clearly FPSC oversight of Sprint's intrastate toll and local tariffs falls outside that mandate. The Commission should also be mindful that neither the level nor the development of any rate has been placed at issue in this proceeding. All interconnection rate levels have been agreed upon.

6. The only two issues for the Commission to arbitrate are the applicability of Sprint's RTBO rate to Wireless One and whether Wireless One is entitled to reciprocal compensation for agreed upon tandem switching, transport and end office rates. The level or development of these rates is not at issue in this case. Introduction of an issue regarding Sprint's end user tariffs or an issue addressing the of rate levels not raised in the Petition of Wireless One should be ruled outside of the scope of this proceeding.

7. If the Commission were to rule that Sprint cannot charge the RTBO rate to Wireless One, the decision making ends there. Wireless One has submitted and all or nothing case to the Commission. Offering to agree to a rate of less than the tariffed RTBO rate on October 2 for the first time (when the Petition claims that the imposition of any charge is unlawful) is untimely and should not be allowed. Wireless One has not asked in its Petition that the FPSC set any rates. Any effort to forestall the imposition of lawfully tariffed toll and local charges on Sprint customers through offering to pay a transport additive¹ is outside of the scope of this proceeding.

WHEREFORE, Sprint requests that the prehearing officer issue an order strictly limiting the issues in this docket to interconnection issues that are properly arbitrable under 47 U.S.C. § 252. Because of the gravity of this issue, Sprint requests that oral argument be granted (telephonically, if needed). If oral argument cannot be arranged, Sprint would prefer to reserve its argument for the prehearing conference.

¹ On October 2, 1997 Wireless One faxed a document seeking to add an issue in an effort "to clarify that a TELRIC-based additive is an acceptable manner to compensate Sprint for any additional costs associated with transporting calls throughout the larger MTA-based local calling area." Clearly this is an effort to prevent Sprint from recovering its costs through lawful toll rates if the RTBO option is eliminated.

RESPECTFULLY SUBMITTED this 20th day of October, 1997.

A handwritten signature in cursive script, appearing to read "Charles J. Rehwinke", written over a horizontal line.

Charles J. Rehwinke!
General Attorney
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail or hand delivery (*) upon the following on this 20th day of October, 1997.

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October 27, 1997

VIA FEDERAL EXPRESS

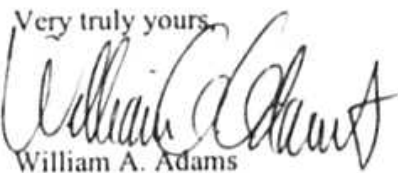
Ms. Blanca S. Bayo, Director
Division of Records and Reporting
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Tallahassee, Florida 32399-0850

Re: *Wireless One Network's Petition for Arbitration with Sprint Florida*
Docket No. **971194-TP**

Dear Ms. Bayo:

Please find enclosed for filing the original and fifteen copies of the Claim of Confidential-1111-97
Treatment Pursuant to Fl. Stat. § 364.183(1). Also you will find enclosed one copy of the
Confidential and Proprietary Prefiled Rebuttal Testimony of Francis J. Heaton. 1111-97

Enclosed are an additional two copies of the Claim of Confidential Treatment Pursuant to
Fl. Stat. § 364.183(1). Please date stamp and return these two copies in the enclosed self-
addressed envelope.

Very truly yours,

William A. Adams

ACK _____

AFA _____

ALP _____

Enclosures

CAF _____

CC: _____

James A. Dwyer (via Federal Express)

Frank Heaton (via Federal Express)

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RECEIVED & FILED

all to Matilda