

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

	:	
In the Matter of	:	DOCKET NO. 971194-TP
	:	
Petition by Wireless One	:	
Network, L.P., d/b/a Cellular	:	
One of Southwest Florida for	:	
arbitration with Sprint-Florida:	:	
Incorporated pursuant to	:	
Section 252 of the	:	
Telecommunications Act of 1996	:	



PROCEEDINGS: **PREHEARING CONFERENCE**

BEFORE: **COMMISSIONER SUSAN F. CLARK**
Prehearing Officer

DATE: **Monday, November 17, 1997**

TIME: Commenced at 1:30 p.m.
Concluded at 2:55 p.m.

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

REPORTED BY: **ROWENA NASH**
Official Commission Reporter

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

APPEARANCES:

WILLIAM A. ADAMS, Arter & Hadden, One
Columbus Circle, 10 West Broad Street, Suite 2100,
Columbus, Ohio 4321-3422, appearing on behalf of
Wireless One.

CHARLES REHWINKEL, 1313 Blairstone Road, MC
FLTLH00107, Tallahassee, Florida 32301, appearing on
behalf of **Sprint-Florida, Incorporated.**

WILLIAM COX, Florida Public Service
Commission, Division of Legal Services, 2540 Shumard
Oak Boulevard, Tallahassee, Florida 32399-0850,
appearing on behalf of the **Commission Staff.**

P R O C E E D I N G S

(Hearing convened at 1:35 p.m.)

CHAIRMAN CLARK: We'll call the prehearing to order. Thank you. Read the notice.

MR. COX: Pursuant to notice, on November 7, 1997, this time and place have been set for a Prehearing Conference in Docket No. 971194-TP, Petition by Wireless One Network, L.P., doing business as Cellular One of Southwest Florida for arbitration with Sprint-Florida, Incorporated, pursuant to Section 252 of the Telecommunications Act of 1996.

CHAIRMAN CLARK: We'll take appearances. Charles.

MR. REHWINKEL: Charles J. Rehwinkel, Sprint-Florida, Incorporated, P.O. Box 2214, Mail Code FLTLH00107, Tallahassee, Florida 32301, appearing on behalf of Sprint-Florida, Incorporated.

MR. ADAMS: Yes, Your Honor, appearing on behalf of Wireless One Network is the firm of Arter & Hadden, One Columbus, 10 West Broad Street, Columbus, Ohio 43215, William A. Adams and Dane Stinson and Laura Hauser. We have been admitted pro hac vice for the purposes of this case.

CHAIRMAN CLARK: Great, thanks.

MR. COX: William P. Cox and Beth Keating on

behalf of the Florida Public Service Commission Staff.

CHAIRMAN CLARK: It looks like I've gotten to everything but the Prehearing Order. (Laughter)

MR. COX: I have an extra copy.

CHAIRMAN CLARK: Why don't you give it to me. Thank you, Will.

All right. I imagine there's preliminary matters we need to take up; is that correct?

MR. COX: Yes, there are. I think the parties have a number, and I think we maybe should take their concerns up first.

CHAIRMAN CLARK: All right. Mr. Adams, I'm going to start with you. What motions or preliminary matters do you have pending? I don't want to deal with them now, I just want the list of them.

MR. ADAMS: On Friday we had a conference call among the parties, and at that time -- the only motion we have pending is one for protective order for confidential treatment, and none of the parties opposed that as of Friday. So I don't believe that's at issue any longer.

We have some procedural matters that we need to handle on order of witnesses, scope of cross examination, those sorts of issues, but they are really kind of tied up with some of the motions that

Sprint has raised as well.

We have subpoenaed both of Sprint's witnesses for the hearing on Monday at 9:30 as part of our case in chief as on cross examination.

CHAIRMAN CLARK: Okay.

Mr. Rehwinkel, what do you have pending?

MR. REHWINKEL: Yes, Commissioner, we have three -- well, actually, two motions pending. One is -- and they're each a motion to strike testimony.

One is a motion to strike based on a deposition of Mr. Poag, and the other is a motion to strike based on the scope of the proceeding. Likewise, I think both parties have pending a briefing, although mine was styled as a motion in response to Staff's request regarding the scope of the proceeding and/or the phrasing of the issue related to the reverse toll bill option.

CHAIRMAN CLARK: Okay. Anything else?

MR. REHWINKEL: We have other issues that are routine regarding the scope -- the order of witnesses. And I don't know if we have any issues related to the subpoenas that were served or attempted to be served this morning upon Mr. Poag and Ms. Khazraee. I don't really understand where we are with that, so I really don't know yet.

CHAIRMAN CLARK: Okay. Well, let me ask a question. When was testimony due in this case?

MR. REHWINKEL: Direct was due on October 7th, and rebuttal on October 28th.

CHAIRMAN CLARK: And the direct is --

MR. REHWINKEL: By both parties.

CHAIRMAN CLARK: Okay.

All right. Mr. Cox, how do you propose we proceed?

MR. COX: Well, the way I propose to proceed is to first look at some of the preliminary issues that Sprint has brought to my attention.

CHAIRMAN CLARK: Okay.

MR. COX: I'm not sure all of them were mentioned in Mr. Rehwinkel's comments, but I would like to take up the motions later. But, first off, I believe he indicated in our conference call yesterday that he'd like to request opening statements at the hearing.

CHAIRMAN CLARK: How long, Mr. Rehwinkel?

MR. REHWINKEL: Madam Chairman, I would need no longer than five minutes.

CHAIRMAN CLARK: Mr. Adams?

MR. ADAMS: We have no opposition to that.

CHAIRMAN CLARK: All right. Five minutes

aside for opening statements.

MR. COX: And the next thing, I think the parties agreed to, yesterday, to combine the direct and rebuttal.

CHAIRMAN CLARK: That sounds good.

MR. COX: And the next item both parties have raised is the order of witnesses.

CHAIRMAN CLARK: All right.

MR. COX: We could proceed section by section, if you like.

CHAIRMAN CLARK: To go to the Prehearing Order and then deal with the motions.

MR. COX: Although I think there is a specific order we should take with the motions.

CHAIRMAN CLARK: Well, you tell me that when we get there.

MR. COX: All right.

CHAIRMAN CLARK: All right.

MR. COX: Staff would note one change on the opening page. We didn't indicate all of the attorneys that are appearing on behalf of Wireless One in this proceeding.

CHAIRMAN CLARK: So you'll add them?

MR. COX: Yes, we'll add them.

CHAIRMAN CLARK: Thank you. Are there any

changes on Pages 1 through 4? All right. How about Page 5?

MR. COX: The only change to Page 5 would be to indicate that we've combined direct and rebuttal.

CHAIRMAN CLARK: Okay. Is there anything else on the order of witnesses?

MR. ADAMS: How would the order then be reflected after they are combined?

MR. COX: After they are combined, the order would be Francis J. Heaton, John Meyer, Ben Poag and Sandy Khazraee.

MR. REHWINKEL: Madam Chairman -- I mean, Commissioner Clark, we have no essential problem with that, we would just ask that Mr. Poag be the last of our witnesses.

CHAIRMAN CLARK: Okay. So it would be Francis Heaton, John Meyer, Sandra Khazraee and then Ben Poag.

MR. ADAMS: And we would also request the same reversal, where Mr. Meyer would start first and Mr. Heaton would go second.

CHAIRMAN CLARK: Then we'll show that as the order of witnesses.

Any other changes to Page 5?

MR. ADAMS: One of the -- this might touch

on one of the motions, and if it does I'm happy to defer until a later time. It's really the scope of what we will be allowed to cross examine Ms. Khazraee and Mr. Poag on. Pending before the Commission at this time is the issue of whether -- we have filed Mr. Poag's deposition. There is testimony in there that we would like to rely on in our case in chief. And we can call him initially as one of our witnesses and cross examine him then, or deem the deposition testimony to be submitted at the hearing. Or we can wait and do all that at one time after he takes the stand. But if we wait, I'm concerned that I don't want Sprint to object that our cross examination is not limited to the scope of the issues raised in the direct testimony.

CHAIRMAN CLARK: All right. Let me ask you a question. In lieu of either cross examining Mr. Poag or calling him as your witness, you would like to introduce the deposition; is that correct?

MR. ADAMS: We would be happy to rely on that and read that into testimony.

CHAIRMAN CLARK: Is there an objection?

MR. REHWINKEL: Yes, Madam Commissioner, most adamantly. I think this is something that should be addressed after we deal with the motions.

CHAIRMAN CLARK: All right, because it gets into the issue of toll billing?

MR. REHWINKEL: It does that. The scope of this hearing is intricately bound up in those two motions and, of course, the actual use of the deposition.

CHAIRMAN CLARK: Then maybe we ought to go to those motions.

MR. COX: Commissioner Clark, Staff would recommend that we go through the procedural order and then after the motions have been ruled on, we can revise the witness and which issues they are addressing appropriately based on which issues are finally determined to be the issues for the proceeding.

CHAIRMAN CLARK: Well, what issues are contested at this point?

MR. COX: One issue is agreed upon, and one issue is contested.

CHAIRMAN CLARK: All right. What is the issue agreed upon, and which is the one contested?

MR. COX: The issue that is agreed upon is Issue No. 1.

CHAIRMAN CLARK: Okay.

MR. COX: And the issue that's contested is

Issue 2. Staff, Wireless One and Sprint all have different wording for their version of the proposed Issue 2.

MR. REHWINKEL: And I apologize, Commissioner, Ms. Khazraee is only a witness on Issue No. 1.

CHAIRMAN CLARK: I'm confused. I have basic positions starting on Page 5. And then I have an Issue 1 and Issue 2, but then if I look over at Page 8, there is also an Issue 1.

MR. COX: That's actually the position that Wireless One drafted and submitted to the Commission, they labeled Issue 1 and Issue 2. It is a bit confusing within the context of their basic position. So that's what that's referring to.

CHAIRMAN CLARK: Is there any change to your basic position for Wireless?

MR. ADAMS: No. Our Issues are 1 and 2 as stated.

CHAIRMAN CLARK: Any change to your basic position, Sprint?

MR. REHWINKEL: No, Commissioner.

CHAIRMAN CLARK: Now, on Page 8, the issues and positions. Are there any changes to Issue 1 and the positions taken on Issue 1? I take it there's no

changes.

MR. ADAMS: No, not from our perspective.

MR. REHWINKEL: Yes, Commissioner. Sprint would, because of the rewording of the issue or the agreement we reached on Friday on the scope of that issue, it will be appropriate to strike two sentences from Sprint's position, and that would be there on Page 12 of the draft order beginning about -- on the fifth line down where it starts, "The Commission should be," and continuing to the last line with the word "rate."

CHAIRMAN CLARK: I'm sorry, give that to me again.

MR. REHWINKEL: Yes. Fifth line down on Sprint's position on Page 12, it starts with, "The Commission should be."

CHAIRMAN CLARK: Okay.

MR. REHWINKEL: And ending with the word "rate" on the last line. Those two sentences can be stricken.

CHAIRMAN CLARK: All right. Now we are on Issue 2, and that is the contested issue.

MR. COX: That is correct.

CHAIRMAN CLARK: Okay. Let me indicate, I do have a Request for Confidential Classification and

Motion for Protective Order. Will you be bringing me an order on that?

MR. COX: Yes, we will.

CHAIRMAN CLARK: Okay.

MR. COX: As I think counsel for Wireless One indicated there was no objections for the request for confidentiality.

CHAIRMAN CLARK: And how -- let me just ask the question. Does it, in fact, get treated as confidential if there are no questions; or does it still have to meet the criteria in the statute?

MR. COX: I believe it will be treated as confidential.

CHAIRMAN CLARK: Well, I just don't want -- everything the Commission gets is a public record, unless it falls within the category of --

MR. COX: Right.

CHAIRMAN CLARK: -- what is protected. Now, I know the law was changed at one time. If you request, and I think nobody protested, we are going to follow the procedures in the statute; is that correct?

MR. COX: Yes.

CHAIRMAN CLARK: I guess what I'm trying to indicate to you, Mr. Adams, just because you've made a request and there's been no objection doesn't mean it

will, in fact, be treated as confidential. It has to meet the statutory criteria.

MR. ADAMS: I understood our agreement complied, that it did meet that statutory requirement.

MR. COX: We haven't reached that conclusion yet.

CHAIRMAN CLARK: You may have reached an agreement with the party, but we are under an obligation that only those documents that come into our possession to be treated as confidential are treated as confidential. And if they don't comply with the statute, regardless of whether anyone objects, they will not be treated as confidential.

MR. ADAMS: I understand, but there will be some notice before.

CHAIRMAN CLARK: Yeah. There is a procedure that gives you the opportunity to protect them while you appeal that decision. But I think you need to talk to Mr. Cox and be clear about the handling of it. But you'll bring me that order?

MR. COX: I'll file the proper procedures and notice.

CHAIRMAN CLARK: Does it is comply with the statutes?

MR. COX: We haven't made that

determination.

CHAIRMAN CLARK: Well, at this point, I'm not going to deal with confidential requests, you'll bring me that order.

MR. COX: Yes, we will.

CHAIRMAN CLARK: Mr. Cox, what should I have before me? I have a Motion for Determination of Issues and Request for Oral Argument.

MR. COX: Yes.

CHAIRMAN CLARK: Okay.

MR. COX: Before we get to the motion, one last thing on the exhibit list, Staff would request Wireless One shorten its description. It's kind of cumbersome, and we have a shorter description than they've put forth. It starts on Page 19.

MR. ADAMS: We'd be happy to provide you a shorter list.

CHAIRMAN CLARK: Okay. Mr. Cox, what should I have before me?

MR. COX: You should have before you the -- first off, I'd like to take up the Motion for Determination of Issues and Request for Oral Argument. There was a motion outstanding, a motion to strike a memorandum in opposition that Wireless One filed in response to Sprint's Motion for Determination of

Issues on a Request for Oral Argument.

CHAIRMAN CLARK: Okay.

MR. COX: Counsel for Sprint indicated yesterday that he might withdraw that motion depending upon whether or not you decided in favor of allowing oral argument on the motion.

CHAIRMAN CLARK: I'm going to allow oral argument on the motion. I have looked at the two motions. I thought I only looked at two pieces of paper. When was this last one --

MR. COX: Which of the two motions?

CHAIRMAN CLARK: The first one I should have is a Motion for Determination of Issues and Request for Oral Argument.

MR. COX: That was the first one.

CHAIRMAN CLARK: That was October 20th. And then I have -- what is the next piece of paper I should have?

MR. COX: The next piece of paper would be Sprint-Florida's Motion to Strike Wireless One. This was filed November 4th.

CHAIRMAN CLARK: Motion to Strike Wireless One's Improper Response to Sprint's October 20th.

MR. COX: That's correct.

MR. REHWINKEL: If I might interject, if it

would be appropriate, isn't what the Commissioner should have is what I've styled as a motion and Wireless One's?

MR. COX: The Commissioner should also have the brief filed by Wireless One.

MR. REHWINKEL: Those would be the relevant documents, because I do withdraw my motion to strike Mr. Adam's memorandum in response.

MR. COX: Okay. So then the two relevant documents, given that you've just decided to rule in favor of the request for oral argument, should be Sprint's Motion for Determination of Issues filed October 20th and Wireless One's brief.

CHAIRMAN CLARK: Wireless One's Memorandum in Opposition to Sprint's Motion for Determination, and then the Motion to Strike, those are the three things I should have in front of me?

MR. COX: There was also a brief filed by Wireless One.

MR. ADAMS: Wireless One filed an issues brief and then a memorandum in opposition to Sprint's motion.

MR. COX: Just for clarification, Staff requested, because there was a problem in resolving this issue, that the parties file briefs. Wireless

One filed a brief, and Sprint filed this Motion for Determination of Issues. In turn, Wireless One responded. So there would actually be three documents relevant to the Motion for Determination of Issues is all I'm trying to clarify.

CHAIRMAN CLARK: Give me the exact titles of everything I should have in front of me.

MR. COX: First, you should have Sprint's Motion for Determination of Issues and Request for Oral Argument.

CHAIRMAN CLARK: All right. Filed October 20th.

MR. COX: Uh-huh.

CHAIRMAN CLARK: Got it.

MR. COX: And filed October 31st, Wireless One's Memorandum in Opposition to Sprint-Florida's Motion for Oral Argument. And the third document you should have --

CHAIRMAN CLARK: How can you tell -- oh, October 30th, okay.

MR. COX: -- was the brief filed by Wireless One. I'm just trying to locate that right now.

MR. ADAMS: It was filed on the 20th.

CHAIRMAN CLARK: I don't think I have that.

MR. ADAMS: It was filed the 20th also, the

same day Sprint filed its motion.

CHAIRMAN CLARK: I have a memorandum, but I have no brief.

MR. COX: Just one second, I have it here. This was filed, I believe, on October 20th.

CHAIRMAN CLARK: Do you have it, Kay? Is that what that is, a brief? (Interruption.)

MR. COX: I'll bring you a copy.

CHAIRMAN CLARK: Thank you.

I sure don't see that. Thank you. Go ahead.

Now I have four things in front of me, but I don't have to worry about the Motion to Strike Wireless One's response, you are going to withdraw that because I've granted oral argument.

MR. REHWINKEL: Well, it's withdrawn, yes, Commissioner.

CHAIRMAN CLARK: All right. It's your motion, right?

Whatever. Whatever it is, it's your turn to go.

MR. REHWINKEL: Commissioner Clark, what you have before you is essentially the positions of the parties regarding what the scope of this case ought to be with respect to what I will call the reverse toll

bill option, or RTBO rate, that the company has tariffed in Florida and to which Wireless One subscribes to at their option.

This rate is an assumption voluntarily made to pay the toll charges where the Commission established surrogate for those toll charges on a basis established by the Commission for calls that are made by Sprint's customers. These customers are not Wireless One's customers. Wireless One has no standing, in our view, to assert their rights on a determination by the PSC of Sprint's relationship with these customers. We feel this is the case because this, the existence and operation of this intrastate tariffed matter, is not mandated by regulation of federal law. But more importantly, Wireless One did not raise the issue of whether this rate -- the level of this rate in its petition.

Wireless One's petition only asked the Commission to find that the assessment of the reverse toll bill charge is unlawful under federal law, federal law being the FCC's rules and some notion of what the Telecommunications Act of 1996 requires.

Sprint has asked that the issue be limited to the unlawfulness of the reverse toll bill rate. Wireless One has, through the evolutionary process,

asked the Commission to find that this rate should be -- is required to be included in an interconnection agreement and that the Commission must establish a rate for the reverse toll bill option charges.

Wireless One has erroneously asserted to the Commission that Sprint has raised the issue of the level of these rates for determination in this proceeding. Nothing could be further from the truth. Our position in this case is that the Commission does not have jurisdiction in a federally-mandated arbitration to determine the level of the reverse toll bill option rate or to affect the tariffed relationship between Sprint's customers and Sprint.

Sprint pays and will pay local interconnection charges that are required by the federal act and by the FCC. That is not a matter of dispute in this case. Wireless One has submitted to the Commission that these rates are agreed to, and they are attached to the petition and the testimony filed by Wireless One.

Sprint's response could have raised the issue of the rate level in this case, but it did not. We have requested the Commission's jurisdiction to set the rate level. Questioning the jurisdiction does not make this a substantive issue for the Commission's

determination.

The petitioner here, Wireless One, can point to no language in an FCC order or act that demonstrates that the Commission is preempted in setting and establishing the reverse toll option rate. These -- the only issue there has been presented for the Commission's determination is whether this rate is unlawful.

And I don't know if the Commissioner has a copy of Wireless One's petition before you, but there is nowhere in there that the rate level is submitted to the Commission. There is nowhere in there submitted to the Commission that the RTBO rate relationship between Sprint's customers and Sprint, or Wireless One's voluntary option under that tariff, must be made part of the interconnection agreement. That position only arose many days after the filing of the petition and the response.

For instance, if you look at Wireless One's position -- or excuse me, Commissioner. If you look at the issue that Wireless One proposes in the draft Prehearing Order, the way it is phrased, it would seek to stack the deck against Sprint and have the Commission buy into the assumption that this voluntary RBTO arrangement is mandated to be a part of the

interconnection agreement. And you can see that on Page 13 of the draft Prehearing Order where the issue now is phrased, "Now that the Federal Communications Commission has promulgated 47 C.F.R. 57.701(b)(2), should Sprint's reverse option charge be part of the interconnection agreement and included in local transport and termination rates, preventing the assessment of toll charges for land-to-mobile calls originating and terminating within a major trading area? If so, what, if anything, should Sprint be able to charge Wireless One for costs associated with transporting local calls throughout the larger calling area versus the traditional wireline local calling area."

However, in the petition that Wireless One filed, the issue on Page 3, Paragraph 6 was submitted this way. "The first issue unresolved by negotiation is whether all land-to-mobile and mobile-to-land calls originated and terminated within an MTA are local telecommunications traffic subject to transport and termination rates, rather than toll charges." That is a long ways from how they are requesting now the Commission to accept phrasing of the issue.

Madam Commissioner, it's our position that the issue also asks you to take the step of actually

setting a rate to replace the reverse toll bill option which you have tariffed at the intrastate level. Sprint's tariff makes it very clear that unless Wireless One opts to take to pay these charges as set out in the tariff, that these calls will be billed to Sprint's customers making these calls. And in that way, this is purely a matter of intrastate rate relationship between Sprint and its customers. This is not a matter that is appropriate in a federally mandated compulsory arbitration in deciding the lawfulness of the RBTO rate. It's an up and down issue, in our opinion, in deciding --

CHAIRMAN CLARK: Let me interrupt you for a minute. If I understand what you are saying, the only issue we need to decide today is whether it's a local call. Read to me again the issue on Page 3 of their petition.

MR. REHWINKEL: Okay. First of all, Commissioner, I agree -- Sprint has reached agreement Friday in the way the Staff has phrased the issue as a more appropriate way. We will be happy to let the Commission decide the issue on that basis.

The way that their petition reads, "The first issue unresolved by negotiation is whether all land-to-mobile and mobile-to-land calls originated and

terminated within an MTA are local telecommunications traffic subject to transport and termination rates, rather than toll charges."

Now, it's our view -- our position in this case is that the definition of the local telecommunications traffic in terms of what the FCC has said, based on the federal mandate of the Telecommunications Act, is that these calls are local for the purposes of deciding whether you pay access charges or local interconnection charges. And that's a matter of charging between the two companies.

How we price that service to our end user is wholly another matter. That is a matter that's purely within your purview and jurisdiction. Now, what we do is we charge those -- and we make it clear in our tariff that those charges will be assessed to our customers originating the calls unless Wireless One steps in and takes those calls at their option. That is a pricing matter, and the pricing of those calls is determined by Chapter 364 as revised in 1995 and your jurisdiction over them.

The matter between the companies, the interconnection, whether you pay local interconnection or access charges, is where the FCC has broadened the local calling area. So their local calling -- their

local calls for purposes of whether you apply access or local interconnection and that's how the issues -- that's how -- that the key is here, is that the way the petition was presented by Wireless One is we have reached agreement on the language and interconnection agreement on all but two areas, and these two areas are defined by three different clauses in the agreement. And they are asking you to put one or the other in there.

Our language says that the definition of local calling, as established by the FCC, is limited to whether you pay access or local interconnection. And we have preserved that it is not for any other purpose, i.e. how we bill our end user customers or anyone who wants to step into their shoes.

So that is how we view this proceeding. That is, in our view, the only mandate that the Commission must follow by the FCC. And, in fact, because of that, because of federal law, you have no jurisdiction other than deciding the --

CHAIRMAN CLARK: I'm sorry, what in federal law says we have no jurisdiction other than whether it's a local interconnection rate or a toll interconnection rate?

MR. REHWINKEL: The FCC's first order and

report sets out the basis for making that determination of whether it's local -- whether it's a local interconnection or toll. Beyond that, the federal government hasn't made no mandate and can make no mandate based on, especially, the Eighth Circuit's opinion that -- and vague on your ability to set --

CHAIRMAN CLARK: I guess that's my question, Mr. Rehwinkel. It's not a matter of not having jurisdiction to do it, it's that it's not -- in your view not appropriate to do it as part of the arbitration.

MR. REHWINKEL: That's part of it. The other part of it is, is that we have -- there's another motion on striking testimony. We've laid out an evolution of this issue from "it's unlawful." It's either unlawful or lawful. That's how it's presented in the petition. Your jurisdiction in the arbitration is that you shall limit your determination to the issues presented in the petition and the response. It has not been presented --

CHAIRMAN CLARK: Okay. You are first saying it's inappropriate to do it in an arbitration because it is a matter of local rate setting within our jurisdiction. And, number two, they never raised it as something needing to be arbitrated.

MR. REHWINKEL: They did not raise anything other than lawfulness of it for purposes of arbitration. Our position on -- that I explained to you about local versus access, that is appropriately before you because that is part of our case. And we agreed with Wireless One to submit that determination to you.

If you look at the pleadings and the way this case is evolved and the testimony that has been filed, we have migrated from lawfulness to let's set the rate --

CHAIRMAN CLARK: I understand that. I understand that. But your point is twofold, and I just want to make sure. First of all, it's not appropriate to arbitrate because you think it's a local rate issue. And secondly, it's not properly before us because it wasn't part of their petition, and you can't simply migrate their petition to include this other issue.

MR. REHWINKEL: Yes. And, specifically, when you say "not appropriate to arbitrate," it's that it's not appropriate to arbitrate that the Commission should set the reverse toll bill option rate at any other level than what it is today in this proceeding.

CHAIRMAN CLARK: Okay. Mr. Adams.

MR. ADAMS: Thank you. I've got a chart I'd like to pass around, something I prepared on the way down. I think it puts a lot of things in perspective. If you would --

CHAIRMAN CLARK: Show it to Mr. Rehwinkel. If he has no objection, I'll look at it.

MR. REHWINKEL: That's fine, Commissioner. I'm not agreeing to the accuracy, I just think it's appropriate. I have no objection to Mr. Adams making his argument with this chart.

CHAIRMAN CLARK: Okay.

MR. ADAMS: The top is kind of a line diagram showing the rough interconnection between Wireless One and Sprint. At the top you see a Wireless One tandem which is -- some people call the MTSO, we are referring to it as a tandem, it is directly interconnected with Sprint's Fort Myers tandem. On the Sprint side, following down, Sprint's tandem is connected to Sprint's end office, which is connected to Sprint's customer.

Over on the Wireless One side, our tandem connects to our Cellular end office, which also called a cell site, which connects with our customer. There are, as you can see, both tandem office connections and end office connections.

And so the first scenario I would like to talk through is mobile-to-land calls; that is, calls originating by a Wireless One customer and terminating to a Sprint customer. And in the chart, that's in the middle of the page, I've got two columns at the top. One is called pre-Telecommunications Act of '96, and one is called post-Telecommunications Act of '96.

And down on the left-hand side, I've got tandem interconnection, which is a Type 2A interconnection under Sprint's mobile services tariff; and an end office, which is a Type 2B. Presently those are priced, the tandem is priced, at 3.34 cents per minute of use peak, 2.34 minute of use off peak.

Now in the agreement, Sprint and Wireless One have agreed that that traffic now will be priced at .7954 cents. There's no dispute there. The same with the end office. End office traffic where Wireless One terminates a call directly to one of Sprint's end offices is a penny a minute in a pre-Telecommunication Act of '96. And after Telecommunication Act, it's .3587 cents. And that's in our agreement, there's no dispute about this.

So mobile-to-land traffic is completely resolved by our interconnection agreement. The only disputes relate to the traffic going the other way,

land-to-mobile. That is, calls originated by Sprint's customers and terminated to a Wireless One mobile customer. And that's No. 2 down here.

And this chart is a little more complicated. The first two rows show Wireless One charges for this traffic. And the top line is a tandem Type 2A interconnection; and that is, a call originating at a Sprint customer and coming back across Sprint's tandem to Wireless One's tandem and back down through the cellular end office to Wireless One's customer.

Before the Telecommunications Act, Wireless One charged Sprint zero for that call. In a post-Telecommunications Act of '96, Wireless One will charge either .7954 or .3587. And that's one of the disputes that needs to be resolved in this arbitration. And that's the equivalent functionality. Does Wireless One's Network operate as a tandem and end office on an equivalent basis to Sprint, and should Sprint have to pay Wireless One the higher rate to terminate traffic across Sprint's tandem to Wireless One's tandem.

Of course, we contend that Sprint must, and Sprint contends that our tandem is really an end office, and hence they only want to pay the end office rate of .3587.

Now, on the end office, this is Sprint terminating traffic over the end office interconnections. Currently, Sprint does not terminate any traffic across the 2A Type 2B trunks between Wireless One cellular end offices and Sprint's end offices.

In the post-Telecommunications Act of '96, that traffic would be priced at .3587, which is the same end office rate that Sprint would charge Wireless One to terminate traffic on its network.

And so, now getting down to Sprint charges, the last two rows on this box, the first row, it says "local." And what I mean by local is within the state local calling areas.

CHAIRMAN CLARK: Just so I'm clear, that means when the Sprint customer is within the state local --

MR. ADAMS: Yeah. Correct. When the Sprint customer is within the state local calling area, there is no charge either pre-Telecommunications Act '96, or post for that traffic.

CHAIRMAN CLARK: Meaning the Sprint customer is not paying anything.

MR. ADAMS: The Sprint customer would be paying whatever charge it pays for local calls. If

it's a flat rate --

CHAIRMAN CLARK: It's not a toll charge.

MR. ADAMS: Yeah. If it's a flat rate or if it's measured for message --

CHAIRMAN CLARK: So it's a local call?

MR. ADAMS: Correct. Now, the complicating factor is that the FCC has introduced this intramTA local calling. And that's the last line. Before the Telecommunications Act of '96 for -- and I should back up here a little bit to give you the history of Wireless One and Sprint interconnection.

Wireless One went into business about 1990. And from the very inception of business, it decided it wanted a land-to-mobile LATA-wide calling area so that any Sprint customer within the Fort Myers LATA could call a Wireless One customer without paying any incremental charge. And so, Wireless One subscribed to the reverse option rate in Sprint's mobile services tariff.

Now, the reverse option rate was set equal to Sprint's originating access charge, which at the reverse option rate as the chart shows, is presently 5.88 cents per minute of use.

CHAIRMAN CLARK: Okay.

MR. ADAMS: By expanding -- by the FCC

expanding the local calling area to be the entire MTA. And the MTA in this area goes all the way from Miami/Fort Lauderdale across the southern part of Florida. And I don't remember the exact county lines now, but it is most of the Fort Myers LATA, but not all the Fort Myers LATA.

CHAIRMAN CLARK: What does MTA mean?

MR. ADAMS: Major trading area.

CHAIRMAN CLARK: And why did the FCC create that?

MR. ADAMS: Because in a wireless environment, you've got mobile customers that aren't fixed, and the local calling areas on mobile-to-land calling is generally a much larger area. I mean, this was to create some -- we've briefed that in some of our briefs.

CHAIRMAN CLARK: So it has reference to the Wireless customer.

MR. ADAMS: It's all land-to-mobile calling, mobile-to-land calling. It's only with respect to land-to-mobile and mobile-to-land. It's not land-to-land at all. It's only with respect to a wireless call.

CHAIRMAN CLARK: All right.

MR. ADAMS: So when the FCC expanded this,

all of a sudden the economics of this relationship changed. It used to be based on the state local calling areas in Sprint's tariffs, and now they are based on the FCC's local calling area, which is much, much greater.

And so, our original position was -- and I should make it clear -- because the MTA in part divides Sprint, the Fort Myers LATA, we are only making the claim that the price of the reverse option should be reduced for intramTA calls. For interMTA calls, the price would remain the same, which would be the tariffed rate of 5.88 cents. We are only talking about calls within an MTA.

So our original position in our petition was this expanded local calling area is local and all of a sudden the charge of 5.88 cents, which Wireless One was paying, goes to zero. There is no charge because it's local now. And whatever charges that Sprint's customers paid for local calls would be compensatory for originating the call.

CHAIRMAN CLARK: Let me ask this question then.

MR. ADAMS: Sure.

CHAIRMAN CLARK: Then it makes sense if I'm a customer who lives in, say, Fort Myers, and I want

to call Miami, I better use somebody's mobile phone.

MR. ADAMS: Right. Right. It would be a local call.

And then Sprint raised the issue in its response, and I've got it here, "granting this relief besides being potentially unlawful would deprive Sprint of the ability to recover the cost incurred in terminating the calls, unless the Commission were to allow Sprint to recover the cost elsewhere."

I mean, that's just one citation. There's others in here about its ability to recover costs. If it goes to zero, as we contended in our arbitration, Sprint raised the question of recovery of costs.

CHAIRMAN CLARK: Let me just ask a question. It's an issue on Page 3 of your petition?

MR. ADAMS: Page 3, Charles correctly cited a part of our petition, Paragraph 6, but there are other parts that cite extensively to the FCC's rules. And we think that Charles is -- in many of the motions, not just this one, but in the others ones you'll hear later -- is trying to obtain a procedural victory here.

We are the small competitor trying to achieve fairness in some of these interconnection rates, and Sprint is trying to, on a procedural basis,

deny us the opportunity to have the merits of this case determined here and now. And we are, of course, strongly opposing that and want to have the merits addressed now. We have been working on this issue since the FCC issued its local competition order back in August of 1996. But I'm digressing a bit.

Back to the chart that I kind of handed out, I can walk through the lower right-hand box that has the circled B in it, and that's the reverse option issue. That's where we are here today. Our first position was zero, that the 5.88 cents goes to zero.

When Sprint raised cost recovery, there were two different proposals that Wireless One came up with. One was .294 cents, and that -- where .294 cents comes from, while the reverse option was originally set at the originating access price, Ben Poag testified in his deposition -- and this is one of the issues we want to bring up at hearing -- that the originating access price was recently reduced by 5%, but there was no corresponding reduction in the reverse option rate.

So if you reduce the 5.88 cents minus 5%, you come to the figure of .294 cents per minute of use. So if you remove -- take away access, which is originating access, you are left with this price of

.294. This is a cost-based price that Wireless One is willing to pay Sprint in a post-Telecommunication Act of '96 environment for calls that are being terminated beyond its state approved local calling areas.

The .4 cents is the next option. .4 cents was the number agreed to between Vanguard and BellSouth in an interconnection agreement that has been approved by the Florida Commission. And that agreement was an additive rate for this very purpose. Wireless One is willing to pay this rate, .4, or .294. And the .4 in the Vanguard/BellSouth agreement was subject to true-up, we are even willing to do that. We are willing to pay .4 cents subject to some computation of costs and a true-up at some future time. Of course, the 5.88 cents is what Sprint would like to continue to charge us for the traffic. And that just doesn't make any sense.

So the reverse option rate has always been part of our interconnection relationship since we started business. Sprint customers have never ever paid a toll charge to call a Wireless One customer. And given the economics of the interconnection relationship, Wireless One really needs relief on this incredibly costly 5.88 cents per minute of use. This was the driving issue for this arbitration. It is a

\$40,000 a month issue for us. And it's something very important to our ability to compete in the marketplace.

CHAIRMAN CLARK: Anything else?

MR. REHWINKEL: Madam Commissioner?

MR. ADAMS: Just a minute. Let me just take a quick look at my notes.

No, I believe not, thank you.

CHAIRMAN CLARK: Mr. Rehwinkel.

MR. REHWINKEL: Madam Commissioner, it's a very crucial point here regarding what Sprint said and Sprint's response and what we raised. I wrote the response, I know what I said, and I can read my response on Page 6. There is a Footnote 4 that Mr. Adams has cited in at least one of the pleadings. There is a sentence that says, "Under this situation the only tariff governing the calls originated by Sprint's customers will be the various toll or other usage tariffs," Footnote 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 another docket, application of existing tariffs would be Sprint's only option.

CHAIRMAN CLARK: Well, Mr. Rehwinkel, help me out for a minute. I think what Mr. Adams is suggesting is that you may be correct procedurally, but we are going to have to address the issue.

Do we need to address, given the fact that the FCC has introduced intraMTA calls being local calling, don't we have to address the access charge?

MR. REHWINKEL: Madam Commissioner, you have to address what that means. Does the intraMTA designation by the FCC, which came about as a result of the '96 Act, it was not existing before as this chart might seem to indicate.

CHAIRMAN CLARK: All right.

MR. REHWINKEL: The issue is, does that come over and does it interfere with the Commission's setting of the rate that Sprint charges its own customers?

Let me read to you what the RTBO tariff says, this is Section 825(g)(7)(a), and this is attached to Mr. Heaton's testimony. "At the option of the mobile carrier, calls that originate from land-line telephones may be billed to the mobile carrier at a per access minute usage rate as follows." And it has the 5.88 cents per minute.

"A, intraLATA toll and local 25 cent message

rated calls that originate and terminate within the company's network 5.88 cents per access minute."

Now, if you go to the 25 cent message rate at what we know as ECS Calls Section of the tariff, it says those calls will be billed to that customer unless the carrier comes in and steps in the shoes of that customer.

This is a matter not of what the MTA says for purposes of access or local interconnection, it's a matter of what we charge our customers. That's a matter that's specifically reserved to the Florida Commission.

Now, whether we do it -- and my point is that Mr. Adams in his petition did not raise this issue for your determination. He says it is unlawful. I have a cat at home. My cat cannot be somewhat pregnant. My cat is either pregnant or not. And what he's saying is it may be a little bit of unlawfulness, will go a long ways for the company. But that's the issue we agreed should be submitted to the Commission about whether we could charge the RBTO to the company or not, and we are willing to put on evidence about that.

But I think the Commission needs to take a long and hard look about where this case is going and

whether it's appropriate to set an RTBO or RTBO surrogate rate in the context of this proceeding.

I'm not looking for a procedural victory. This is compulsory federally mandated arbitration that we have to be involved in, but it should not be taken far afield and subject us to essentially a ratemaking hearing.

CHAIRMAN CLARK: Anything else?

MR. REHWINKEL: And whatever Vanguard -- Mr. Adams tells you that Vanguard and BellSouth have agreed to something. He has not told you what the behind-the-scenes negotiations were and why someone gave in on an issue and maybe conceded on another issue. That was a negotiated agreement. We were not a party to it. We don't know it; Wireless One doesn't even know what went on behind the scenes. So whatever BellSouth agreed to, for whatever their corporate reasons in nine states that they serve, and that was a nine state agreement, is not an issue before the Commission.

If the Commission wants to do this, we can trot some agreements in here and say that you ought to adopt those matters that are contained in those agreements. And then we can go and we can in a one-day hearing explore what went on behind the scenes

in a negotiated agreement.

CHAIRMAN CLARK: Well, let me ask a question. If they were part of the negotiated agreement, why doesn't it make sense to have it part of the arbitration? I mean, you are indicating that those issues were part of a negotiated agreement.

MR. REHWINKEL: Parties can agree to anything. Your standard or review for a negotiated agreement is basically, is it inconsistent with the public interest. You don't go and say each and every rate in there was based on a certain basis under the federal act. If they want to take something off tariff, that's fine. But the federal act does not mandate that the Commission -- it does not even allow you, really, to go and take something off tariff and put it into an agreement. Parties can agree, but that's a far different matter than what you can compel us to do in an arbitration. And whatever Vanguard and BellSouth agree to, I have no idea.

MR. ADAMS: May I respond?

CHAIRMAN CLARK: Let me ask a question, Mr. Rehwinkel. You do not object to Staff's proposed Issue 2 on Page 19; is that correct?

MR. REHWINKEL: I do not, Commissioner. I think that phrase is exactly what's before the

Commission.

Let me ask Staff. What this issue is designed to do is determine whether or not the rate focuses only on the rate that should be charged between switches, and excludes any consideration of what the rate is charged to the end customer of Sprint. Is that what you are saying?

MR. COX: That's correct. We have sought to exclude what Sprint charges its customers for these calls.

CHAIRMAN CLARK: Okay. Mr. Adams.

MR. ADAMS: The first thing, I wanted to correct, perhaps, a misimpression I left. The Telecommunications Act and the -- well, actually, it's the Act, itself, says that the scope of the arbitration is set by both the petition and the response. And that's, "The State Commission shall limit its consideration of any petition to the issues set forth in the petition and the response if any."

So Charles and Sprint clearly raise the issue of cost recovery in their response. And then we responded with two counter proposals, one being the BellSouth/Vanguard --

CHAIRMAN CLARK: Well, Mr. Adams let me back up. Suppose he hadn't raised that, what is your

position then?

MR. ADAMS: Our position was -- our first position is it goes to cost -- I mean, goes to zero, the cost goes to zero.

CHAIRMAN CLARK: No. Let me ask it differently. Did you raise it as an issue? What is the issue you raised on Page 3 of your petition?

MR. ADAMS: Our issue --

CHAIRMAN CLARK: Read it to me, please.

MR. ADAMS: Well, it's somewhat out of context. I mean, this is a paragraph that is in our petition. It says, "The first issue unresolved by negotiation is whether all land-to-mobile and mobile-to-land calls originated and terminated within an MTA are local telecommunications traffic subject to transport and termination rates, rather than toll charges." And all of this is consistent with that notion. We are talking about replacing access with transport and termination.

And on the terminating side, we've agreed essentially about how to approach that. It's the originating side which is somewhat in dispute here.

CHAIRMAN CLARK: Let me ask you a question. Why should it be different?

MR. ADAMS: Why should --

CHAIRMAN CLARK: Why should the rate be different regardless of what the FCC might have said? Why should it be different, the interconnection rate? And I take it, it's your --

MR. ADAMS: It shouldn't be. There should be reciprocal, symmetrical rates. And for our calls for --

CHAIRMAN CLARK: I don't mean between the parties. I mean, why isn't the rate, the mobile-to-land -- maybe I'm not clear. You have agreed on the mobile-to-land calls, but you would not agree that those same rates apply the other way on the land-to-mobile calls.

MR. ADAMS: For the local calling area?

CHAIRMAN CLARK: Right.

MR. ADAMS: We could make an argument that the rates, whatever are charged, should be reciprocal.

CHAIRMAN CLARK: But I'm not talking about reciprocal between the companies, I'm talking about whether the traffic goes to wireless or whether -- I guess it is reciprocal, you're right.

Could I ask you to do something? Let me see your petition. I don't have a copy of it. Or does the Staff have a copy?

MR. COX: I have a copy.

MR. ADAMS: The petition, out of fairness, is 11 pages long, and one sentence is being quoted out of it. When taken in context, all of these issues are raised in the petition and, certainly, when you add the response which Charles filed, there's no question that cost recovery is at issue in this case.

And we want to have this resolved. We want to go back to doing business, to providing quality services to customers and stop fighting over the interconnection issues. What we don't want to have happen is have the most significant issue that we wanted to have resolved in this case postponed for another proceeding.

CHAIRMAN CLARK: Okay.

MR. ADAMS: And we are willing to true-up, willing to set an interim rate in this proceeding subject to true-up.

CHAIRMAN CLARK: Mr. Adams, where should I be looking in your petition? It's only 11 pages long, you say?

MR. ADAMS: Yes. And what you're looking for --

CHAIRMAN CLARK: Is on Page 3, I guess.

MR. ADAMS: Yeah, Page 3, Paragraph 6 is what has been read into the record today. But there,

as you see, Paragraph 7 goes into more detail on what the FCC's order requires.

CHAIRMAN CLARK: Well, let me ask you a question. If we determine that -- is it your position that we can't make a decision that those intramTA calls placed by a Sprint customer, say in Fort Myers to a Wireless One customer in Miami, we can't make the decision that that's a toll call?

MR. ADAMS: But Wireless One doesn't serve Miami, it only serves the Fort Myers LATA, essentially.

CHAIRMAN CLARK: Okay.

MR. ADAMS: Essentially, Sprint and Wireless One are overlapping service areas.

CHAIRMAN CLARK: I guess what I'm trying to -- is it your view that -- it's your position that all of those are now local calls.

MR. ADAMS: All intramTA calls.

CHAIRMAN CLARK: IntramTA calls are local, and that's not Sprint's position; is that correct?

MR. REHWINKEL: That's absolutely correct, Commissioner.

CHAIRMAN CLARK: Okay. All right. I think I understand it now. Mr. Cox, do you have any thoughts on this issue?

MR. COX: I guess Staff basically disagreed with the prose wherein the Wireless One proposed. And the reason being is because it moved from the relationship between these two companies in their interconnection agreement to the relationship between Wireless -- excuse me, Sprint and its end user customers.

We felt that wasn't within the scope of an arbitration proceeding under the Act and didn't feel it was appropriate for the Commission to address in this proceeding.

CHAIRMAN CLARK: Let me ask you a question. If we determine that Wireless One is right and they are not toll calls, that, in fact, they are local, then what happens? Then Sprint has to come in and file a tariff?

MR. COX: They should file a revision to their tariff, I would believe, if that's the determination. They could contest that.

CHAIRMAN CLARK: And so, then I would assume it goes to zero because it's a local call. And then you are out your revenues, right?

MR. REHWINKEL: The difficulty with that scenario, Commissioner, is that the determination of whether it's a local call first involves the

determination of what the purposes for the FCC's establishment, if you will, of a local --

CHAIRMAN CLARK: Charles, I understand that. Suppose we determine that it is, in fact, a local call.

MR. REHWINKEL: Yes.

CHAIRMAN CLARK: Then it would seem to me that you wouldn't be allowed to charge toll rates.

MR. REHWINKEL: Well, you mean a local call or a call to which we could not charge either the 10 cent, 6 cent ECS rate for business or the 25 cent rate. In other words -- because we do have -- under 365, we have some ECS routes that are local by law, and we still can charge 25 cents or 10 cents, 6 cents on those. So for the purposes of your question, I'm assuming that there would be what would not be an ECS call, but a toll call today. And if you were to establish it was now a local call for state purposes, yes, we would lose the revenue on that call, the revenue that is in the 5.88 cents per minute.

MR. ADAMS: Our view of that issue is we're only -- we are trying to move from a relationship based on the mobile services tariff, which we've been buying out of since we started business, to one based on contract. And the rates that would be set in this

proceeding would only govern the relationship between Sprint and Wireless One.

And the fact that Sprint's raises revenue loss issues is somewhat of a hollow argument, because as I in my earlier handout -- there's no discussion of lost revenues with respect to mobile-to-land calling which has gone down significantly from as high as 3.34 cents per minute to .7954 cents per minute. And so, the loss of revenues there that is mandated by the Telecommunications Act in the FCC's order is no different than what is going on on the reverse option issue.

We just want an agreement, interconnection agreement, which has all of the terms and conditions of our interconnection relationship with Sprint to be included.

MR. REHWINKEL: Madam Commissioner, may I say one very, very thing?

CHAIRMAN CLARK: Go ahead.

MR. REHWINKEL: The local interconnection rates which are required to be based on a forward-looking cost basis, which you've been through many an arbitration to this point and you understand that that's what the federal mandate is, and that's where we cannot complain under federal law or FCC

about lost revenues.

So I agree with Mr. Adams to that extent, but that's the connect -- the relationship between the two companies. If Wireless One gets their way and you draw this relationship between our company and our customers into an interconnection agreement and mandate that it be there, then, first of all, your jurisdiction has been invaded. That becomes now a matter for review in federal court. And I think that's where it clearly shows that this is not a matter of interconnection. It is a matter that they -- they claim that they have made it their terms of conditions, but it is not part of the Act.

MR. ADAMS: If that is a legitimate concern to the Commission, then the true-up proposal that we suggest would satisfy that concern. An interim rate of whatever, .294, .4, something much more competitive than 5.88 cents could be set subject to true-up in another state proceeding that the Commission might want to conduct.

CHAIRMAN CLARK: Okay.

MR. ADAMS: But we need rate relief now.

CHAIRMAN CLARK: I am inclined at this point to limit this arbitration to what the Staff has proposed as an issue, fully realizing that the way we

come down on that may influence additional work that we have to do. I'm not sure it will, but at this point I'm going to allow the issue as stated by Staff on Proposed Issue 2 to be the issue with respect to this item. Now, what?

MR. COX: We have two motions to strike that Sprint has submitted regarding various testimony filed by Wireless One in this proceeding.

CHAIRMAN CLARK: Okay.

MR. COX: And the first was filed on November 5th, and it was titled "Motion to Strike Portions of Rebuttal Testimony of Frank Heaton and John Meyer."

CHAIRMAN CLARK: I have that before me.

MR. COX: There's been no request for argument on these two motions, so that's where we stand with regard to request for argument by the parties.

CHAIRMAN CLARK: Well, when is the time for filing a response?

MR. COX: A response has been filed by Wireless One. You should have a copy of that. It was filed Friday.

CHAIRMAN CLARK: That's probably why I don't have it.

MR. COX: Okay. I delivered a copy there early this morning, so you probably have not seen it.

CHAIRMAN CLARK: I haven't been in my office, I think that's the problem.

If you'd prefer it, it could be taken up at the hearing. Either that -- what I'll do is I'll take the motion and the response and I'll look at the testimony and I will get a ruling tomorrow.

MR. COX: Okay.

CHAIRMAN CLARK: Because I don't have the testimony in front of me right now. We'll make sure I do that.

MR. COX: The only thing that I think --

CHAIRMAN CLARK: I'm sorry, I have just gotten an indication I do have the testimony. I have Mr. Poag -- well, yeah, I do.

Well, unless you all want oral argument, I will look at it and not take your time right now. Thank you, Billy.

What else do we have to take up?

MR. COX: The only thing that I have left is possible revisions to the prehearing statements based on the determination of issues and possibly set a date for those provisions to be filed.

CHAIRMAN CLARK: Mr. Adams, how soon can you

revise or prepare a response to that issue?

MR. ADAMS: Certainly, later this week.

Thursday, Friday, is that --

CHAIRMAN CLARK: The hearing is Monday?

MR. COX: That's correct.

CHAIRMAN CLARK: Let's set it for -- the Commissioners like to have the Prehearing Order so they can take it home with them on the weekend. I'm going to make it close of business Wednesday so the Staff can get it incorporated and delivered to us on Friday.

MR. ADAMS: Could I make one request since I'm from out of town, that we fax it --

CHAIRMAN CLARK: Oh, absolutely, fax is fine.

MR. ADAMS: -- to the parties and then overnight it for filing on Thursday?

CHAIRMAN CLARK: You don't have to file it, just fax it. You can call and dictate it over the phone if that's easier. No, for revisions to the Prehearing Order, if you fax it, it's fine. You don't need to file it. Anything else?

MR. COX: That's all that I have.

MR. ADAMS: The order of witnesses and -- I mean, that, in part, is tied up in some of the issues

that you are going to take under advisement and issue an order on. But it is important to how we prepare for hearing.

CHAIRMAN CLARK: On the striking of the testimony?

MR. ADAMS: Well, the striking of the testimony and whether we are going to be permitted to examine Mr. Poag and Ms. Khazraee on issues that we would like to pursue.

CHAIRMAN CLARK: Well, if it's not an issue, you won't have the opportunity to pursue it. It is limited to what is identified in the prehearing as an issue to be resolved through the arbitration. Without you being more specific, I can't help you.

MR. ADAMS: Okay. Well, I haven't gone back to think through all the points.

CHAIRMAN CLARK: When you get to a clear picture of what it is you want to ask, if you'll get with Mr. Rehwinkel and discuss what it is you want to explore, if he has no objection, there you go, it's done. If you still want to do it and think it needs some sort of resolution, I'll be here and Mr. Cox can get me that information. But we are just doing the arbitration and issues related to the arbitration.

Anything else?

MR. COX: That's all I have.

CHAIRMAN CLARK: Okay. What I have left to do then is the motions to strike the testimony, that's all?

MR. COX: That's correct.

CHAIRMAN CLARK: And Mr. Adams will get you his revised position on Issue 2 -- as will you, Mr. Rehwinkel -- close of business Wednesday so that we can issue the Prehearing Order.

MR. REHWINKEL: Yes.

CHAIRMAN CLARK: So we've covered everything we need to right now.

MR. COX: That's all I have, unless the parties have anything else.

CHAIRMAN CLARK: Mr. Adams.

MR. ADAMS: Nothing further at this time.

CHAIRMAN CLARK: Mr. Rehwinkel.

MR. REHWINKEL: Just with regard to Mr. Adam's last request regarding how he wants to proceed with the subpoena or the cross examination issue, I just would like to be apprised of whatever he relates to Staff at that time so I can understand what's going on as well.

CHAIRMAN CLARK: Well, I assume he's going to come to you first and say this is what he wants.

And if you don't reach an agreement, then we have to resolve it.

MR. REHWINKEL: I was doing something else, and I didn't pay attention, I apologize. Thank you.

CHAIRMAN CLARK: All right with that, this prehearing is adjourned. Thank you.

(Thereupon, the hearing concluded at 2:55 p.m.)

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STATE OF FLORIDA)
:
COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, ROWENA NASH Official Commission Reporter,

DO HEREBY CERTIFY that the Prehearing Conference in Docket No. 971194-TP was heard by the Prehearing Officer at the time and place herein stated; it is further

CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript, consisting of 58 pages, constitutes a true transcription of my notes of said proceedings

DATED this 18 day of November, 1997.



ROWENA NASH
Official Commission Reporter
(904) 413-6736