FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

March 26, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (B.KEATING, COX)
DIVISION OF COMMUNICATIONS (NORTON)

RE: DOCKET NO. 971194-TP - PETITION BY WIRELESS ONE, 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

AGENDA: APRIL 7, 1998 - REGULAR AGENDA - POST HEARING DECISION - MOTIONS FOR RECONSIDERATION - ORAL ARGUMENT REQUESTED

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\971194RC.RCM - DEFERRED FROM MARCH 24, 1998, AGENDA CONFERENCE - MINOR MODIFICATIONS TO ISSUES 5 AND 6, AS A RESULT OF DEFERRAL

CASE BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act concerns interconnection with the incumbent local exchange carrier, while Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements reached through compulsory arbitration. Specifically, Section 252(b)(1) states:

> (1) Arbitration.-During the period from the 135th day to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation

> under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the state commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

On April 10, 1997, Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida (Wireless One) and Sprint-Florida, Inc. (Sprint) entered into negotiations regarding Wireless One's request for interconnection arrangements with Sprint. The parties were unable to reach final agreements on certain issues. Thus, on September 12, 1997, Wireless One filed a petition for arbitration of issues not resolved in its negotiations with Sprint.

Section 252(b)(4)(A) provides that this Commission shall limit its consideration of any petition to the issues set forth in the petition and in the response, if any. The Commission conducted a hearing in this docket on November 24, 1997.

On January 26, 1998, the Commission issued its Final Order on the arbitration request, Order No. PSC-98-0140-FOF-TP. In that Order, the Commission determined that Wireless One's DMS 250 switch, also known as the Mobile Telephone Switching Office (MTSO), functions as a tandem for purposes of reciprocal compensation. The Commission also determined that under the FCC's rules, reciprocal compensation rates for land to mobile traffic apply only from the point of interconnection between Wireless One and Sprint to Wireless One's end office. The Commission found that the portion of the call from Sprint's originating landline end user to the point of interconnection is not governed by the FCC's decision that the Major Trading Area (MTA) is the local calling area for Commercial Mobile Radio Services (CMRS) traffic. In addition, the Commission determined that FCC Rules 47 C.F.R. 51.701(b)(2) and 47 C.F.R. 51.703(b) do not preclude Sprint from assessing a charge in accordance with its Reverse Toll Billing Option (RTBO) tariff offering. The Commission found that the RTBO charge does not constitute an access charge.

On February 10, 1998, Wireless One filed a Motion for

Reconsideration of the Commission's decision regarding the RTBO charge. Wireless One did not file a request for oral argument on its motion. In the alternative, Wireless One requested a generic proceeding to consider the impact of toll charges on CMRS providers' ability to compete. On February 23, 1998, Sprint filed a Response to Wireless One's Motion for Reconsideration and a Cross-Motion for Reconsideration of the Commission's decision that Wireless One's DMS 250 functions as a tandem switch. In addition, Sprint asked the Commission to stay the portions of Order No. PSC-98-0140-FOF-TP pending the outcome of its Cross Motion for Reconsideration and requested oral argument on its Cross-Motion. On March 9, 1998, Wireless One filed a Response to Sprint's Cross-Motion for Reconsideration, Motion for Stay and Request for Oral Argument.

This recommendation was deferred from the Commission's March 24, 1998, agenda conference at the request of the parties. As a result of the deferral, there have been minor modifications to staff's recommendations on Issues 5 and 6.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Sprint's Request for Oral Argument on the Cross-Motion for Reconsideration?

STAFF RECOMMENDATION: No. The issues are clearly set forth in the pleadings and in the record. Staff does not believe that oral argument would aid the Commission in evaluating the Cross-Motion for Reconsideration. Staff recommends that Sprint's Request for Oral Argument be denied.

STAFF ANALYSIS: Rule 25-22.058, Florida Administrative Code, requires a movant to show ". . . with particularity why Oral Argument would aid the Commission in comprehending and evaluating the issues before it."

In support of its request for oral argument on its Cross-Motion for Reconsideration, Sprint states that this docket has involved very technical matters. Sprint asserts that the issue of reciprocal compensation and functional equivalence of a CMRS provider is novel for this Commission. Sprint adds that its argument in support of reconsideration on the reciprocal compensation issue involves comparing the routing of land-to-mobile calls to the actual pricing structure ordered by the Commission. Sprint argues the oral argument will assist the Commission in

understanding this technical issue.

In its response, Wireless One states that it does not oppose Sprint's request for oral argument, as long as oral argument is also granted on Wireless One's Motion for Reconsideration.

In this particular case, staff believes that the matters addressed in Sprint's Cross-Motion for Reconsideration are ably presented by the parties' pleadings. The issues are very clearly set forth in those pleadings, as well as in the record. Staff does not believe, therefore, that oral argument would aid the Commission in evaluating Sprint's Cross Motion for Reconsideration. Thus, staff recommends that Sprint's Request for Oral Argument be denied.

ISSUE 2: Should the Commission grant Wireless One's Motion for Reconsideration?

STAFF RECOMMENDATION: No. Wireless One has failed to identify any point of fact or law that the Commission overlooked or failed to consider in rendering Order No. PSC-98-0140-FOF-TP. Wireless one's motion should, therefore, be denied.

STAFF ANALYSIS: The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. V. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

Wireless One

In its Motion, Wireless One asks the Commission to reconsider its decision regarding Sprint's Reverse Option Charge. Wireless One asserts that the Commission failed to consider certain points in reaching its decision not to eliminate or reduce the RTBO charge.

Wireless One asserts that under the Commission's decision, different local calling scopes require that the same call over the same facilities will be a toll call when originated by the land line customer, but will be a local call when originated by the wireless customer. Wireless One asserts that this results in "asymmetry" because wireless carriers that serve rural areas with finite flat rate local calling privileges lose revenues to the LEC in the form of the RTBO charge; thus, Wireless One argues the wireless carriers are at a significant economic disadvantage to the LEC.

Wireless One asserts that its witnesses testified that the RTBO charge had been part of the parties' interconnection relationship since the two networks were first interconnected. Wireless One asserts that Sprint has never charged its customers toll for any land-to-mobile calls since 1990. Wireless One argues that it is Sprint's customer and that it has generated revenue for Sprint simply by its existence. Wireless One argues, therefore, that intraMTA calls to its mobile customers should be treated differently than intraLATA toll calls made from one land based customer to another. Wireless One argues that these are two different classes of service. In addition, Wireless One argues that the Commission failed to consider that the FCC's Local Interconnection Order, FCC Order 96-325, (Interconnection Order) had remedied this "asymmetry" by stating that for wireless carriers, the local calling area included the entire MTA.

Wireless One further asserts that the Interconnection Order requires two-way trunking when feasible, and argues that Sprint routes its traffic through the tandem 2A trunks, rather than the two-way end office type 2B trunks, in order to incur an RTBO charge. Wireless One argues that Sprint should be required to route traffic to Wireless One at the most cost-efficient point for Wireless One.

Sprint

In its response, Sprint states that Wireless One has not raised any new issues. Sprint asserts that every argument made by Wireless One in its Motion was previously considered and rejected by the Commission. Sprint adds that the "competitive asymmetry" argument raised by Wireless One was not an issue for arbitration. Sprint further asserts that any argument relating to competitive asymmetry that is based upon the BellSouth/Vanguard LATA-wide additive should be rejected. Sprint states that the negotiated, BellSouth/Vanguard agreement does not apply to this arbitration.

Sprint also notes that the Commission rejected Wireless One's assertions that the voluntary RTBO is a "term and condition" of the interconnection relationship between Sprint and Wireless One. Sprint states that Wireless One's assertions in its Motion for Reconsideration that the RTBO is a new class of service were not raised in the arbitration proceeding. Furthermore, Sprint argues that even if it were a new class of service, Sprint would still not be precluded from charging toll to its own originating customers.

Sprint adds that Wireless One's assertion that this is a new class of service conflicts with Wireless One's assertions in the arbitration proceeding that the RTBO is unlawful and that toll charges on intra-MTA calls are also unlawful.

Finally, regarding Wireless One's assertions that the RTBO charge constitutes an access charge, Sprint agrees that Wireless One has cited the law correctly, but asserts that Wireless One has not shown how the Commission erred in applying that law. Sprint states that the Commission has already considered and rejected Wireless One's arguments that the RTBO charge is an access charge.

Staff Analysis

In its Motion for Reconsideration, Wireless One first asserts that the Commission failed to consider that the different calling scopes of wireless and land based carriers result in competitive asymmetry between the carriers. Wireless One adds that the Commission failed to acknowledge that the FCC's Interconnection Order, FCC Order 96-325, and the FCC's rules implementing that Order, rectify that asymmetry. Staff notes that the Commission considered this argument at page 17 of Order No. PSC-98-0140-FOF-TP, and rejected Wireless One's assertions that a determination regarding competitive effects should be made in this docket. Noting that it did not agree with Wireless One's assertions that the FCC had already made a determination on a land line LEC's ability to assess toll on intraMTA calls to wireless customers, the Commission stated that any concerns regarding the competitive impact of LECs assessing toll charges on intraMTA calls would be best addressed in another proceeding. See Order No. PSC-98-0140-FOF-TP, at p. 17. Wireless One has not identified any mistake of fact or law made by the Commission in its determination on this point in this proceeding.

Wireless One next asserts that it has always subscribed to the RTBO and that Sprint has never charged Sprint customers toll charges for calls to Wireless One's customers. This argument was addressed by the Commission at page 17 of Order No. PSC-98-0140-FOF-TP. Wireless One has not identified any mistake of fact or law in the Commission's decision on this point and should not be allowed to reargue matters the Commission has already considered.

Wireless One further asserts that Sprint must send its traffic over the Type 2B trunks, which would be the most cost efficient means for Wireless One to receive traffic from Sprint. Sprint's routing of traffic to Wireless One was not an issue to be resolved in this proceeding. The issue decided reads, as follows:

> With respect to land-to-mobile traffic only, do the reciprocal compensation rates negotiated by Wireless One and Sprint-Florida, Incorporated apply to intraMTA calls from the originating landline end user to Wireless One's end-office switch, or do these rates apply from the point of interconnection between Wireless One and Sprint to Wireless One's end-office switch.

Clearly, the issue decided relates to which rates apply to intraMTA calls originating from a Sprint customer and terminating on Wireless One's network, not to how Sprint routes calls. Although the Commission did hear Wireless One's arguments regarding Type 2B connections and SS7 signaling, the Commission did not make a determination on whether Sprint should be required to route traffic to Wireless One using Type 2B interconnection because the parties had already agreed that this was not an issue to be decided in the context of this arbitration. See Order No. PSC-98-0140-FOF-TP at p. 8; Staff Recommendation at p. 13; and Transcript Volume 3, p. 304, lines 8 - 12. Thus, this is not a point of fact or law overlooked by the Commission.

Wireless One has not identified any factual or legal basis for its Motion for Reconsideration. Its motion falls short of the standard set forth in Diamond Cab Co. V. King, 146 So. 2d 889 (Fla. 1962). Based on the foregoing, staff recommends that Wireless One's Motion for Reconsideration of Order No. PSC-98-0140-FOF-TP be denied.

ISSUE 3: Should the Commission grant Sprint's Cross-Motion for Reconsideration?

STAFF RECOMMENDATION: No. Sprint has failed to identify any point of fact or law that the Commission overlooked or failed to consider in rendering Order No. PSC-98-0140-FOF-TP. Sprint's cross-motion should, therefore, be denied. Staff recommends, however, that Sprint's request to revise the language to be inserted at Attachment II--Interconnection, D.3 be approved. Staff also recommends that the Commission clarify the language included at page 17 of the Order regarding the LATA-wide additive by removing any reference to other carriers' agreements, including the BellSouth/Vanguard agreement.

STAFF ANALYSIS: The proper standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. V. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

Sprint

In its Cross-Motion, Sprint asks that the Commission reconsider its decision that Wireless One's cell site provides termination in accordance with FCC Rule 51.701(d) and that Wireless One's DMS 250 functions as a tandem; thus, Sprint asks that the Commission reconsider its finding that the two networks are functionally equivalent. In addition, Sprint asks that the Commission reconsider its inclusion of language regarding a "LATA-wide additive."

First, Sprint states that the Commission should reconsider its decision regarding functions of Wireless One's cell site and DMS 250 because Order No. PSC-98-0140-FOF-TP does not contain a

sufficient factual or legal basis for the Commission's conclusions. Sprint argues that FCC Rule 47 C.F.R. 51.701(d) contains a two part test: 1) switching must occur at the cell site; and 2) traffic must be delivered to the called party's premises. Sprint asserts that the Commission's order only applies to the second part of this test.

Sprint also argues that the facts in the record show that the cell site's function is to deliver the call, but that the record demonstrates switching occurs at the MTSO. Sprint argues that the Commission's order does not make the finding required by Rule 47 C.F.R. 51.701(d) that switching occurs at a functionally equivalent facility - that being the cell site.

Sprint further argues that because the cell site does not perform a switching function, the requirements of Rule 47.C.F.R. 51.701(d) are not met, and, therefore, the Commission's order is in error. Furthermore, Sprint asserts that since the cell site does not perform a switching function and does not comply with the FCC's rule, then Wireless One's DMS 250 must not perform a tandem function. Essentially, Sprint argues that calls cannot be delivered solely to either the DMS 250 or to the cell site for termination because neither the DMS 250 nor the cell site perform both functions set forth in Rule 47 C.F.R. 51.701(d) for termination.

In addition, Sprint asks that the Commission alter the language ordered to be inserted in the agreement at Attachment II--Interconnection, D.3. That language reads as follows:

> For all land to mobile traffic that Company terminates to Carrier, Company will pay tandem interconnection, transport, and end office termination rate elements where interconnection occurs at the access tandem. Where connection occurs at the carrier's end office (cell site), Company will pay the end office termination rate only.

Sprint asks that the Commission remove the words "end office" from the last sentence of the ordered language so that the sentence reads, "Where connection occurs at the carrier's cell site, Company will pay the end office termination rate only." Sprint argues that the record clearly demonstrates that the cell site is not an end

office. Sprint adds that this language will require Sprint to retroactively pay tandem switching and termination for calls Sprint did not have an opportunity to deliver to the cell site.

Next, Sprint argues that the Commission should delete the language contained in Order No. PSC-98-0140-FOF-TP at page 17 regarding a LATA-wide additive. Sprint asserts that the Commission clearly implied that the additive negotiated by other parties had been used in place of the RTBO charge. Sprint argues that not only should the Commission not have included any reference to provisions negotiated by other providers in other agreements, the Commission's interpretation of the LATA-wide additive was based on testimony that was incorrect. Sprint argues that the LATA-wide additive included in the BellSouth/Vanguard agreement and referred to by Wireless One in its testimony actually applies to mobile-to-land traffic, not land-to-mobile traffic. Thus, the LATA-wide additive rate is a terminating rate, and does not address the originating portion of the call as might be inferred from the Order. Sprint argues, therefore, that the language should be stricken because it is misleading and inapplicable to the situation between Wireless One and Sprint.

Wireless One

In its Response, Wireless One states that Sprint has not identified any mistake of fact or law that the Commission made in making its determination that Wireless One is entitled to compensation for switching, transport, and termination as is Sprint. Wireless One notes that the Commission fully considered this issue in its Order and found that the two networks are, in fact "functionally equivalent." Wireless One argues that Sprint has not identified any mistake in that finding.

Wireless One also argues that the Commission's determination on this issue is supported by the FCC's decision in the FCC's First Report and Order, Order No. 96-325, where the FCC recognized that not all networks would be exactly comparable due to differences in technology. Wireless One states that the FCC then directed state commissions to consider whether new technologies perform similar functions that should be priced at the same rate as the functions performed by the ILEC. Wireless One argues that in this proceeding, the Commission appropriately used that rationale and found that the two networks did perform similar functions.

In addition, Wireless One specifically disputes Sprint's arguments regarding the definitions of a tandem switch, transport, and termination, as well as Wireless One's capability of providing those functions. Wireless One argues that its network performs each of these functions, as indicated in the Commission's order.

Finally, regarding the LATA-wide additive language contained in the order, Wireless One asserts that it is of no consequence that the additive suggested by Wireless One and referred to by the Commission was contained in an agreement between two parties that were not parties to this arbitration. Wireless One argues that the agreement was approved by the Commission and that the Commission was within its authority to use Commission precedent in commenting on issues in this case. Furthermore, Wireless One notes that the Commission's comments had no effect on the ultimate determination. Wireless One argues, therefore, that Sprint has no basis for asking that this language be removed.

Staff Analysis

RECIPROCAL COMPENSATION

Staff does not agree with Sprint that the Commission has failed to fully apply FCC Rule 47 C.F.R. 51.701(d) in finding that Wireless One's network is functionally equivalent to Sprint's for purposes of transport, tandem and end office switching. As set forth on pages 6 through 8 of Order No. PSC-98-0140-FOF-TP, the Commission fully considered Sprint's arguments that the DMS 250 is not a tandem switch and the cell site is not an end office. The Commission then reviewed FCC Rule 47 C.F.R. 51.701(d) and determined that the rule, and particularly the phrase ". . . or equivalent facility" should be interpreted broadly. The Commission reasoned that if both systems provide the same functions, then the parties should receive the same compensation even if the networks and methods of performing those functions are not identical. At page 10, the Commission then determined that both Sprint and Wireless One transport, switch, and terminate traffic and that Wireless One could assess the same rate elements that Sprint charges for those functions.

Staff notes that the testimony and arguments presented by the parties and included at pages 2 through 9 of the Order do indicate that neither the DMS 250 nor the cell site perform both a switching function and a delivery function. However, the Commission has

interpreted Rule 47 C.F.R. 51.701(d) to mean that these functions may be provided by equivalent facilities and not necessarily in the identical manner as that provided by the ILEC. The pertinent portion of FCC Rule 47 C.F.R. 51.701(d) reads as follows:

> . . . termination is the switching of local telecommunications traffic at the terminating carrier's end office, or equivalent facility, and delivery of such traffic to the called party's premises.

(Emphasis added.) Staff notes that while Rule 47 C.F.R. 51.701(d) does state that switching must occur at the terminating carrier's end office, or equivalent facility, it does not say that the same facility must then deliver the call. The rule describes termination and the functions necessary to accomplish that act. It does not mandate the means or facilities for accomplishing those functions.

Furthermore, in interpreting FCC Rule 47 C.F.R. 51.701(d), the Commission also considered the FCC's directive in its First Report and Order, Order No. 96-325, at ¶1090, that the states should consider whether new technologies perform functions similar to those performed by an incumbent LEC's network. With this directive in mind, the Commission found that Wireless One's network and Sprint's network perform the same functions, albeit by different technologies. See Order No. PSC-98-0140-FOF-TP at page 10.

Sprint has only indicated that it does not agree with the Commission's interpretation of the requirements for reciprocal compensation and of FCC Rule 47 C.F.R. 51.701(d). While Sprint may differ with the Commission's interpretation and application of the law, a difference of opinion as to interpretation does not constitute a mistake. Sprint has not identified a mistake that the Commission made in applying the law on this point.

APPROVED LANGUAGE FOR ATTACHMENT II--INTERCONNECTION, D.3

Staff does, however, agree that it would be appropriate to delete the words "end office" from the last sentence of the language approved for insertion in this Section. Staff recommends, therefore, that the last sentence be revised to state:

Where connection occurs at the carrier's cell site,

> Company will pay the end office termination rate only.

Staff believes this revision is appropriate because the record reflects, and the Commission acknowledged in its Order at pages 7-9, that the cell site alone does not perform all of the functions of Sprint's end office. Staff believes that this revision may avoid future confusion between the parties in interpreting and conducting business under the agreement.

LATA-WIDE ADDITIVE LANGUAGE

Staff does not believe that it is necessary for the Commission to delete all of the language at page 17 of Order No. PSC-98-0140-FOF-TP regarding the LATA-wide additive. This language was clearly intended to be dicta only, and was based upon testimony presented by Wireless One's witness Heaton. See Order No. PSC-98-0140-FOF-TP at p. 12. Staff does, however, suggest that the Commission clarify that the specific rate additive alluded to by Witness Heaton, the BellSouth/Vanguard additive, was actually intended to cover traffic terminated by BellSouth. It is not directly comparable to the type of additive that Wireless One suggested at hearing that it would be willing to pay Sprint in order to avoid the RTBO charge or the assessment of toll charges. At page 17, the Commission did not reference the BellSouth/Vanguard agreement. Instead, the Commission indicated that apparently other carriers have been able to negotiate a solution to this problem -- one that the Commission believed to be competitively equitable.

Nevertheless, since it may be inferred from the testimony presented by Witness Heaton that the Commission was, in fact, specifically referring to the BellSouth/Vanguard agreement, and since there is no other evidence in the record regarding other specific carriers that have implemented a LATA-wide additive directly comparable to that suggested by Witness Heaton, staff recommends that the Commission clarify its Order. Staff recommends that the Commission delete the first sentence of the last paragraph on page 17 of Order No. PSC-98-0140-FOF-TP that reads, "We also note that some LECs and CMRS providers in Florida have agreed that the CMRS provider will pay only transport and termination plus a "LATA-wide additive" for all calls that it terminates." Staff recommends that the Commission replace that sentence with the following language, "We also note that Wireless One's witness

Heaton suggested that Wireless One would be willing to pay a "LATA-wide additive" to cover any incremental cost associated with the increased calling scope of the MTA for calls that it terminates for Sprint."

ISSUE 4: Should the Commission grant Wireless One's request for a generic proceeding?

STAFF RECOMMENDATION: No. Staff believes that Wireless One's request for a generic proceeding is inappropriate within the context of a motion for reconsideration of an arbitration order. Staff recommends, therefore, that Wireless One's request for a generic proceeding regarding the effects of toll charges on wireless carriers' ability to compete be denied without prejudice to refile its request as a separate petition to be addressed in a new docket.

STAFF ANALYSIS: If the Commission does not grant its Motion for Reconsideration in Issue 2, Wireless One asks that the Commission establish a generic docket to investigate competitive problems resulting from the different local calling scopes of land line LECs and wireless carriers. Wireless One also asks that the Commission address how numbering could be used to resolve some of these competitive difficulties.

Wireless One notes that in Mr. Heaton's testimony, he discussed distributed NXXs. Wireless One states that Mr. Heaton testified that Sprint had indicated that it could not deliver traffic to the Type 2B trunk connections because the mobile called party's NXX is not rate centered at the end office interconnection. Wireless One argues that distributed NXXs would eliminate this problem because it would allow virtual rate centering. As such, a call originating in any exchange with a direct interconnection would be rated as a local call.

Wireless One suggests that another solution would be for Sprint to deliver traffic to Wireless One at the Type 2B trunks, which would make that traffic local.

Wireless One argues that either of these approaches would cure the competitive "asymmetry" problem and would also promote number conservation.

Sprint

Sprint argues that the Commission should refrain from taking any action on Wireless One's request to establish a generic proceeding. Sprint states that it and any other ILEC providing RTBO services should have the opportunity to respond to this

request as a petition for a generic proceeding. In other words, Sprint states that it, as well as any other affected ILECs, should have 20 days to respond in accordance with Rule 25-22.037(1), Florida Administrative Code.

In addition, Sprint states that it would be more appropriate for the full Commission to decide on a petition for generic proceeding as the Commission has done historically, rather than the current panel assigned to this docket. Sprint asks, therefore, that the Commission decline to act on the request to initiate a generic docket.

Staff Analysis

Staff believes that Wireless One's request for a generic proceeding is inappropriate within the context of a motion for reconsideration of an arbitration order. While the requested action would necessitate involvement by parties other than the participants in this arbitration, the request has been submitted within the narrow confines of this arbitration. As such, other potential interested parties do not have notice of Wireless One's request. Staff recommends, therefore, that Wireless One's request for a generic proceeding regarding the effects of toll charges on the wireless carriers' ability to compete be denied without prejudice to refile its request as a separate petition for consideration in a new docket.

ISSUE 5: Should the Commission grant Sprint's Motion for Stay of portions of the Commission's Final Order On Arbitration, Order No. PSC-98-0140-FOF-TP?

STAFF RECOMMENDATION: Yes. If the Commission approves staff's recommendations in Issues 1-4, staff recommends that the Commission grant Sprint's Motion for Stay of Portions of Order No. PSC-98-0140-FOF-TP. Staff recommends that the Commission then direct the parties to amend the agreement filed February 25, 1998, to revise the language for Attachment II -- Interconnection, p.3, within 30 days of the disposition of the Motion for Reconsideration and Cross-Motion for Reconsideration at the Commission's Agenda Conference.

STAFF ANALYSIS: Sprint states in its request for stay that if the parties submit an agreement that complies with the Commission's arbitration decision prior to the Commission's decision on the motion and cross-motion for reconsideration, Sprint will be required to make payments, including retroactive payments, in accordance with the Commission's decision on the tandem switching issue. If the Commission stays its decision on the arbitration agreement pending its decision on reconsideration, Sprint argues that Wireless One will not be harmed because Sprint has agreed to retroactive payments. If, however, the Commission proceeds with approval of the agreement, Sprint argues that it will be harmed because it will have to make payments to Wireless One, and Wireless One has not agreed to refund any payments made by Sprint if the Commission reverses its decision on reconsideration.

In its Response, Wireless One states that the Final Interconnection Agreement memorializing the Commission's arbitration decision was filed on February 25, 1998. Wireless One argues that in accordance with Section 47 U.S.C. §252(e)(4), the Commission must approve or reject the agreement within 30 days. Wireless One argues, therefore, that the Commission must rule on the agreement by March 25, 1998[1]. In view of this requirement, Wireless argues that the Commission must deny Sprint's request for

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[1] Staff notes that the 30 days actually runs on March 27, 1998. If, however, the Commission approves staff's recommendation on this issue and directs the parties to revise the language in the agreement filed February 25, 1998, staff believes that the required approval date for the agreement will run from the date the parties amend the agreement to memorialize the Commission's decision on this recommendation.

a stay.

In view of the provisions in the agreement and staff's recommended revision of the language to be included in Attachment II--Interconnection, p. 3, staff recommends that the Commission stay action on the agreement filed February 25, 1998, direct the parties to amend that agreement to revise the language for Attachment II--Interconnection, p.3, within 30 days of the Commission's disposition of the Motion for Reconsideration and Cross-Motion for Reconsideration at its Agenda Conference.

ISSUE 6: Should this Docket be closed?

STAFF RECOMMENDATION: No. If the Commission approves staff's recommendations in Issues 1-5, the parties should be required to submit the final amended arbitration agreement for approval within 30 days of the Commission's Agenda Conference. This Docket should remain open pending Commission approval of the final amended arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

STAFF ANALYSIS: If the Commission approves staff's recommendations in Issues 1-5, the parties should be required to submit the final amended arbitration agreement for approval within 30 days of the Commission's Agenda Conference. This Docket should remain open pending Commission approval of the final amended arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.