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March 31, 1999

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED-FPSC
50 MAR 31 PM 4:41
RECORDS AND
REPORTING

Re: Docket No. 990223-TL Preliminary Objection of
Sprint-Florida, Incorporated and Motion to Strike

Dear Ms. Bayo:

Enclosed for filing is the original and seven (7) copies of
Sprint-Florida, Inc.'s Preliminary Objection of Sprint-
Florida, Incorporated and Motion to Strike Please
acknowledge receipt and filing of the above by stamping the
duplicate copy of this letter and returning the same to this
writer.

Thank you for your assistance in this matter.

Sincerely,

Charles J. Rehwinkel

CJR/th

Enclosures

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG 1 _____
- LIN 5 _____
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- RCH _____
- SEC 1 _____
- WAS _____
- OTH _____

DOCUMENT NUMBER-DATE

04141 MAR 31 99

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into telephone exchange boundary issues in South Polk County.

DOCKET NO. 981941-TL

In Re: Investigation into telephone exchange boundary issues in South Sarasota and North Charlotte Counties.

DOCKET NO. 990184-TL

In Re: Request for review of proposed numbering plan relief for the 941 area code.

DOCKET NO. 990223-TL

FILED: March 31, 1999

Preliminary Objection of Sprint-Florida, Incorporated and Motion to Strike

Sprint-Florida, Incorporated (Sprint) objects to the late filing of both Direct and Rebuttal Testimony by Wireless One. Furthermore, to the extent testimony is allowed, the Commission should strike all testimony relating to irrelevant matters and reconsideration of the Commission's decision in Docket 971114-TL and testimony filed in contravention of a signed binding contract between Sprint and Wireless One. Sprint does not waive its rights

to the full response time frame allowed under the Commission Rules, the Model Rules and the Florida Rules of Civil Procedure. Responsive pleadings are allowed on the Motions for Extension of Time (to accept Late-filed Testimony) up until April 7 and April 12, 1999. In support Sprint states as follows:

This docket was established on March 1, based primarily on Mr. Heaton's self-styled complaint of February 25, 1999. Mr. Heaton was given notice of and participated in a teleconference on March 8, 1999 for the purpose of issue identification. The issue of testimony and the Direct and Rebuttal Testimony dates of March 18 and March 25 were expressly mentioned on that call by staff. Furthermore, Sprint served its Direct Testimony on Wireless One on March 18, 1999. Nevertheless, Mr. Heaton, ostensibly on behalf of a Limited Partnership, of which he is not a known partner, has filed Motions for Extension of Time, a prehearing statement and Direct and Rebuttal Testimony.

Order FPSC PSC-99-0441-PCO-TL, issued March 4, 1999 requires that Direct Testimony be prefiled on March 18 and Rebuttal Testimony be filed on March 25. This same schedule was directly communicated to Mr. Heaton by staff on March 8, 1999. Sprint has not been able to ascertain whether Mr. Heaton was mailed a copy of other notices or indicia of the ongoing Docket, but believes that he was. The Commission should verify service of materials from the Division of Records and Reporting before considering ruling in Mr. Heaton's favor on these matters. Mr. Heaton's Direct Testimony was filed on March 29 (and received by regular mail the same day), and

Rebuttal Testimony was faxed to Sprint at 5:17 P.M. on March 30.

FPSC rule 25-22.039 (Intervention) states in part that "Intervenors take the case as they find it." Although he filed the February 25th letter/complaint which did not request a hearing, Mr. Heaton does not feel that he was an official party of record and has now sought intervention by Motion filed March 29, 1999. Under the circumstances of this case and Mr. Heaton's initial letter, actual and constructive notice through service of Motions and testimony, participation in the March 8, 1999 teleconference, and the provisions of Commission rules, late-filed testimony should not be allowed.

Mr. Heaton's claims of ignorance should not be accepted as justification for his inattention to this proceeding. He is not unsophisticated and is well aware of the Commission process and is a former New York Commission staff member. His letterhead indicates access to the Internet and testimony filing information has been timely posted on the FPSC website related to this docket. The Commission should require him to take the case as he found it when he got around to paying attention to it. The significance Mr Heaton's correspondence and filings attribute to this case seems to be overshadowed only by his inattention to it.

In the event the tardy testimony is allowed, Mr. Heaton's Direct Testimony from page 5, line 3, through page 18, line 10 should be stricken as irrelevant and improper based on the finality of Order Nos. PSC-98-0140-FOF-TP and PSC-98-0594-TP (reconsideration) which resolved in Sprint's favor the issue that Mr. Heaton is complaining about. The orders resolving

that arbitration docket resulted in a contract between Sprint and Wireless One that, pursuant to Section 29, provides that "This agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns." Mr. Heaton's effort to revisit the issue in this docket may be a violation of the contract that he has agreed to be bound by and upon which Sprint has the right to rely upon in the governance of its business. Other miscellaneous references to these *res judicata* matters should be stricken from prefiled testimony and the Commission should issue an order *in limine* barring spontaneous oral testimony on these matters.

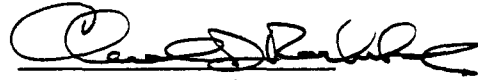
If the Commission chooses to allow the testimony and the inappropriate portions in the very limited hearing opportunity, Sprint reserves its right to conduct discovery and provide responsive (possibly live) testimony on the far ranging factual issues belatedly raised in the Heaton testimony.

Because the late appearance of these matters, Sprint reserves the further right to advance additional argument on these issues, including issues as to whether Mr. Heaton, who is not identified as one of the partners of Wireless One Networks, L.P., is authorized under the applicable rules and statutes to represent the company in this docket¹.

Sprint also requests that this matter be taken up at the April 1, 1999 prehearing conference.

¹Rule 28-106.106, Who May Appear; Criteria for Qualified Representatives, governs representation in FPSC matters.

Respectfully submitted, this 31st day of March 1999.

A handwritten signature in black ink, appearing to read "C. Rehwinkel", written over a horizontal line.

Charles J. Rehwinkel
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CERTIFICATE OF SERVICE
DOCKET NO. 981941-TL, 990184-TL & 990223-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail or hand-delivery this 31st day of March, 1999 to the following:

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