



# Public Service Commission

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**-M-E-M-O-R-A-N-D-U-M-**

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RECORDS AND REPORTING

**DATE:** OCTOBER 7, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF COMMUNICATIONS (HINTON) *CH*  
DIVISION OF LEGAL SERVICES (CALDWELL) *Quic/D/K*

**RE:** DOCKET NO. 990884-TP - REQUEST FOR ARBITRATION CONCERNING COMPLAINT OF ORLANDO TELEPHONE COMPANY REGARDING ENFORCEMENT OF INTERCONNECTION AGREEMENT WITH SPRINT-FLORIDA, INCORPORATED.

**AGENDA:** OCTOBER 19, 1999 - REGULAR AGENDA - DECISION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\990884A.RCM

### CASE BACKGROUND

On July 7, 1999, Orlando Telephone Company, Inc. (OTC) filed a Complaint for Enforcement of its Interconnection Agreement with Sprint-Florida, Incorporated (Sprint). In its Complaint, OTC alleges Sprint owes OTC approximately \$232,622.36 for terminating interstate switched access. On July 28, 1999, Sprint filed its Answer to the Complaint.

On September 2, 1999, OTC filed a Motion to Require Compliance with Dispute Resolution Provisions of the Interconnection Agreement. On September 17, 1999, Sprint filed its Response to OTC's Motion to require immediate compliance with dispute resolution provisions of interconnection agreement.

DOCUMENT NUMBER-DATE

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**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant Orlando Telephone Company's Motion to Require Compliance with Dispute Resolution Provisions of the Interconnection Agreement and order Sprint-Florida, Incorporated to pay to Orlando Telephone Company \$116,311.18 for terminating interstate switched access under section XVI.B.1. of the Agreement?

**RECOMMENDATION:** No. Requiring Sprint-Florida, Incorporated to pay \$116,311.18 for terminating interstate switched access under section XVI.B.1. of the Interconnection Agreement may result in prejudging an issue to be decided at hearing before the opportunity of a hearing has been given. (CALDWELL)

**STAFF ANALYSIS:** In Orlando Telephone Company's, Inc. (OTC) Complaint, OTC alleges Sprint owes OTC approximately \$232,622.36 for terminating interstate switched access. On September 2, 1999, OTC filed a Motion to Require Compliance with Dispute Resolution Provisions of the Interconnection Agreement (Agreement) to require immediate compliance with section XVI.B.1. of that Agreement. Specifically, OTC argues in its Motion that Sprint is required by section XVI.B.1. of the Agreement to pay OTC 50 percent of the disputed amount allegedly owed by Sprint to OTC.

In support of this claim, OTC quotes section XVI.B.1. of the Agreement that provides:

If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within thirty (30) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reason for disputing each item. The Non-Paying Party shall pay when due (i) all undisputed amounts to the Billing Party and (ii) fifty (50) percent of the Disputed Amount. The remaining balance of the Disputed Amount not paid shall thereafter be paid with appropriate late charges, if appropriate, upon final determination of such dispute.

As support of its argument that the dispute is one contemplated by the Agreement, OTC quotes the American Heritage Dictionary which defines "bona fide" as "done or made in good faith, sincere." OTC also quotes from earlier correspondence and filings by Sprint that refer to the claim as a dispute. Specifically, OTC states that Sprint representative Joan Seymour indicated that Sprint realized that interstate billing was in dispute in an e-mail dated February 16, 1999. OTC further emphasizes that Sprint's Answer to OTC's Complaint states that:

The sole point of [the] substantive dispute between the parties is the rate to be utilized in calculating the access compensation due OTC.

OTC concludes that a bona fide dispute exists as contemplated by the Interconnection Agreement with Sprint and, therefore, requests 50 percent of the amount in dispute be paid immediately to OTC by Sprint.

On September 17, 1999, Sprint filed its Response to OTC's Motion. In its Response, Sprint maintains that OTC is seeking payment based on "terms" that were never contemplated in the agreement. Therefore, there could be no "bona fide" dispute. Sprint further argues that payment of 50 percent of the claim by OTC would, of necessity, pre-judge the validity of OTC's access charges and the ultimate issue.

By Order No. PSC-99-1803-PCO-TP, issued September 16, 1999, a tentative list of issues for this proceeding was established. Issue 4 states:

Does a "bona fide dispute" pursuant to section XVI.B.1. at page 35 of the Agreement exist between Sprint and Orlando Telephone Company?

Staff believes that the disposition of this issue determines whether under the terms of the Agreement "the Billing Party" (Sprint) must pay 50 percent of the disputed amount to "the Non-Paying Party" (OTC) upon written notice from the "Non-Paying Party." Staff believes that granting OTC's Motion may result in prejudging the issue before an opportunity for a hearing has been given. Therefore, staff recommends OTC's request be denied.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** No. This docket should remain open pending the outcome of the hearing. (CALDWELL)

**STAFF ANALYSIS:** This docket should remain open pending the outcome of the hearing.