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August 31, 2000

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

001275-TP

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RECORDS AND REPORTING

Re: In re: Complaint of Network Telephone Corporation against Sprint-Florida, Inc.

Dear Ms. Bayo:

On behalf of Network Telephone Corporation, enclosed for filing and distribution are the original and 15 copies of the following:

- Complaint of Network Telephone Corporation Against Sprint-Florida, Inc.

Thank you for your assistance.

Yours truly,

Joseph A. McGlothlin

JAM/kmr
Enclosure

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Network Telephone Corporation against Sprint - Florida, Inc.

Docket No.: 001275-TP
Date Filed: August 31, 2000

COMPLAINT OF NETWORK TELEPHONE CORPORATION AGAINST SPRINT- FLORIDA, INC.

Network Telephone Corporation (Network Telephone), through its undersigned counsel, files its Complaint against Sprint-Florida, Inc. (Sprint), and in support states:

1. By this Complaint, Network Telephone seeks relief from Sprint's refusal to allow Network Telephone to collocate certain equipment necessary for interconnection and access to unbundled network elements in Sprint's central offices. Sprint's refusal is a violation of its collocation obligations under the 1996 Telecommunications Act, and related orders of the FCC and of this Commission.

2. The full name and business address of Complainant is :

Network Telephone Corporation
815 South Palafax Street
Pensacola, Florida 32501

3. The persons who should receive copies of all notices, orders, and pleadings relating to this matter are:

Joseph A. McGlothlin
McWhirter, Reeves, McGlothlin, Davidson
Decker, Kaufman, Arnold & Steen, P.A.
117 S. Gadsden Street
Tallahassee, Florida 32301

(850) 222-2525 Telephone
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Brent McMahan
Vice President, Regulatory and Governmental Affairs
Network Telephone Corporation
815 South Palafax Street
Pensacola, Florida 32501
(850) 341-8268 Telephone
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BACKGROUND

4. **The 1996 Telecommunications Act.** Section 251(c)(6) of the 1996 Telecommunications Act requires ILECs such as Sprint to "provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier . . ."

5. **The FCC.** The FCC first implemented this requirement in its Local Competition-First Report and Order, 11 FCC Rcd at 15782-15811. In this order, the FCC adopted minimum national collocation requirements. However, the FCC also ruled that the states would have flexibility in imposing additional collocation requirements consistent with the Act, including the designation of ". . . specific additional types of equipment that may be collocated pursuant to section 251(c)(6)." First Report and Order at ¶ 580. Noting that changes in technology are blurring distinctions between types or categories of equipment, the FCC said in its First Report and Order that, where the functionality of a piece of equipment is in dispute, state commissions will determine. . ." whether

the equipment at issue is actually used for interconnection or access to unbundled elements." First Report and Order, at ¶ 581. The FCC emphasized that the burden is on an ILEC that denies collocation to prove to the state commission that particular equipment is not "necessary" for interconnection or access to unbundled network elements within the meaning of the 1996 Act. First Report and Order, at ¶ 580.

6. The FCC examined its collocation rules again in Docket No. 98-147, "Deployment of Wireline Services Offering Advanced Telecommunications Capability." In Order No. 99-48, the FCC modified the national rules for collocation, and emphasized that collocation requirements apply to the deployment of advanced services. The FCC reiterated that "...states will continue to respond to specific issues by imposing additional requirements." Order No. 99-48, at p.13.

7. In Order No. 99-48, the FCC specifically considered allegations that ILECs were impeding competition by refusing to allow collocation of equipment that integrates multiple functionalities, including switching. The FCC stated that its rules ". . . require incumbent LECs to permit collocation of all equipment that is necessary for interconnection or access to unbundled network elements, regardless of whether such equipment includes a switching functionality, provides enhanced services capabilities, or offers other functionalities."

8. GTE Service corporation appealed FCC Order No. 99-48 to the United States Court of Appeals, D.C. Circuit. The court did not find fault with either the FCC's delineation of the discretion of the states to adopt additional collocation requirements, or the burden of proof that the

FCC placed on an objecting ILEC. The court concluded that the FCC had not demonstrated that the criteria that it formulated in Order No. 99-48 were related to the "necessary" standard of the 1996 Act. The court remanded the matter to the FCC for further proceedings. However, in doing so, the court stated:

> We do not mean to vacate the Collocation Order to the extent that it merely requires LECs to provide collocation of competitors' equipment that is directly related to and thus necessary, required, or indispensable to "interconnection or access to unbundled network elements."

GTE Service Corporation v. Federal Communications Commission, 205 F.3d 416, (D.C. Cir. 2000), at 424.

9. The court also recognized that one purpose of the 1996 Telecommunications Act is to ". . ensure competition in areas of advanced technology in telecommunications. . ." GTE Service Corporation at 421.

10. On August 10, 2000, the FCC initiated further rulemaking activities to comply with the court's opinion.

11. **The Florida Commission.** This Commission conducted extensive hearings on collocation issues in Docket Nos. 981834-TP and 990321-TP. After recounting the history of the FCC's development of collocation requirements, in Order PSC–00-0941-FOF-TP, issued on May 11, 2000, the Commission stated:

> Based on the foregoing, we conclude that the FCC has provided sufficient direction in determining the equipment that may be physically collocated. The FCC's rules require incumbent LECs to permit collocation of all equipment that is necessary for interconnection or access to unbundled network elements, regardless of whether such equipment includes a switching functionality, provides enhanced service capabilities, or offers other functionalities. The FCC has also stated that an

> incumbent LEC may not place any limitations on the ability of competitors to use all the features of its collocated equipment Therefore, we shall require ILECs to allow the types of equipment in a physical collocation arrangement that are consistent with FCC rules and orders. We note, however, that the FCC has, thus far, declined to require the collocation of equipment that is used exclusively for switching or enhanced services.

12. In the same order, the Commission–like the FCC-- concluded that the burden is on an ILEC that refuses to allow collocation to demonstrate that the equipment will not be used for interconnection and/or access to unbundled network elements. Further, the Commission determined that it would be impossible, due to rapidly changing technology, to prescribe an exhaustive list of the equipment that could be collocated; a case by case approach is required. At the time this complaint is being prepared, motions for reconsideration and/or clarification of Order No. PSC-00-0941-FOF-TP are pending before the Commission.[1]

FACTUAL ALLEGATIONS

13. Network Telephone is a Florida corporation. Network Telephone has obtained authority to operate as a competitive local exchange company in the states of Florida, North Carolina, South Carolina, Georgia, Louisiana, Alabama, Tennessee, Kentucky, and Mississippi.

14. In Florida, Network Telephone has entered interconnection/collocation agreements with BellSouth Communications, Verizon Florida, Inc., and Sprint.

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[1]In its motion for clarification of Order No. PSC-00-0941-FOF-TP, Sprint asserts that the Commission can and should clarify that it has approved the guidelines in the vacated FCC order and rules as its own standards ". . .notwithstanding the D.C. Circuit decision." Sprint Motion for Clarification, dated May 26, 2000, at page 9.

15. As a new entrant in Florida's local market, Network Telephone is in the process of configuring and deploying a state-of-the-art, ATM-based network that will enable Network Telephone to meet the needs of its customers for both traditional and advanced communications services. A specific part of Network Telephone's business plan is to deliver advanced services–including high-speed access to the Internet-- at affordable rates to small and medium -sized customers who are located in some of Florida's smaller markets, such as "Tier 2" and "Tier 3" communities. Network Telephone's ability to succeed in its efforts to provide new, additional choices and high quality services to Florida's consumers depends on its ability to compete with the incumbent local exchange companies and with other alternative local exchange companies. To that end, Network Telephone has designed, and is in the process of deploying, a network configured to realize the benefits of improvements in technology and recent developments in equipment manufacturing. Network Telephone's specific network design and its choice of equipment will enable it to reduce the high capital investments associated with deploying a state-of-the-art network and to maximize its efficiency of operation. The lower initial costs and operating efficiency associated with this network are critical to Network Telephone's ability to offer advanced communications services to a greater segment of Florida consumers at competitive rates.

16. An important component of Network Telephone's system design is the "PathStar" access server (also known in the industry as PAS). Designed and manufactured by Lucent Technologies, the new PathStar technology is designed to accomplish efficiencies and savings while providing a

technology-rich network. Lucent's PathStar access server incorporates numerous functionalities within a sophisticated, integrated package. It functions as an access server, a Digital Subscriber Line Access Multiplexer (DSLAM), an IP gateway, a router, and a Class 5 switch.

17. The PathStar access server is physically compact. It consists of an "access shelf" and a "data shelf." The "shelves" can reside on a rack or in a cabinet that is only 19 inches wide and 24 inches deep.

18. The PathStar's "access shelf" is designed to receive terminating DSO loops furnished by the ILEC for the provisioning of POTS service, as well as unbundled copper loops of the ILEC for the furnishing of xDSL service. Moreover, this function cannot be severed from the balance of the integrated access shelf. Accordingly, the access shelf of the PathStar access server is used to access unbundled network elements. The access shelf also serves as a remote module for xDSL and POTS service.

19. The ability of the PathStar to access and receive an ILEC's terminating DS3 loops, T1 loops, and PRI loops resides within the "data shelf". This functionality–i.e., the access to unbundled DS3, T1, and PRI loops --is an integral part of, and cannot be separated from the balance of, the data shelf; nor can it be transferred to the access shelf. Accordingly, like the access shelf, the PathStar's data shelf is used to access certain unbundled network elements and is necessary for that purpose. (See letter from J. H. Simester, Senior Manager of PathStar Product Management for Lucent Technologies, dated August 30, 2000, attached as Exhibit A.) The PathStar's data shelf,

which is contained in a separate housing but is connected to and communicates with the "access shelf", contains the functionality that enables the "access shelf" to perform its POTS and xDSL services. The data shelf also provides ATM and IP router functions. However, the data shelf will not be used exclusively for the purpose of switching and/or advanced services, as it will access the T-1 unbundled network element of the ILEC that is essential to Network Telephone's planned service offerings.

20. Network Telephone intends to deploy the PathStar in its network in the most efficient possible configuration. Network Telephone will collocate the PathStar "access shelf" within the ILEC's central offices. Necessarily, the ILEC's DS0 loops and unbundled copper loops essential to the POTS and xDSL services that Network Telephone intends to provide will terminate in the PathStar's access shelf. Network Telephone will collocate both the "access shelf" and the "data" shelf" of the PathStar at selected central points in certain of the ILEC's tandem offices. Necessarily, certain unbundled network elements of the ILEC, including the T-1 loop that is essential to Network Telephone's planned service offerings, will terminate in the PathStar's data shelf. With this configuration, Network Telephone can access unbundled network elements and gain maximum utilization of the integrated functionalities of the PathStar, while minimizing the cost of interoffice transport necessary to connect and enable its network. Further, because of the compactness of PathStar components, this configuration will impose, if anything, a smaller requirement for collocation space on the ILEC than a network that does not utilize the PathStar access server.

21. So configured, the PathStar access server will help enable Network Telephone to efficiently and competitively provide POTS, xDSL, data services, IP gateway services, packet switching, and other advanced services. In providing these services, Network Telephone will employ unbundled network elements accessed by the access shelf and the data shelf of the PAS. Network Telephone will utilize the Class 5 functionality provided by the PathStar data shelf, but will not use the equipment exclusively for that purpose. Instead, Network Telephone will use each shelf component of the PathStar access server to access specific unbundled network elements and to employ those elements in a variety of services and functions, including switched services.

22. Network Telephone has submitted applications to collocate the PathStar in the manner described above to BellSouth and to Verizon. BellSouth and Verizon have agreed to allow collocation of the PathStar, including both the access shelf and the data shelf, as requested by Network Telephone.

23. Network Telephone submitted similar collocation applications to Sprint. In its initial application to Sprint, which was submitted on May 3, 2000, Network Telephone applied to collocate the PathStar access shelf and the data shelf in Sprint's office in Fort Walton Beach, a Tier 3 market. Subsequently, Network Telephone applied to collocate the PathStar access and data shelves in the following additional Sprint offices: Tallahassee (4); Ocala (2); Deland; Kissimmee; Winter Park; Fort Myers; and Naples.

24. However, on August 2, 2000, Sprint refused to allow Network Telephone to collocate

the "data shelf" component of the PathStar within any of the Sprint offices. Sprint took the position that, because the data shelf contains the functionality that enables PathStar to also serve as a Class 5 switch, only the "access shelf" component of the PathStar may be collocated within Sprint's central offices. Further, Sprint informed Network Telephone that if Network Telephone collocates the PathStar's access shelf in Sprint's office, Sprint will not permit it to utilize the Class 5 switch functionality provided by the PathStar.

STATEMENT OF DISPUTED FACTS

25. Network Telephone is unable to state at this time whether Sprint disputes any of the facts alleged herein.

ULTIMATE FACTS ALLEGED

26. Both the access shelf and the data shelf of the PathStar access server are designed to access and receive an ILEC's terminating unbundled network elements. Further, the function of accessing the unbundled network elements allocated to each shelf in the functional design of PathStar cannot be severed from either shelf or performed by the other shelf.

27. In its installation and application of the PathStar equipment and technology, Network Telephone will employ both the access shelf and the data shelf of PathStar to access unbundled network elements.

28. Sprint has not demonstrated, and cannot meet its burden to demonstrate, that the access shelf and the data shelf of the PathStar access server will not be used by Network Telephone to access unbundled network elements.

29. Sprint's refusal to allow Network Telephone to collocate the access shelf and the data shelf of the PathStar access server is a violation of Sprint's obligation under Section 251(c)(6) of the 1996 Telecommunications Act to allow collocation of equipment necessary to interconnect and access unbundled network elements within its offices.

30. Sprint's attempt to prohibit Network Telephone from utilizing the additional integrated functionality of equipment used to access unbundled network elements is in conflict with the intent of the 1996 Telecommunications Act to promote competition in the market for advanced services and the similar intent of Chapter 364, Florida Statutes.

31. Sprint's refusal to allow Network Telephone to collocate the access shelf and the data shelf of the PathStar access server and employ them in the manner proposed by Network Telephone constitutes anticompetitive behavior in violation of the 1996 Act and Chapter 364, Florida Statutes. The inability to collocate PathStar equipment would artificially inflate Network Telephone's costs and thwart its ability to compete to provide advanced services in the market in which Sprint participates, to the detriment of Florida's consumers of communications services.

32. This Commission has authority to prescribe collocation requirements consistent with, and in addition to, those articulated by the FCC. Requiring Sprint to permit Network Telephone to

collocate the complete PathStar access server in the manner proposed by Network Telephone, without limitations on the use of the functionality of PathStar, is consistent with the intent of the 1996 Act. It is also consistent with the Commission's responsibility under Florida law to prevent anticompetitive conduct and ensure that all providers of telecommunications services are treated fairly.

WHEREFORE, Network Telephone Corporation requests the Commission to exercise jurisdiction over this complaint, expedite appropriate proceedings thereon, and enter an order (1) confirming that both the access shelf and the data shelf of the Lucent PathStar access server are subject to collocation requirements; (2) ordering Sprint to permit collocation of the PathStar access and data shelves as proposed by Network Telephone Corporation; and (3) confirming that Network Telephone may employ all functionalities of collocated PathStar equipment.

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Attorneys for Network Telephone Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Complaint of Network Telephone Corporation Against Sprint-Florida, Inc. has been furnished by hand delivery(*) and U.S. mail Thursday, August 31, 2000, to:

*Beth Keating
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

*Charles J. Rehwinkel
Sprint-Florida, Incorporated
1313 Blair Stone Road
Tallahassee, Florida 32301

*John P. Fons
Ausley & McMullen
227 South Calhoun Street
Tallahassee, Florida 32301

Joseph A. McGlothlin

Lucent Technologies
Bell Labs Innovations

J. H. Simester
Senior Manager
PathStar Product Management
InterNetworking Systems

Room 3A104A
200 Schulz Drive
Red Bank, NJ 07701
Voice (732) 224-3217
Fax (732) 224-8077
simester@lucent.com

August 30, 2000

Mr. Joseph McGlothlin
McWhirter, Reeves, McGlothlin
117 Gadsden Street
Tallahasee, FL 32311

Dear Mr. McGlothlin:

I am the Product Manager for Lucent Technologies' PathStar Access Server, and as such have personal knowledge of the physical design, technical capabilities, and functional attributes of the product.

Lucent Technologies has designed the PathStar Access Server to perform several important functions in an alternative local exchange company's (ALEC) network. The PathStar Access Server combines several functionalities in a compact, integrated package. The PathStar provides access to an incumbent local exchange company's (ILEC) unbundled network elements, and also serves as a digital subscriber line access multiplexer (DSLAM), an edge router, an IP gateway, and a Class 5 switch for POTS telephony.

The PathStar Access Server fits in a cabinet or mounts on a rack that is 19" wide and 24" deep.

The PathStar consists of two separately housed components or "shelves": the "Access Shelf" and the "Data Shelf." The function of accomplishing access to an ILEC's unbundled network elements is divided between the two shelves (see attached figure, PathStar System Components).

The PathStar's Access Shelf is designed to access and receive from the ILEC terminating, unbundled DS0 loops employed by the ALEC in providing POTS services and unbundled copper loops used by the ALEC in providing ADSL service. Because of the integrated design and construction of the Access Shelf, the functionality of gaining access to the ILEC's DSO and unbundled copper loops cannot be separated from the other physical components or the other functionalities of the Access Shelf. Further, the separate Data Shelf is incapable of accessing the ILEC's unbundled DSO loops and unbundled copper loops, as the design of PathStar has allocated that function to the Access Shelf. Since the interfaces that the PathStar's Access Shelf is designed to access are typically terminated in the ILEC's central office, it would be technically infeasible for the PathStar to provide collocation access to those unbundled network elements for voice and data services without placing the Access Shelf in the collocation environment.

The PathStar's Data Shelf is designed to access and receive from the ILEC terminating, unbundled UNEs such as T1 loops and Primary Rate Interfaces (PRI loops). It also accommodates high speed data interfaces such as DS3/OC3 loops for ATM, and 10/100Mb Ethernet connections. The Data Shelf also provides call routing and processing functions. It serves as an IP gateway and as an edge router. The Data Shelf contains the functionality that

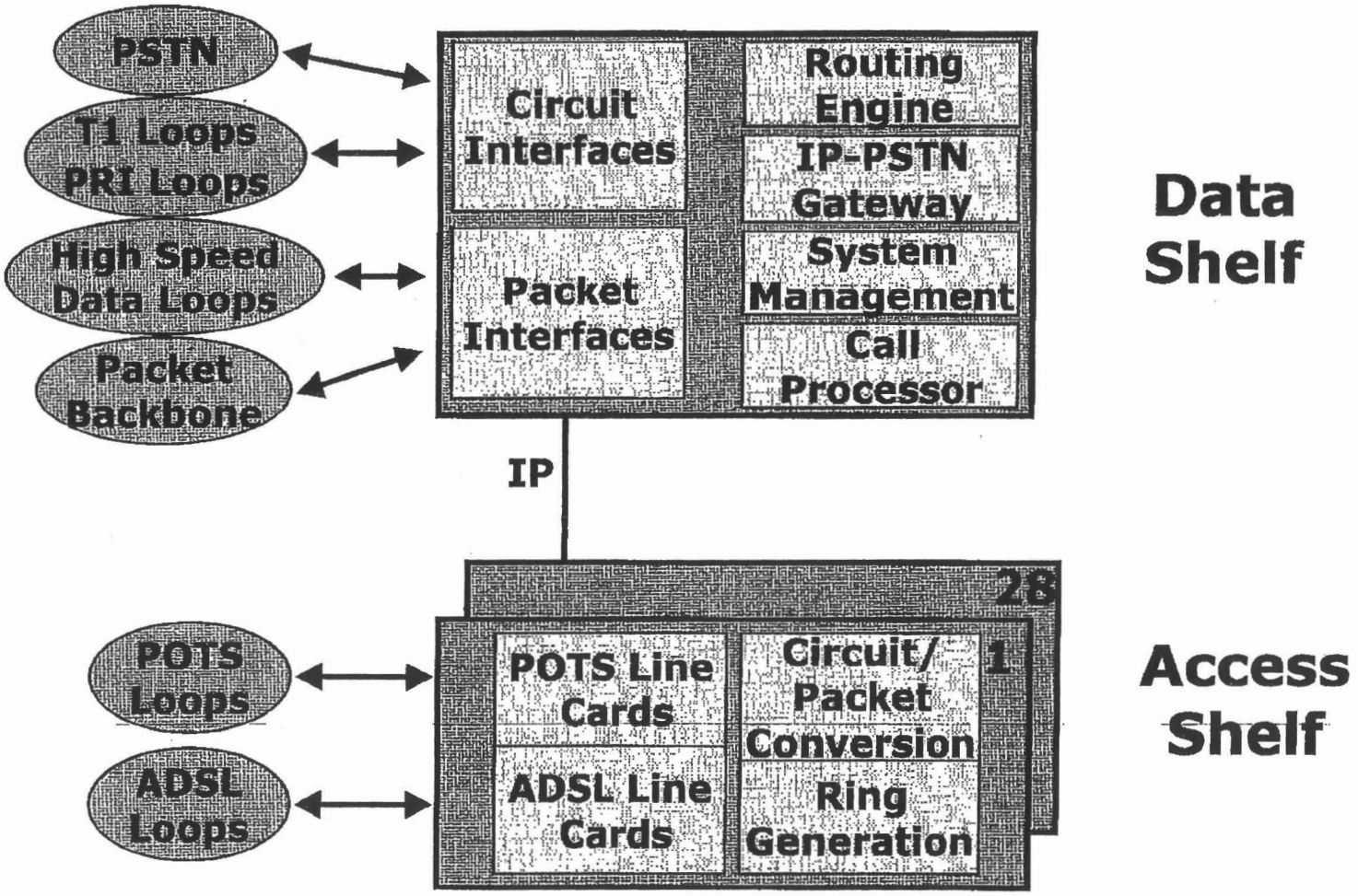
enables PathStar to operate as a core switch for other remote locations. Because of the integrated design and construction of the Data Shelf, the function of providing access to the ILEC's unbundled T1, PRI, and high speed data loops identified above cannot be separated from the other physical components or the other functionalities of the Data Shelf. Further, the separate Access Shelf is incapable of accessing the ILEC's unbundled T1, PRI, and high speed data loops, as the design of the PathStar has allocated that function to the Data Shelf. Since the T1, PRI, and high speed data interfaces are typically terminated in the ILEC's central office, it would be technically infeasible for PathStar to provide collocation access to those unbundled network elements for voice and data services without placing the Data Shelf in the collocation environment.

Sincerely,

Attachment – PathStar System Components

PathStar System Components

Lucent Technologies
Bell Labs Innovations



COMPLAINT OF NETWORK TELEPHONE
EXHIBIT A, ATTACHMENT 1