Sprint
Docket No. 000828-TP
Filed : November 1, 2000

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

DIRECT TESTIMONY

OF

MARK G. FELTON

Q. Please state your name and business address.

A. My name is Mark G. Felton. My business address is 7301 College Boulevard, Overland Park, Kansas 66210.

Q. By whom are you employed and in what capacity?

A. I am employed by Sprint Communications Company Limited Partnership, ("Sprint") as Manager- Local Market Development.

Q. What is your educational background and work experience?

A. I graduated from the University of North Carolina at Wilmington in 1988 with a B.S. degree in Economics. In 1992 I received a Masters degree in Business Administration from East Carolina University. I began my career with Carolina Telephone (a Sprint subsidiary) in 1988 as a Staff Associate. This was a

Management Intern position that focused heavily on developmental and cross-training activities. My job responsibilities were to develop Part 36 Jurisdictional Cost Studies to be used in monthly booking and budgeting. In 1989 I became a Separations Analyst with essentially the same responsibilities that I had as Staff Associate. In 1990 I became a Coordinator-Separations. In this position, I developed costs and prices for Carolina Telephone's interexchange facilities lease product. I later assumed responsibility for Carolina Telephone's optional intraLATA toll product, Saver*Service. In 1993, I was named Administrator-Local Tariffs and Regulatory Issues. In this position I maintained the General Subscriber Services Tariff for South Carolina and served as the primary point of contact for the SCPSC staff on regulatory issues. In 1994 I became Competitive Analysis Manager for Sprint. In that position, I provided analytical support for the Revenues Policy group dealing with such issues as access reform, price caps, and local competition. I assumed my current position in June 1999.

Q. What are your current responsibilities?

A. My current responsibilities include representation of Sprint in interconnection negotiations with BellSouth Telecommunications, Inc. ("BellSouth"). In addition, I support the coordination of Sprint's entry into the local markets within BellSouth's territory. I interface with BellSouth's account team supporting Sprint by communicating service and operational issues and requirements, including escalation of service and/or support issues as necessary.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to provide input and background information to the Florida Public Service Commission ("FPSC") regarding Sprint's Petition for arbitration of certain issues that Sprint and BellSouth Telecommunications, Inc. ("BellSouth") discussed during the course of negotiating a renewal of their Interconnection Agreement, but were unable to resolve. Specifically, my testimony will deal with the following issues: resolution of conflicts between the Agreement and the BellSouth tariff (Issue No.1); resale of stand-alone Custom Calling Services (Issue No. 3); unbundled packet switching (Issue No. 5) conversion of switching UNE's to market-based rates (Issue No. 7); tandem charges for comparable geographic area (Issue No. 11) and; inclusion of IP telephony in the definition of "switched access traffic" (Issue No. 12).

Q. Describe Sprint and its business focus.

A. Sprint is certificated by the FPSC as a Alternative Local Exchange Carrier. Sprint's business plans in Florida include facilities-based local service via its revolutionary Sprint ION service, as well as local resale to both business and residential customers. Sprint will rely on BellSouth as an Incumbent Local Exchange Carrier ("ILEC") for the lease of unbundled network elements ("UNEs"), central office collocation, local number portability, directory listings, CCS7 signaling, rights-of-way and pole attachments and interoffice and interconnection trunking.

ISSUE NO. 1: Terms and Conditions, Section 19.7 – Resolution of conflicts between Agreement and BellSouth tariff.

Q. Please describe the issue relating to the resolution of conflicts between a Sprint/BellSouth interconnection agreement provision and a BellSouth tariff provision.

A. This provision in the General Terms and Conditions of the Agreement is intended to establish a default resolution in the unlikely event that a term or condition of the Agreement conflicts with a term or condition from the BellSouth tariff from which a product or service is purchased.

Q. What is Sprint's position on this issue?

A. Sprint believes that, in the event that a provision of the interconnection agreement conflicts with a provision of an applicable tariff and the tariff is not explicitly referenced by the Agreement, the Agreement should prevail in all situations. Both Sprint and BellSouth had access to BellSouth tariffs during the course of negotiations and to the extent that a provision of the tariff conflicted with a proposed provision in the agreement, the Parties had the opportunity to argue their respective positions and reach a compromise, or to the extent a compromise could not be reached, to arbitrate the issue. Therefore, conflicts between the tariff and the contract have presumptively been addressed during interconnection agreement negotiations and the relevant contract provision should govern.

Q. Since the tariff is a public document and subject to regulatory review, why does Sprint object to the provisions of the tariff prevailing in situations where there is a conflict?

A. A tariff is indeed a public document that has undergone regulatory scrutiny. However, a tariff is designed to meet the general needs of all persons or entities that purchase product or services from it. An interconnection agreement, on the other hand, is a customized, negotiated contract that is designed to meet the specific requirements of the negotiating parties. To the extent that Sprint asks for, and BellSouth contractually agrees to, a provision that differs from BellSouth's tariffs, Sprint should not be bound by the tariff provision.

Q. Under Sprint's proposal, how would future tariff modifications that may conflict with the agreement be handled?

A. In a situation where future tariff modifications cause a tariff provision to conflict with a mutually negotiated provision in the Sprint / BellSouth interconnection agreement, unless that tariff provision is specifically referenced by the agreement for the product or service in question, the provision of the agreement should prevail. Sprint believes that a future BellSouth tariff revision is the most likely event that would trigger a conflict between the tariff and the interconnection agreement. Certainly during the negotiation process, Sprint cannot anticipate future revisions that BellSouth may make to its tariffs that may or may not conflict with a provision that has been negotiated in the interconnection agreement. With Sprint's proposed language, modifications to a BellSouth tariff that caused the tariff to conflict with BellSouth's agreement with Sprint would be of no consequence to Sprint's ALEC interests. Sprint was diligent in ensuring that references to a BellSouth tariff within the agreement (and in effect at the time of execution, were satisfactory to Sprint's business plans and purposes. It would be unreasonable, and cause Sprint to be at a competitive disadvantage, for Sprint to adjust its business plans because of a post-execution unilateral change in a BellSouth tariff provision that was not explicitly intended, through a reference in the agreement, to apply to Sprint.

Q. What action does Sprint request the commission to take on this issue?

A. Sprint requests that the Commission adopt its language as follows:

> Nothing in this Agreement shall preclude Sprint from purchasing any services or facilities under any applicable and effective BellSouth tariff. Each party hereby incorporates by reference those provisions of its tariffs that govern the provision of any of

the services or facilities provided hereunder. In the event of a conflict between a provision of this Agreement and a provision of an applicable tariff, the Parties agree to negotiate in good faith to attempt to reconcile and resolve such conflict. If any provisions of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this Agreement, or any Attachment hereto, shall prevail. The fact that a condition, right, obligation, or other term appears in this Agreement but not in any such tariff shall not be interpreted as, or be deemed as grounds for finding, a conflict for purposes of this Section.

ISSUE NO. 3: Attachment 1, Resale – Resale of stand-alone vertical features

Q. Please describe the issue.

A. Sprint proposes to include language in the interconnection agreement that would allow it to purchase Custom Calling Services on a "stand-alone" basis for resale without the restriction of having to purchase the basic local service for resale.

Q. Describe what custom calling services are.

A. Custom Calling Services are optional features that an end user may purchase which enhance the functionality of the local service. Custom Calling Services are retail services that are priced and purchased separately from the basic local service and are not necessary for the basic local service to function properly. Sprint believes that these Services are appropriately characterized as a "telecommunications service(s)" under Section 251(c) of the Act.

Q. What is BellSouth's objection to Sprint's proposal?

A. BellSouth seeks to restrict Sprint from purchasing Custom Calling Services except where Sprint also purchases the underlying basic local service. This restriction is based primarily on a tariff provision (BellSouth's General Subscriber Services Tariff, Section A13.9.2(B)) which states that "Custom Calling Services are furnished in connection with individual line residence and business main service". In other words, the purchase of any Custom Calling Service, in BellSouth's opinion is dependent upon, or "tied" to, the purchase of local dial tone. BellSouth seeks to place upon Sprint this same limitation, which is intended for subscribers who are not telecommunications carriers.

Q. Are there any federal regulations that require BellSouth to offer custom calling services individually for resale?

A. Yes. Under Section 251(c) of the Act, BellSouth, as an ILEC, must "offer for resale at wholesale rates *any* telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers" (emphasis added). Sprint believes that Custom Calling Services are optional telecommunication services that simply provide additional functionality to basic telecommunications services. BellSouth seems to agree. In customer advertising on the BellSouth Internet website, BellSouth refers to dial tone as a "basic" service and Custom Calling Services as "optional" services. Neither Congress nor the FCC made a distinction between "basic" and "optional" telecommunications services when promulgating the resale requirement. In fact, the FCC, in ¶ 871 of the First Report and Order in CC Docket 96-98 (issued August 8, 1996) ("Local Competition Order"), noted that they found "no statutory basis for limiting the resale duty to basic telephone services". Therefore, Sprint believes that BellSouth is under no less of an obligation to offer for resale "optional" Custom Calling Services as it is to offer for resale "basic" local telephone service.

Q. Should the tariff restriction that applies to end users also apply to Sprint?

A. No. The FCC, in its Local Competition Order, ¶ 939, found unequivocally not only that "resale restrictions are presumptively unreasonable", but also that "[i]ncumbent LECs can rebut this presumption [only] if the restrictions are narrowly tailored." The FCC explained that the presumption exists because the ability of ILECs to impose resale restrictions and limitations is likely to be evidence of market power, and may reflect an attempt by ILECs to "preserve their market position." In this case, BellSouth's attempt to "tie" provision of local dial tone and Custom Calling Services by the same carrier evidences not just BellSouth's market power in Florida, but represents a clear attempt to preserve its dominant market position in the burgeoning sub-market for Custom Calling Services.

Q. Is there any technical reason why BellSouth cannot provision custom calling services on a stand-alone basis?

A. No, there appears to be no technical reason that would prevent BellSouth from offering Customer Calling Services to Sprint on a stand-alone basis. These features are currently marketed to end-users separately from local dial-tone, carry an additional charge, and are subject to a service order charge. Sprint does not deny that some form of dial tone is needed to make Custom Calling Services work. However, there is no reason that the same carrier must be the provider of both dial tone and Custom Calling Services when they are sold today separately and are two separate services.

Q. Why does Sprint seek to resell custom calling services to end-users when they are not that customer's local provider?

A. Many products and services have been developed, are under development, or have not yet even been conceived which require a Custom Calling Service as a component for the product or service to work optimally. An example of just such a product is unified voice messaging which allows a customer to maintain one voice mailbox for all of their voice messages. For this to work properly, the customer must have Call Forwarding Busy Line and Call Forwarding Don't Answer. This is just one example of a service that could be deployed using a stand-alone Customer Calling Service as a component. Many more creative applications will likely be developed if Sprint is given the authority to resell stand-alone Custom Calling Services.

Q. Why doesn't Sprint simply instruct the customer to purchase the custom calling services that are necessary for a Sprint product directly from BellSouth?

A. The customer could purchase these services directly from BellSouth, however, in doing so, Sprint's stature as a local carrier is diminished as compared to BellSouth. In addition, one of the major attractions in any product, and especially one as complicated as telecommunications can be, is the ease of obtaining and using the product. Certainly, Sprint would face a significant obstacle to market a product for which the customer was required to purchase additional components for and assemble himself or herself. This is an obstacle that BellSouth does not have to face.

Q. Why doesn't Sprint purchase custom calling services from BellSouth at retail rates?

A. Assuming that Sprint were entitled to purchase Custom Calling Services from BellSouth on that basis, this would less than optimal for three reasons. First, Sprint would be forced to pay retail, rather than wholesale, rates. Sprint, as a telecommunications carrier, is entitled to purchase from BellSouth at wholesale prices those telecommunications services that BellSouth sells at retail to end-users. When Custom Calling Features are purchased for resale together with BellSouth dialtone they are subject to this discount. There is no rational economic reason not to apply the wholesale discount when purchased on a stand alone basis. Additionally, Sprint would be penalized by paying Custom Calling Service prices that have historically been inflated to subsidize basic service rates. Second, Sprint would be forced to deal with BellSouth as an end-user customer rather than as an interconnecting carrier, as Congress and the FCC intended. This might entail submitting orders over the phone or via fax rather than electronically as an interconnecting carrier would. This could also result in delayed orders, needless expense and would inhibit Sprint from acting as a peer and competitor to BellSouth. Third, if Sprint is treated as an end-user when ordering Custom Calling Services from BellSouth, Sprint could expect to receive and manage hundreds, if not thousands, of paper bills in much the same format BellSouth utilizes for its own end-users, rather than a mechanized billing system it utilizes when billing carriers with whom it has a wholesale relationship. This clearly is discriminatory, and would prevent Sprint from acting as a true competitor to BellSouth.

Q. What action does Sprint request the Commission to take on this issue?

A. Sprint requests that the Commission direct BellSouth to make stand-alone Custom Calling Services available to Sprint in a reasonable and non-discriminatory manner. In addition, Sprint requests that the Commission adopt Sprint's language as follows:

> Resale of Custom Calling Services. Except as expressly ordered in a resale context by the relevant state Commission in the jurisdiction in which the services are ordered, Custom Calling Services shall be available for resale on a stand-alone basis.

ISSUE NO. 5: Attachment 2, Network Elements and Other Services, Sections 4.2.6, 12 – Access to DSLAM, unbundled packet switching

Q. Please describe the issue.

A. The FCC ordered ILECs to offer packet switching to ALECs on an unbundled basis if four criteria apply to the ILEC. The four criteria are set out in 47 CFR 51.319(c)(3)(B) and further discussed in ¶313 of the Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98 (issued November 5, 1999) ("UNE Remand Order"). They are: 1) IDLC technology has been deployed or fiber is used between the central office and an intermediate location such as a remote terminal; 2) no spare copper exists for use with xDSL by the requesting carrier; 3) ALECs are not permitted to collocate DSLAMs in the ILEC's remote terminal; and 4) the ILEC has deployed packet switching for its own use ("collectively, limited circumstances"). The clarification that Sprint is seeking in this proceeding is whether BellSouth is relieved of its responsibility to offer packet switching if any of the four limited circumstances do not apply to BellSouth on a customer location specific basis or, stated differently, should BellSouth be relieved of this obligation if any of the limited circumstances are not applicable anywhere within BellSouth's network. By way of example, if Sprint seeks to provide advanced services to a customer in Miami, and BellSouth does not have spare copper loops in that customer's location in Miami, but BellSouth does have a spare copper loop in Orlando, should BellSouth be obligated to offer packet switching at the Miami location?

Q. What is Sprint's position on this issue?

A. Sprint believes that if each of the limited circumstances apply to BellSouth for the customer location in question, then BellSouth is obligated to offer packet switching to Sprint on an unbundled basis at that location.

Q. What is BellSouth's position on this issue?

A. BellSouth's position is unclear. In negotiations, BellSouth seemed to agree with Sprint's position, however, in other jurisdictions, BellSouth has indicated in written and oral testimony that it believes that if BellSouth meets the criteria for withholding packet switching at any location in its network that it is not obligated to unbundle packet switching at locations where the criteria for withholding packet switching are otherwise not met. See, Petition for Arbitration of Interconnection Agreement between BellSouth Telecommunication, Inc. and Intermedia Communiations, Inc. Georgia PSC Docket No. 11644-U, Prefiled Direct Testimony of Alphonso J. Varner, at 35.

Q. What problem exists if the limited circumstances are evaluated on any basis other than a location-specific basis?

A. If BellSouth is allowed to evaluate the limited circumstances on a region-wide, statewide, or even exchange-wide basis, the benefits of competition will be denied to consumers in Florida and the development of advanced services will be stymied through higher prices and reduced innovation. It would be irrational to say that a consumer has competitive alternatives for advanced services just because BellSouth has a spare copper loop in another state, city, or even across town. That is, however, precisely what BellSouth has suggested in testimony in other jurisdictions. To evaluate the limited circumstances on anything other than a location-specific basis would be meaningless with respect to the goal of ensuring that effective competition exists for every consumer in Florida. BellSouth simply must not be allowed to hamper the development of advanced services in this way.

Q. What action does Sprint request the Commission to take?

A. Sprint requests that this Commission order BellSouth to evaluate the four limited circumstances on a location-specific basis by adopting Sprint's proposed language as follows:

> BellSouth shall be required to provide nondiscriminatory access to unbundled packet switching capability only where each of the following conditions are satisfied on a location specific basis (i.e. per the loop or remote terminal in question):
>
> BellSouth has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier

or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);

There are no spare copper loops capable of supporting the xDSL services Sprint seeks to offer;

BellSouth has not permitted Sprint to deploy a Digital Subscriber Line Access Multiplexer at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has Sprint obtained a virtual collocation arrangement at these subloop interconnection points as defined by 47 C.F.R. § 51.319 (b); and,

BellSouth has deployed packet switching capability for its own use.

ISSUE NO. 7: Attachment 2, Network Elements and Other Services, Sections 8.4, 8.5 – conversion of switching UNEs to market-based rate upon addition of fourth line.

Q. Please describe the issue.

A. This issue deals with the appropriate rate for UNE switching for existing lines when Sprint serves a customer in density zone 1 in of the top fifty Metropolitan Statistical Areas ("MSAs") who has three lines or less and the customer adds an additional line or lines.

Q. What is Sprint's position on this issue?

A. Sprint's position is that when a Sprint customer in density zone 1 in one of the top fifty MSAs with three lines or less is served via UNE switching and the customer adds a fourth or higher lines, the three existing lines should be priced at cost-based rates. In fact, to more accurately reflect the telecommunications needs and characteristics of medium-sized businesses, Sprint believes that 40 lines is a more appropriate threshold to delineate between a small and medium- sized business. Therefore, only when a customer reaches the 40th line should BellSouth be allowed to charge a market-based rate for all of the lines exceeding 39.

Q. What is BellSouth's position on this issue?

A. Sprint's understanding of BellSouth's position is that UNE switching for *all* of the lines provided by Sprint to customers in zone 1 in one of the top fifty MSAs would convert to market-based rates when the customer adds a fourth line.

Q. Why does Sprint disagree with BellSouth's position?

A. FCC Rule 51.319(c)(1)(B) sets out the narrowly tailored exception to an ILEC's obligation to unbundle local circuit switching. Although Sprint disagrees with the FCC's determination that four lines is the appropriate threshold for a medium sized business, it is clear that the FCC did not address the issue of pricing for local circuit switching for existing lines when a customer goes from 1-3 lines to 4 lines or higher. BellSouth has no authority from the applicable rule or the attendant discussion in ¶¶ 290-298 of the UNE Remand Order to re-price the first three lines when the customer adds a fourth and additional lines.

Q. Why is the threshold for medium-sized businesses important to this issue?

A. The FCC points out in ¶¶ 293-294 of its UNE Remand Order that competition is nascent in the "mass market" which includes residential and small business customer whereas, competition in the medium and large business market is "beginning to broaden". The FCC concluded that, without access to local circuit switching, ALECs were impaired in their ability to address only the mass market and that sufficient alternatives exist for the medium and large business segments. The FCC, therefore, sought to tailor the unbundling requirement such that ILECs were not required to offer local circuit switching to ALECs serving medium and large business customers.

Q. What is the basis for Sprint's position that 39 lines is the appropriate threshold to differentiate between a small and a medium-sized business?

A. Certainly, "small" and "medium" are imprecise terms and the FCC made an attempt to place parameters around their meaning. However, a more realistic, fact-based definition of "small-business" is one that employs up to 500 people.[1] A more conservative definition of "small-business" is one that employs fewer than 100 people. It would be unreasonable to think that such a business could survive with just 3 phone lines. Rather, the Yankee Group reports that the larger segment of small businesses (those with 50-99 employees) uses an average of 22 phone lines, whereas the smaller segment of medium businesses (those with 100-249 employees) uses an average of 56 lines.[2] The Yankee Group results are consistent with the way that Sprint's incumbent LEC marketing organization differentiates between the small business market and the medium and large business markets: Businesses that have up to 15 key trunks or up to 50 Centrex lines are considered small business or "mass market." Either the Yankee Group data or Sprint's internal practice is far more reliable than the sheer guesswork that underlies the "up to three-line" criterion employed in the UNE Remand Order. Should the Commission choose to rely on the Yankee Group's study, it should use the midpoint between the 22-line average for the larger small businesses and the 56-line average of the smaller medium businesses as reported by the Yankee Group, or 39 lines.

[1] See < http://www.smallbiz.findlaw.com/text/P10_4223.stm >.

Q. What action does Sprint request the Commission to take on this issue?

A. Sprint requests that this Commission adopt its language with respect to BellSouth's obligation to offer local circuit switching on an unbundled basis. The language is as follows:

> Notwithstanding BellSouth's general duty to unbundle local circuit switching, BellSouth will provide unbundled local circuit switching for Sprint when Sprint establishes service for end users with three (3) or fewer voice-grade (DS-0) equivalents or lines in locations where BellSouth has provided non-discriminatory cost-based access to the Enhanced Extended Link (EEL) through-out a Density Zone 1 MSA as determined by NECA Tariff No. 4 as in effect on January 1, 1999.
>
> When a Sprint customer with three (3) or fewer voice-grade (DS-0) equivalents or lines (as defined above) is being served via unbundled local circuit switching and such customer's requirements grow such that additional lines are ordered, Sprint may continue to order and BellSouth will provide such additional lines using unbundled local circuit

[2] See Yankee Group, "What SMBs Want In Local Service: Do You Have It?," November 1998.

switching for up to and including thirty-nine (39) total lines provisioned at that customer location. The fortieth line and each additional line at such customer location will be provided by BellSouth at a rate that is negotiated by the Parties for use of local circuit switching for the affected facilities.

BellSouth shall not be required to offer unbundled local circuit switching for Sprint when Sprint establishes service for end users with four (4) or more voice-grade (DS-0) equivalents or lines in locations where BellSouth has provided non-discriminatory cost-based access to the Enhanced Extended Link (EEL) through-out a Density Zone 1 MSA as determined by NECA Tariff No. 4 as in effect on January 1, 1999.

ISSUE NO. 11: Attachment 3, Interconnection, Section 6.1.6 – Tandem charges for comparable area.

Q. Please describe the issue.

A. Sprint has proposed to include language in the Agreement that would allow Sprint to charge the tandem interconnection rate when Sprint's switch serves an area comparable to BellSouth's tandem switch.

Q. What is BellSouth's position on this issue?

A. BellSouth believes that in order for Sprint to be entitled to charge the tandem interconnection rate when it terminates BellSouth's originated traffic, the Sprint switch must not only serve a comparable geographic area but must also perform a tandem switching function.

Q. What is the function of the tandem switch?

A. The tandem switch serves as a hub for multiple end office switches relieving each end office that subtends the tandem of the need to be physically connected to every other end office. The tandem switch generally performs trunk-to-trunk switching for traffic which originates in one end office switch and is destined for another end office.

Q. What is the basis for Sprint's position?

A. FCC Rule 51.711 provides for symmetrical reciprocal compensation for the transport and termination of local traffic. Section (a) of Rule 51.711 states the general rule that reciprocal compensation rates charged by interconnecting carriers be symmetrical. Subsection (a)(3) states that "(w)here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate." The FCC notes in ¶ 1090 of the First Report and Order (FCC 96-98) that transport and termination of calls originating on a competing carrier's network may incur "additional costs" depending on whether or not tandem switching is involved and that state commissions should establish rates accordingly: "Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate." The meaning of this paragraph and associated rule is abundantly clear and in need of no interpretation.

Q. Is the provision of the tandem switching function a requirement for compensating ALECs at the tandem interconnection rate?

A. FCC Rule 51.711 and Paragraph 1090 of the First Report and Order do not require that the ALEC switch perform a specific functionality to entitle the ALEC to charge the tandem switching interconnection rate as long as the switch serves a comparable geographic area.

Q. How has the Florida Public Service Commission addressed this issue?

A. In the *Intermedia v. BellSouth* arbitration case, (Docket No 991854-TP; Order No. PSC-00-1519-FOF-TP, Issued August 22, 2000), the Commission addressed the issue from a fact - based perspective, rather than from the perspective of what contract provision should control. In *Intermedia*, the Commission considered whether Intermedia's switches performed the tandem functionality and/or whether the Intermedia switches actually served an area equal to the geographic area covered by the BellSouth tandem switch. In that case the Commission found that the record was insufficient to support such a finding on either functionality or geographic coverage.

Sprint's position in this case is that that factual issue does not need to be addressed today. The issue before the Commission today is whether Sprint should be entitled to compensation that includes the tandem switching element when traffic is terminated via a switch that covers the same geographic area served by a BellSouth tandem switch. Sprint requests that the policy issue should be decided. Sprint will self-certify that its switch(es) are capable of serving the requisite area to be entitled to the tandem interconnection rate. Otherwise, this Commission will be in the position of conducting a fact-based proceeding each time Sprint deploys a switch.

Q. Have other state commissions previously ruled on this issue?

A. Yes. The North Carolina Utilities Commission ("NCUC") ruled in the ITC^DeltaCom / BellSouth arbitration (Docket No. P-500, Sub. 10):

> the FCC's Order treats geographic coverage as a proxy for equivalent functionality, and that the concept of equivalent functionality is included within the requirement that the equipment utilized by both parties covers the same basic geographic are.

Q. What action does Sprint request the Commission to take on this issue?

A. Sprint requests that the Commission adopt Sprint's language as follows:

> Where the switch of Sprint serves a geographic area comparable to the area served by BellSouth's tandem switch, the appropriate rate for Sprint is the BellSouth's tandem interconnection rate.

ISSUE NO. 12: Attachment 3, Interconnection, Sections 6.1.7, 6.7.1, 7.7.9 – inclusion of IP telephony in definition of "Switched Access Traffic"

Q. Please identify the issue in dispute.

A. BellSouth proposes to include Internet Protocol (IP) Telephone calls in the definition of Switched Access.

Q. What is Sprint's position on IP telephony?

A. Sprint believes that any decision on the treatment of IP Telephony for the purposes of inter-company compensation is beyond the scope of this arbitration proceeding. The FCC, in its 1998 Federal-State Joint Board on Universal Service, Report to Congress, declined to make ruling on the regulatory treatment of IP telephony and further declined to subject such calls to access charges. For BellSouth to presuppose the outcome on any future FCC proceeding on this matter is inappropriate and premature. Hence, Sprint proposes that the interconnection agreement remain silent on this issue until a definitive ruling has been made by the FCC.

Q. What action does Sprint request the Commission to take on this issue?

A. Sprint requests that the Commission order that the Sprint/BellSouth interconnection agreement remain silent on the issue of IP Telephony pending the outcome of any FCC proceeding on the issue. Sprint also asks the Commission to adopt its definition of switched access as follows:

> Switched Access Traffic. Switched Access Traffic means the offering of transmission or switching services to Telecommunications Carriers for the purpose of the

origination or termination of telephone toll service. Switched Exchange Access Services including but not limited to: Feature Group A, Feature Group B, Feature Group D, 800/888 access and 900 access.

Q. Does this conclude your Direct Testimony?

A. Yes.