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November 30, 2000
RECORDS AND
REPORTING

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

Re: Docket No. 000636-TP Post Hearing Statement and Brief of
Sprint-Florida, Incorporated

Dear Ms. Bayó:

Enclosed for filing is the original and fifteen (15) copies of Sprint-Florida,
Inc.'s Post Hearing Statement and Brief in the above mentioned docket.

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,

Susan S. Masterton

APP	_____	SSM/th
CAF	_____	
CMP	<u>3</u>	Enclosures
COM	_____	
CTR	_____	
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DOCUMENT NUMBER-DATE
15326 NOV 30 8
FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In Re: Complaint of Sprint Communications)
Company Limited Partnership against)
BellSouth Telecommunications, Inc. for its)
Failure to comply with its Interconnection)
Agreement.)** **Filed: November 30, 2000**
Docket No. 000636-TP

SPRINT'S POST HEARING STATEMENT AND BRIEF

Sprint Communications Company, Limited Partnership ("Sprint") hereby files its posthearing statement and brief in this matter. Sprint's presentation of posthearing comments will follow the issues set out in the prehearing order, with the issues and positions stated and argument following.

I. Statement of Basic Position

Under the plain meaning of the terms of the Interconnection Agreement between Sprint and BellSouth, ISP-bound traffic is local traffic for the purposes of reciprocal compensation. Because the meaning of local traffic as defined in the Interconnection Agreement is unambiguous, it is Sprint's position that, as a matter of law, the Commission should, consistent with prior decisions, order BellSouth to pay Sprint reciprocal compensation for such traffic under the terms of their Interconnection Agreement.

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II. Issues

Issue 1: Under the Florida Interconnection Agreement, are Sprint Communications Company Limited Partnership and BellSouth Telecommunications, Inc. required to compensate each other for delivery of traffic to Internet Service Providers (ISPs)? If so, what actions, if any should be taken?

****Position:** ISP-bound traffic is clearly local traffic as defined in the Parties' Interconnection Agreement. The Commission has consistently determined that ISP traffic is local traffic due reciprocal compensation under interconnection agreements with substantially equivalent provisions to those in the Parties' Agreement. Sprint should receive reciprocal compensation for BellSouth-originated ISP-bound traffic.**

III. Argument

A. ISP-Bound Traffic is Local Traffic Subject to Reciprocal Compensation Under the Parties' Interconnection Agreement

1. The Plain Language of the Agreement includes ISP-Bound Traffic as Local Traffic

Section 251(b)(5) of the Telecommunications Act of 1996 imposes upon local exchange carriers the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Rule 51.703(a) provides that the reciprocal compensation provisions of the Act apply to local traffic.

In Attachment 11, page 5-6, of the Interconnection Agreement between the Parties¹, Local Traffic is defined as follows:

“Local Traffic” means any telephone call that originates and terminates in the same LATA and is billed by the originating party as a local call, including any call terminating in an exchange outside of BellSouth’s service area with respect to which BellSouth has a local interconnection agreement with an independent LEC, with which Sprint is not directly interconnected.

Bell-South originated ISP-bound traffic terminated to a Sprint ISP end-user within the same LATA clearly fits within the scope of this definition.

Sprint agrees with BellSouth Witness Hendrix that this definition involves a three-part test, that is, it must: 1) originate within a LATA; 2) terminate to an end-user in the same LATA; and 3) be billed by the originating party as a local call. (Hendrix, Tr at 60) However, contrary to BellSouth Witness Hendrix’s testimony, Sprint asserts that such traffic clearly meets all three prongs of the test and, therefore, fits within the definition agreed to by the parties.

Relating to the payment of reciprocal compensation, Attachment 6, Section 5.1 of the Agreement requires the Parties to bill each other reciprocal compensation “in accordance

¹ On July 1, 1997, Sprint and BellSouth entered into an Interconnection Agreement which was approved by the Commission pursuant to Order No. PSC-97-0983-FOF-TP.

with the standards set forth in the Agreement for local traffic terminated to the other Party's customer.”

Witness Hendrix argues that for reciprocal compensation to apply the Agreement requires termination of traffic on either BellSouth's or Sprint's network. (Hendrix, Tr at 48) The actual language of the Agreement requires that such traffic must terminate to the other Party's customer. (Closz, Tr at 33) When a BellSouth end user places a call to an ISP that is a Sprint local service customer, the call is clearly “terminated to the other Party's customer” and clearly subject to reciprocal compensation under the Agreement.

The plain language of the Agreement evidences no intent to exclude ISP-bound traffic from the definition of local traffic subject to reciprocal compensation. The Agreement does not differentiate ISP-bound traffic from other local traffic in the definition. In addition, nowhere does the Agreement provide a mechanism for identifying ISP-bound traffic so that it can be excluded from the reciprocal compensation provisions, nor does the Agreement provide an alternative mechanism of compensation for such traffic.

The Commission has consistently interpreted agreements with substantially similar relevant provisions to the provisions in the Sprint/BellSouth Agreement to include local traffic in the definition of local traffic, subject to reciprocal compensation.² (Closz, Tr at

² See, Consolidated Complaints, In re: Worldcom Technologies, Inc., Teleport Communications Group, Intermedia Communications, and MCIMetro Access Transmission Services, Inc., against BellSouth Telecommunications, Inc., Order No. PSC-98-1216-FOF-TP; In re: Request for arbitration concerning complaint of American Communications Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc., against BellSouth Telecommunications, Inc, Order No. 99-0658-FOF-TP; In re: Complaint of Global NAPs for enforcement of Section VI (B) of its interconnection agreement with BellSouth Telecommunications,

26, 27) These decisions include the interpretation of contract provisions identical to the provision in the Sprint/BellSouth agreement,³ as well as provisions identical to the provision referred by BellSouth Witness Hendrix, which is substantially equivalent, though not identical to, the provisions in the Sprint/BellSouth Agreement. (Hendrix, Tr at 48; Closz, Tr at 31)⁴

In making these determinations, the Commission has found that if the unambiguous language of the agreements includes ISP-bound traffic as local traffic, the need to further explore extrinsic evidence of the Parties' intent is obviated.⁵ The principles of contract law support the Commission's determination that there is no need to look beyond the four corners of an agreement when the language of the agreement is clear. See, e.g., *Green v. Life & Health of America*, 704 So. 2d 1386, 1391 (Fla. 1998); *Walgreen Co. v. Habitat Development Corp.*, 655 So. 2d 164, 165 (Fla. 3d D.C.A. 1995).

Based on the plain language of the Sprint/BellSouth Interconnection Agreement and the Commission's previous decisions interpreting substantially equivalent language in other agreements, it is Sprint's position that, as a matter of law, the Commission should find that definition of the local traffic in the Sprint/BellSouth Agreement includes ISP-bound traffic for the purposes of payment of reciprocal compensation.

Inc., Order No. PSC-00-0802-FOF-TP; In re: Complaint of ITC^DeltaCom against BellSouth Telecommunications, Inc., Order No. PSC-00-1540-FOF-TP.

³ Complaint of Teleport Communications Group/TCG SouthFlorida against BellSouth Telecommunications, Inc., Docket No. 980184-TP, Order No. PSC-98-1216-FOF-TP

⁴ MCIMetro Complaint, Docket No. 980499-TP, Order No. PSC-98-1216-FOF-TP, e.spire Complaint, Docket No. 981008-TP, Order No. PSC-99-0658-FOF-TP, and Global NAPs Complaint, Docket No. 991267-TP, Order No. PSC-00-0802-TP

⁵ See, Consolidated Complaints, Order No. PSC-98-1216-FOF-TP; Global NAPs Complaint, Order No. PSC-00-0802-FOF-TP; ITC^DeltaCom Complaint, Order No. PSC-00-1540-FOF-TP.

2. Extrinsic Evidence of the Parties' Intent

Sprint believes, consistent with principles of contract law and previous Commission decisions, that it is not necessary as a matter of law for the Commission to explore evidence extrinsic to the clear language of the Agreement to ascertain the Parties' intent regarding the treatment of ISP-bound traffic. However, Sprint has presented testimony that shows that, even if such extrinsic evidence is considered, it does not demonstrate that BellSouth expressed to Sprint any intent to exclude such traffic from the definition of local traffic during the negotiations and prior to the execution of the Agreement. (Closz, Tr at 23, 30) To the contrary, as Sprint Witness Closz has testified, Sprint always understood that ISP-bound traffic was clearly included in the definition of local traffic by the plain language of the Agreement. (Closz, Tr at 24, 25)

BellSouth Witness Hendrix suggests that filings by BellSouth in certain FCC proceedings served to put Sprint on notice during the negotiations that BellSouth did not intend for such traffic to be included in the Agreement's definition of local traffic. (Hendrix, Tr at 47 and Composite Exhibit 2) However, BellSouth has provided no evidence that the parties to the negotiation were aware of these BellSouth filings or that BellSouth's statements in these unrelated federal dockets should be considered in interpreting the terms of the Florida Interconnection Agreement they were negotiating. (Closz, Tr at 30, 32, 34, 35) During the negotiations, BellSouth made no effort to propose an affirmative exclusion of ISP-bound traffic from the definition of local traffic or the reciprocal

compensation provisions in the Agreement, to propose a mechanism to identify such traffic for the purposes of excluding it from reciprocal compensation billing under the agreement, or to propose an alternative compensation mechanism for the termination of such traffic.

BellSouth Witness Scollard testifies that BellSouth has never included Sprint-originated ISP-bound traffic in its reciprocal compensation billings to Sprint. (Scollard, Tr at 66) Apparently, this testimony is intended to serve as evidence that BellSouth never intended that such traffic be included in the definition of local traffic under the Agreement. However, this evidence is irrelevant as an expression of BellSouth's intent when negotiating the Agreement. BellSouth did not begin billing Sprint for reciprocal compensation until January 1998, long after the Agreement was executed by the Parties. (Warner, Tr at 11) At the time of negotiations, Sprint had no reason to believe, and in fact did not believe, that ISP-bound traffic, which falls within the clear meaning of local traffic as defined in the Agreement, subsequently would be excluded by BellSouth from reciprocal compensation billing or payments to Sprint. (Closz, Tr at 35)

In addition to the FCC filings, BellSouth Witness Hendrix points to a letter and Internet posting provided by BellSouth to ALECs asserting its position regarding ISP-bound traffic. (Hendrix, Tr at 47 and Composite Exhibit 2) Since these notifications were provided after the date the parties entered into their interconnection agreement, they are irrelevant to a determination of the Parties' intent at the time the agreement was executed.

Similarly, the Declaratory Ruling (FCC Order 99-38, Docket No. 96-98) referenced by BellSouth to support its position that ISP-bound traffic is interstate, not local, traffic was not issued until February 1999, well after the parties executed their Agreement.⁶ Notably, in the Declaratory Ruling the FCC explicitly recognized that parties to existing interconnection agreements could have agreed to include ISP-bound traffic as local traffic and authorized state commissions to recognize and enforce such agreements. In providing guidance to state commissions, the Declaratory Ruling recognized the FCC's longstanding policy of treating ISP traffic as local, contrary to BellSouth's characterization of the FCC's long history of treating ISP traffic as interstate (Hendrix, Tr. at 51-54)⁷

Sprint believes that it is not necessary for the Commission to look outside the four corners of the Parties' Interconnection Agreement to determine whether ISP-bound traffic is subject to reciprocal compensation under the Agreement, because the Agreement is unambiguous concerning the definition of local traffic. However, even when such extrinsic evidence is examined, it strongly supports that the Parties did not intend to exclude ISP-bound traffic from the definition of local traffic, which plainly includes it.

⁶ In *Bell Atlantic v. FCC*, 206 F. 3d 1 (D.C. Circuit 2000), the Court subsequently vacated the FCC's end-to-end analysis classifying ISP bound traffic as interstate.

⁷ In the Declaratory Ruling at ¶ 24 the FCC provided several criteria for state commissions to consider when determining whether existing interconnection agreements intended to treat ISP-bound traffic as interstate, including: whether incumbent LECs serve ISPs out of intrastate or interstate tariffs; whether revenues are classified as intrastate or interstate; whether the Parties made any attempt to segregate ISP-bound traffic; whether, if ISP-bound traffic is not considered to be local, the Parties would be compensated for this traffic.

B. Actions the Commission should take

The Commission should determine that ISP-traffic is local traffic subject to reciprocal compensation under the terms of the parties Interconnection Agreement. Upon making this determination, the Commission should order BellSouth to pay the reciprocal compensation due Sprint based on Sprint's billings to BellSouth beginning in 1999.⁸

IV. CONCLUSION

The Commission should determine that under the unambiguous and plain language of the Interconnection Agreement entered into by Sprint and BellSouth, ISP-bound traffic is local traffic subject to reciprocal compensation. While as a matter of law further examination of extrinsic evidence of the Parties' intent is not required, such an examination would support a determination that ISP-bound traffic is local traffic under the Agreement. The Commission should order BellSouth to pay the reciprocal compensation due Sprint, pursuant to the terms of the Parties' Agreement.

⁸ Sprint's assessment of the amount due through [August] 2000 is reflected in confidential Exhibit 1. Witness McIntire has suggested revisions to Sprint's calculations. (McIntire, Tr at 70, 71)

Respectfully submitted, this 30th day of November 2000.

Susan S. Masterton

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CERTIFICATE OF SERVICE

Docket No. 000636-TP

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail, or hand delivery (*) this 30th day of November, 2000, to the following:

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