

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Sprint  
Spectrum L.P., d/b/a Sprint PCS  
for arbitration of certain terms  
and conditions of a proposed  
agreement with BellSouth  
Telecommunications, Inc.  
pursuant to Section 252 of the  
Communications Act.

DOCKET NO. 000761-TP  
ORDER NO. PSC-00-2535-PHO-TP  
ISSUED: December 28, 2000

Pursuant to Notice and in accordance with Rule 28-106.209,  
Florida Administrative Code, a Prehearing Conference was held on  
December 18, 2000, in Tallahassee, Florida, before Chairman J.  
Terry Deason, as Prehearing Officer.

APPEARANCES:

JOHN FONS, ESQUIRE, Ausley Law Firm, P.O. Box 391,  
Tallahassee, Florida 32302  
CHARLES W. MCKEE, ESQUIRE, Sprint PCS, 4900 Main, 11th  
Floor, Kansas City, MO 64112  
On behalf of Sprint Spectrum L.P., d/b/a Sprint PCS.

NANCY B. WHITE, ESQUIRE, 150 South Monroe Street, Suite  
400, Tallahassee, Florida 32301-1556  
R. DOUGLAS LACKEY, ESQUIRE, Suite 4300, 675 W. Peachtree  
St., NE, Atlanta, GA 30375  
On behalf of BellSouth Telecommunications, Inc.

DIANA W. CALDWELL, ESQUIRE, and FELICIA R. BANKS,  
ESQUIRE, Florida Public Service Commission, 2540 Shumard  
Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Commission Staff.

DOCUMENT NUMBER-DATE

16479 DEC 28 8

FPSC-RECORDS/REPORTING

**PREHEARING ORDER**

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived through compulsory arbitration. Specifically, Section 252(b)(1) states:

(1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than nine months after the date on which the local exchange carrier received the request under this section.

II. CASE BACKGROUND

Pursuant to Section 252 of the Telecommunications Act, Sprint Spectrum L.P. d/b/a Sprint PCS (Sprint PCS) petitioned for arbitration with BellSouth Telecommunications, Inc. (BellSouth) on June 23, 2000. This matter is currently set for an administrative hearing.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is

requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not

subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

#### IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

#### V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness

has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first; after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct and Rebuttal</u>		
Randy G. Farrar	Sprint	1, 2 and 3
Bridger Mitchell	Sprint	1 and 2
Michael Hunsucker	Sprint	1, 4 and 5
Tony Sabatino	Sprint	2
John Quackenbush (Direct only)	Sprint	3
Randy Ham	BellSouth	1, 2, 4 and 5
<u>Panel:</u>		
Jamshed K. Madan	BellSouth	1, 2, 3, 4 and 5
Michael D. Dirmeier	BellSouth	1, 2, 3, 4 and 5
David C. Newton	BellSouth	1, 2, 3, 4 and 5

VII. BASIC POSITIONS

**SPRINT:** Sprint PCS is entitled to receive in reciprocal compensation a rate that covers its additional costs of terminating BellSouth's traffic. Sprint PCS is not obligated to use BellSouth's rates as a proxy. The Telecommunications Act of 1996 (Act) imposes a duty upon BellSouth to establish reciprocal compensation arrangements with Sprint PCS for the interconnection, transport and termination of calls (47 U.S.C. § 251(b)(5)). More specifically, the Act requires that such terms and conditions be considered just and reasonable only when they:

- i) . . . provide for the mutual and reciprocal recovery by **each carrier** of costs associated with the transport and termination **on each carrier's network facilities** of calls that originate on the network facilities of the other carrier; and
- ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

47 U.S.C. § 252(d)(2)(A)(i) (emphasis added). See also, 47 C.F.R. § 51.701(e).

The FCC has found that the "additional cost" of terminating a call originating on another network "includes only the usage-sensitive costs . . . but not the non-traffic sensitive costs." Local Competition Reconsideration Order, 11 FCC Rcd 13042, 13045 ¶ 6 (1996). The FCC has also established a procedure so that a carrier "other than the incumbent LEC" can recover its own call termination costs rather than use the ILEC's costs as a proxy: "prove to the state commission on the basis of a cost study . . . that the forward-looking costs for a network efficiently configured and operated by the carrier . . . exceed the costs incurred by the incumbent LEC . . . and, consequently, that such a higher rate is justified." 47 C.F.R. § 51.771(b).

Consistent with these FCC rules, Sprint PCS has prepared a forward-looking Total Element Long Run Incremental Costs ("TELRIC") cost study. This cost study demonstrates that Sprint PCS' additional cost to terminate BellSouth traffic is \$0.066 per minute of use. Sprint PCS therefore proposes that for all land-to-mobile traffic that BellSouth terminates to Sprint PCS, BellSouth should pay Sprint PCS for transport and termination at the rate of \$.066 per minute.

**BELLSOUTH:**

The Commission's goal in this proceeding is to resolve each issue in this arbitration consistent with the requirements of Section 251 of the Telecommunications Act of 1996 ("1996 Act"), including the regulations prescribed by the Federal Communications Commission ("FCC"). The seminal question that must be resolved in this arbitration is whether Sprint Spectrum, LP ("Sprint PCS") has demonstrated that it is entitled to receive asymmetrical reciprocal compensation for calls that originate on BellSouth's local landline network and that terminate on Sprint PCS's network. BellSouth states that Sprint PCS has not demonstrated that it is entitled to asymmetrical reciprocal compensation because its cost study supporting such rates is fatally flawed and cannot be corrected on the record presented to the Commission in this proceeding. BellSouth also asserts that as a matter of public policy, allowing Sprint PCS to receive asymmetrical reciprocal compensation based on the facts in this case would be inappropriate. Sprint PCS seeks rates for the use of portions of its network that BellSouth is not allowed to include in its reciprocal compensation studies. Sprint PCS's claimed asymmetrical reciprocal compensation rate is 18 times higher than BellSouth's rate for traffic flowing in the other direction, and there is no current cost recovery mechanism in place to recover these costs if charged against BellSouth. Therefore, the Commission should adopt BellSouth's positions on the issues in dispute.

**STAFF:**

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based

upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

**ISSUE 1:** Does Sprint PCS incur costs in terminating BellSouth's land-to-mobile traffic? If so, what are those costs?

**POSITIONS**

**SPRINT:** Yes. The costs Sprint PCS incurs in terminating BellSouth's land-to-mobile traffic are additional costs as defined by the FCC. As demonstrated by Sprint PCS' cost study, Sprint PCS' additional cost to terminate BellSouth's land-to-mobile traffic is \$0.066 per minute of use. (Hunsucker, Farrar Mitchell)

**BELLSOUTH:**

BellSouth agrees that Sprint PCS does incur costs to terminate a call that originates on BellSouth's landline network, just as BellSouth incurs a cost to terminate Sprint PCS-originated calls. The study that Sprint PCS has submitted in this proceeding, however, does not allow an accurate determination of what those costs may be for purposes of determining an asymmetrical reciprocal compensation rate.

**STAFF:** Staff takes no position at this time.

**ISSUE 2:** What costs identified in Issue 1, if any, constitute additional costs consistent with applicable laws and rules?

**POSITIONS**

**SPRINT:** The FCC has defined "additional costs" as the traffic sensitive costs that a carrier incurs in terminating a call that originates on another carrier's network. The "additional costs" incurred by Sprint PCS includes all of those traffic sensitive network components necessary to terminate land-to-mobile traffic. (Farrar, Mitchell, Sabatino)



**BELLSOUTH:**

Additional costs are those costs that one local exchange carrier incurs to terminate another local exchange carriers calls, that would not have been incurred but for the additional call. That is, "additional costs" have been defined by the FCC as the traffic-sensitive costs necessary to transport the call to the terminating carrier's end office, and end office switching costs in that office. These costs are supposed to be based on the costs that a carrier using the most efficient telecommunications technology and the lowest cost network configuration would incur. There have been no costs identified in response to Issue 1 that could constitute "additional costs." This is because the cost study offered by Sprint PCS does not reflect the costs that a carrier using the most efficient telecommunications technology and the lowest cost network configuration would incur.

**STAFF:** Staff takes no position at this time.

**ISSUE 3:** Is Sprint PCS's cost study appropriate for determining the additional costs identified in Issue 2?

**POSITIONS**

**SPRINT:** Yes. The Sprint PCS cost study is a forward-looking cost study which uses the costing principles required by the FCC's Local Competition Order in FCC Docket No. 96-98. These are the same principles used by Sprint-Florida to develop the economic cost of unbundled network elements and reciprocal compensation for its Florida local exchange territories. (Farrar, Quackenbush)

**BELLSOUTH:**

The Sprint PCS cost study referred to in Issue 2 is not appropriate for identifying any additional costs necessary to terminate BellSouth-originated local calls nor is it appropriate to establish asymmetrical reciprocal compensation rates. The study is fatally flawed because it includes cost for network elements that are not traffic-sensitive and because the study does not

reflect the costs that a carrier using the most efficient technology and the lowest cost network configuration would incur. Indeed, the study includes fixed-cost elements, such as spectrum and towers as well as the basic elements that Sprint PCS was required to construct as a condition of its license, without regard to whether a single minute of traffic every traversed the network. Moreover, the declining costs of the Sprint PCS network, as evidenced by its own cost figures, demonstrates that the network is not configured optimally. Therefore, the cost study submitted by Sprint PCS is fatally flawed and cannot be used in this proceeding.

**STAFF:** Staff takes no position at this time.

**ISSUE 4:** For those elements and functions that constitute additional costs, is asymmetrical compensation appropriate?

**POSITIONS**

**SPRINT:** Yes. As required by the Telecommunications Act of 1996 (Act) and the FCC Orders and Rules implementing the Act, Sprint is entitled to recover its "additional costs" of terminating land-to-mobile local traffic, even if those costs are higher than the costs BellSouth incurs to terminate local traffic on its network. (Hunsucker)

**BELLSOUTH:**

As noted in response to the previous issues, Sprint PCS incurs cost to terminate BellSouth-originated local calls, just as BellSouth incurs costs when the calls flow in the opposite direction. The elements that would be included are those Sprint PCS traffic-sensitive elements that provide transport from BellSouth's network to Sprint PCS's network, plus those elements that provide end office switching. Sprint PCS, however, has not produced a cost study that would show that a carrier using the most efficient technology and the least cost network configuration would incur costs for these traffic-sensitive elements that are greater than those incurred by BellSouth for handling calls flowing in the

other direction. Therefore asymmetrical compensation is not appropriate in this case.

**STAFF:** Staff takes no position at this time.

**ISSUE 5:** What is the appropriate level of compensation Sprint PCS should receive for the termination of BellSouth's land-to-mobile traffic?

**POSITIONS**

**SPRINT:** Based upon the Sprint PCS cost study, Sprint PCS should receive \$0.066 per minute of use for the termination of BellSouth's land-to-mobile traffic. (Hunsucker)

**BELLSOUTH:**

The appropriate level of compensation Sprint PCS should receive for the termination of BellSouth-originated local traffic is the same rate that BellSouth receives when it terminates a Sprint PCS-originated call, where the same traffic-sensitive network elements are used. Sprint PCS should not receive asymmetrical reciprocal compensation for terminating BellSouth-originated calls.

**STAFF:** Staff takes no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Anthony Sabatino	Sprint	AS-1	Network Architecture
	Sprint	AS-2	PCS Cost Study Line Item Description
	Sprint	AS-3	Addition of Carriers

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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Anthony Sabatino	Sprint	AS-4	De-block Mobile Frequencies
			De-block Base Station Frequencies
	Sprint	AS-5	PCSA block
Randy G. Farrar	Sprint	RGF-1	Total Investment
	Sprint	RGF-2	Excluded Expenses
	Sprint	RGF-3	Sprint PCS-Florida, Calculation Module, TELRIC/Economi c Cost Summary Worksheet
	Sprint	RGF-4	RGF-4 Sprint PCS Cost Model
John D. Quackenbush	Sprint	JDQ-1	Book Value Equity Ratios
			Comparison of Sprint PCS, BST, and USTA ILECs
	Sprint	JDQ-2	Cash Flow to Capital Ratios
			Comparison of Sprint PCS, BST, and USTA ILECs

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
John D. Quackenbush	Sprint	JDQ-3	Pre-Tax Fixed Charge Coverage Ratios
			Comparison of Sprint PCS, BST, and USTA ILECs
	Sprint	JDQ-4	Revenues to Net Plant Ratios
			Comparison of Sprint PCS, BST, and USTA ILECs
	Sprint	JDQ-5	Market Value Equity Ratios
			Comparison of Sprint PCS, BST, and USTA ILECS
	Sprint	JDQ-6	Standard and Poors' Debt
			Comparison of Digital Wireless Companies, BST and other ILECs
	Sprint	JDQ-7	Betas
			Comparison of Digital Wireless Companies, BST, and other ILECs

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Jamshed K. Madan	BellSouth	Exhibit A	Qualifications of Jamshed K. Maden
Michael D. Dirmeier	BellSouth	Exhibit B	Qualifications of Michael D. Dirmeier
David C. Newton	BellSouth	Exhibit C	Qualification of David C. Newton
	BellSouth	Exhibit 1	Sprint PCS Cost-Version 1
	BellSouth	Exhibit 2	Sprint PCS Cost-Version 2

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PENDING CONFIDENTIALITY MATTERS

Pending confidentiality requests include seven filed by Sprint PSC on September 25, October 4 and 11, November 15, 16, and 27, and December 4, 2000, document numbers 12053-00, 12598-00, 12945-00, 14840-00, 14842-00 and 15438-00 and 15457-00 and two requests by BellSouth on November 15 and December 12, 2000, document numbers 14758-00 and 15905-00 respectively. Sprint PCS also filed a request for confidentiality of portions of Exhibits 1 and 2 dated November 27, 2000. If possible, these requests will be addressed prior to the January hearing.

XI. RULINGS

A. The parties shall address in their briefs the following issue:

Whether there are any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter?

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B. Sprint PCS's Motion to accept filing of rebuttal testimony filed December 14, 2000, is granted.

C. The parties shall be allowed five minutes per side for opening statements.

Based on the foregoing, it is

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 28th day of December, 2000.

  
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J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

DWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.