

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

---

Docket No.: 001275-TP

**PREFILED DIRECT TESTIMONY**

**AND EXHIBITS OF**

**BRENT MCMAHAN**

**ON BEHALF OF**

**NETWORK TELEPHONE CORPORATION**

DOCUMENT NUMBER-DATE

00725 JAN 17 2016

FPSC-RECORDS/REPORTING

1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                                   **PREFILED DIRECT TESTIMONY OF**

3   **BRENT MCMAHAN**

4                   **ON BEHALF OF NETWORK TELEPHONE CORPORATION**

5                                   **DOCKET NO. 001275-TP**

6           **Q.     Please state your name and business address.**

7           A.     My name is Brent McMahan. My business address is 815 South Palafox Street,  
8                   Pensacola, Florida 32501.

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

10          A.     I am employed by Network Telephone Corporation. My title is Vice President of  
11                   Regulatory and Governmental Affairs. In this capacity I work closely with our  
12                   Engineering Department on our collocation requests, as they relate to the build-out  
13                   of our network.

14          **Q.     Please describe your educational background and professional experience.**

15          A.     I am a graduate of the University of Southern Mississippi with a BS and two Masters'  
16                   degrees in Business and Political Science. I assumed my present position in  
17                   December, 1999.

18                   Prior to that, I had twenty-three years of experience in a variety of  
19                   assignments with BellSouth Telecommunications, and, more recently, two years with  
20                   Williams Communications Solutions.

21          **Q.     What is the purpose of your testimony?**

22          A.     I will describe Network Telephone's business plan; relate the chronology of events

1 which culminated in Sprint's refusal to allow Network Telephone to collocate the  
2 PathStar Data Shelf; and describe the impact of its refusal on both Network  
3 Telephone and consumers of telecommunications services in the areas of Florida in  
4 which Sprint is the ILEC.

5 **Q. Please describe Network Telephone Corporation.**

6 A. Network Telephone Corporation was incorporated in Florida on October 22, 1997.  
7 Network Telephone is authorized to operate as a competitive local exchange  
8 company in Florida, North Carolina, South Carolina, Georgia, Louisiana, Alabama,  
9 Tennessee, Kentucky, and Mississippi. For the last year Network Telephone has  
10 been involved in the financing and construction of a modern, state of the art, ATM-  
11 based network. Network Telephone intends to provide affordable  
12 telecommunications services—both traditional and advanced—that will reach not only  
13 major metropolitan areas but also smaller communities.

14 **Q. How has Network Telephone proceeded to implement its business plan?**

15 A. The key to the ability to offer advanced services in smaller communities on a  
16 competitive basis is to minimize the initial build-out costs of the network. Network  
17 Telephone has designed and configured a network that takes advantage of  
18 efficiencies in the manufacturing as well as the deployment of network equipment.  
19 In his testimony, Arvil Fowler, Network Telephone's Chief Technology Officer, will  
20 provide a more detailed description of Network Telephone's network design. The  
21 centerpiece of the network is Lucent Technologies' PathStar Access Server (or  
22 "PathStar"). The PathStar Access Server enables Network Telephone to incorporate  
23 modern, ATM-based technology and the ability to provide both POTS and advanced

1 services to small and medium sized business customers throughout the Southeastern  
2 U.S. Its integrated design and its ability to serve several central offices from a  
3 collocated host location provide Network Telephone the ability to reduce the initial  
4 costs of the network; minimize the need for and the cost of interoffice transport; and  
5 reduce the number of collocations necessary to complete the network--all of which  
6 contribute to the ability of Network Telephone to operate on a competitive basis in  
7 large and small markets.

8 **Q. To what extent has Network Telephone “rolled out” its network?**

9 A. We are actively building the network now. Thus far, Network Telephone has  
10 installed over two hundred collocation sites. Each of these sites has a DSLAM.  
11 Some of these DSLAM sites will incorporate remote PathStar Access Shelves.  
12 Among these DSLAM sites, we have co-installed thirteen (13) PathStars with the  
13 Data Shelf and Access Shelf combined, with twenty (20) more under construction.  
14 Our eventual build-out will approach three hundred sites. Because of Sprint’s denial  
15 of our collocation applications, all of these sites are in either BellSouth or Verizon  
16 franchise areas in the southeastern United States.

17 **Q. To what extent is it necessary to collocate the PathStar Access Server in the**  
18 **ILEC’s offices?**

19 A. As Mr. Fowler will describe in more detail, we must collocate the “Access Shelf”  
20 component of PathStar in the ILEC’s central offices, and must collocate the “Data  
21 Shelf” component in selected offices. Without the ability to collocate the Data Shelf,  
22 our roll out would be halted.

1           **Q.    Have you applied to any ILECs for permission to collocate the Access Shelf and**  
2           **the Data Shelf?**

3           A.    Yes. We have applied to BellSouth, Verizon, and Sprint.

4           **Q.    How have the ILECs responded to these applications?**

5           A.    BellSouth and Verizon readily agreed to allow collocation of both the Access Shelf  
6           and the Data Shelf components of the PathStar Access Server. However, Sprint  
7           responded very differently.

8           **Q.    Please elaborate.**

9           A.    In May of 2000, Network Telephone submitted applications to Sprint to collocate the  
10           PathStar Access Server in thirteen central offices, including locations in Ft. Walton  
11           Beach, Tallahassee, Ocala, Ft. Myers and Winter Park.

12          **Q.    What happened after you submitted the requested to Sprint?**

13          A.    Sprint did not respond until August 2, 2000. Then, Sprint notified Network  
14           Telephone that it would allow only the Access Shelf component of the PathStar to  
15           be collocated in its offices. Sprint refused to allow collocation of the PathStar Data  
16           Shelf. In addition, Sprint informed Network Telephone that if we were eventually  
17           able to collocate the Data Shelf we would not be permitted to utilize the switching  
18           function of the PathStar Access Server.

19          **Q.    What reason did Sprint give for its denial of your requests?**

20          A.    Sprint gave only one reason. Sprint based its denial of our application on the false  
21           claim that the Data Shelf component of PathStar would not be used to access  
22           unbundled network elements. Based upon that claim, Sprint took the position that it  
23           had no obligation to permit collocation of the Data Shelf. I am attaching as Exhibit

1           \_\_\_ (BM-1) an e-mail from Sprint’s Cathy Lail, in which she communicated Sprint’s  
2           denial of our request.

3           **Q.    Is Sprint’s claim valid?**

4           A.    No. Sprint was and is wrong on this point. As Mr. Fowler will testify, the Data Shelf  
5           component of the PathStar is used to access T1 loops, as well as PRI loops, both of  
6           which are classified as unbundled network elements. More importantly, the PathStar  
7           Access Server can access these unbundled ILEC network elements only with the Data  
8           Shelf; the “Access Shelf” component is dedicated to accessing other unbundled loops,  
9           and is incapable of accessing the T1 loops and the PRI loops that the Data Shelf is  
10          designed to receive and terminate.

11          **Q.    Did Sprint provide any basis for its mistaken assertion?**

12          A.    Not at the time it rejected our applications. However, through discovery initiated after  
13          we filed our complaint in this case we have learned that Sprint misinterpreted a  
14          drawing of PathStar located on Lucent’s web site. I am attaching as Exhibit \_\_\_ (BM-  
15          2) Sprint’s responses to Network Telephone’s interrogatory Nos. 1 and 3, which  
16          describe the manner in which Sprint committed its error.

17          **Q.    Did Sprint ever ask Lucent Technologies whether the Data Shelf is used to access  
18          unbundled network elements?**

19          A.    No. Although Sprint’s message denying our applications indicated that Sprint had  
20          conferred with Lucent, Sprint’s subsequent responses to Network Telephone discovery  
21          requests establish that (1) Sprint never corresponded with Lucent on the subject in  
22          writing, and (2) Sprint asked Lucent by telephone only if it is possible to physically  
23          separate the Access Shelf and the Data Shelf. Of course, the answer to that limited

1 question is yes, and in fact our network design takes full advantage of this feature.  
2 However, the question did not elicit the information needed to access Network  
3 Telephone's application for collocation. By that time Sprint was proceeding on its  
4 erroneous premise. Having erroneously concluded that the Data Shelf is not used to  
5 access unbundled network elements, and having determined that the Data Shelf can  
6 be located physically apart from the Access Shelf component, Sprint took the position  
7 that its obligation to permit collocation did not extend to the Data Shelf component  
8 of PathStar. To date, Sprint has refused to acknowledge its error, even in the face of  
9 authoritative information provided to Network Telephone by Lucent Technologies.

10 **Q. What has been the impact of Sprint's position on Network Telephone's business**  
11 **plan?**

12 A. The denial of our request to collocate and employ the Data Shelf has severely crippled  
13 Network Telephone's ability to execute its business plan. As Mr. Fowler explains, the  
14 high costs of any alternative would render Network Telephone non-competitive. For  
15 this reason, Network Telephone has halted plans to enter markets in Sprint franchised  
16 territory, including all of its Florida exchanges.

17 **Q. What is the impact of Sprint's denial of your application to collocate both**  
18 **PathStar components on consumers of telecommunications services?**

19 A. I will use a real world illustration to answer that question. As I described earlier,  
20 Network Telephone intends to offer advanced services, including xDSL services, that  
21 a network configured with PathStar can provide. Among applications that Sprint  
22 rejected was an application to collocate in Ft. Walton Beach. Because the high cost  
23 and technical difficulty of proceeding without the ability to collocate the Data Shelf

1 renders Network Telephone unable to compete, Network Telephone has not entered  
2 the Ft. Walton Beach market. Very recently, Sprint announced the roll-out of its own  
3 xDSL service to customers in Ft. Walton Beach. The effect of the denial of our  
4 application is to give Sprint the enormous (and, under the circumstances, grossly  
5 unfair) competitive advantage of being the only provider of the xDSL service at its  
6 inception. The impact upon customers is to deprive them of the benefits of  
7 competition based on price and quality of service.

8 **Q. What do you want the Commission to do?**

9 A. I have been advised that this Commission has the authority to require an ILEC to  
10 permit collocation of equipment necessary to access UNEs where a party demonstrates  
11 the measure is consistent with the intent of the Telecommunications Act of 1996. I  
12 understand the commission has adopted a case-by-case approach to the resolution of  
13 disputes over the equipment which is subject to the collocation requirement.

14 While I am not an attorney, I am aware, as I am sure the Commission is aware,  
15 that the intent of the Act is to foster competition for telecommunications services,  
16 including advanced services. Our plan to use sophisticated, integrated equipment like  
17 PathStar to lower costs and extend advanced services to more markets is perfectly  
18 consistent with the intent of the Act. The impact of Sprint's refusal to allow us to  
19 collocate began with an erroneous conclusion regarding the role of each PathStar  
20 component in accessing UNEs. Unless something is done quickly to remedy the  
21 situation, by clinging tenaciously to its original mistake of fact Sprint will have  
22 already gained an unfair advantage over Network Telephone in an important new  
23 market, one rich with high technology customers. The delay associated with being



1 required to bring this matter to the Commission has already cost Network Telephone  
2 dearly in terms of its ability to compete, and has adversely affected consumers. We  
3 ask the Commission to recognize (as Sprint should have recognized by now) that both  
4 the PathStar shelves are necessary to access an ILEC's unbundled network elements,  
5 and to require Sprint to permit us to collocate and utilize on an unrestricted basis both  
6 the Access Shelf and the Data Shelf of the PathStar, just as BellSouth and Verizon  
7 have done.

8 **Q. Does this conclude your testimony?**

9 **A. Yes.**

---

Cathy Lail  
Field Service Manager  
P ~ 407.889.6476 F ~ 407.884.1706  
email ~ [cathy.lail@mail.sprint.com](mailto:cathy.lail@mail.sprint.com) <<mailto:cathy.lail@mail.sprint.com>>

-----Original Message-----

From: Lail, Cathy A.  
Sent: Wednesday, August 02, 2000 9:45 AM  
To: 'brentm'  
Cc: Cheek, William E.; Beling, Jessica J.; Fox, Edward B.; Carden, Andrew D.  
Subject: RE: PathStar switches and Sprint collocations  
Importance: High

Brent - I have the following to offer in response to your memo dated July 6, 2000 regarding the collocation of PathStar switches in Sprint central offices.

Sprint's Network, Regulatory and Policy teams have reviewed with the Lucent engineering group and based upon the information received, have concluded that the PathStar switch itself does not need to be collocated in the office.

The switching functionality, i.e. ATM, IP, of the PathStar Access Server can physically be separated from the components that are used to access network elements. The component necessary for accessing network elements is the Access Shelf, and that may be collocated in the central office, on a customer premises, or as outside plant in a CEV, etc. Additionally, the Stinger (Lucent) DSLAM unit is already an approved device for collocation in our central office and is approved for collocation.

This analysis of the equipment in question is consistent with Sprint's interpretation of the recent 9th Circuit Court's remand of the 98-147 order, as to what equipment may be collocated.

Brent, Sprint will be formally denying Network Telephone's requests to collocate in the following central offices: FTWBFLXA, FTMFLXA, WNPFLXA, TLHSFLXA, OCALFLXB, and OCALFLXA. Each of these offices includes the request to collocate the PathStar equipment. If you would like to amend your original requests, please have updated applications sent to me.

If you have additional questions, please advise.

Sprint – Florida, Incorporated  
Docket No. 001275-TP  
Network Telephone's First Set of  
Interrogatories  
January 5, 2001  
Interrogatory No. 1

REQUEST: State with particularity all of the specific factual grounds on which Sprint based its decision to deny Network Telephone's application to collocate the data shelf portion of the Lucent PathStar access server in Sprint's central offices.

ANSWER: Sprint's decision to deny Network Telephone's application to collocate the data shelf portion of the Lucent PathStar access server in Sprint's central offices was based on the following specific facts:

- a. The Lucent PathStar access server consists of two main components, the access shelf and the data shelf.
- b. The Lucent product information demonstrates that the access shelf and data shelf components of the PathStar access server can be segregated.
- c. The access shelf component of the Lucent PathStar access server provides the functions necessary to gain access to unbundled network elements.
- d. The DC Circuit Court decision in *GTE Service Corp. v. FCC*, 205 F.3d 416 (DC Cir. 2000), requires ILECs to allow collocation of equipment that performs functions that are directly necessary for interconnection or access to unbundled network elements (UNEs).
- e. Because the data shelf component of the PathStar access server is not necessary for interconnection or access to UNEs and because the data shelf component can be separated from the access shelf, Sprint is not required to allow ALECs to collocate the data shelf in Sprint's central offices.

INFORMATION PROVIDED BY: Edward Fox  
Network Operations Planning Manager

Sprint – Florida, Incorporated  
Docket No. 001275-TP  
Network Telephone's First Set of  
Interrogatories  
January 5, 2001  
Interrogatory No. 3

REQUEST: Prior to the decision to deny Network Telephone's application to collocate the data shelf component of the Lucent PathStar access server in Sprint's central offices, did Sprint contact Lucent Technologies? If so, please provide:

- a. The name(s) of the individual(s) from Sprint who contacted Lucent;
- b. The specific inquiry or request that Sprint communicated to Lucent;
- c. The name(s) of the individual(s) at Lucent with whom Sprint communicated;
- d. The substance of all information and/or opinions received by Sprint from Lucent, regarding the PathStar access server.

ANSWER: Yes, Sprint contacted Lucent Technologies prior to the decision to deny Network Telephone's application to collocate the data shelf component of the Lucent PathStar access server in Sprint's central offices.

- a. Jon Weyhrich, Network Implementation Manager
- b. Lucent was contacted regarding the PathStar access shelf being located away from the data shelf.
- c. John Feldman, with follow-up by his technician whose name was not documented.
- d. There are no distance limitations between the access shelf and the data shelf.

INFORMATION PROVIDED BY: Edward Fox  
Network Operations Planning Manager

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the Prefiled Direct Testimony and Exhibits of Brent McMahan on behalf of Network Telephone Corporation has been furnished by hand delivery(\*) and U.S. mail Wednesday, January 17, 2001, to:

\*Lee Fordham  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Susan S. Masterton/Charles J. Rehwinkel  
Sprint-Florida, Incorporated  
1313 Blair Stone Road  
Tallahassee, Florida 32301

  
Joseph A. McGlothlin