



# Public Service Commission

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RECORDS AND REPORTING  
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DATE: APRIL 12, 2001

TO: BLANCA S. BAYO, DIRECTOR/RECORDS AND REPORTING

FROM: BETH KEATING, Staff Counsel *BK*  
LENNIE FULWOOD, Division of Competitive Services *LF*

RE: DOCKET NO. 000828-TP - PETITION OF SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP FOR ARBITRATION OF CERTAIN UNRESOLVED TERMS AND CONDITIONS OF A PROPOSED RENEWAL OF CURRENT INTERCONNECTION AGREEMENT WITH BELL SOUTH TELECOMMUNICATIONS, INC.

**Request to Revise Recommendation - Item 4**

Pursuant to SOP 1607, attached is a revised recommendation for Item 4 on the April 17, 2001, Agenda Conference schedule. Only Issue A is revised. The changes can be found in the recommendation statement of that Issue on page 5 and in the second paragraph of the analysis for that issue on page 6.

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Attached to S:\PSC\LEG\WP\000828R.RCM



# Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

**DATE:** APRIL 12, 2001

**TO:** MARY A. BANE, Deputy Director/Technical

**FROM:** BETH KEATING, Staff Counsel *BK*  
LENNIE FULWOOD, Division of Competitive Services *Lenn Fulwood*

**RE:** DOCKET NO. 000828-TP - PETITION OF SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP FOR ARBITRATION OF CERTAIN UNRESOLVED TERMS AND CONDITIONS OF A PROPOSED RENEWAL OF CURRENT INTERCONNECTION AGREEMENT WITH BELL SOUTH TELECOMMUNICATIONS, INC.

## Request to Revise Recommendation - Item 4

Pursuant to SOP 1607, staff requests permission to revise Issue A of Item 4 on the April 17, 2001, Agenda Conference schedule. It has come to our attention after the filing of the recommendation that the phrasing of part of the recommendation paragraph needed modification to more appropriately respond to the issue.

This is an arbitration docket, and although the statutory time frames for concluding this matter have been waived by the parties, staff recommends that this not be deferred in an effort to comport with the spirit of the Act to the extent possible. These changes are simple clarifications intended only to prevent staff's position from being misconstrued.

*OK*  
*MBB*  
*4/12/01*

**ISSUE A:** What is the Commission's jurisdiction in this matter?

**RECOMMENDATION:** Staff believes that the Commission has jurisdiction pursuant to Chapter 364, Florida Statutes, and Section 252 of the Federal Telecommunication Act of 1996 (Act) to arbitrate interconnection agreements, and may implement the processes and procedures necessary to do so in accordance with ~~is authorized to do so by~~ Section 120.80(13)(d), Florida Statutes. Section 252 states that a State Commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. Further, staff believes that while Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration not inconsistent with Act and its interpretation by the FCC and the courts, the Commission should use discretion in the exercise of such authority.  
(VACCARO)

**POSITION OF THE PARTIES:**

**SPRINT:** The Commission has jurisdiction over this Petition pursuant to Section 252 of the Act.

**BELLSOUTH:** BellSouth did not provide a specific position statement. BellSouth did, however, provide a discussion in its brief regarding the Commission's jurisdiction to arbitrate this matter.

**STAFF ANALYSIS:**

Sprint states in its brief, that in Section 252(b) of the Act, Congress created an arbitration procedure for requesting telecommunications carriers and ILECs to obtain an interconnection agreement through "compulsory arbitration" by petitioning a "State commission to arbitrate any open issues" unresolved by negotiation under Section 252(a) of the Act. (BR p. 32) Sprint also states that Sections 252(c) and (e) of the Act set forth the time frames for Commission action and the criteria upon which the Commission's decision must be based. (BR p. 32)

BellSouth states that the Act requires interconnection negotiations between local exchange companies and new entrants. BellSouth also states that parties that cannot reach a satisfactory resolution are entitled to seek arbitration of the unresolved

issues by the appropriate state commission pursuant to Section 252(b) of the Act. (BR p. 4)

### Analysis

Pursuant to Section 252 (b) of the Act, an incumbent local exchange carrier or any other party to a negotiation under the Act after a prescribed period of time for voluntary negotiation, may petition a state commission to arbitrate any open issues. Pursuant to Section 252 (b) (4) of the Act, the State Commission must limit its consideration to the issues set forth in the petition and the response. Under Section 252(c) of the Act, the State Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions to implement the standards for arbitration set forth in Section 252(c) of the Act. Pursuant to Section 252 (c) of the Act, a State Commission in resolving any open issue and imposing conditions upon the parties to the agreement, shall ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the FCC; establish any rates for interconnection, services, or network elements according to Section 252(d) of the Act; and provide a schedule for implementation of the terms and conditions by the parties to the agreement. In addition, staff believes that the Commission has the authority to construe the requirements of the Act, subject to controlling FCC Rules, FCC Orders and controlling judicial precedent.

Staff also notes that Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration that are not inconsistent with the Act and its interpretation by the FCC and the courts. Staff believes that under Section 252(e) of the Act, the Commission could impose additional conditions and terms in exercising its independent state law authority under Chapter 364, Florida Statutes, so long as those requirements are not inconsistent with the Act, FCC rules and orders, and controlling judicial precedent. Staff believes, however, that it is appropriate for the Commission to exercise its state authority with discretion. Furthermore, Section 120.80 (13)(d), Florida Statutes, allows the Commission to implement processes and procedures necessary to implement the Act.

Based on the foregoing, staff believes that the Commission has jurisdiction pursuant to Section 252 of the Act to arbitrate interconnection agreements. Section 252 states that a State