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April 18, 2001

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Ms. Blanca S. Bayó, Director
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Florida Public Service Commission
2540 Shumard Oak Boulevard
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Re: Docket No. 000075-TP Posthearing Statement
And Brief Of Sprint

Dear Ms. Bayó:

Enclosed for filing is the original and fifteen (15) copies including a diskette of Sprint 's Posthearing Statement and Brief in Docket No. 000075-TP.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Sincerely,

Susan S. Masterton

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into) DOCKET NO. 000075-TP
Appropriate Methods to)
Compensate Carriers For) Filed: April 18, 2001
Exchange of Traffic Subject to)
Section 251 of the)
Telecommunications Act of 1996)
_____)

SPRINT'S POSTHEARING STATEMENT AND BRIEF

Pursuant to Orders Establishing Procedure (Order No. PSC-00-229-PCO-TP, Order No. PSC-00-2350-PCO-TP and Order No. PSC-00-2452-PCO-TP) Sprint-Florida, Incorporated and Sprint Communications Company Limited Partnership ("Sprint") submit the following Posthearing Statement and Brief:

INTRODUCTION

At issue in this proceeding is the proper intercarrier compensation mechanism for ISP-bound traffic and the Commission's authority to adopt such a mechanism in this generic proceeding. Sprint believes that the Commission has jurisdiction to adopt a compensation mechanism for ISP-bound traffic, pending action by the FCC to adopt a federal mechanism that supersedes the Commission's actions. It is Sprint's position that the Commission should treat ISP-bound calls as though they were local calls for purposes of inter-carrier compensation arrangements. Whatever compensation arrangements apply to purely local calls should apply to these calls as well. Sprint believes that a reciprocal compensation rate should ideally reflect the overall costs and mix of

traffic. To achieve this result, Sprint recommends that the Commission adopt a reciprocal compensation mechanism that bifurcates the switching charge into a call setup charge and a call duration charge which appropriately reflects the ILEC's costs to terminate traffic.

ISSUES, POSITIONS AND ARGUMENT

ISSUE 1(a): Does the Commission have the jurisdiction to adopt an inter-carrier compensation mechanism for delivery of ISP-bound traffic?

ISSUE 1(b): If so, does the Commission have the jurisdiction to adopt such an inter-carrier compensation mechanism through a generic proceeding?

Position: **The Federal Communications Commission has no rule governing inter-carrier compensation for ISP-bound traffic. Pending the outcome of its rulemaking proceeding, the FCC explicitly permitted state commissions to determine the appropriate compensation for this traffic.

Argument: The Commission's jurisdiction to adopt an inter-carrier compensation mechanism is a threshold issue that must be resolved before the Commission can move forward to address the remaining issues in this docket. Sprint believes that the Commission does have jurisdiction to set such a mechanism, albeit on interim basis, based on its authority under the Telecommunications Act and relevant FCC orders and rules. Sprint believes that this authority has not been disturbed by subsequent court actions regarding such FCC orders.

The central FCC order that recognizes state authority to resolve issues related to compensation for ISP-bound traffic is the Declaratory Ruling issued February 26, 1999. (*In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order No. 99-38 in Docket No. 96-98.) In that ruling the FCC declared ISP-bound traffic to be interstate in nature and thus subject to the FCC's jurisdiction. (paragraph 18) The FCC sought comments on the development of federal rules setting forth a compensation mechanism for this traffic. (paragraph 34) However, the FCC also recognized continuing state authority to interpret compensation provisions of agreements and impose compensation mechanisms, in the absence of superseding FCC rules. (paragraph 21) The FCC explicitly recognized reciprocal compensation as an appropriate mechanism that could be imposed by the states. (paragraphs 26 & 27)

Subsequently, in *Bell Atlantic v. FCC*, 206 F. 2d 1 (D.C. Circuit 2000), the D.C. Circuit Court of Appeals vacated the ruling based on the FCC's analysis that identified ISP-bound traffic as interstate traffic. The Court questioned the adequacy of the FCC's rationale for determining that such traffic is interstate traffic, particularly the FCC's use of the end-to-end analysis of the traffic. (206 F.2d at 9) In rejecting the FCC's findings in the Declaratory Ruling the Court noted that earlier FCC decisions using this analysis were not relevant or were inconsistent with the Declaratory Ruling (206 F.2d at 5-7), contrary to BellSouth's Witness Shiroishi's assertion that while the Court rejected the Declaratory Ruling all previous decisions similarly addressing the nature of ISP-bound traffic are still valid law. [TR. 668]

Ms. Shiroishi argues that the Court vacated the Declaratory Ruling in total and that the Declaratory Ruling was the only basis for state jurisdiction over ISP-bound traffic, since it is jurisdictionally interstate. Therefore, Ms. Shiroishi concludes that the basis of the state's authority to address ISP-bound traffic no longer exists. [TR. 590] Sprint disagrees with this position. Sprint disagrees with Ms. Shiroishi's interpretation that the Court vacated the FCC's recognition of the states' continuing authority to set compensation mechanisms for ISP-bound traffic, as expressed in the Declaratory Ruling. The Court explicitly stated that it did not reach ILEC arguments that section 251 (b) (5) superseded state authority in this area. (206 F.2d at 9) In addition, While the FCC in its First Report and Order determined that the reciprocal compensation rules do not apply to interstate access compensation arrangements, the D.C. Circuit Court opinion made it abundantly clear that the FCC has not provided sufficient justification that ISP-bound calls fit in this category. Therefore, based on the FCC's recognition of continuing state authority in the absence of controlling federal rules, the Commission has ample authority to resolve this issue and adopt a reciprocal compensation mechanism for ISP-bound traffic, unless and until the FCC acts to supersede the state imposed mechanism with its own mechanism.

In fact, the Commission has previously exercised this authority to impose reciprocal compensation requirements on ISP-bound traffic, subsequent to the D.C. Circuit Court opinion, in its final arbitration order relating to the Global Naps/BellSouth interconnection agreement. *In re: Petition by Global NAPS, Inc. for arbitration of interconnection rates, terms and conditions and related relief of proposed agreement with BellSouth Telecommunications, Inc.*, Order No. PSC-00-1680-FOF-TP. Other states have also recognized and acted upon their authority to

impose reciprocal compensation requirements for ISP-bound traffic. Staff witness Fogelman states in his testimony that a “majority of states” have adopted such reciprocal compensation arrangements. (TR.875) In addition, he discusses several states that have adopted specific reciprocal compensation arrangements tailored to reflect the varying characteristics of ISP-bound traffic and other local traffic and the associated affect on costs. (TR.863-865)

ISSUE 2: Is delivery of ISP-bound traffic subject to compensation under Section 251 of the Telecommunications Act of 1996?

Position: **While the FCC has yet to make a final determination regarding the appropriate compensation arrangement or methodology that carriers should employ to compensate each other for completing dial-up Internet calls, the FCC has clearly stated that reciprocal compensation is an acceptable option for the interim period.

Argument: As set forth in the discussion related to Issue 1, pending further inconsistent action by the FCC, it is Sprint’s position that state’s are free to impose reciprocal compensation requirements on ISP-bound traffic pursuant to the provisions of Section 251 of the Act and FCC rules implementing that provision of the Act.

ISSUE 3: What actions should the Commission take, if any, with respect to establishing an appropriate compensation mechanism for ISP-bound traffic in light of current decisions and activities of the courts and the FCC?

Position: **The absence of a federal rule specifying the treatment of ISP-bound traffic for purposes of reciprocal compensation has created uncertainty for ILECs and ALECs. The Commission has the authority, albeit on an interim basis, to resolve this issue. Sprint urges the Commission to do so through a generic determination.

Argument: Since the D.C. Circuit Court's vacation of the FCC Declaratory Ruling there has been significant uncertainty from economic and market perspectives for ILECs and ALECs regarding the status of reciprocal compensation for ISP-bound traffic. [TR.366] As Mr. Falvey testified, this uncertainty makes it particularly difficult for the ALECs to formulate and carry out business plans to provide competitive services in the state. [TR. 230] While it is true that the industry expects a ruling from the FCC at any time, that may potentially supersede the Commission's actions in this docket, no one knows exactly when the FCC will rule. Sprint believes that it is in the interest of both ALECs and ILECs for the Commission resolve this issue, as least on an interim basis, through this generic proceeding. [TR.363, 366] Sprint suggests that the Commission should adopt a reciprocal compensation mechanism for ISP-bound traffic through this generic proceeding, although individual ILECs and ALECs are always free to negotiate other appropriate compensation arrangements.

ISSUE 4: What policy considerations should inform the Commission's decision in this docket?

Position: **ISP-bound traffic is functionally the same as other local voice traffic. It is administratively cumbersome and/or expensive to distinguish between the two types of traffic.

Longer holding times are characteristic of other users in addition to ISPs. Whatever compensation applies to other local traffic should also apply to ISP-bound calls.

Argument: Sprint believes that the Commission should consider the nature of ISP-traffic and the technical issues that arise in attempting to separate ISP-bound traffic from other types of local traffic in making its decision in this docket. ISP-bound traffic is functionally the same as other local voice traffic. [TR. 67, 233, 367] Testimony supports that at this point no accurate readily implementable methodology exists for distinguishing ISP-bound traffic from other local traffic. [TR. 73, 377] While BellSouth witness Scollard offers testimony concerning proposed methodologies for separating traffic, he does not address the potential cost to implement these methodologies or how ILECs intend to recover these costs. [TR. 136-139] In fact, BellSouth Witness Shiroishi refused under cross-examination to commit that BellSouth would not attempt to recover these costs at some future date. [TR. 640]

Mr. Scollard's proposed methodologies suffer from other problems with implementation and accuracy. Since BellSouth has been unsuccessful in obtaining information from ALECs regarding specific numbers serving ISP providers, it has resorted to the use of an approximation of ISP-bound traffic based on call holding times. [TR. 134] This methodology completely fails to recognize other types of local traffic that might also result in longer call durations. Because of the difficulties in applying an accurate methodology to separate functionally equivalent dial up ISP traffic from other local traffic, Sprint suggests instead that all local traffic, including ISP-bound traffic should be treated the same for reciprocal compensation purposes.

ISSUE 5: Is the Commission required to set a cost-based mechanism for delivery of ISP-bound traffic?

Position: **Under Section 251 and 252 of the Act, ILECs are required to file cost-based rates for all traffic, including ISP-bound traffic. Local switching rates need to be structured into a two-part rate structure that recognizes the two distinctly different cost components – call set-up and call usage.

Argument: Sprint believes that a reciprocal compensation rate should ideally reflect the overall costs and mix of traffic. [TR. 369] As Sprint’s witness Hunsucker explains there are two components to the switching charge in current reciprocal compensation rates. [TR. 370] The first component is a call setup charge, this component does not vary with the length of the call. The second component is a call duration charge which varies per minutes of use.[TR. 370] Mr. Hunsucker describes how the current blended switching rate was based on a calculation of average call duration. As described in Mr. Hunsucker’s testimony, this blended rate results in underrecovery of costs if the call is shorter than the average call duration and an overrecovery of costs if the call is longer. [TR. 371] Sprint suggests that a bifurcated switching rate that separates the call set up and call duration components of the charge would more closely match the underlying costs and ensure that the costs are recovered appropriately. [TR. 372]

ISSUE 6: What factors should the Commission consider in setting the compensation-mechanisms for delivery of ISP-bound traffic?

Position: **Sprint believes that a reciprocal compensation rate should ideally reflect the overall costs and mix of traffic. Internet calls have much longer “holding times” than the average voice call. This critical difference must be recognized in the development of reciprocal compensation rates.

Argument: As Mr. Hunsucker and other witnesses testified, ISP-bound traffic is not functionally different from other local traffic. However, ISP-bound calls have a significantly longer call duration than most other types of the local traffic. [TR. 383, 462] But, ISP-bound traffic is not the only local traffic that might be characterized by longer call holding times. [TR. 367]

Sprint believes that in making its decision in this docket, the Commission must consider the functional similarity of ISP-bound traffic to other types of local traffic, the technical difficulty and expense of separating ISP-bound traffic from other local traffic for the purposes of reciprocal compensation, and the longer call duration of ISP-bound traffic and other local traffic that might result in overrecovery under the current switching component of the reciprocal compensation charge. With these factors in mind, Sprint believes that the Commission should adopt a reciprocal compensation rate for all local traffic that bifurcates the switching rate into a call set up and a call duration cost component. Sprint believes that this bifurcated switching charge will more accurately reflect the costs associated with terminating local traffic, including ISP-bound

traffic. [TR.385] In addition, Mr. Fogelman supports such a rate structure as one that more closely reflects the costs to terminate traffic. (TR. 896) A compensation mechanism that more accurately reflects costs should eliminate ILEC concerns about “windfalls” to the ALECs and should make the issue of who terminates traffic neutral for ILECs [TR. 386, 896]

ISSUE 7: Should inter-carrier compensation for delivery of ISP-bound traffic be limited to carrier and ISP arrangements involving circuit-switched technologies?

Position: **To limit inter-carrier compensation for ISP-bound traffic to only circuit-switched traffic is both unwarranted and provides uneconomic incentives for ILECs and ALECs not to implement more advanced, and more efficient, technologies.

Argument: As Mr. Hunsucker explains, excluding noncircuit switched technology would impose on Sprint additional delays, costs, and the burden of separately arbitrating the issue of intercarrier compensation for these technologies. [TR.376] Mr. Falvey agrees that reciprocal compensation should apply to non-circuit switched technologies in order to encourage innovation, [TR. 232]

ISSUE 8: Should ISP-bound traffic be separated from non-ISP bound traffic for purposes of assessing any reciprocal compensation payments? If so, how?

Position: **A separate class of service for dial-up Internet traffic is unnecessary. Other types of traffic generate a disproportionate amount of terminating traffic. Internet traffic should not be singled out without looking at all types of traffic and traffic flows.

Argument: As explained in detail above, Sprint opposes the separation of ISP-bound traffic from other local traffic because of the technical difficulties and expense involved. Several other parties agree that this task would be technologically difficult and unduly burdensome. While Mr. Beauvais appears to believe that workable methodologies exist to separate ISP-bound traffic from other local traffic, he too agrees that an exact methodology for distinguishing ISP-bound calls is not easily or readily available.[TR. 461] Instead Mr. Beauvais recommends the use of estimates, such as a percentage internet use factor, based primarily on analyses of call duration. [TR. 495] Sprint objects to this approach because it could inappropriately identify indisputably local traffic as ISP-traffic.

ISSUE 9: Should the Commission establish compensation mechanisms for delivery of ISP-bound traffic to be used in the absence of the parties reaching an agreement or negotiating a compensation mechanism? If so, what should be the mechanisms?

Position: **The Commission should treat ISP-bound calls as local calls for purposes of inter-carrier compensation. The basic switching components used for voice and Internet-bound traffic are the same, only the call duration changes. The solution is to bifurcate the switching charge into a call setup charge and a call duration charge.

Argument: As explained above, Sprint believes that the Commission has the authority to establish compensation mechanisms for the delivery of ISP-bound traffic and that the Commission should exercise such authority to alleviate the current uncertainty in the industry. While parties are free to negotiate alternative compensation arrangements, Sprint believes that the adoption by the Commission in this generic proceeding of a mechanism to be used in the event parties cannot agree will facilitate such negotiations. In addition, Sprint believes that such a fallback mechanism will reduce potential litigation between the parties to interconnection negotiations, allowing the parties to focus on their real business of providing competing telecommunications services to the benefit of Florida consumers. The reduction of potential litigation will conserve valuable Commission resources, as well.

Sprint has detailed above its proposal for a reciprocal compensation rate for all local traffic, including ISP-bound traffic that more accurately reflects the costs of terminating such traffic by recognizing that some local traffic has longer call durations than others. [TR. 384] Sprint recommends a methodology that bifurcates the switching component of the reciprocal compensation charge into call set up and a call duration components. Sprint believes this methodology more accurately reflects the costs of terminating traffic and thus will eliminate the concerns expressed by BellSouth and Verizon of “windfalls” based on the nature of the traffic.[TR. 386] Staff witness Fogelman recommends a similar approach because the purpose of reciprocal compensation is to compensate for costs associated with transport and termination of a call. [TR. 865]

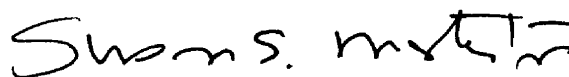
BellSouth and Verizon have suggested that a “bill and keep” approach is the appropriate reciprocal compensation mechanism for the Commission to adopt in this proceeding. BellSouth appears to advocate a bill and keep approach for ISP-bound traffic only (TR. 606), while Verizon recommends that the Commission adopt bill and keep for all local traffic. (TR. 462) Sprint believes that the BellSouth approach of bill and keep for ISP-based traffic only is unworkable because it would require the separation of ISP-bound traffic from other local traffic, which (as previously discussed) Sprint believes is technologically difficult and administratively burdensome and expensive.

In addition, Sprint believes that Commission is precluded from adopting in this proceeding Verizon’s proposal for bill and keep for all local traffic by FCC Rule 51.713, which sets forth the circumstances under which bill and keep may be imposed. [TR. 393] As explained by Mr. Fogelman, the FCC rule requires that traffic between the ILEC and the ALEC must be “in balance” for bill and keep to be applied. (TR. 884) Sprint interprets this requirement to apply on a carrier-specific basis. (TR. 399) Sprint is aware that, in some instances, traffic between Sprint and an ALEC is not “in balance” as contemplated by the FCC rule. (TR. 399) Mr. Fogelman agrees that traffic is likely not in balance in Florida, as required by the rule. (TR. 876)

BellSouth attempts to evade the in balance requirement by asserting that IPS-bound traffic is not local and, therefore, the FCC rule doesn’t apply. [TR. 605] However, the jurisdictional nature of such traffic is still in dispute pending the FCC’s response to the D.C. Circuit Court ruling. And again, BellSouth’s approach requires separation of funtionally similar traffic, which Sprint believes in unworkable.

Therefore, Sprint urges the Commission to adopt its proposal, also supported by Mr. Fogelman, for a reciprocal compensation mechanism that applies to ISP-bound traffic and other local traffic, using a bifurcated rate structure that appropriately reflects the costs incurred for call termination.

DATED this 18th day of April, 2001.

Handwritten signature of Susan S. Masterton in black ink, written over a horizontal line.

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CERTIFICATE OF SERVICE
DOCKET NO. 000075-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 18th day of April, 2001 to the following:

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