



Susan S. Masterton
Attorney

Law/External Affairs
Post Office Box 2214
1313 Blair Stone Road
Tallahassee, FL 32316-2214
Mailstop FTLHO0107
Voice 850 599 1560
Fax 850 878 0777
susan.masterton@mail.sprint.com

June 21, 2001

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. 000075-TP (Phase I) Sprint's Supplemental Brief

Dear Ms. Bayó:

Enclosed for filing is the original and fifteen (15) copies of Sprint's Supplemental Brief in Docket No. 000075-TP (Phase I). Copies of the Brief have been served pursuant to the attached Certificate of Service.

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

SSM/th

Enclosures

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
DOCKET NO. 000075-TP (Phase I)

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 21th day of June, 2001 to the following:

Nancy B. White/James Meza II
c/o Nancy H. Sims
BellSouth
Telecommunications, Inc.
150 S. Monroe Street, Suite 400
Tallahassee, Florida 32302

Focal Communications Corporation
of Florida
Mr. Paul Rebey
200 North LaSalle Street,
Suite 1100
Chicago, IL 60601-1914

Floyd Self
Messer Law Firm
Post Office Box 1876
Tallahassee, Florida 32302

Gerry Law Firm
Charles Hudak/Ronald V. Jackson
3 Ravinia Dr., #1450
Atlanta, GA 30346-2131

AT&T
Tracy Hatch, Esq.
101 North Monroe Street
Suite 700
Tallahassee, Florida 32301-1549

Global NAPS, Inc.
10 Merrymount Road
Quincy, MA 02169

Michael Gross
Florida Cable Telecommunication
Assoc.
246 East 6th Avenue
Tallahassee, Florida 32303

Intermedia Communications, Inc.
Mr. Scott Sapperstein
3625 Queen Palm Drive
Tampa, FL 33619-1309

Cox Communications
Ms. Jill N. Butler
4585 Village Avenue
Norfolk, VA 23502-2035

BroadBand Office Communications,
Inc.
Mr. Woody Traylor
2900 Telestar Court
Falls Church, VA 22042-1206

Kimberly Caswell
Verizon
P.O. Box 110, FLTC0007
Tampa, Florida 33601-0110

Katz, Kutter Law Firm
Charles Pellegrini/
Patrick Wiggins
12th Floor
106 East College Avenue
Tallahassee, FL 32301

e.spire Communications, Inc.
James C. Falvey, Esq.
131 National Business Parkway
Suite 100
Annapolis Junction, MD 20701

Kelley Law Firm
Genevieve Morelli
1200 19th St. NW, Suite 500
Washington, DC 20036

*KMC Telecom, Inc.
Mr. John McLaughlin
1755 North Brown Road
Lawrenceville, GA 33096*

*Landers Law Firm
Scheffel Wright
P.O. Box 271
Tallahassee, FL 32302*

*Level 3 Communications, LLC
Michael R. Romano, Esq.
1025 Eldorado Blvd.
Bloomfield, CO 80021-8869*

*MCI WorldCom
Ms. Donna C. McNulty
325 John Knox Road, Suite 105
Tallahassee, FL 32303-4131*

*McWhirter Law Firm
Vicki Kaufman
117 S. Gadsden St.
Tallahassee, FL 32301*

*Messer Law Firm
Norman Horton, Jr.
215 S. Monroe Street, Suite 701
Tallahassee, FL 32301-1876*

*Moyle Law Firm(Tall)
Jon Moyle/Cathy Sellers
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301*

*Orlando Telephone Company
Herb Bornack
4558 S.W. 35th Street, Suite 100
Orlando, FL 32811-6541*

*Pennington Law Firm
Peter Dunbar/Karen Camechis
P.O. Box 10095
Tallahassee, FL 32302-2095*

*Supra Telecom
Doris M. Franklin/Mark Buechele
1311 Executive Center Drive,
Suite 200
Tallahassee, FL 32301*

*US LEC of Florida Inc
Attn: General Counsel.
Three Morrocroft Centre
6801 Morrison Boulevard
Charlotte, NC 28211*

*Felicia Banks, Esq.
Florida Public Service Commission
2540 Shumard Oak Blvd,
Tallahassee, Florida 32399-0850*

*Kenneth A. Hoffman, Esq.
Stephen A. Ecenia, Esq.
Rutledge, Ecenia, Purnell &
Hoffman, P.A.
Post Office Box 551
Tallahassee, Florida 32302*

*Allegiance Telecom
Morton Posner, Esq.
1150 Connecticut Avenue, N.W.
Suite 205
Washington, DC 20036*

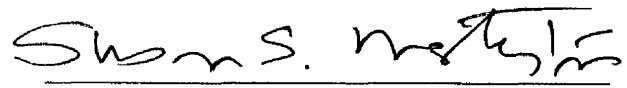
*Allegiance Telecom, Inc.
Elizabeth Howland, Esq.
1950 Stemmons Freeway,
Suite 3026
Dallas, TX 75207-3118*

*Ausley Law Firm
Jeffry Wahlen
P.O. Box 391
Tallahassee, FL 32302*

*Intermedia Communications, Inc.
Mr. Scott Sapperstein
One Intermedia Way
MC FLT-HQ3
Tampa, FL 33647-1752*

*Time Warner Telecom of
Florida, L.P.
Carolyn Marek
233 Bramerton Court
Franklin, TN 37069*

*XO Communications, Inc.
Dana Shaffer
105 Molly Street, Suite 300
Nashville, TN 37201-2315*


Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into)
Appropriate Methods to) DOCKET NO. 000075-TP
Compensate Carriers For) (Phase I)
Exchange of Traffic Subject to)
Section 251 of the) Filed: June 21, 2001
Telecommunications Act of 1996)
_____)

SPRINT'S SUPPLEMENTAL BRIEF

Pursuant to the Order Requiring Additional Briefing (Order No. PSC-01-1036-PCO-TP) and the Order Granting Motion for Extension of Time to File Supplemental Brief and Modifying Order Requiring Additional Briefing (Phase I) (Order No. 01-1094-PCO-TP), Sprint-Florida, Incorporated and Sprint Communications Company Limited Partnership ("Sprint") submit the following Supplemental Brief.

INTRODUCTION

On January 21, 2000, this docket was established to investigate the appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996 (the Act). A hearing regarding the issues delineated for Phase I (specifically relating to compensation for ISP-bound traffic) was held on March 7-8, 2001. As required by the applicable procedural orders, post-hearing briefs were filed on April 18, 2001. Subsequently, the Federal Communications Commission (FCC) released its decision on matters relating to intercarrier compensation for telecommunications traffic to Internet service providers (ISPs).

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, CC docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, FCC 01-131 (released April 27, 2001) (“Order on Remand”). The FCC decision was in response to a remand by the D.C. Circuit Court of Appeals of the FCC’s earlier Declaratory Ruling¹ relating to the jurisdiction of and the appropriate compensation mechanism for ISP-bound traffic.² The Order on Remand was published in the Federal Register on May 15, 2001, and took effect on June 14, 2001.

In Order No. PSC-01-1036-PCO-TP, this Commission, through the Prehearing Officer, has requested the Parties to file supplemental briefs “addressing the impact of the FCC’s April 19, 2001, decision on Phase I issues in this docket.” Although several issues are identified to be addressed in Phase I of this docket, the overarching issue is Issue 1, a legal issue addressing the Commission’s jurisdiction to adopt a generic mechanism for compensation for ISP-bound traffic.

SUMMARY OF THE ORDER

In response to the D.C. Circuit Court’s remand of the Declaratory Ruling, in the Order on Remand the FCC reaffirms and further explains the rationale behind its initial finding that ISP-bound traffic is properly classified as interstate, and therefore falls exclusively under the FCC’s jurisdiction. The FCC explains that the service provided by LECs to deliver traffic to an ISP constitutes “information access” under 251 (g) of the Telecommunications Act, is not “telephone exchange service”, and, therefore, is not governed by section 251 (b) (5) of the Act. Order on

¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68 (released February 26, 1999).

Remand at ¶23. In addition, the FCC reaffirms its “end-to-end” jurisdictional analysis of ISP-bound calls and finds such traffic to be jurisdictionally interstate. Order on Remand at ¶52. The FCC then reiterates its earlier finding that the FCC exercises jurisdiction over ISP-bound traffic pursuant to its jurisdiction over interstate communications services set forth in 47 U.S.C. § 201. Order on Remand at ¶65.

In the Order on Remand, the FCC exercises its section 201 jurisdiction over “information access traffic” by setting rate caps for such traffic and establishing a scheme for implementing the rate caps in the context of the current environment. The Order on Remand establishes an intercarrier compensation rate for ISP-bound traffic, effective on the effective date of the Order, that gradually declines over the next three years. Order on Remand at ¶78. This rate applies until the end of the three-year period or upon further Commission action, whichever is later. *Id.* In addition to the rate cap, the FCC imposes a cap on the number of minutes of ISP-bound traffic subject to compensation. *Id.* If ISP-bound traffic cannot be measured, then a presumption that traffic is ISP-bound arises if the balance of traffic flowing between an ILEC and a CLEC exceeds a 3:1 ratio. Order on Remand at ¶79. In addition, compensation for ISP-bound traffic is not available for CLECs who are new market entrants, that is, who were not exchanging traffic pursuant to an interconnection agreement prior to the adoption of the Order on Remand. Order on Remand at ¶81. While the rate applies specifically to ISP-bound traffic, an ILEC may only take advantage of the lower rate if it agrees to offer to exchange all traffic subject to §251 (b) (5) at the same rate. Order on Remand at ¶89.

² *Bell Atlantic v. FCC*, 206 F.3d 1 (D.C. Circuit 2000)

The FCC designates the compensation mechanism established in the Order on Remand as an interim mechanism, to apply during the pendency of a separate proceeding to examine intercarrier compensation mechanisms for all types of traffic.³ Order on Remand at ¶77. The interim compensation regime is to apply as carriers re-negotiate expired or expiring interconnection agreements and does not alter existing contractual arrangements, except to the extent that the parties are entitled to invoke change-of-law provisions. Order on Remand at ¶82. The FCC makes clear that the rate is a cap, and that any compensation scheme that results in lower rates, including a bill and keeps mechanism, previously imposed by a state commission remains in effect. Order on Remand at ¶80. In addition, the Order does not preempt any state commission decisions regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime. Order on Remand at ¶82.

DISCUSSION OF EFFECT ON PHASE I

The Order specifically affects the positions taken by the Parties on Issue 1: (a) Does the Commission have the jurisdiction to adopt an inter-carrier compensation mechanism for delivery of ISP-bound traffic? (b) If so, does the Commission have the jurisdiction to adopt such an inter-carrier compensation mechanism through a generic proceeding?

Originally, Sprint took the position that the Commission had jurisdiction to establish a compensation mechanism for ISP-bound traffic pursuant to the Declaratory Ruling. Sprint's Posthearing Statement and Brief, at pages 2-5. Sprint advocated that the Commission should

³ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (released April 27, 2001).

exercise its jurisdiction as an interim measure until and unless the FCC took action that superseded the Commission's decision. Sprint's Posthearing Statement at page 4. The FCC's decision in the Order on Remand constitutes such superseding action and, unless ultimately overturned by the courts or modified by the FCC, nullifies the Commission's authority to implement a compensation mechanism for ISP-bound traffic.⁴ Sprint's interpretation of the Order on Remand therefore alters Sprint's position on Issue 1, in that Sprint believes the Order precludes the Commission from adopting a mechanism for intercarrier compensation for ISP-bound traffic.

The Order on Remand clearly establishes that ISP-bound traffic is interstate information access traffic subject to FCC regulation under 47 U.S.C. §201. The FCC's recognition of ISP-bound traffic as §201 access traffic preempts this Commission's jurisdiction to establish a compensation mechanism for such traffic, effectively mooting the Commission's need to take action on any of the issues in Phase I of this proceeding pending further action by the courts or by the FCC.

Although the FCC grandfathered prior state action that sets a lower cap and recognized the continuing validity of state decisions for traffic exchanged prior to the issuance of the Order on Remand, the FCC expressly ruled that state commissions have no continuing jurisdiction over ISP-bound (information access) traffic. Order on Remand at ¶82. While the FCC decision may raise some issues that will ultimately require resolution by the Commission in the context of

⁴ In ¶48 of the Order on Remand, the FCC reiterates the preservation of its authority to regulate interstate traffic set forth in 47 U.S.C. §251(i). The U.S. Supreme Court has recognized the FCC's preeminent authority to interpret the provisions of the Act in *AT&T v. FCC*, 525 U.S. 366 (1999).

individual arbitrations, Sprint does not believe that this generic docket is an appropriate forum for consideration of such issues.⁵

Although Sprint believes that the Order is clear regarding the FCC preemption of state jurisdiction, several requests for reconsideration, appeals, and requests for stays have been filed with the FCC or the federal courts.⁶ Because the actions on these requests could affect the FCC's decision in ways that might alter Sprint's position regarding the Commission's jurisdiction, Sprint does not believe that at this time the Commission should issue a decision that it has no jurisdiction and close Phase I of the docket. Instead, Sprint urges the Commission to defer its issuance of a decision, pending the outcome of the various federal legal and regulatory proceedings. If a binding decision is subsequently rendered by either the FCC or the federal courts that engenders a need for Commission action, the Commission should then resume its proceedings under Phase I of this docket, as appropriate.

CONCLUSION

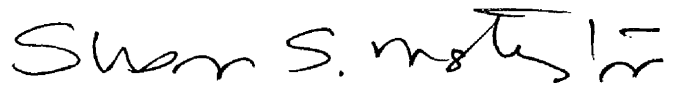
Sprint believes that the Order on Remand supersedes the Commission's jurisdiction to adopt a mechanism for reciprocal or other intercarrier compensation for ISP-bound traffic.

⁵ For example, the Order on Remand provides for state commissions to address carrier specific issues relating to rebutting the presumption that traffic above or below the 3:1 ratio established by the order is or is not ISP-bound traffic. Order on Remand at ¶79.

⁶ See, e.g., Petition of Core Communications Inc. for Stay Pending Judicial Review, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, FCC 01-131, filed June 1, 2001; Emergency Petition of Core Communications, Inc. for Stay Pending Judicial Review, *Core Communications Inc. v. FCC*, Case No. 01-1256, U.S. Court of Appeals for the D.C. Circuit, filed June 7, 2001; Petition for Review, *Sprint Corporation v. FCC*, U.S. Court of Appeals for the D.C. Circuit, Filed May 24, 2001; Independent Alliance on Intercarrier Compensation Petition for Reconsideration and/or Clarification, *Implementation of the Local*

Therefore, Sprint urges the Commission to defer rendering any decision in Phase I of this docket, unless and until further action by the FCC or the federal courts changes the effect of the FCC's Order, necessitating further action by the Commission.

DATED this 21st day of June 2001.



SUSAN S. MASTERTON
P.O. Box 2214
Tallahassee, FL 32316-2214
(850) 599-1560

ATTORNEY FOR SPRINT