ORIGINAL

Sprint

Susan S. Masterton
Attorney

Law/External Affairs
Post Office Box 2214
1313 Blair Stone Road
Tallahassee, FL 32316-2214
Mailstop FLTLH00107
Voice 850 599 1560
Fax 850 878 0777
susan.masterton@mail.sprint.com

June 10, 2002

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No 000075-TP (Phase IIA) Posthearing Statement and Brief

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 (Phase IIA).

Copies are being served on the parties in this docket, pursuant to the attached Certificate of Service.

Please acknowledge receipt of this filing by stamping and initialing a copy of this letter and returning same to the courier. If you have any questions, please do not hesitate to call me at 850/599-1560.

Sincerely,

Susan S. Masterton

Susan S. Masterton

Enclosure

AUS
CAF
CMP
COM 4
CTR
ECR
GCL
OPC
MMS
SEC
OTH 1

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

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by hand delivery* or U S Mail this 10th day of June, 2002 to the following.

ALLTEL Corporate Services, Inc
Stephen Refsell/Bettye Willis
One Allied Drive
Little Rock, AR 72203-2177

AT&T Communications of the Southern States, Inc. (GA)
Virginia C Tate
1200 Peachtree St , Suite 8100
Atlanta, GA 30309

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

BellSouth Telecommunications, Inc
Nancy B White/James Meza III
c/o Nancy H Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

BroadBand Office Communications, Inc
Mr Julian Chang
951 Mariner's Island Blvd , Suite 700
San Mateo, CA 94404-1561

Cox Communications
Ms Jill N Butler
225 Clearfield Avenue
Virginia Beach, VA 23462-1815

Florida Cable Telecommunications Assoc , Inc
Michael A Gross
246 E 6th Avenue, Suite 100
Tallahassee, FL 32303

Florida Competitive Carriers Assoc
c/o McWhirter Law Firm
Joseph McGlothlin/Vicki Kaufman
117 S Gadsden St
Tallahassee, FL 32301

Florida Digital Network, Inc
Mr. Matthew Feil
390 North Orange Avenue, Suite 2000
Orlando, FL 32801-1640

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

Gerry Law Firm
Charles Hudak/Ronald V Jackson
3 Ravinia Dr., #1450
Atlanta, GA 30346-2117

Global NAPS, Inc
10 Merrymount Road
Quincy, MA 02169

Intermedia Communications, Inc
Ms Donna C. McNulty
The Atrium, Suite 105
325 John Knox Road
Tallahassee, FL 32303-4131

KMC Telecom, Inc.
Mr John McLaughlin
1755 North Brown Road
Lawrenceville, GA 30043-8119

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

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

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

MediaOne Florida
Telecommunications, Inc.
Ms. Rhonda P Merritt
101 North Monroe Street, Suite 700
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

Rutledge Law Firm
Ken Hoffman/John Ellis/M. McDonnell
P.O. Box 551
Tallahassee, FL 32302-0551

Supra Telecom
Brian Chaiken
2620 S.W. 27th Avenue
Miami, FL 33133-3001

TCG South Florida
Ms. Lisa A. Riley
1200 Peachtree Street, N.E., Ste. 8066
Atlanta, GA 30309-3523

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

US LEC of Florida Inc.
Ms. Wanda G Montano
6801 Morrison Blvd.
Charlotte, NC 28211-3599

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

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

e spire Communications, Inc.
131 National Business Parkway, #100
Annapolis Junction, MD 20701-1001

Felicia Banks *
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, Florida 32399-0850

Susan S. Masterton

Susan S Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into Appropriate Methods to Compensate Carriers For Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996	) DOCKET NO. 000075-TP (Phase IIA))) Filed: June 10, 2002))))

SPRINT'S POST-HEARING STATEMENT AND BRIEF

Pursuant to the Prehearing Order in this proceeding, Order No. PSC-02-0602-PHO-TP, Sprint-Florida, Incorporated and Sprint Communications Company Limited Partnership (collectively, "Sprint") submit the following Post-hearing Statement and Brief:

INTRODUCTION

In this proceeding the Commission has asked the parties to provide additional testimony and evidence related to two issues that the Commission considered at a December 5, 2001 Special Agenda Conference to rule on the issues presented in Phase II of the Generic Reciprocal Compensation Docket.

First, the parties were asked to address the issue of the appropriate local calling area for reciprocal compensation purposes, specifically whether the appropriate local calling area is the LATA, the originating carrier's local calling area, or the incumbent local exchange company's (ILEC's) tariffed local calling area. Sprint urges the Commission to adopt the ILEC's local calling area as the appropriate local calling area for reciprocal compensation purposes. In its testimony and in this post-hearing statement and brief, Sprint provides

strong support that such a decision is consistent with the authority delegated to state commissions by the FCC, is consistent with the authority delegated to the Commission by the Florida Legislature, and ensures competitive neutrality and nondiscriminatory treatment among providers of intraLATA, interexchange service.

Second, the parties were asked to address whether the Commission should impose bill and keep as the default reciprocal compensation mechanism in Florida, based on a presumption that traffic between an ILEC and an ALEC is "roughly balanced" unless a party rebuts this presumption, as provided in FCC Rule 51.713. Sprint provides a traffic analysis of the traffic it exchanges with ALECs in Florida, subtracting minutes relating to non-251(b)(5) ISP-bound traffic, and demonstrates that such traffic does not meet the roughly balanced standard set forth in the FCC rule. Therefore, Sprint sees little benefit in adopting a presumption in favor of bill and keep in Florida and suggests, instead, that the Commission should adopt as the default reciprocal compensation mechanism symmetrical reciprocal compensation pursuant to the standards set forth in the relevant FCC rules.

ISSUES, POSITIONS AND DISCUSSION

ISSUE 13: How should a "local calling area" be defined, for purposes of determining the applicability of reciprocal compensation?

a) What is the Commission's jurisdiction in this matter?

b) Should the Commission establish a default definition of local calling area for the purpose of intercarrier compensation, to apply in the event parties cannot reach a negotiated agreement?

c) If so, should the default definition of local calling area for purposes of intercarrier compensation be: 1) LATA-wide local calling, 2) based upon the originating carrier's retail local calling area, or 3) some other default definition/mechanism?

Position: **Pursuant to the authority delegated by the FCC, the Commission should establish a default local calling area consistent with the Commission's authority under Florida law. The ILEC's tariffed local calling scope should define the appropriate local calling scope for reciprocal compensation purposes for wireline carriers.**

Discussion:

The need for a default mechanism if negotiations fail

Most, if not all, parties to this proceeding suggest that private negotiations between the parties should govern the determination of the appropriate local calling scope for reciprocal compensation between incumbent local exchange companies (ILECs) and alternative local exchange companies (ALECs) (collectively LECs) pursuant to the provisions of the federal Telecommunications Act of 1996 (the Act). [Shiroishi, Tr. 22; Trimble, Tr. 85, 118; Cain, Tr. 215, Warren, Tr. 263] BellSouth has indicated that there may not be a need for the Commission to establish a default compensation mechanism, because it has not found this to be a significant issue of dispute in its interconnection negotiations. [Tr. 21]

Sprint agrees that negotiation is always preferred in establishing interconnection arrangements between local carriers. However, unlike BellSouth, Sprint has found the issue of the appropriate local calling scope applicable to reciprocal compensation to be a contentious issue in its interconnection agreement negotiations [Hunsucker, July 5, 2001 Phase II Hearing, Tr. 526] and believes a default mechanism adopted by this Commission would facilitate resolution of interconnection negotiations between the parties. [Ward, Tr. 185] The record clearly supports Sprint's position that the ILEC's tariffed local calling scope is the appropriate default that should be adopted by this Commission.

The Commission's jurisdiction to determine the appropriate local calling area for reciprocal compensation purposes must be exercised consistent with Florida law

The FCC has delegated to the Commission the explicit authority to determine the local calling scope for reciprocal compensation between local carriers. Paragraph 1035 of the Local Competition Order provides that:

> ...state commissions have the authority to determine what geographic areas should be considered "local areas" for the purposes of applying reciprocal compensation obligations under 251(b)(5), consistent with the historical practice of defining local areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate or intrastate access charges. [emphasis added]

While the FCC regulations address the issue of the appropriate delineation of authority between the FCC and the states, as an administrative agency the Commission's specific authority to act is derived from the Florida Legislature.[1] Therefore, the Commission must exercise the authority delegated to it by the FCC in accordance with the applicable Florida Statutes. In authorizing state commissions to determine the appropriate local calling scopes for reciprocal compensation purposes, the FCC recognizes state authority in this area by explicitly tying a state commission's decision to "the historical practice of defining local calling areas."

Florida law governs the authority of the Commission to carry out its delegated authority from the FCC in several ways. Section 364.02, Florida Statutes, defines basic local telecommunications services in a way that recognizes the local calling areas of the incumbent local exchange companies (ILECs) as they existed on the date they elected price regulation. Section 364.051, F.S., and section 364.163, F.S., set forth the price regulation scheme. The statutory scheme recognizes a continuing distinction between local and toll services by capping the rates for these services and providing mechanisms

specific to each type of service for increasing or lowering those rates.[2] This statutory scheme preserves the rate structure which generates revenues necessary for providing mandatory universal service by the ILECs, who are carriers of last resort.

Section 364.051, F.S., delineates the scope of price regulation for retail services provided by local exchange companies. Pursuant to the definitions in section 364.02, F.S., basic local service is defined to include "local usage necessary to place unlimited calls within a local exchange area." All other services are deemed "nonbasic services" over which the Commission has limited jurisdiction. Nonbasic services include extended area services and extended calling services implemented, but not ordered implemented by the Commission, after July 1, 1995, and also include intraLATA toll service.[3] Since the statutes determine the scope of basic and nonbasic local services, the Commission cannot change these definitions through an order this proceeding to determine, pursuant to FCC-delegated authority, the local calling area for reciprocal compensation "consistent with the historical practice of defining local areas for wirelines LECs."

The provisions of the access charge price regulation scheme set forth in s. 364.163, F.S., are particularly relevant to a consideration of the Commission's authority to expand the local calling area to include the LATA under state law. The statute delineates a specific legislative scheme for setting and reducing switched access charge rates, leaving the Commission no discretion over access rates. The expansion of the local

---

[1] *United Telephone Company of Florida v. Public Service Commission*, 496 So. 2d 116 (Fla. 1986)

[2] AT&T witness Cain's statement that LATA boundaries are no longer legally significant to a determination of local calling areas (Tr. 216, 217) is misplaced, in that LATA boundaries have never been used to determine "local" calling areas, rather they were designed to distinguish between toll calls that could be carried by ILECs (specifically the former Bell operating companies) and IXCs.

[3] In several opinions the Commission has recognized that it has limited authority to affect the pricing or provisioning of nonbasic services provided by price-regulated ILECs. See, e.g., *In re: Resolution by Hamilton County Board of Commissioners requesting extended area service (EAS) from Hamilton County*

calling scope for reciprocal compensation purposes affects access charge rates in a manner not contemplated by the statute. The Commission recognized this limitation on its authority over access rates in *Complaint of MCI Telecommunications Corporation against GTE Florida Incorporated regarding anticompetitive practices related to excessive intrastate switched access*, Docket No. 970841-TP, Order No. 97-1370-FOF-TP. In that Order the Commission held that "the specific provisions of Section 364.163, Florida Statutes, clearly limit our authority to act with regard to switched access rates."

As stated by Alltel witness Busbee, expanding the local calling scope to the LATA would indirectly violate section 364.163, F.S., because it would, in essence, lower access charge rates for certain entities providing intraLATA toll service from the current intrastate access rate to the reciprocal compensation rate. (Tr. 208) It would undermine the essential principles of administrative law relating to the proper delegation of authority from the Legislature if an administrative agency could accomplish indirectly what it is prohibited from doing directly.

Even if the Commission were to decide section 364.163, F.S., did not apply to efforts to indirectly reduce or eliminate access charges through establishing compensation between local carriers, it is clear that this section prohibits a reduction in access charges for interexchange carriers. The Commission staff appeared to contemplate this limitation in its staff recommendation on this issue, considered by the Commission at its December 5, 2001 Special Agenda Conference (which is part of the record in this docket). In that recommendation, the staff suggested that the lower reciprocal compensation rate for intraLATA calls would apply only to the exchange of traffic between LECs, while IXCs

---

to all exchanges within Suwannee County, Columbia County and Madison County, Docket No. 970825-TL; Order No. PSC-97-0971-FOF-TP, issued August 12, 1997.

would continue to pay the higher access rates. (Staff Recommendation in Docket No. 000075-TP, Issued November 21, 2001, at page 44.)

The Commission's inability to reduce the access payments for intraLATA toll calls provided by IXCs, while reducing such payments for ALECs, creates a discriminatory and anticompetitive situation, one that the statutory access charge price regulation scheme clearly prevents the Commission from addressing within its delegated authority under Florida law. FDN's witness Warren[4] tries to justify this discriminatory treatment by pointing to a difference in the nature of the service provided by long distance carriers versus local exchange carriers. (Tr. 273-274) However, the Legislature recognized the need to treat providers of intraLATA toll service similarly to preserve a level competitive playing field in the form of the imputation requirements imposed on ILECs who compete with other providers of intraLATA toll service in section 364.051(5)(c), F.S.

In addition to the price regulation provisions, section 364.025, F.S., sets forth a scheme for ensuring that basic local telecommunications services remain available to consumers at affordable prices in a competitive environment (i.e., universal service). The statute authorizes the Commission to adopt an interim mechanism for ensuring universal service, pending the adoption of a permanent mechanism by the Legislature. The law explicitly provides that in adopting the interim mechanism the Commission must ensure that ALECs contribute their fair share to support universal service. [Section 364.025.(2), Florida Statutes.] In exercising this authority, the Commission has adopted a mechanism that preserves the subsidies previously embodied in ILEC rates that ensured that basic

[4] Sharon Warren adopted the pre-filed testimony of John McCluskey.

local rates remain low, while rates for other services, including intrastate access charges, remain at levels sufficient to support the low basic rate. [5]

The implications of this section of law to the issue of the appropriate local calling area and the Commission's implementation of an interim universal service mechanism that preserves the implicit subsidies embodied in the ILECs' rates are discussed extensively in the parties' prefiled testimony and in the cross examination of the BellSouth and Verizon witnesses at the hearing. [*See, e.g.,* cross-examination of Shiroishi, Tr. 48-49; cross-examination of Trimble, Tr. 146-148.] BellSouth, Verizon and Sprint have provided discovery responses containing estimates of the significant dollar amount of revenues that would be lost should the Commission adopt a LATA-wide local calling area for reciprocal compensation purposes. [Exhibits 11, 13, 14 and 15] Sprint's local division specifically has estimated a potential revenue loss of $16 million.

Mr. Trimble aptly explains the interim universal service mechanism in Florida and the detrimental effect of a decision to make the LATA the local calling area on the ILECs' ability to maintain universal service under the current structure. [Tr. 101, 102] AT&T's witness blithely dismisses these concerns by indicating that the ILECs have the ability to to request explicit universal service support under the universal service provisions. [Tr. 232][6] The ALECs appear to be suggesting that the Commission allow them to avoid any universal service obligations by eliminating their contributions to the interim mechanism provided through intraLATA access charges, instead putting the burden of any loss of universal service support squarely on consumers, through statutory mechanisms to increase basic service prices or impose explicit universal service support

[5] *In re: Determination of funding for universal service and carrier of last resort responsibilities*, Docket No. 950696-TP, Order No. PSC-95-1592-FOF-TP (Issued December 27, 1995).

mechanisms. (Tr. 63, 67-68)[7] The ALECs argue that this action will benefit consumers by offering them greater choices for nonbasic services (that is, expanded local calling areas). The Commission should ask itself if this is the outcome it desires and if there is any evidence that greater consumer choice or lower prices even will materialize should it nevertheless proceed to radically and unlawfully alter the current local/toll distinctions by adopting a LATA-wide local calling scope for reciprocal compensation purposes. [Shiroishi, Tr. 64; Trimble, Tr.152]

The Legislature's desire to ensure competitive neutrality among competing providers of toll services and to preserve the rate structure that supports universal service in Florida is further evidenced by the provisions of section 364.16(3)(a), Florida Statutes.[8] Section 364.16(3)(a), F.S., provides that:

> No local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic for which terminating access service charges would otherwise apply through a local interconnection arrangement without paying the appropriate charges for such terminating service. [emphasis added]

Verizon witness Trimble correctly characterizes the intent of this provision to prevent "access bypass" through the use of local interconnection arrangements. (Tr. 104) The Commission's decision in BellSouth's arbitration with Telenet regarding the resale of call forwarding services also supports this interpretation.[9] The prevention of access bypass is important both to ensure competitive neutrality among providers of toll services

---

[6] FDN's appears to confuse state universal service support versus the federal mechanism. [Tr. 271-272]

[7] In its cross-examination of Verizon witness Trimble, Commission staff raises the alternative of an ILEC availing itself of the "change in circumstances" provision of section 364.051, F.S., to replace revenues lost through an expansion of the local calling area for reciprocal compensation purposes through an increase in basic local rates. [Tr. 148]

[8] Mr. Trimble's testimony discusses the historical purpose of the access charge regime to preserve the provision of universal service. [Tr. 90]

and to ensure the continuation of revenue contributions to support universal service, at least until the Legislature replaces these contributions with an explicit universal service funding mechanism pursuant to s. 364.025 (4), F.S.

AT&T's witness argues that section 364.16(3)(a), F.S., speaks to the behavior of local exchange companies, not specifically to the Commission's authority. [Cain, Tr. 233] This argument is invalid under principles of Florida administrative law. The legislative grant of authority to the Commission embodied in section 364.01 (1), F.S., authorizes the Commission to exercise over telecommunications companies the "powers conferred by this chapter." Section 364.01(2), Florida Statutes, similarly limits the Commission's exercise of its exclusive authority over telecommunications companies to "all matters set forth in this chapter." In addition, the Florida Administrative Procedures Act in section 120.536, F.S., limits the Commission's rulemaking authority to only those matters for which it can identify a "specific law implemented."[10] Section 120.52(8), F.S., limits an agency to adopting "only rules that implement or interpret their specific powers and duties granting by the enabling statute." In this instance, the prohibition on access bypass by local exchange companies via local interconnection arrangements in section 364.16(3)(a), F.S., precludes the Commission from authorizing ILECs or ALECs to violate these specific provisions under its general grant of authority in 364.01, F.S, or its general authority to arbitrate interconnection disputes in s. 364.16, F.S.

---

[9] *In re: Petition for arbitration of dispute with BellSouth Telecommunications, Inc. regarding call forwarding by Telenet of South Florida, Inc.*, Docket No. 961346-TP, Order No. PSC-97-0462-FOF-TP (Issued April 23, 1997).

[10] While this docket is not specifically a rulemaking proceeding, the generic order that is the expected outcome of the proceeding will closely resemble the definition of a rule in s. 120.52, F.S. Section 120.52 (15), F.S., defines a rule as any statement of general applicability that implements, interprets or prescribes law or policy.

AT&T's witness Cain also tries to minimize the impediment of section 364.16(3)(a), F.S., to adopting a LATA-wide local calling area by emphasizing the modification of the term "access charges" with the phrase "that would otherwise apply." [T. 233][11] Mr. Cain postulates that if the Commission extended the local calling area to include the LATA for reciprocal compensation purposes, then access charges would not "otherwise apply" and therefore no violation of the section would occur. [Id.] However, as discussed above, the Commission has no authority to eliminate or reduce the access charges applicable for interexchange providers, so that access charges would "otherwise apply" to intraLATA calls between exchanges for IXCs.

The Legislature was well aware of the access charge regime in place for intraLATA toll calls when it enacted section 364.16(3)(a), F.S., as evidenced by its detailed regulation of such charges in section 364.163, F.S. It stands to reason that "otherwise applies" as used in section 364.16(3)(a), F.S., is intended to apply to payments under the access charge scheme, not the mechanisms for intercarrier compensation for local traffic that the Commission is authorized to establish through arbitrations in s. 364.16, F.S. Any other interpretation would leave this section of the law with little or no meaning—clearly not reflective of what the Legislature intended. As Verizon witness Trimble states "applying reciprocal compensation payments to intraLATA interexchange calls seems to be exactly the kind of end-run around access charges that the Legislature intended to prevent." [Tr. 104] It would defy common sense and a plain reading of the overall legislative mandate in chapter 364, F.S., to allow this Commission to completely

[11] Commission staff also appears to apply this interpretation of s. 364.16(3)(a), F.S., in its response to questions from the Commissioners at the December 5, 2001 Special Agenda Conference. [Dec. 5, 2001, Special Agenda Tr. 77-78]

wipe out the substantial universal service support mechanisms embedded in the access bypass provision and other rate structure and pricing provisions.

A different local calling scope for ALECs and IXCs is discriminatory and anticompetitive

Even if the Commission did have the legal authority to expand the local calling area to the LATA for LEC to LEC reciprocal compensation purposes, which Sprint believes it does not, Sprint opposes such a scheme because it is discriminatory among telecommunications carriers and it is not competitively neutral. As Ms.Ward explains, expanding the local calling area to the LATA for ALECs only would severely disadvantage IXCs in the competitive market for intraLATA toll services. [Tr. 173] In the worst case, the intraLATA market for IXCs would completely migrate to LECs over time. As Ms. Ward stated in her answer to staff's discovery request to Sprint, based on year 2001 revenues, the annualized impact to Sprint long distance from the loss of these revenues would be $14 million. [Exhibit 11]

Commissioner Deason is not incorrect in his implication that these revenues have been declining over time due to competitive pressures, particularly from the wireless market. [Tr. 56-57] However, such a wholesale reduction of the IXCs' revenues as might occur under the LATA-wide local calling proposal by regulatory fiat is bad public policy. Such regulatory intervention would leave IXCs with no mechanism to respond to competitive pressures in the intraLATA market, except perhaps to become ALECs and provision intraLATA services through their ALEC arms. [Tr. 60] Such misplaced and happenstance regulatory incentives would bring to fruition the fears of arbitrage expressed by BellSouth witness Shiroishi and Verizon witness Trimble and would skew the natural development of the competitive market. [Tr. 45, 108] The elimination of one

class of competitors (IXCs) and the hampering of another through regulatory restrictions (ILECs) is not the outcome that the Act or the Florida Statutes intended to foster.

The originating carriers local calling scope is not an acceptable alternative

The alternative of adopting the originating carrier's local calling area as the local calling area for reciprocal compensation purposes poses even more pitfalls than the alternative of using the LATA. [Trimble, Tr. 97, Ward, Tr. 185] First, it is even more discriminatory than the LATA because one carrier might pay another carrier a different intercarrier compensation rate for the same call, going in a different direction. [Trimble, Tr. 98; Ward, Tr. 185; Busbee, Tr. 210] As stated by Trimble and echoed by witness Ward, the direction of the call should have no relevance in establishing the appropriate intercarrier compensation for the call. [Trimble, Tr. 99, Ward, Tr. 185]

Second, implementation of a reciprocal compensation scheme based on the originating carriers local calling scope would be an administrative nightmare for Sprint. As Ms. Ward indicated in her testimony, the revision of Sprint's billing system to accommodate the variety of local calling scopes that might be applicable among carriers or even for the same carrier logistically would be an extremely burdensome task and would have a potentially costly impact on Sprint. [Trimble, Tr. 100; Ward, Tr. 185]

Other states have recognized the ILEC's local calling scope as the appropriate local scope for reciprocal compensation purposes

Other states that have addressed the issue of the appropriate local calling area for reciprocal compensation purposes have found that the ILEC's local calling area is appropriate to define intercarrier compensation obligations. For instance, the Texas Commission, in a broader proceeding to examine reciprocal compensation obligations under the federal act, held that local traffic (for which reciprocal compensation is due) is

defined as traffic that originates and terminates to end users in the same exchange areas or end users that share a common mandatory local calling area.[12]

The Nevada Commission, in an interconnection arbitration decision, also confirmed that reciprocal compensation should apply to traffic that originates and terminates within state-defined local calling areas.[13] Ohio, too, in its generic "Local Service Guidelines" establishes the ILEC local calling area as the demarcation for differentiating local and toll calls for the purpose of determining appropriate traffic termination compensation.[14] This decision was recently affirmed in Sprint's Ohio arbitration with Global NAPs.[15] As Ms. Ward indicates in her rebuttal testimony, no state in which Sprint operates as an ILEC currently has defined the LATA as the local calling area for intercarrier compensation purposes. [Tr. 183]

In the original Phase II proceeding, ALEC witness Selwyn cited to New York as a state that had adopted a LATA wide local calling scope for reciprocal compensation purposes.[16] However, New York's decision was adopted prior to the enactment of the 1996 Act and also in the context of a different statutory price regulation and universal service scheme. Therefore, the New York decision should not be persuasive to the Commission in making its determination in this docket.

---

[12] *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Texas Public Utilities Docket No. 21982, (August 31, 2000).

[13] Arbitrations between Pac-West Telecomm, Inc. and Nevada Bell and Advanced Telecom Group and Nevada Bell, Public Utilities Commission of Nevada Docket Nos. 98-10015 and 99-1007, Revised Arbitration Decision (April 12, 1999).

[14] *In the Matter of the Implementation of the Mediation and Arbitration Provisions of the Federal Telecommunications Act of 1996*, Public Utilities Commission of Ohio Case No. 96-463-TP-UNC, adopting Ohio Local Service Guideline IV.C.

[15] Global NAPs Arbitration with Sprint and Ameritech, Public Utilities Commission of Ohio Case No. 01-2811-ARB and 01-3096-ARB, Arbitration Award, Issued May 9, 2002.

[16] *Proceeding to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market*, New York Public Service Commission Case No. 94-C-0095, Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation (Issued Sept. 27, 1995).

The ILEC's Local Calling Scope Is The Appropriate Default For Reciprocal Compensation Purposes

The Commission is constrained by the provisions of Florida law from altering the local calling scope for reciprocal compensation purposes to include the entire LATA and from eliminating or replacing access charges with reciprocal compensation as the appropriate intercarrier compensation mechanism for these calls. Such a plan, even if legally permissible, would be discriminatory against other carriers (specifically IXCs) who are required by Florida law to continue to pay access charges for intrastate interexchange calls. Maintaining the ILEC local calling scope as the local calling scope for reciprocal compensation purposes avoids these anticompetitive and discriminatory effects, in that all providers are treated equally regarding the payment of access charges to the originating and terminating local exchange provider for intraLATA toll calls. [Trimble, Tr. 100, 103, 116]

In addition, since the other states in which Sprint operates as an incumbent local exchange provider have not adopted the LATA-wide local calling area concept, the Commission's implementation of a LATA-wide local calling scope for reciprocal compensation purposes would require Sprint to change its billing systems to accommodate this unique compensation system in Florida. [Ward, Tr. 183] The other suggested alternative, using the originating carriers local calling scope to determine the appropriate intercarrier compensation, is also discriminatory and would impose an even higher, and perhaps more costly, administrative burden on Sprint to implement. [Ward, Tr. 185]

Adopting the ILEC local calling scope for reciprocal compensation purposes has none of these detriments. It is consistent with the Commission's delegated authority

under federal and state law. It is competitively neutral, in that all carriers would be subject to the same compensation scheme for the same types of calls. It preserves the current interim mechanism for supporting universal service obligations in place in Florida. The preservation of the interim mechanism ensures that no increases in end user rates or imposition of additional end user surcharges are necessary to replace the potentially substantial loss of revenue to ILECs from the elimination of IntraLATA toll access charges and the erosion of intraLATA toll revenues. It imposes no administrative burdens on Sprint, as it is the compensation mechanism currently in place under all of Sprint's interconnection agreements in all of the states in which Sprint provides local service. For these reasons Sprint urges the Commission's to determine that ILEC's local calling scope, as set forth in the ILEC's tariffs is the appropriate default reciprocal compensation mechanism in Florida.

ISSUE 17: Should the Commission establish compensation mechanisms governing the transport and delivery of traffic subject to Section 251 of Act to be used in the absence of the parties reaching an agreement or negotiating a compensation mechanism? If so, what should be the mechanism?

a) Does the Commission have jurisdiction to establish bill and keep?

b) What is the potential financial impact, if any, on ILECs and ALECs of bill and keep arrangements?

c) If the Commission imposes bill and keep as a default mechanism, will the Commission need to define generically "roughly balanced?" If so, how should the Commission define "roughly balanced?"

d) What potential advantages or disadvantages would result from the imposition of bill and keep arrangements as a default mechanism, particularly in comparison to other mechanisms already presented in Phase II of this docket?

Position: **Sprint's traffic analysis shows that traffic is generally not roughly balanced between Sprint and individual ALECs in Florida. Therefore, Sprint believes there is little benefit in the Commission adopting a presumption that traffic is roughly balanced and establishing bill and keep as the default mechanism for reciprocal compensation in Florida.**

Discussion:

Commission jurisdiction

The Commission has jurisdiction under section 252(d)(2) of the Act to establish charges for reciprocal compensation. Section 252(d)(2) also provides that a state is not precluded from approving bill and keep arrangements in carrying out its responsibilities related to the establishment of such charges.

FCC Rule 51.713 spells out a state commission's authority to impose bill and keep arrangements for reciprocal compensation. The rule provides that the Commission may impose such arrangements if the Commission determines that the amount of telecommunications traffic is "roughly balanced" from one network to another (that is, between specific carrier networks) and is expected to remain so (and a showing of cost-justification for asymmetrical compensation has not been made). In addition, the rule allows the Commission to presume that traffic between carriers is roughly balanced, unless a party rebuts this presumption.

Affect of pending FCC proceeding

While the Commission has jurisdiction to impose a bill and keep mechanism, consistent with federal law and current FCC rules, the FCC is in the midst of a proposed rulemaking proceeding with the intent of specifically and thoroughly assessing the

benefits of imposing bill and keep arrangements for all types of intercarrier compensation.[17] Verizon has recommended that this Commission defer a ruling on the bill and keep issue until the FCC has completed that proceeding, since the FCC's determinations will likely preempt and could negate any or all of this Commission's determinations regarding this issue. (Tr. 86) Other parties (including Sprint), while not specifically advocating that the Commission defer a ruling pending the FCC action, have recommended that it is not appropriate for the Commission to impose bill and keep as a default reciprocal compensation mechanism in this proceeding, a view that is not inconsistent with Verizon's position that any ruling by this Commission should be delayed until completion of the FCC proceedings. [Hunsucker, Tr. 200-201; Barta, Tr. 259]

Only BellSouth has taken a strong position in favor of the Commission adopting bill and keep as the default mechanism for reciprocal compensation in this proceeding. [Tr. 31] BellSouth's position is that the Commission should adopt bill and keep as the default mechanism for reciprocal compensation for all traffic that remains subject to 251(b)(5), after the removal of ISP-bound traffic from that category as a result of the FCC's ruling in the ISP Remand Order.[18]

---

[17] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC 001-132 (Released April 27, 2001). The FCC states: We intend to test the concept of a unified regime for the flows of payments among telecommunications carriers that result from the interconnection of telecommunications networks under current systems of regulation. Specifically, we seek comment on the feasibility of a bill-and-keep approach for such a unified regime." ¶ 1.

[18] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, FCC 01-131 (Released April 27, 2001) ("ISP Remand Order"). A recent decision of the federal DC Circuit Court of Appeals remanded the ISP Remand Order back to the FCC for further analysis. However, the court explicitly did not vacate the ISP Remand Order, therefore it is still law pending the outcome of the remand proceedings. Worldcom v. FCC, U.S. Ct. of Appeals for the D.C. Circuit, Case No. 01-1218, decided May 3, 2002.

Traffic is not roughly balanced between Sprint and ALECs in Florida

The parties generally agree that under the current FCC rules, traffic between specific carrier networks must be roughly balanced for the Commission to have the authority to impose bill and keep as the default mechanism for reciprocal compensation. (Shiroishi, Tr. 28; Trimble, Tr.110; Hunsucker, Tr. 195; Barta, Tr. 246; Cain, Tr. 225) Similarly, the parties generally agree that the FCC allows the Commission to presume that traffic is roughly balanced, subject to a carrier demonstrating to the Commission that such is not the case. (Shiroishi, Tr. 29; Trimble, Tr. 110; Hunsucker, Tr. 195; Barta, Tr. 249) However, Parties disagree on the proper definition of roughly balanced.

BellSouth has taken a "creative" position regarding the significance of the provisions of the ISP Remand Order to determining the meaning of roughly balanced. According to BellSouth's analysis, the FCC in its ISP Remand Order has determined that all traffic over a 3:1 ratio (of terminating to originating traffic) is presumed to be ISP-bound traffic because the mutual exchange of traffic is out of balance by such a significant degree.[19] The remaining traffic is presumed to be 251(b)(5) traffic, that is, local telecommunications traffic, subject to the reciprocal compensation requirements of the Act.[20] BellSouth has interpreted the FCC's demarcation of a threshold for the application of the FCC's rate structure for ISP traffic as a springboard for its interpretation that the order establishes a precedent that traffic exchanged at a 3:1 ratio or less is "roughly balanced" for the purpose of determining the appropriate compensation for the remaining 251 (b)(5) traffic. [Tr. 29, 31] Sprint disagrees that BellSouth's analysis is supported by the provisions of the ISP Remand Order.

[19] ISP Remand Order ¶ 79.
[20] ISP Remand Order ¶ 79.

The ISP Remand Order provides that traffic over a 3:1 ratio is presumed to be ISP-bound traffic and sets out a diminishing compensation mechanism for such traffic.[21] It states the objective, ultimately, of approaching bill and keep for ISP-bound traffic and, in fact, imposes bill and keep as the appropriate intercarrier compensation mechanism for "new" ISP-bound traffic.[22] In contrast, the Order provides that traffic exchanged at under the 3:1 ratio is presumed to be 251(b)(5) traffic, and continues to be subject to the state-imposed reciprocal compensation mechanisms.[23] This structure for compensation for 251(b)(5) traffic versus ISP-bound traffic contradicts the interpretation BellSouth proposes. As AT&T's witness Cain points out, a definition of roughly balanced that allows one carrier to terminate three times as many minutes as the other carrier is an "extremely 'rough' definition of 'roughly in balance' and is, therefore, unreasonable." [Tr. 236]

Other parties to the proceeding propose a standard based on a 10% differential or less between traffic exchanged between two networks as a benchmark to determine when traffic is roughly balanced. [Trimble, Tr.110; Cain, Tr. 237; Barta, Tr. 247; Warren, Tr. 267-268][24] Sprint suggests that it isn't necessary for the Commission to define roughly balanced at this time, because bill and keep should not be adopted as a default mechanism in this proceeding. [Tr. 200]

Sprint conducted an analysis of traffic exchanged between Sprint and ALECs in Florida, both with ISP-bound traffic included and with ISP-bound traffic excluded.

---

[21] ISP Remand Order ¶ 78.
[22] ISP Remand Order ¶ 81.
[23] ISP Remand Order ¶79. However, if an ILEC elects the compensation ISP-bound traffic at the FCC imposed rate, 251(b)(5) traffic must be exchanged at the FCC rate as well. On the other hand, if the ILEC does not elect the FCC rate, then all traffic, including ISP-bound traffic is subject to the state-imposed 251(b)(5) rate. ¶
[24] While the proposals use a common percentage deviation of 10%, the details of the proposals vary.

(Exhibit 3, originally prefiled as Exhibits MRH-1 and MRH-2). Even excluding ISP-bound traffic, Sprint's studies show that traffic between Sprint and ALECs in Florida is generally out of balance, at a total market ratio of 1.94 to 1. (Tr. 199; Exhibit 3, MRH-2).[25]

While BellSouth argues that Sprint traffic is in balance, using BellSouth's liberal interpretation of "roughly balanced" equaling a 3:1 ratio, Sprint believes that the traffic patterns represented by its exchange of traffic with ALECs in Florida would not meet the standard expressed in the FCC rule. Under the definition of roughly balanced proposed by a majority of parties to this proceeding, that is a standard of no more than a 10% deviation, the traffic patterns between Sprint and ALECs would not be considered roughly balanced and, therefore, bill and keep could not be imposed pursuant to the FCC's rule. As a result, Sprint believes that any attempt to impose bill and keep as a default mechanism in its interconnection agreements with ALECs would likely result in arbitration proceedings before the Commission to address the roughly balanced concern, undercutting any benefit to the parties or the Commission from adopting a default mechanism. [Tr. 200]

A default mechanism will not facilitate interconnection agreement negotiations or save company or Commission resources

Because, as explained above, traffic patterns between Sprint and ALECs in Florida do not appear to meet the FCC's rule requirement that such traffic be roughly balanced for bill and keep to be appropriate, Sprint does not see any benefit to establishing bill and keep as the default reciprocal compensation mechanism in Florida.

[25] A review of confidential data submitted in response to staff discovery by BellSouth (Exhibit 13) and Verizon (Exhibit 15), appears to demonstrate potentially significant variations in the balance of traffic between each ILEC and individual ALECs, as well.

[Tr. 200] In fact, such a default mechanism might result in increased arbitrations before the Commission to address disagreements between the parties concerning the balance of traffic. [Id.] Even if the Commission adopts a definition of roughly balanced, the parties still probably will dispute whether, in fact, the exchange of traffic in a particular arrangement meets this standard. The parties appear to agree that arbitrations concerning this issue would likely result if the Commission adopts a presumption of roughly balance for the purpose of imposing bill and keep as the default mechanism for reciprocal compensation. [Shiroishi, Tr. 30; Trimble, Tr. 111; Hunsucker, Tr. 200; Barta, Tr. 248; Cain, Tr. 225; Warren, Tr. 269]

The ISP Remand Order, addressing the appropriate intercarrier compensation for ISP-bound traffic, has altered the effect of any decision by this Commission to implement bill and keep as a default mechanism for reciprocal compensation. The order has eliminated ISP-bound traffic from the mix of 251(b)(5) traffic, but requires ILECs who elect the FCC compensation scheme for ISP-bound traffic to apply the same rate to reciprocal compensation for 251(b)(5) traffic as they apply to ISP-bound traffic.[26] This requirement supersedes any compensation mechanism this Commission may adopt.[27] While it is true, as BellSouth's witness Shiroishi notes, that an ALEC may refuse to accept the ILEC's offer to exchange all traffic at the FCC rate [Tr. 42], if this Commission ordered bill and keep as the default reciprocal compensation mechanism, Sprint believes that would provide an incentive for ALECs to accept the offer, since they would then receive some compensation for their 251(b)(5) traffic. This would negate any impact of the Commission's adoption of the bill and keep default mechanism.

[26] ISP Order ¶ 89.
[27] ISP Order ¶ 82.

Adopting a bill and keep mechanism in Florida would not save administrative costs for Sprint. As explained by Sprint's witness Hunsucker, because Sprint's billing systems are regional in scope, and because bill and keep is not the norm in other states where Sprint provides local service as an incumbent, it would actually impose costs on Sprint to treat Florida reciprocal compensation different from the other states. [Tr. 201]

The Commission should not adopt bill and keep or a presumption of bill and keep as the default reciprocal compensation mechanism in Florida

The FCC is currently engaged in a comprehensive proceeding to examine bill and keep for intercarrier compensation for all types of telecommunications traffic exchanged between carriers. The outcome of the FCC proceeding likely will affect, if not negate, any action that the Commission takes on this issue at this time. (Trimble, Tr. 87, 112] Based on Sprint's analysis of its exchange of traffic with ALECs in Florida, such traffic is not uniformly roughly balanced. As stated by FCTA witness Barta and AT&T witness Cain, if traffic is roughly balanced, the parties have an incentive to agree to bill and keep within the context of the negotiation of their individual interconnection agreement. [Tr. 225, 251] Therefore, Sprint does not see any benefit from the Commission adopting, in this generic proceeding, a presumption that traffic is roughly balanced until a party rebuts it for the purpose of imposing bill and keep for 251(b)(5) traffic.

Sprint does not support the adoption of bill and keep as the presumptive default reciprocal compensation mechanism in Florida. Rather, Sprint suggests that the FCC rules establishing symmetrical reciprocal compensation mechanisms should be recognized as the default mechanism in Florida in this generic proceeding. [Hunsucker, July 5, 2001 Phase II Hearing, Tr. 520-521.]

DATED THIS 10th day of June 2002.

Susan S. Masterton
P.O. Box 2214
Tallahassee, FL 32316-2214
850-599-1560

ATTORNEY FOR SPRINT