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September 8, 2003

VIA HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of the Commission
Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

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Re: Docket No. 030296-TP

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of the Sprint-Florida, Incorporated's Response to AT&T's Motion for Protective Order.

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

Thank you for your assistance in this matter.

Sincerely,



J. Jeffrey Wahlen

Enclosures

cc: All Parties of Record

- AUS _____
- CAF _____
- CMP _____
- COM 3 _____
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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of unresolved issues resulting from negotiations with Sprint-Florida, Incorporated for interconnection agreement, by AT&T Communications of the Southern States, LLC d/b/a AT&T and TCG South Florida

DOCKET NO. 030296-TP
FILED: September 8, 2003

**SPRINT-FLORIDA, INCORPORATED'S RESPONSE TO AT&T'S
MOTION FOR PROTECTIVE ORDER**

In accordance with Rules 28-106.204, Florida Administrative Code, and Rule 1.280(c), Florida Rules of Civil Procedure, Sprint-Florida, Incorporated ("Sprint" or the "Company") hereby files its response in opposition to the motion for protective order regarding the deposition of David L. Talbott filed by AT&T Communications of the Southern States, Inc. and TCG South Florida ("AT&T") on September 5, 2003 ("Motion"), and requests the Motion be denied.

Argument

1. The battle over Issue No. 7 and VOIP has now been raging for over six (6) weeks.
2. Sprint served its First Set of Interrogatories to AT&T on June 27, 2003. [DN 05753-03] Therein, Sprint propounded thirteen interrogatories (Nos. 3-15) that were "fact specific, fact intensive and fact dependent" regarding AT&T's use of VOIP in the State of Florida, *i.e.*, Sprint requested information about VOIP minutes of use, routing, technology and services. AT&T served preliminary objections to the VOIP interrogatories on July 2, 2003. [DN 05907-03] Sprint promptly contacted counsel for AT&T to attempt to resolve

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those objections, but could not. AT&T renewed its objections to the VOIP interrogatories when it answered portions of Sprint's First Set of Interrogatories on July 14, 2003; however, AT&T did not answer the VOIP interrogatories. [DN 06167-03] Sprint filed a Motion to Compel on July 15, 2003. [DN06258-03]

3. AT&T responded to Sprint's Motion to Compel and filed a Motion for Protective Order and Motion in Limine on July 22, 2003. [DN06574-03] Therein, AT&T essentially requested that Issue No. 7 be eliminated as an issue in this case and requested an order blocking Sprint's VOIP interrogatories.

4. The pre-hearing conference was held on July 24, 2003, at which time the pre-hearing officer heard argument on Sprint's Motion to Compel and AT&T's Motion for Protective Order and Motion in Limine. At the conclusion of the arguments, Staff announced their preliminary recommendation that Sprint's Motion to Compel be granted in part and denied in part. [Transcript of Pre-hearing Conference, page 37, Ins. 10-17] More specifically, Staff recommended that the VOIP interrogatories should be answered, but that the interrogatories should be limited to "calls that originate or terminate in Sprint's service territory and services provided or offered within Sprint's service territory." [Id.]

5. Sprint filed its Response to AT&T's Motion for Protective Order and Motion in Limine on July 28, 2003. [DN 06781-03] Therein, Sprint agreed to the limitation recommended by Staff at the pre-hearing conference.

6. Since then, Staff has sent interrogatories to AT&T seeking "fact specific, fact intensive and fact dependent" information about AT&T's use of VOIP as it relates to Sprint. See Staff's Third Set of Interrogatories, served August 22, 2003. [DN 07814-03] Likewise, Sprint has sent a second set of interrogatories to AT&T, some of which seek "fact specific,

fact intensive and fact dependent” information about AT&T’s use of VOIP as it relates to Sprint. See Sprint’s Second Set of Interrogatories to AT&T, served August 19, 2003. [DN 07679-03]

7. In turn, AT&T has raised the same objections and renewed its Motion for Protective Order and Motion in Limine, both as to Sprint’s Second Set of Interrogatories and Staff’s Third Set of Interrogatories. [DNs 07889-03 and 07996-03] On August 29, 2003, Sprint responded by restating its response to the Motion for Protective Order and Motion in Limine and moved to compel AT&T to answer the VOIP interrogatories in Sprint’s Second Set of Interrogatories. [DN 08099-03]

8. On September 3, 2003, Sprint served a notice of deposition of AT&T’s witness, David L. Talbott, for September 9, 2003. [DN 8189-03] Predictably, AT&T filed a Motion for Protective Order on September 5, 2003 (“Motion”), therein requesting that AT&T be excused from answering “fact specific, fact intensive and fact dependent” information about AT&T’s use of VOIP.

9. AT&T’s Motion restates the arguments it has made at least four (4) times in the proceeding, but offers nothing new that has not already been raised and responded to before. Although Sprint could repeat its arguments again, Sprint hereby simply incorporates by reference the arguments contained in its Motion to Compel, dated July 15, 2003 [DN 06258-03] and its Response (July 28, 2003) to AT&T’s Motion for Protective Order and Motion in Limine [DN 06781-03] as though fully repeated herein.

10. All of the arguments regarding Issue No 7 and “fact specific, fact intensive and fact dependent” discovery about AT&T’s use of VOIP have been made multiple times. Issue No. 7 on VOIP has been an issue in this case since inception. AT&T has not moved

to strike the issue, but rather, continues to seek to limit Sprint's and the Commission's access to relevant information on VOIP so that the Commission will be forced to decide Issue No. 7 in AT&T's favor.

11. AT&T's answers to Sprint's First Set of Interrogatories were due on July 14, 2003 and have been unanswered now for 56 days and counting. AT&T's answers to the VOIP questions in Sprint's Second Set of Interrogatories were due on August 25, 2003 and have been unanswered now for 14 days.

12. In its pleadings incorporated herein by reference, Sprint has cited the federal court case involving this Commission¹ that compels the Commission to hear and decide Issue No. 7. AT&T has cited no persuasive legal precedent to the contrary.

13. Although AT&T claims that "fact specific, fact intensive and fact dependent" information about AT&T's use of VOIP is not relevant or calculated to lead to the discovery of admissible evidence, that would only conceivably be the case if the pre-hearing officer or Commission decide Issue No. 7 in AT&T's favor **before** the hearing even occurs, which would be improper.

14. Because the hearing is scheduled for little more than a week from the scheduled date for the deposition, and due to the unresolved dispute over the status of this issue Sprint has been unable to obtain from AT&T the information necessary to present its case regarding VoIP traffic, a prompt resolution of Sprint's Motions to Compel and AT&T's Motions for Protective Order is imperative, to allow the parties to proceed with the necessary case preparation.

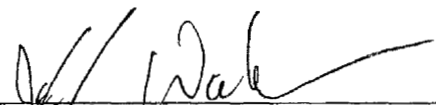
¹ See MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., 112 F. Supp. 2d 1286, 1297 (N. D. Fla. 2000).

WHEREFORE, Sprint respectfully requests that AT&T's Motion for Protective Order be denied, that AT&T's witness Talbott be required to answer "fact specific, fact intensive and fact dependent" information about AT&T's use of VOIP during his deposition, and that AT&T be compelled to answer the VOIP interrogatories to which it has objected in Sprints First and Second Set of interrogatories to AT&T.

DATED this 8th day of September, 2003.

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CERTIFICATE OF SERVICE

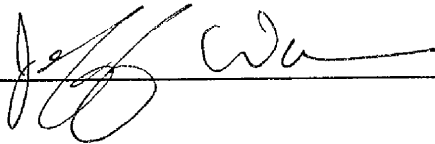
I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail or hand delivery (*) this 8th day of September, 2003, to the following:

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