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May 27, 2005

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

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Re: Docket No. 041464-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint-Florida, Incorporated are the original and 15 copies of Sprint's Direct Testimony and Exhibits of:

1. Jimmy R. Davis and Exhibit JRD-1 05190-05
2. Steven D. Givner and Exhibit SDG-1 05191-05
3. James M. Maples 05189-05
4. Peter Sywenki 05192-05

DOCUMENT NUMBER - DATE  
 05189 MAY 27 '05  
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Maples  
Davis  
Sywenki  
Givner

FPSC-COMMISSION CLERK

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 my assistant. If you have any questions, please do not hesitate to call me at 850/599-1560.

Sincerely,

*Susan S. Masterton*

Susan S. Masterton

Enclosure

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Givner  
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**CERTIFICATE OF SERVICE  
DOCKET NO. 041464-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail on this 27<sup>th</sup> day of May, 2005 to the following:

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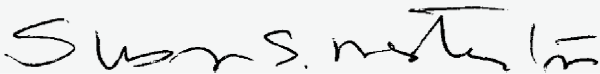
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Susan S. Masterton  
Susan S. Masterton

1 **BEFORE THE PUBLIC SERVICE COMMISSION**

2  
3 **DIRECT TESTIMONY**

4 **OF**

5 **JAMES M. MAPLES**

6  
7 **Q. Please state your name, title and business address.**

8 **A.** My name is James M. Maples. I am employed as Regulatory Affairs Manager,  
9 for Sprint/United Management Company. My business address is 6450 Sprint  
10 Parkway, Overland Park, KS 66251.

11  
12 **Q. Please summarize your educational and professional background.**

13 **A.** I received a Bachelor of Science degree from East Texas State University,  
14 Commerce, Texas, in December 1973 with majors in mathematics and industrial  
15 technology. During that period, beginning in 1968, I was also employed by  
16 Sprint/United Telephone Texas as an installer/repairman of residential, simple and  
17 complex business systems and as a central office switchman. I completed the  
18 company's Management Training program in 1974 and was promoted to the  
19 position of Revenue Requirement Analyst later that same year.

20  
21 For the next seventeen (17) years I held positions of increasing responsibilities in  
22 state, regional and corporate Sprint organizations. During that period, I prepared  
23 or was responsible for jurisdictional separation studies, revenue budgets, demand

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1 forecasts, access charge rates, and financial reporting to various regulatory  
2 agencies.

3  
4 From 1991 through 1995, as Manager Cost Allocations for Sprint/United  
5 Management Company, I developed financial models for alternative regulation,  
6 participated in a two year project to develop a system-wide product costing  
7 model, developed and trained personnel on revenue budget models, and  
8 standardized systems for separations costing through system design, development,  
9 testing and implementation.

10  
11 In 1995 I accepted the position of Manager-Pricing/Costing Strategy and for 17  
12 months coordinated several system-wide teams that were charged with the  
13 identification and development of methods, procedures, and system changes  
14 required to implement local competitive services. During that period, I  
15 coordinated the technical support needed to establish and maintain relationships  
16 with Competitive Local Exchange Carriers (CLECs).

17  
18 From September 1996 through July 1999 I held the position of manager of  
19 Competitive Markets – Local Access with the responsibility for pricing unbundled  
20 network elements, supporting negotiations with new competitive carriers, and  
21 assisting in implementation issues.

22  
23 I began my current position in August 1999. My responsibilities include the

1 review of legislation, court rulings, state commission and FCC orders affecting  
2 telecommunications policy, interpreting the impact to the corporation, developing  
3 positions, communicating them throughout the organization, and representing  
4 them before regulatory bodies such as the Florida Public Service Commission  
5 (FPSC).

6  
7 **Q. Have you testified before any regulatory commissions?**

8 **A.** Yes. I have testified before the Missouri, Florida, Nevada, and California  
9 regulatory commissions regarding interconnection and network unbundling  
10 issues.

11  
12 **Q. On whose behalf are you testifying?**

13 **A.** I am testifying on behalf of Sprint - Florida, Incorporated (hereafter referred to as  
14 "Sprint").

15  
16 **Q. What is the purpose of your Direct Testimony?**

17 **A.** The purpose of my Direct Testimony is to provide Sprint's positions regarding the  
18 following outstanding issues:

19 **ISSUE 21** What are the appropriate terms and conditions applicable to the  
20 resale of Contract Service arrangements, Special arrangements, or  
21 Individual Case Basis (ICB) arrangements?

22 **ISSUE 22** What terms and conditions should be included to reflect the FCC's  
23 TRO and TRRO decisions?

1           **ISSUE 24** May Sprint restrict UNE availability where there is not a  
2                           “meaningful amount of local traffic?” If so, what is a “meaningful  
3                           amount of local traffic?”

4           **ISSUE 25** When and how should Sprint make sub-loop access available to  
5                           FDN?

6           **ISSUE 27** Under what circumstances must Sprint, at FDN’s request, combine  
7                           and provide individual network elements that are routinely combined  
8                           in Sprint’s network?

9           **ISSUE 29** What rates, terms and conditions should apply to routine network  
10                          modifications on UNEs available under the Agreement?

11          **ISSUE 30** On what rates, terms and conditions should Sprint offer loop  
12                          conditioning?

13          **ISSUE 34** What are the appropriate rates for UNEs and related services  
14                          provided under the Agreement?

15

16   **Q.    Please summarize your Direct Testimony?**

17   **A.**    Sprint operates as both a CLEC and ILEC in the state of Florida. It is therefore  
18           both providing and receiving access to unbundled network elements (UNEs).  
19           Sprint’s positions on these issues are balanced, based on reasonable  
20           interpretations of FCC rules and orders. There is no longer any need for “fresh  
21           look” periods in which end users avoid agreed to termination liabilities in contract  
22           service arrangements when they switch service providers. Furthermore, such  
23           periods discriminate against ILECs and produce less competition. Sprint’s

1 proposed terms for managing the loss of UNE access due to the changing status of  
2 its wire centers are reasonable and should be adopted. The limit on the number of  
3 DS1 Dedicated Transport circuits on any given route is appropriate and consistent  
4 with the FCC's rules. Unbundled network elements cannot be used to provide  
5 services in competitive markets or for information services unless they are also  
6 being used to provide local exchange service. Sprint's proposal for the pricing of  
7 sub-loops and access to sub-loops is consistent with prior findings of the FPSC  
8 and the FCC's rules. Sprint's rates and terms for combining unbundled network  
9 elements and commingling unbundled network elements with wholesale services  
10 are supported by FCC rules and decisions made by the FPSC when investigating  
11 Sprint's UNE rates. The rates and terms that Sprint offers for routine network  
12 modifications, loop conditioning, and other unbundled network elements are  
13 consistent with the FPSC's prior findings as well as the FCC rules and should be  
14 adopted.

15

16 **ISSUE 21** What are the appropriate terms and conditions applicable to the resale of  
17 Contract Service arrangements, Special arrangements, or Individual Case  
18 Basis (ICB) arrangements?

19

20 **Q. What is the dispute between FDN and Sprint?**

21 **A.** Sprint often provides telecommunications services to end users via contract  
22 service arrangements (CSA), Special arrangements, or Individual Case Basis  
23 arrangements that include components that are unique to the specific

1 circumstances of the service offerings. The arrangement can include a  
2 termination liability that obligates the end user to pay Sprint a fee if they decide to  
3 terminate the contract before the termination date. These fees ensure Sprint's  
4 ability to recover costs that it may have deferred over the life of the agreement  
5 rather than recover them in an initial payment, to the benefit of the end user.  
6 Sprint has proposed terms that exercise this termination liability should the end  
7 user choose to transfer service to a CLEC reseller before the CSA termination  
8 date. FDN opposes these terms, seeking an indefinite "fresh look" period,  
9 allowing the end user to avoid these contractual obligations. The terms proposed  
10 by Sprint are as follows. The terms being disputed are emboldened.

11  
12 38.1.3 Sprint shall offer for resale all of its Telecommunications Services  
13 available at retail to subscribers who are not Telecommunications  
14 Carriers, including but not limited to Contract Service Arrangements  
15 (or ICB), Special Arrangements (or ICB), and Promotions in excess of  
16 ninety (90) Days, all in accordance with FCC and Commission Rules  
17 and Regulations. **For Contract Service Arrangements, Special**  
18 **Arrangements, or ICBs, the end-user customer's agreement with**  
19 **Sprint will terminate and any applicable termination liabilities**  
20 **will be charged to the end-user customer. The terms of the**  
21 **Contract Service Arrangement, Special Arrangement or ICB will**  
22 **apply commencing on the date CLEC commences to provide**  
23 **service to the end-user customer and ending on the end date of the**



1                   **Contract Service Arrangement, Special Arrangement or ICB.**

2                   **Sprint will apply the rate in the Contract Service Arrangement,**

3                   **Special Arrangement or ICB in accordance with section 38.1.**

4  
5   **Q.    How should the Commission resolve on this issue?**

6   **A.    The terms proposed by Sprint should be adopted.**

7  
8   **Q.    What is a “fresh look” period?**

9   **A.    A fresh look period is a time of limited duration in which end users are allowed to**  
10           **opt out of a CSA or similar arrangement with an Incumbent Local Exchange**  
11           **Carrier (ILEC), choosing service from a competing provider, without incurring**  
12           **the cost of termination liabilities.**

13  
14   **Q.    What was the purpose of this period?**

15   **A.    The intent was to jump start competition in the period immediately following**  
16           **passage of the Telecommunications Act of 1996 (Act). Given the fact that this**  
17           **was almost a decade ago, and that competition for business customers, which are**  
18           **the primary users of such arrangements, is apparent, Sprint does not believe that it**  
19           **is necessary.**

20  
21   **Q.    Has the FPSC addressed fresh look periods in other proceedings?**

22   **A.    The FPSC approved a fresh look rule applying to all contracts executed prior to**  
23           **June 30, 1999 that remain in effect 1 year after the effective date of the rule;**  
24           **however, the rules were never formally adopted. (See Docket No. 980253-TX)**

1 Several ILECs opposed the rules to the Department of Administrative Hearings  
2 (DOAH), which found in favor of the ILECs, and the FPSC withdrew the rules.  
3 (See, GTE FLORIDA, INC., Petitioner, vs. FLORIDA PUBLIC SERVICE  
4 COMMISSION, Respondent.; BELLSOUTH TELECOMMUNICATIONS, INC.,  
5 Petitioner, vs. FLORIDA PUBLIC SERVICE COMMISSION, Respondent; Case  
6 No. 99-5368RP; Case No. 99-5369RP; July 13, 2000, Agency Final Order  
7 (DOAH Order))

8

9 **Q. Why did the DOAH rule in favor of the ILECs?**

10 **A.** The DOAH determined that the establishment of the rules was an invalid  
11 exercise of delegated legislative authority. They based this on a variety of  
12 findings including a determination that the rules discriminated against ILECs and  
13 would actually produce less rather than more competition. (DOAH Order at 114,  
14 115, and 117.)

15

16 **Q. What bearing do these proceedings have on FDN's objection to Sprint's  
17 proposed terms?**

18 **A.** The FPSC recognized that there should be a limit to a fresh look period and  
19 proposed rules that would have essentially ended it after 2004. It is now 2005,  
20 almost a decade after the passage of the Act, and a fresh look period is no longer  
21 necessary or appropriate. The DOAH findings clearly support the position that a  
22 fresh look period is not necessary to promote competition nor does it discriminate  
23 against CLECs.

1 **Q. Has the FCC addressed termination liabilities?**

2 A. The FCC considered termination liabilities in the Triennial Review Order (TRO)  
3 with respect to CLECs converting special access services to unbundled network  
4 elements (UNEs). (See, FCC 03-36, *Review of the Section 251 Un bundling*  
5 *Obligations of Incumbent Local Exchange Carriers, Implementation of the Local*  
6 *Competition Provisions of the Telecommunications Act of 1996, Deployment of*  
7 *Wireline Services Offering Advanced Telecommunications Capability*, CC  
8 Dockets 01-338, 96-98, 98-147, Report and Order and Order on Remand and  
9 Further Notice of Proposed Rulemaking, Released August 21, 2003.) The FCC  
10 declined “to require incumbent LECs provide requesting carriers an opportunity  
11 to supersede or dissolve existing contractual arrangements through a conversion  
12 request” in paragraph 584 of the TRO. Sprint’s proposed terms, while applicable  
13 to resale, are consistent with this position.

14  
15 **Q. Is Sprint refusing to resell CSAs?**

16 A. No. Sprint’s proposed language makes it clear that they are available for resale.

17  
18 **ISSUE 22** What terms and conditions should be included to reflect the FCC’s TRO  
19 and TRRO decisions?

20 **Q. Please describe the dispute between the parties.**

21 A. There are two specific issues being disputed. The first issue has to do with the  
22 process that the parties will follow when Sprint wire centers meet the thresholds  
23 defined by the FCC in the Triennial Review Remand Order (TRRO) and its

1 obligation to unbundle certain UNEs is eliminated. (See, FCC 04-290,  
2 *Unbundled Access to Network Elements, Review of the Section 251 Obligations of*  
3 *Incumbent Local Exchange Carriers*, WC Docket 04-313 and CC Docket 01-338,  
4 Order on Remand, Released February 4, 2005.) The terms proposed by Sprint are  
5 consistent with the TRRO, providing FDN (as well as all affected CLECs) with  
6 adequate notice and giving FDN the opportunity to challenge Sprint's claim under  
7 the dispute resolution process defined in the interconnection agreement. FDN has  
8 asked Sprint to inform it if another CLEC files with the FPSC for resolution of a  
9 dispute regarding the status of a wire center. Such disputes filed with the FPSC  
10 are public record and readily available to FDN on the Commission's web site.

11 The second disputed matter is over the DS1 Dedicated Transport cap included in  
12 the FCC's rules. FDN claims that the cap is only applicable on routes where DS3  
13 Dedicated Transport is no longer available. Sprint disagrees.

14  
15 The terms affected by the first issue are included in 44.6.5 (DS1 Loop), 44.7.5  
16 (DS3 Loop), 49.2.4 (DS1 Dedicated Transport), 49.3.4 (DS3 Dedicated  
17 Transport) and 49.5.3 (Dark Fiber Dedicated Transport). For the sake of  
18 efficiency, only the DS1 Loop terms are show below since the disputed language  
19 is the same in all cases. It is displayed as underlined text.

20 **44.6.5 If Sprint identifies Wire Centers in addition to those listed on Exhibit**

21 A that exceed the threshold, Sprint will provide CLEC notice in  
22 accordance with the notice provisions of this Agreement. CLEC shall  
23 not be able to order new DS1 loops for the identified wire centers 30

1 days after the date of the notice, subject to the Dispute Resolution  
2 section of this Agreement. If any carrier has disputed a wire center  
3 designation and the dispute was resolved by the Commission, the  
4 Parties will abide the Commission's decision in that dispute provided  
5 CLEC is given notice pursuant to section 20 of this Agreement within ten  
6 days of such proceeding being filed with the Commission and CLEC may  
7 participate in such proceeding as a party. Any DS1 loops from the wire  
8 centers identified in the notice which are leased from Sprint on the date of  
9 the notice shall be available for a 12-month period from the date of the  
10 notice at a rate that is equal to 115% of the rate CLEC paid on the date  
11 of the notice.

12  
13 The terms proposed by Sprint for the second issue that FDN disputes are as  
14 follows:

15  
16 **49.2.2 CLEC may obtain a maximum of ten unbundled DS1 dedicated**  
17 **transport circuits on each route where DS1 dedicated transport is**  
18 **available on an unbundled basis.**

19  
20 **Q. How should the Commission resolve this issue?**

21 **A.** The additional terms proposed by FDN at 44.6.5, 44.7.5, 49.2.4, 49.3.4, and  
22 49.5.3 should be rejected. Sprint's proposed terms at 49.2.2 should be accepted.

23  
24 **Q. What are the wire center thresholds you referred to above?**

1    **A.**     In the TRRO the FCC eliminated ILEC unbundling obligations for certain UNEs  
2           in wire centers and routes between wire centers if the wire centers met specific  
3           thresholds. These thresholds are based on the number of business lines and/or  
4           fiber based collocators present in each wire center. (See, 47 C.F.R. §51.319(a)(4);  
5           §51.319(a)(5); §51.319(e)(2)(ii)(A); §51.319(e)(2)(iii)(A); §51.319(e)(2)(iv)(A).)  
6           Sprint and FDN disagree over the process that the parties will follow in  
7           eliminating the impacted UNEs when Sprint claims that one of its wire centers  
8           meets a threshold.

9  
10   **Q.**     **Did the FCC establish a procedure in the TRRO?**

11    **A.**     The FCC established a detailed transition plan for affected UNEs that were in  
12           service prior to the order's effective date, March 11, 2005. The transition plan  
13           provides for a 12 month transition for DS1 and DS3 Loops and DS1 and DS3  
14           Dedicated Transport. The plan provides 18 months for Dark Fiber Loop and Dark  
15           Fiber Transport. The terms proposed by Sprint incorporate the FCC's transition  
16           plan and expands it to apply to UNEs that are affected after March 11, 2005. The  
17           FCC also provided a default process that gave CLECs the right to dispute an  
18           ILECs claim regarding the status of a wire center. Paragraph 234 of the TRRO  
19           provides that if, after conducting an investigation, a CLEC believes that the  
20           ILEC's claim is in error it can challenge the ILECs claim ultimately forcing the  
21           issue to the state commission for resolution. Sprint believes that once the status  
22           of a wire center has been resolved before a state commission it should no longer  
23           be subject to challenge.

1 **Q. What is the basis of Sprint's belief?**

2 **A.** The FCC clearly stated that once the status of an ILEC wire center exceeded the  
3 established thresholds no further unbundling could be required for the impacted  
4 UNE. (See, 47 C.F.R. §51.319(a)(4); §51.319(a)(5); §51.319(e)(3)(i);  
5 §51.319(e)(3)(ii).) Allowing multiple CLECs to continually and repeatedly  
6 challenge the status of a wire center in various proceedings would effectively  
7 nullify these rules. In addition, the determination is based on assessment of the  
8 same set of facts that should easily be established. FDN believes that if it doesn't  
9 challenge the status of a wire center or is not notified regarding a dispute  
10 proceeding to that effect, it should be able to challenge a wire center's status even  
11 though the FPSC has made a concrete finding in a public proceeding.

12  
13 **Q. Why shouldn't Sprint be required to notify FDN regarding a dispute?**

14 **A.** First, Sprint does not anticipate significant activity in this regard and will  
15 probably review wire center status on a semi-annual basis. Second, FDN will  
16 receive a notice from Sprint regarding the status of a wire center, along with all  
17 other CLECs in Florida, at the same time. Third, there is a 30 day period in which  
18 CLECs can review the claim, conduct inquiries, and determine if they are going to  
19 dispute Sprint's claim. Disputes that are filed with the FPSC are public record  
20 and posted on the FPSC web site that is accessible by all CLECs, including FDN.  
21 It is a simple matter for them to log into the FPSC web site on a regular basis for a  
22 short period of time, much simpler than having Sprint send out additional  
23 notifications to all CLECs.

1 **Q. Why did Sprint propose the cap on the number of DS1 Dedicated Transport**  
2 **circuits that a CLEC can lease on any given route?**

3 **A.** The terms proposed by Sprint are fully supported by rule adopted by the FCC in  
4 the TRRO. 47 C.F.R. 51.319(e)(1)(2)(B) states as follows:

5  
6 Cap on unbundled DS1 transport circuits. A requesting  
7 telecommunications carrier may obtain a maximum of ten  
8 unbundled DS1 dedicated transport circuits on each route where  
9 DS1 dedicated transport is available on an unbundled basis.

10

11 **Q. Why does FDN oppose these terms?**

12 **A.** FDN believes that the cap should only apply over those routes where ILECs are  
13 not obligated to unbundled DS3 Dedicated Transport. FDN is obviously seeking  
14 to further limit the FCC's clear restriction.

15

16 **Q. What is the basis for FDN's claim?**

17 **A.** It is Sprint's understanding that the primary basis is the FCC's discussion of this  
18 cap contained in paragraph 128 of the TRRO. It is as follows:

19 *Limitation on DS1 Transport.* On routes for which we determine  
20 that there is no unbundling obligation for DS3 transport, but for  
21 which impairment exists for DS1 transport, we limit the number of  
22 DS1 transport circuits that each carrier may obtain on that route to  
23 10 circuits. This is consistent with the pricing efficiencies of



1 aggregating traffic. While a DS3 circuit is capable of carrying 28  
2 uncompressed DS1 channels, the record reveals that it is efficient  
3 for a carrier to aggregate traffic at approximately 10 DS1s. When  
4 a carrier aggregates sufficient traffic on DS1 facilities such that it  
5 effectively could use a DS3 facility, we find that our DS3  
6 impairment conclusions should apply. (Footnotes omitted.)  
7

8 A careful reading will show that it does not support FDN's claim and that the  
9 FCC rule is clearly consistent with text in the order.  
10

11 **Q. What is the proper interpretation?**

12 **A.** The FCC makes two determinations or findings in its comments. In the first  
13 sentence it determines that the cap applies on routes where there is no unbundling  
14 obligation for DS3 transport. In the last sentence it makes a finding that, when a  
15 carrier aggregates enough traffic on DS1 facilities such that it can justify buying a  
16 DS3 facility the same cap should apply. It also makes a clear statement that the  
17 number of DS1 circuits justifying purchasing a DS3 is 10 DS1s.  
18

19 **Q. Is there any other support for Sprint's position?**

20 **A.** Yes. The FCC established the same cap on DS1 loops contained in 47 C.F.R. §  
21 51.319(a)(4)(ii) and in doing so stated in footnote 489 of the TRRO, "We impose  
22 a similar cap on the number of DS1 transport circuits that can be purchased by a

1 given competitive LEC on a single route. *See supra* para. 128.” The FCC’s rules  
2 between DS1 loops and DS1 dedicated transport are entirely consistent.

3  
4 **ISSUE 24** May Sprint restrict UNE availability where there is not a “meaningful  
5 amount of local traffic?” If so, what is a “meaningful amount of local  
6 traffic?”

7  
8 **Q. Please describe the issue.**

9 **A. The parties are disputing** the terms included in section 40.4 that define how UNEs  
10 can be used. Sprint has modified the terms that were being disputed when the  
11 issue statement was crafted. Sprint initially included use restrictions for UNEs  
12 based on the amount of local traffic that they were used for. There are two basic  
13 disputes. First, Sprint’s position is that any Sprint facilities between it and  
14 Interexchange or CMRS carriers’ facilities are not available as UNEs. FDN  
15 disagrees (40.4.2 and 40.4.4). Second, Sprint believes that UNEs can only be  
16 used for Interexchange, CMRS, or information services if they are also being used  
17 for local exchange services. Again, FDN disagrees (40.4.3). The disputed terms  
18 are shown below. Terms proposed by FDN disputed by Sprint are underlined and  
19 terms proposed by Sprint and disputed by FDN are emboldened.

20  
21 40.4.2 CLEC may not access a UNE for the exclusive provision of Mobile  
22 Wireless Service. Facilities whose sole purpose is connecting Sprint’s

1 network and a CMRS carrier's network do not qualify as UNEs and  
2 will not be available to CLEC as UNEs.

3  
4 **40.4.3 CLEC must use any UNE purchased from Sprint for the purpose**  
5 **of providing local exchange services. CLEC may use a UNE for**  
6 **the provision of interexchange or information services if CLEC is**  
7 **also providing local exchange services over the same UNE.**

8  
9 40.4.4 CLEC may not access a UNE for the exclusive provision of  
10 interexchange services. Unbundled loops ordered by CLEC into a  
11 third party collocation cannot be used by the third party collocater to  
12 provide retail interexchange services exclusively. Facilities whose  
13 sole purpose is connecting Sprint's network and interexchange  
14 carriers' networks do not qualify as UNEs and will not be available to  
15 CLEC as UNEs.

16  
17 **Q. How should the Commission resolve this issue?**

18 **A.** Sprint's proposed terms should be accepted with one addition to Sprint's last  
19 proposal, italicized below. The modifications proposed by FDN should be  
20 rejected.

21 **40.4.3 CLEC must use any UNE purchased from Sprint for the purpose**  
22 **of providing local exchange services. CLEC may use a UNE for**  
23 **the provision of interexchange, *Mobile Wireless* or information**

1                    **services if CLEC is also providing local exchange services over the**  
2                    **same UNE.**

3  
4    **Q.    What is the basis for Sprint’s claims with respect to the terms proposed in**  
5           **40.4.3?**

6    **A.**    Sprint’s claims are based on the FCC’s findings in the TRRO. First, it is clear  
7           from the Act that UNEs are provided for telecommunications services. As set  
8           forth in 47 U.S.C. §251(c)(3), ILECs have “[t]he duty to provide [UNEs] to any  
9           requesting carrier for the provision of a telecommunications service.” Second, in  
10          the TRRO the FCC considered the telecommunications market and divided it into  
11          three distinct markets: commercial mobile wireless, long distance, and local  
12          exchange. The FCC defined mobile wireless as “to refer to all mobile wireless  
13          telecommunications services, including commercial mobile radio service  
14          (CMRS).” (See Fn 97, TRRO) It defined long distance or interexchange “to mean  
15          telecommunications service between stations in different exchange areas.” (See  
16          Fn 98, TRRO) It defined local exchange as “markets for the services provided by  
17          local exchange carriers, which include telephone exchange service and exchange  
18          access. 47 U.S.C. § 153(26)”. (See Fn 63, TRRO) Further, it determined that the  
19          commercial mobile wireless service market and long distance services markets  
20          were competitive and that UNEs could not be used exclusively to provision those  
21          services. (See, ¶15, ¶34-¶36 of the TRRO and 47 C.F.R. §51.309(b).) Third, the  
22          FCC based its impairment findings on the impact to the local exchange markets in  
23          hopes that it would promote “the same robust competition that characterizes the

1 long distance and wireless markets.” (§ 3, TRRO.) Sprint therefore believes that  
2 it is consistent with the TRRO and entirely appropriate to require CLECs to  
3 initially seek access to UNEs on the basis of providing local exchange service  
4 prior to using it for other services. FDN is seeking to circumvent the clear intent  
5 of the FCC in the TRRO.

6  
7 **Q. Please explain.**

8 **A.** As Sprint understands the issue, FDN believes that it can provide an information  
9 service on a UNE as long as it is providing any telecommunications service on the  
10 UNE, even if it is solely providing interexchange services on that UNE. The basis  
11 for that is 47 C.F.R. § 51.100(2)(b) which is as follows:

12  
13 A telecommunication carrier that has interconnected or gained access  
14 under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer  
15 information services through the same arrangement, so long as it is  
16 offering telecommunications services through the same arrangement as  
17 well.

18 Sprint does not agree with this interpretation.

19  
20 **Q. What is the basis of Sprint’s disagreement?**

21 **A.** The market restriction on telecommunications services imposed by the FCC in the  
22 TRRO impacts and modifies the telecommunications services referenced in the  
23 above rule. The FCC was concerned with gaming by CLECs and attempts to

1 convert the existing access services to UNEs when it had found that the  
2 interexchange and mobile wireless markets are competitive. FDN is seeking to  
3 employ a form of gaming by only providing interexchange telecommunications  
4 services over UNEs and not providing any competition for the local exchange  
5 market, contrary to the clear intent of the FCC.  
6

7 **Q. Why does Sprint disagree with the language added by FDN in 40.4.2 and**  
8 **40.4.4?**

9 **A.** There are two basic reasons. First, as I've shown above in the TRRO the FCC  
10 found that the interexchange and mobile wireless (including CMRS) markets are  
11 fully competitive and that UNEs should not be used for the exclusive provision of  
12 those services. It seemed logical to Sprint that any facilities between it and an  
13 interexchange carrier's facilities, or those of a CMRS carrier, would be  
14 exclusively used for the provision of those services. The terms proposed by FDN  
15 are an attempt to argue the same point for 40.4.3 that it can provide interexchange  
16 or mobile wireless telecommunications service on a UNE if it is also providing an  
17 information service. Sprint strenuously disagrees. Second, in the TRRO the FCC  
18 found that ILECs do not have to provide entrance facilities as UNEs. (See, 47  
19 C.F.R. §51.319(e)(2)(i).) Entrance facilities are those facilities between the ILEC  
20 and another carrier, which is exactly what Sprint's terms depict.  
21

22 **ISSUE 25** When and how should Sprint make sub-loop access available to FDN?  
23

1 Q. What is the dispute between FDN and Sprint?

2 A. Sprint has proposed terms and conditions wholly consistent with the FPSC's  
3 finding in Docket No. 990649B-TP, *Investigation into pricing of unbundled*  
4 *network elements (Sprint/Verizon track)*, ORDER NO. PSC-03-0058-FOF-TP  
5 ISSUED: January 8, 2003 (Sprint UNE Cost Docket). The circumstances  
6 regarding Sprint's unbundling obligations have not changed, yet FDN opposes  
7 Sprint's terms. Sprints proposed language is as follows (disputed terms are  
8 emboldened):

9 45.1 Sprint will offer unbundled access to copper subloops and subloops for  
10 access to multiunit premises wiring. **Sprint will consider all requests**  
11 **for access to subloops that have been ordered from Sprint by any**  
12 **CLEC through the ICB process due to the wide variety of**  
13 **interconnections available and the lack of standards.** A written  
14 response will be provided to CLEC covering the interconnection time  
15 intervals, prices and other information based on the ICB process as set  
16 forth in this Agreement. Once a type of subloop has been provisioned  
17 to any CLEC in the state of this Agreement, Sprint shall make  
18 available such subloop under the same or more favorable terms,  
19 conditions and charges to other requesting CLECs, upon execution of  
20 an amendment or other acceptance of pricing by CLEC.

21  
22 Q. How should the Commission resolve this issue?

23 A. Sprint's proposed terms should be accepted.

1 **Q. What did the FPSC recommend in the Sprint UNE Cost Docket?**

2 **A.** The FPSC agreed with Sprint's recommendation that it provide prices for sub-  
3 loop components such as distribution facilities but that requests for unusual sub-  
4 loops or access to sub-loops would be handled on an individual case basis (ICB).  
5 The Commission based its decision on the fact that no CLECs in Florida had  
6 requested any sub-loops and that Sprint had no experience in doing so, which  
7 would be the basis for developing rates. (See Sprint UNE Cost Docket, pages 34  
8 and 38.)

9  
10 **Q. Have the circumstances changed?**

11 **A.** Not with respect to Sprint's experience. Sprint has not received any requests from  
12 CLECs in Florida for sub-loops, not even FDN.

13  
14 **Q. You stated that circumstances have not changed with respect to Sprint's**  
15 **experience. Have there been any changes that impact Sprint's obligation to**  
16 **provide sub-loops?**

17 **A.** The FCC eliminated feeder loop facilities from the category of sub-loops and  
18 Sprint therefore removed those prices from the UNE price list.

19  
20 Unlike our previous subloop unbundling rules, however, the rules we adopt  
21 herein do not require incumbent LECs to provide unbundled access to their  
22 feeder loop plant as stand-alone UNEs, thereby limiting incumbent LEC



1 subloop unbundling obligations to their distribution loop plant. (See ¶254,  
2 TRO.)

3  
4 **ISSUE 27** Under what circumstances must Sprint, at FDN's request, combine and  
5 provide individual network elements that are routinely combined in  
6 Sprint's network?

7  
8 **Q. What is the disagreement between FDN and Sprint?**

9 **A.** The parties disagree over terms defining the pricing of UNE combinations and  
10 commingled arrangements. Following are the terms proposed by Sprint with the  
11 disputed language emboldened.

12  
13 50.2.2 CLEC may Comingle an unbundled network element or combination  
14 of UNEs with wholesale services purchased from Sprint. Upon  
15 request, Sprint will perform the work necessary to Comingle such  
16 UNE or UNE combinations with wholesale services purchased from  
17 Sprint. **CLEC will compensate Sprint the costs of work performed**  
18 **to Comingle UNEs or UNE combinations with wholesale services.**  
19 Each component of the commingled facility, either UNE or wholesale  
20 service, will be billed at the UNE or wholesale service rate for that  
21 component, plus applicable non-recurring charges. Sprint will not  
22 ratchet price individual components; that is, Sprint will not reflect a  
23 combination of UNE and wholesale rates for the same component.

1 Wholesale service rates will be per the appropriate tariff or agreement,  
2 or at an applicable resale discounts pursuant to this Agreement. Sprint  
3 will provide CLEC access to EEL as provided in this Agreement.  
4 CLEC is not required to own or control any of its own local exchange  
5 facilities before it can purchase or use EEL to provide a  
6 telecommunications service under this Agreement. Any request by  
7 CLEC for Sprint to provide combined UNEs that are not otherwise  
8 specifically provided for under this Agreement will be made in  
9 accordance with the BFR process described in Section 41 and made  
10 available to CLEC upon implementation by Sprint of the necessary  
11 operational modifications.

12  
13 **Q. How should the Commission resolve this issue?**

14 **A.** The terms proposed by Sprint should be accepted.  
15

16 **Q. What is a combination?**

17 **A.** A combination is the connecting of two or more UNEs. The combination can be  
18 made by Sprint or FDN.  
19

20 **Q. How does Sprint propose to price for combinations?**

21 **A.** The charges for each individual UNE will apply. This is consistent with the  
22 FPSC's determination in Sprint's UNE Cost Docket. (See Sprint UNE Cost  
23 Docket, pages 188-189.) Any facilities required to connect the two UNEs, such

1 as cross connects, would be charged at Total Element Long Run Incremental  
2 (TELRIC) rates.

3

4 **Q. What is a commingled arrangement?**

5 **A.** A commingled arrangement is a UNE or combination of UNEs connected or  
6 attached to a Sprint wholesale service.

7

8 **Q. What is Sprint's proposal for pricing commingled arrangements?**

9 **A.** If the arrangement includes more than one UNE the UNE combination would be  
10 priced as stated immediately above. Consistent with the FCC's determination in  
11 the TRO the wholesale service would be priced in accordance with the terms and  
12 conditions under which it was offered. The facility connecting the UNE or UNE  
13 combination and wholesale service would be priced in accordance with the  
14 wholesale service.

15

16 **Q. You mentioned that pricing the wholesale service in accordance with the  
17 terms under which it is offered is consistent with the TRO. Please explain.**

18 **A.** When the FCC ordered commingling in the TRO it determined that ILECs do not  
19 have to ratchet price.

20

21 580. As explained below, however, we do not require incumbent LECs to  
22 "ratchet"<sup>1785</sup> individual facilities. Thus, we do not require incumbent LECs  
23 to implement any changes to their billing or other systems necessary to bill

1 a single circuit at multiple rates (*e.g.*, a DS3 circuit at rates based on  
2 special access services and UNEs) in order to charge competitive LECs a  
3 single, blended rate.

4  
5 <sup>1785</sup> Ratcheting is a pricing mechanism that involves billing a single circuit  
6 at multiple rates to develop a single, blended rate.

7  
8 **Q. What combinations or commingled arrangements are CLECs interested in?**

9 **A.** The predominate focus is on Enhanced Extended Loops (EELs) which are a  
10 combination of DS1/DS3 UNE Loops with DS1/DS3 UNE Dedicated Transport  
11 or DS1/DS3 UNE Loops or Dedicated Transport commingled with Special  
12 Access DS1/DS3 transport or channel terminations.

13  
14 **Q. Has Sprint priced these arrangements?**

15 **A.** Yes. The individual UNE components have been priced and the prices for the  
16 wholesale services are included in the appropriate tariff.

17  
18 **Q. Has Sprint priced any other combinations or commingled arrangements?**

19 **A.** EELs are the primary combinations or commingled arrangements that CLECs  
20 have shown any interest in to date that Sprint is obligated to provide for new  
21 services. Sprint continues to provide the embedded based of UNE-P (Unbundled  
22 Network Element-Platform) and Line Sharing per the FCC rules. Sprint also  
23 provides NIDs combined with Loops when Loops are ordered. This is not

1 generally viewed as a combination. Sprint will consider requests for new  
2 combinations or commingled arrangements through the Bona Fide Request (BFR)  
3 process.

4  
5 **ISSUE 29** What rates, terms and conditions should apply to routine network  
6 modifications on UNEs available under the Agreement?  
7

8 **Q. What is the dispute contained in Issue 29?**

9 **A.** The dispute is centered on Sprint's proposal for pricing routine network  
10 modifications. Sprint has researched the most common modifications and  
11 proposed the appropriate pricing in the pricing appendix. Any modification not  
12 listed would be treated on an individual case basis. FDN disagrees. In addition  
13 FDN has inserted language which would imply that rates other than UNE rates  
14 should be considered when developing prices for routine network modifications.  
15 Sprint disagrees. Following are the terms proposed by Sprint and FDN's inserted  
16 language. Sprint's terms are emboldened and FDN's proposed language is  
17 underlined.

18  
19 **53.1.1 Sprint will make routine network modifications to unbundled loop**  
20 **facilities used by CLEC where the requested loop facility has**  
21 **already been constructed. Sprint will perform routine network**  
22 **modifications to unbundled loop facilities in a nondiscriminatory**  
23 **fashion, without regard to whether the loop facility being accessed**

1           **was constructed on behalf, or in accordance with the**  
2           **specifications, of any carrier. CLEC will compensate Sprint for**  
3           **the costs of such routine network modifications to unbundled loop**  
4           **facilities to the extent the costs are not recovered in the unbundled**  
5           **loop rates or other rates, in accordance with Table One, or Sprint**  
6           **will provide a price quote via the ICB process.**

7  
8           **53.1.2   Sprint will make routine network modifications to unbundled**  
9           **dedicated transport facilities used by CLEC where the requested**  
10          **Dedicated Transport facilities have already been constructed.**  
11          **Sprint will perform the routine network modifications to**  
12          **unbundled Dedicated Transport facilities in a nondiscriminatory**  
13          **fashion, without regard to whether the facility being accessed was**  
14          **constructed on behalf, or in accordance with the specifications, of**  
15          **any carrier. CLEC will compensate Sprint for the costs of such**  
16          **routine network modifications to unbundled Dedicated Transport**  
17          **facilities to the extent the costs are not recovered in the unbundled**  
18          **Dedicated Transport rates. Sprint will provide routine network**  
19          **modifications at the rates on Table One, or Sprint will provide a**  
20          **price quote via the ICB process**

21  
22   **Q.    How should the Commission resolve this issue?**

1 A. Sprint's proposed terms should be accepted. The additional language proposed  
2 by FDN should be rejected.

3  
4 **Q. What is a routine network modification?**

5 A. The FCC defined a routine network modification as "an activity that the  
6 incumbent LEC regularly undertakes for its own customer." (See, 47 C.F.R. §  
7 51.319(a)(7) and § 51.319(e)(4)(ii).)

8  
9 **Q. Why did the FCC establish the rules for routine network modifications?**

10 A. The FCC wanted to ensure non-discriminatory treatment and to prevent any  
11 undue restrictions for access to UNEs.

12  
13 **Q. Did the FCC provide a detailed list of what constitutes a routine network  
14 modification?**

15 A. No. In ¶633 of the TRO the FCC established principles and listed examples in the  
16 rule but it declined to formulate a detailed list of electronic components.

17 **Q. What routine network modifications did Sprint price out?**

18 A. Sprint developed pricing for the most common routine network modifications and  
19 included them on the price list. They are rearrangement of cable, repeater and  
20 doubler installation, smart jack installation, and the installation of line cards. In  
21 some cases, such as installing a line card, Sprint acknowledges that the cost of  
22 doing so is included in existing rates. In some cases, such as installing a doubler,  
23 Sprint will charge FDN for such activity only on those occasions where Special  
24 Construction charges would routinely apply. Any network modification not

1 included in the price list would be priced on an individual case basis. Since these  
2 prices were not considered in the Sprint UNE Cost Docket Sprint witness Davis  
3 has filed cost testimony in support of Sprint's pricing.  
4

5 **Q. What is the basis of Sprint's application of Special Construction Charges in**  
6 **some instances?**

7 **A.** There are times when the level of work activity needed for a routine network  
8 modification is not recovered in the existing UNE rates. In such cases Sprint is  
9 justified in seeking additional compensation. Sprint believes that the Special  
10 Construction criteria used in its Access Tariff for the state of Florida (Section E-  
11 14) define when that occurs. It is certainly at parity with how it treats its  
12 customers that buy services such as DS1/DS3 Loops and DS1/DS3 Dedicated  
13 Transport.  
14

15 **Q. Has FDN or any other CLEC requested any other routine network**  
16 **modifications?**

17 **A.** No.  
18

19 **Q. Why does Sprint disagree with the phrase "or other rates" added by FDN in**  
20 **53.1.1?**

21 **A.** Sprint agrees that it should not be allowed to double recover the cost of providing  
22 UNEs. The FCC clearly cautioned against this in paragraph 640 of the TRO and  
23 the prices displayed in the pricing appendix reflect that agreement. However, the



1 terms proposed by FDN implies that the cost of routine network modifications to  
2 UNE Loops are subsidized by other rates, perhaps not even UNE rates. This is  
3 not consistent with TELRIC pricing and should be rejected.  
4

5 **ISSUE 30** On what rates, terms and conditions should Sprint offer loop conditioning?  
6

7 **Q. Please describe the issue.**

8 **A.** FDN and Sprint have reached agreement on the terms and conditions of loop  
9 conditioning but continue to disagree over the rates. Sprint has proposed the rates  
10 approved by the FPSC in Sprint's UNE Cost Docket. FDN has continually  
11 refused to accept the decision of the FPSC in that proceeding and will not agree to  
12 the ordered rates.  
13

14 **Q. How should the Commission resolve this issue?**

15 **A.** The FPSC should find that the loop conditioning prices it approved for Sprint in  
16 Sprint's UNE Cost Docket are reasonable and that they should be incorporated  
17 into the agreement.  
18

19 **Q. Why should the FPSC approve Sprint's proposal?**

20 **A.** The majority of Sprint's arguments supporting the rates approved by the FPSC in  
21 Sprint's UNE Cost Docket are included below in the discussion of Issue 34. The  
22 Commission determined Sprint's rates after a lengthy proceeding, examining the  
23 assumptions, models, and inputs in detail. FDN actively participated in that

1 proceeding and is simply refusing to accept the decision. There is no reason to  
2 revisit the issue so soon after the order was released.

3  
4 **ISSUE 34** What are the appropriate rates for UNEs and related services provided  
5 under the Agreement?

6  
7 **Q. What is the dispute between the parties in Issue 34?**

8 **A.** FDN refuses to accept the prices established by the FPSC in Sprint's UNE Cost  
9 Docket and included in the pricing appendix.

10  
11 **Q. How should the Commission resolve this issue?**

12 **A.** The FPSC should find that the UNE prices it approved for Sprint in Sprint's UNE  
13 Cost Docket are applicable and that they should be incorporated into the  
14 agreement between FDN and Sprint.

15 **Q. Please describe the process that the FPSC followed in establishing Sprint's  
16 UNE prices.**

17 **A.** The FPSC reached a decision on Sprint's UNE rates on January 8, 2003 after a  
18 lengthy process including the filing of extensive testimony, cost models,  
19 interrogatories and document requests, depositions, and legal briefs. The decision  
20 rendered by the FPSC was thorough, over 250 pages in length. The FPSC  
21 examined Sprint's models and inputs in excruciating detail, making modifications  
22 where it deemed necessary.

23

1 **Q. Did FDN participate in the Sprint UNE Cost Docket?**

2 **A.** Yes. Although FDN did not submit testimony in the docket, FDN filed a  
3 prehearing statement and a lengthy post-hearing brief. References to FDN's  
4 participation are included throughout the FPSC order.

5

6 **Q. How were the new rates to be incorporated into agreements between Sprint  
7 and CLECs?**

8 **A.** The FPSC determined that the new rates should be incorporated as amendments to  
9 existing interconnection agreements. Sprint requested that carriers be required to  
10 conform to the new rates within 60 days of the order's effective date but its  
11 request was rejected. (See Sprint UNE Cost Docket, pages 190-191.) Sprint was  
12 concerned that carriers would do exactly as FDN has done, engaging in extensive  
13 delay tactics.

14

15 **Q. Did Sprint attempt to incorporate the new rates with FDN as ordered by the  
16 FPSC?**

17 **A.** Yes. FDN has repeatedly refused to accept the rates determined by the FPSC and  
18 sought a stay with the FPSC.

19

20 **Q. Did the FPSC grant FDN's request for a stay?**

21 **A.** No.

22

23 **Q. Are there any changes that would alter Sprint's results?**

1 A. No.

2

3 Q. **Should the FPSC consider making changes to prices it approved in Sprint's**  
4 **UNE Cost Proceeding?**

5 A. No. The decision is recent and there is no reason to re-visit the determination of  
6 the FPSC. It is clear that FDN is simply unwilling to accept the decision and  
7 authority of the FPSC and is seeking shelter in protracted litigation. If the FPSC  
8 allows FDN to question the decision in the Sprint UNE Cost Docket in this  
9 proceeding it will be rewarding such behavior, essentially rehearing the case.

10

11 Q. **Does this conclude your testimony?**

12 A. Yes.

13

14

15

16

17

18

19

20

21

22

23