

1 **BEFORE THE PUBLIC SERVICE COMMISSION**

2 **REBUTTAL TESTIMONY**

3 **OF**

4 **JAMES M. MAPLES**

5 **DOCKET NO. 041464-TP**

6

7 **SECTION I - INTRODUCTION**

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

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

12

13 **Q. Are you the same James M. Maples that filed direct testimony in this**
14 **proceeding on May 27, 2005?**

15 Yes, I am.

16

17 **Q. On whose behalf are you testifying?**

18 **A. I am testifying on behalf of Sprint - Florida, Incorporated (hereafter referred to as**
19 **“Sprint”).**

20

21 **Q. What is the purpose of your Rebuttal Testimony?**

22 **A. The purpose of my Rebuttal Testimony is to refute direct testimony filed in this**
23 proceeding on behalf of FDN with respect to the following issues:

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1 **ISSUE 21** What are the appropriate terms and conditions applicable to the
2 resale of Contract Service arrangements, Special arrangements, or
3 Individual Case Basis (ICB) arrangements? (FDN Witness Kevin P.
4 Smith, Direct Testimony, pages 9-10.)

5 **ISSUE 22** What terms and conditions should be included to reflect the FCC's
6 TRO and TRRO decisions? (FDN Witness Kevin P. Smith, Direct
7 Testimony, pages 10-11.)

8 **ISSUE 23** When should FDN be required to self-certify unbundled network
9 elements (UNEs)? When self-certification is required, how should
10 FDN self-certify? (FDN Witness Kevin P. Smith, Direct Testimony,
11 page 11.)

12 **ISSUE 24** May Sprint restrict UNE availability where there is not a
13 "meaningful amount of local traffic?" If so, what is a "meaningful
14 amount of local traffic?" (FDN Witness Kevin P. Smith, Direct
15 Testimony, page 11.)

16 **ISSUE 25** When and how should Sprint make sub-loop access available to
17 FDN? (FDN Witness Kevin P. Smith, Direct Testimony, page 12.)

18 **ISSUE 27** Under what circumstances must Sprint, at FDN's request, combine
19 and provide individual network elements that are routinely combined
20 in Sprint's network? (FDN Witness Kevin P. Smith, Direct
21 Testimony, page 12.)

- 1 • Sprint's utilization of CSAs and Special Arrangements is authorized by the
2 Commission and not discriminatory. A refusal to allow Sprint to charge
3 termination liabilities will harm Sprint and place it at a competitive
4 disadvantage.
- 5 • The FCC cap of 10 UNE DS1 Dedicated Transport circuits applies to each
6 route and any attempt to restrict this application is contrary to the FCC's rules
7 and counterintuitive.
- 8 • The list of wire centers identified by Sprint and available to CLECs in Florida
9 as meeting the FCC threshold criteria is accurate and should be approved.
10 Once approved CLECs should not have the ability to endlessly litigate and
11 dispute the standing of a wire center once its status has been determined.
12 UNEs impacted by the change in status of a wire center ordered during a
13 dispute should be converted to another service should the dispute be found in
14 the ILEC's favor.
- 15 • CLECs clearly have an obligation to certify that the EELS ordered by them
16 meet the use criteria established by the FCC. UNEs cannot be used to
17 exclusively provide interexchange, mobile wireless services, or information
18 services, but must first be used to provide local exchange services.
- 19 • Sprint's proposal for providing subloop access is consistent with the
20 Commission's ruling in the UNE Docket. No CLEC has requested and Sprint
21 has not provided subloop access in Florida.
- 22 • Sprint's pricing proposal for providing commingled arrangements is
23 reasonable and should be adopted. The tariffed components of a commingled

1 arrangement are billed in accordance with that tariff and it is unreasonable to
2 duplicate tariff pricing in an interconnection agreement.

- 3 • Sprint is not obligated to provide routine network modifications free of
4 charge. The issue is whether or not the prices developed by Sprint recover the
5 cost of certain modifications.
- 6 • And finally, the issues addressed in the Panel's Direct Testimony have been
7 previously addressed by this Commission. Not only has the Commission
8 ruled on these issues in the UNE Docket, but further attempts on the part of
9 FDN to refute the Commission's findings through its Motion for
10 Reconsideration were also denied. Despite the fact that FDN offers no
11 additional evidence that is required for further consideration, FDN is once
12 again presenting the same arguments on the same issues that were present in
13 2002. In addition, the Panel makes the claim that current rates are no longer
14 valid because they are based on data from 2000, yet it refutes Sprint's state
15 specific inputs and proposes national default data from 1998. Such weak
16 arguments do not merit any further consideration from either Sprint or the
17 Commission.

18
19 **SECTION II – UNRESOLVED ISSUE DISCUSSION**

20
21 **ISSUE 21** What are the appropriate terms and conditions applicable to the resale of
22 Contract Service arrangements, Special arrangements, or Individual Case

1 Basis (ICB) arrangements? (FDN Witness Kevin P. Smith, Direct
2 Testimony, pages 9-10.)
3

4 **Q. On page 9, line 22, of his direct testimony FDN witness Smith states that**
5 **promotions are included in the dispute between FDN and Sprint. Do you**
6 **agree?**

7 **A.** No. The disputed terms (as shown in my direct testimony on page 6 beginning
8 line 12) specifically address Contract Service Arrangements, Special
9 Arrangements, or ICBs. Sprint is unaware of any issue with respect to
10 promotions.
11

12 **Q. Does Sprint resell services provided as promotions?**

13 **A.** Sprint complies with FCC rules and resells any promotion that extends beyond 90
14 days in length. (47 C.F.R. §51.613(a)(2))
15

16 **Q. What support did FDN witness Smith provide for claiming that end users**
17 **should not pay Sprint previously agreed to termination liabilities if they**
18 **switch their service to FDN?**

19 **A.** He stated that the economics of reselling the CSA would not work for FDN if the
20 end user incurred termination fees. (Smith Direct Testimony, page 10, line 3.)
21

22 **Q. Is this sufficient justification to allow an end user to cancel a contract that it**
23 **willfully entered into with another company?**

1 **A.** Absolutely not. FDN is essentially asking the commission to recognize their
2 specific economics in establishing public policy. FDN does not provide any
3 evidence that its economics should be considered rather than that of an efficient
4 competitor or that it is impossible for any carrier to win customers from Sprint
5 that are provided service via a CSA. In ¶25 of the Triennial Review Remand
6 Order (TRRO) the FCC rejected any notion that a specific carrier's particular
7 business strategy should be used in determining impairment with respect to UNEs
8 (See, FCC 04-290, *Unbundled Access to Network Elements, Review of the Section*
9 *251 Obligations of Incumbent Local Exchange Carriers*, WC Docket 04-313 and
10 CC Docket 01-338, Order on Remand, Released February 4, 2005). That same
11 principle should apply here.

12
13 **Q.** **Is FDN prohibited from making competitive bids to these customers when**
14 **their contracts expire?**

15 **A.** No. In fact, FDN's proposal would force Sprint to forego revenues that it expects
16 from a customer whose business FDN may have bid on and lost, effectively
17 giving FDN a second chance at securing the bid.

18
19 **Q.** **Would Sprint be harmed if it were forced to apply the average resale**
20 **discount to CSA's?**

21 **A.** Yes. In many cases the cost that is deferred over the life of the contract and
22 recovered through a termination fee is for the purchase and installation of specific
23 customer equipment (see also Maples Direct, page 6 at line 3). Sprint does not

1 avoid these costs if it resells the CSA to FDN or any other CLEC. Even the
2 Commission recognized this in their proposed Fresh Look rules (discussed in
3 Maples Direct, page 7 at line 22) allowing ILECs to recover certain costs that
4 would otherwise not be recovered (Proposed Rules, PART XII-FRESH LOOK:
5 25-4.302 Termination of LEC Contracts, See DOAH Order at 17).

6
7 **Q. Is the use of CSA's by Sprint anti-competitive or discriminatory?**

8 **A.** No. The pricing flexibility utilized by ILECs in CSA's or other special
9 arrangements have been authorized by the Commission. The very purpose of a
10 CSA is to allow an ILEC to make a competitive bid to an end user customer that
11 is seeking offers from other telecommunications providers. Furthermore, the
12 fact that ILECs have to resell CSA's restricts their pricing flexibility, since it is
13 very possible that after signing a contract with the ILEC the end user may seek to
14 receive additional discounts by transferring the contract to a CLEC.

15
16 **ISSUE 22** What terms and conditions should be included to reflect the FCC's TRO
17 and TRRO decisions? (FDN Witness Kevin P. Smith, Direct Testimony,
18 pages 10-11.)

19
20 **Q. What disputes did FDN witness Smith include with respect to Issue 22?**

21 **A.** Mr. Smith included three issues. The first (22a) is in regards to the cap on the
22 number of UNE DS1 circuits a CLEC can purchase on any transport route. The
23 second (22b) concerns the list of wire centers that Sprint claims meets the criteria

1 established by the FCC in the TRRO for determining non-impairment for certain
2 UNEs. The third (22c) is related to the process that the parties will follow when
3 Sprint wishes to add a wire center to the list of unimpaired wire centers after the
4 interconnection agreement is executed. (FDN Witness Smith, Direct Testimony,
5 page 10.)

6
7 **Q. Did FDN witness Smith provide any clear statement of FDN's position with**
8 **respect to issue 22(a) in his direct testimony?**

9 **A.** No. He simply stated that FDN disagreed with Sprint's interpretation without
10 providing any further reasons (FDN Witness Smith, Direct Testimony, page 10, at
11 line 13.)

12
13 **Q. Has your understanding of the dispute changed?**

14 **A.** No. Absent specificity in direct testimony, Sprint must rely on conversations
15 during negotiations. FDN seeks to change the rule adopted by the FCC in the
16 TRRO by limiting the cap of DS1 circuits to those routes where there has been a
17 finding of non-impairment for DS3 circuits. The rule (47 C.F.R.
18 §51.319(e)(2)(ii)(B)) states that the cap applies to "each route where DS1
19 dedicated transport is available on an unbundled basis." (Maples Direct
20 Testimony, page 14, at line 6.) Sprint does not believe that there is any
21 contradictory language in the TRRO that would allow a different application of
22 the rule (see Maples Direct Testimony, page 15, at line 12). FDN is asking the
23 Commission to make a finding of impairment which is at odds with the FCC's

1 determination. FDN's position is counterintuitive. The FCC did not intend to
2 provide unlimited access to UNEs but imposed limits in order "to encourage the
3 innovation and investment that comes from facilities-based competition."
4 (TRRO, ¶2.)

5
6 **Q. You stated above that FDN's position is counterintuitive. What did you
7 mean by that?**

8 **A.** The DS1 cap establishes the point at which a CLEC can efficiently purchase a
9 DS3. FDN's position would only apply the cap on those routes where UNE DS3
10 transport is not available, which means that it is efficient for a CLEC to buy
11 special access DS3 transport when it has more than 10 DS1's. Special access
12 DS3 transport is generally priced higher than UNE DS3 transport; therefore, it
13 should also be efficient for a CLEC to buy UNE DS3 transport when it has 10 or
14 more DS1s.

15
16 **Q. What is being disputed in issue 22(b)?**

17 **A.** In the TRRO the FCC established criteria for determining non-impairment for
18 DS1 and DS3 UNE loops and DS1, DS3, and dark fiber UNE dedicated transport
19 based on the number of business lines and/or fiber based collocators in ILEC wire
20 centers. Sprint electronically mailed a list of the wire centers in Florida that met
21 these criteria to FDN on April 28, 2005. Sprint also posted the list on its publicly
22 available website at:

1 http://www.sprint.com/regulatory/unimpairedOffices.html?refurl=unimpaired_wir
2 [e_centers](#)

3 FDN had requested additional information regarding the method that Sprint used
4 to count the number of business lines and fiber based collocators and more
5 specific detail regarding the values for each listed wire center.

6
7 **Q. Has Sprint provided the information requested by FDN?**

8 **A.** Sprint provided the information to FDN on May 27, 2005. It is included as
9 Exhibits JMM-1 and JMM-2 to this testimony. Exhibit JMM-1 describes the
10 methodology that Sprint used to determine the number of business lines and fiber
11 based collocators. A thorough review of the document will show that Sprint's
12 process is entirely consistent with the rules established by the FCC in the TRRO.
13 Exhibit JMM-2 shows the specific counts for each wire center supporting Sprint's
14 claim.

15
16 **Q. Has FDN disputed Sprint's claims regarding the status of these wire centers**
17 **or Sprint's methodology?**

18 **A.** FDN has not communicated disagreement in any fashion regarding either the
19 wire centers Sprint identified or its methodology.

20
21 **Q. What is the issue being disputed in 22(c), as described by FDN witness**
22 **Smith?**

1 **A.** On page 11 beginning line 6 of his direct testimony FDN witness Smith states that
2 FDN believes that it has “the right to pursue dispute resolution for any subsequent
3 attempt to add to the unimpaired wire center list, and Sprint should have to
4 provide UNEs from that wire center pending resolution of the dispute.”
5

6 **Q.** **Was this Sprint’s understanding of the issue?**

7 **A.** No. It should be clear from reviewing my direct testimony (pages 10 through 13)
8 that this was not our understanding. Sprint believed that the part of the process
9 that the parties were disputing was how Sprint noticed carriers when it wanted to
10 add a wire center to the un-impaired wire center list.
11

12 **Q.** **Is FDN’s position clear from Mr. Smith’s direct testimony?**

13 **A.** Not entirely. He claims that FDN should have the right to dispute Sprint’s future
14 claims regarding the status of wire centers. The terms that Sprint proposes (see
15 Maples direct, page 10, at line 20) clearly allow FDN to dispute the status within
16 a specific time frame after being noticed. FDN has not previously challenged the
17 time period included in the terms during which the CLECs determine whether or
18 not they will challenge Sprint’s claim. It can be inferred from the terms proposed
19 by FDN that if they do not participate in a dispute proceeding regarding the status
20 of one of Sprint’s wire center they want the opportunity to dispute the status on
21 their own, bringing the issue before this Commission a second time. This is why
22 Sprint has rejected FDN’s proposed terms. As I stated in my direct testimony on
23 page 13 beginning line 2, Sprint does not believe that CLECs should be able to

1 continually and repeatedly challenge the status of a wire center, effectively
2 nullifying the provisions in the FCC rules that prohibit further unbundling in wire
3 centers where there has been a finding of non-impairment.

4
5 **Q. Can a CLEC continue ordering UNEs from a wire center or route between**
6 **wire centers if they are disputing Sprint's claim regarding the status of a**
7 **wire center?**

8 **A.** If there has not been a finding by the Commission regarding the status of the wire
9 center the CLEC can continue ordering the impacted UNEs; however, if the
10 dispute is found in favor of Sprint any UNE ordered 30 days after the date of
11 notification should be transitioned immediately to special access or some similar
12 service and back billed accordingly.

13
14 **Q. What is the basis for this position?**

15 **A.** A CLEC cannot simply dispute the ILEC's claims regarding the status of a wire
16 center just to extend its access to a UNE that it is no longer entitled to and should
17 be deterred from doing so. Treating the circuits ordered during the dispute period
18 differently from the embedded base is counterproductive. For a CLEC to dispute
19 an ILEC's claims regarding the status of a wire center they "must undertake a
20 reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best
21 of its knowledge, its request is consistent with the requirements discussed in parts
22 IV, V, and VI above and that it is therefore entitled to unbundled access to the

1 particular network elements sought pursuant to section 251(c)(3).” (TRRO, ¶234)
2 CLECs should not be allowed to delay the process simply via legal maneuvering.
3

4 **Q. In his direct testimony, FDN witness Smith stated that FDN was willing to**
5 **self-certify eligibility under such circumstances (page 11 at line 11). Is this**
6 **sufficient?**

7 **A.** A willingness to self-certify is meaningless without including terms regarding the
8 level of effort that a CLEC must go through before it does so, and, as stated
9 immediately above, giving CLECs the ability to dispute the status of a wire center
10 and receive monetary gain would simply invite further disputes.
11

12 **ISSUE 23** When should FDN be required to self-certify unbundled network elements
13 (UNEs)? When self-certification is required, how should FDN self-
14 certify? (FDN Witness Kevin P. Smith, Direct Testimony, page 11.)
15

16 **Q. Did Sprint address this issue in its direct testimony?**

17 **A.** No. Sprint was unaware that it was an issue until it appeared in Mr. Smith’s
18 testimony.
19

20 **Q. Why not?**

21 **A.** Sprint believed that the terms being disputed had been resolved. Sprint originally
22 proposed the following terms at 40.4. The terms that were disputed by FDN are
23 emboldened.

1 40.4 CLEC may use Network Elements provided under this Agreement
2 for any Telecommunications Service and as permitted by
3 Applicable Rules subject to the restrictions listed below. CLEC
4 will provide self-certification at the time of ordering that these
5 requirements are met for each UNE ordered.
6

7 Sprint agreed to modify the terms during negotiations, deleting the last sentence
8 and retaining the first sentence, which was not disputed.
9

10 **Q. Are there other instances in the agreement where the terms require self-**
11 **certification?**

12 **A.** The terms in 50.4.3 require self-certification for access to EELs, consistent with
13 the FCC's rules in 47 C.F.R. §51.318(b). To Sprint's knowledge these terms are
14 not being disputed.
15

16 **ISSUE 24** May Sprint restrict UNE availability where there is not a "meaningful
17 amount of local traffic?" If so, what is a "meaningful amount of local
18 traffic?" (FDN Witness Kevin P. Smith, Direct Testimony, page 11.)
19

20 **Q. Did FDN's witness clearly articulate their position on Issue 24 in direct**
21 **testimony?**

1 **A.** No. The testimony of Mr. Smith is that "...FDN disagrees with Sprint's
2 interpretation and reserves the right to address these issues in later testimony and
3 in its brief." (Smith Direct Testimony, page, 11 at line 22.)
4

5 **Q.** **Is it Sprint's position that every UNE ordered has to have a "meaningful"**
6 **amount of local traffic?**

7 **A.** The original terms proposed by Sprint, which were the basis for the issues
8 included that requirement. During the course of negotiations, several weeks prior
9 to the due date for the direct testimony, Sprint changed the terms to that discussed
10 in my direct testimony (with the exception of a small addition), beginning page
11 16, line 9. The current terms being disputed stipulate that all UNEs must be used
12 to provide local exchange services. The basis for that position is included in my
13 direct testimony on pages 18 through 20. The rules established by the TRRO
14 prohibit the use of UNEs solely for providing interexchange and mobile wireless
15 services, which it deemed to be competitive. UNEs can be used to provide those
16 services if they are also being used to provide local exchange services, which
17 were defined in the TRRO. While the ILEC obligation to provide UNEs is only
18 for telecommunications services, the FCC rules allow CLECs to put information
19 services on them if they are also being used to provide telecommunications
20 services, which Sprint believes must include local exchange services.

21

22 **ISSUE 25** When and how should Sprint make sub-loop access available to FDN?
23 (FDN Witness Kevin P. Smith, Direct Testimony, page 12.)

1 **Q. Do you agree with Mr. Smith's characterization of this issue on page 12 of his**
2 **direct testimony?**

3 **A.** No. Mr. Smith oversimplifies the process of sub-loop access, and while not
4 directly stated, implies that if Sprint does not agree with FDN's terms that it will
5 be guilty of discriminating. That is not true. The terms proposed by Sprint
6 specifically states that once Sprint provides a type of sub-loop it will provide it to
7 FDN or any other CLEC "under the same or more favorable terms, conditions and
8 charges".

9

10 **Q. You stated above that Mr. Smith oversimplified the process. Please explain.**

11 **A.** He implies that the ICB process is onerous and unnecessary should FDN seek to
12 access sub-loops, ignoring the fact that during the ICB process Sprint will review
13 the specifics surrounding the request to determine if it has previously provided the
14 same or similar type of access. He does not acknowledge the fact that the
15 individual circumstances are likely to vary, impacting the cost of access, nor the
16 fact that the terms of the agreement obligate Sprint to provide an ICB price quote
17 within 30 business days from the receipt of the request (section 42.2).

18

19 **Q. Has FDN requested access to sub-loops from Sprint?**

20 **A.** No. As I stated in my direct testimony, neither FDN nor any other CLEC in
21 Florida has requested access to sub-loops from Sprint.

22

1 **ISSUE 27** Under what circumstances must Sprint, at FDN's request, combine and
2 provide individual network elements that are routinely combined in
3 Sprint's network? (FDN Witness Kevin P. Smith, Direct Testimony, page
4 12.)

5
6 **Q. Does Sprint agree with FDN witness Smith that all the non-recurring charges**
7 **for the commingled services identified in the text of the agreement should be**
8 **included in the agreement? (Smith Direct Testimony, page 12 at line 12.)**

9 **A.** No. As I stated on pages 25 and 26 of my direct testimony the FCC specifically
10 stated that the prices for the wholesale service component of a commingled
11 arrangement should be those included in the appropriate tariff. Sprint does not
12 believe that those tariffed charges should be duplicated in an interconnection
13 agreement. Tariffed charges change over time in accordance with the rules and
14 procedures that govern those services and it would be inappropriate to freeze
15 those rates in an interconnection agreement, as well as introducing unnecessary
16 billing complexity. FDN has the opportunity to review the various tariffs and
17 determine which wholesale product it wishes to use in a particular commingled
18 arrangement that it seeks. In addition, the terms being disputed by FDN in 50.2.2
19 are general in nature and do not apply just to those commingled arrangements
20 specified in the agreement. They essentially state that FDN or any CLEC will
21 compensate Sprint for the cost of work that it does on behalf of the CLEC to
22 combine UNEs or commingle services (Maples Direct, page 23, at line 17). I am

1 not aware of anything in the Act or FCC's rules that require Sprint to provide
2 services free of charge at any time.

3
4 **Q. Has Sprint provided the pricing that FDN has requested?**

5 **A.** Sprint provided pricing in response to FDN's first set of interrogatories, item 82.
6 It illustrates the pricing methodology I describe in my direct testimony (page 25,
7 at line 9), with one exception. The UNE portion is priced per the price list
8 included in the agreement and the wholesale service segment is priced according
9 to the appropriate tariff.

10
11 **Q. What is the one exception you mentioned above?**

12 **A.** In my direct testimony I stated that the facility connecting the UNE with the
13 wholesale service would be priced per the wholesale service. Upon further
14 review, Sprint determined that for the commingled arrangements being requested
15 by FDN, the facility connecting the UNE loop with special access transport
16 should be priced consistent with UNEs. The review also revealed that Sprint has
17 not developed a price for that connecting facility.

18
19 **Q. What price does Sprint propose that it use for this connecting facility?**

20 **A.** Sprint will provide this facility at no charge at this time. If and when Sprint
21 develops a price for this facility it will follow the terms and conditions in the
22 interconnection agreements regarding implementation.

23

1 **Q. You mentioned that Sprint had determined that the price for the connecting**
2 **facility for the commingled arrangements requested by FDN should be**
3 **priced consistent with UNEs. Does that mean that there may be commingled**
4 **arrangements where Sprint would take a different position?**

5 **A.** Yes. Sprint made the decision above based on a review of the individual elements
6 and services and what facilities the different rates were designed to cover
7 (commingling UNE loops with special access transport and multiplexing). It
8 found that there was a facility connecting the UNE loop with the special access
9 transport that wasn't included in either rate. It is entirely possible that the review
10 of a commingled arrangement using different elements and services would result
11 in a different conclusion.

12
13 **ISSUE 29** What rates, terms and conditions should apply to routine network
14 modifications on UNEs available under the Agreement? (FDN Witness
15 Kevin P. Smith, Direct Testimony, pages 12-13.)

16
17 **Q. What is FDN's position with regard to this issue?**

18 **A.** On page 12, beginning at line 22 of his direct testimony, Mr. Smith states,
19 "FDN's position is that if Sprint would perform a particular network modification
20 in the ordinary course for its own benefit, then FDN should not have to pay for
21 that modification if FDN also benefited."

22
23 **Q. Did FDN provide any support for its position?**

1 **A.** No. FDN’s testimony provides absolutely no supporting evidence that should
2 convince the Commission to agree with its position.

3

4 **Q.** **Does Sprint perform network modifications free of charge for its customers?**

5 **A.** No. Sprint incurs costs for all work that it does in modifying its network. That
6 cost is recovered though the rates that it charges to its customers. The fact that
7 Sprint may not charge an additional fee in some cases does not mean that Sprint is
8 not compensated for that work.

9

10 **Q.** **Is FDN claiming that it should not have to pay Sprint for modifications that**
11 **Sprint makes to its network on behalf of FDN?**

12 **A.** That is the literal interpretation of the phrase “FDN should not have to pay for
13 that modification if FDN also benefited.”

14

15 **Q.** **Does the FCC prohibit Sprint from recovering its cost of providing routine**
16 **network modifications on behalf of CLECs?**

17 **A.** Absolutely not. TELRIC pricing theory allows ILECs to recover the cost of
18 providing service to CLECs. As I stated in my direct testimony on page 30
19 beginning line 21, the FCC cautioned against the double recovery of cost for
20 doing routine network modification, which does not prohibit any charges for
21 routine network modifications, but demands a factual inquiry to determine which
22 costs are included in the existing rates and which ones are not. Sprint has

1 identified those costs and is fully prepared to support its position in this
2 proceeding.

3

4 **Q. Is Sprint proposing that it charge FDN for routine network modifications at**
5 **times when it would not do so for its own customers?**

6 **A.** No. As I stated in my direct testimony on page 30 beginning line 7, Sprint will
7 utilize the same criteria it applies to its customers that buy access services to
8 determine if additional charges should apply.

9

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

11

12 **Q. Did FDN file direct testimony on this issue?**

13 **A.** No.

14

15 **Q. Is there a dispute between the parties?**

16 **A.** As I stated in my direct testimony beginning on page 31 at line 7, Sprint
17 understood that FDN is disputing the rates for conditioning approved by the
18 Commission in the UNE Docket. Sprint believes that it should be allowed to
19 implement those rates in its interconnection agreement with FDN. The primary
20 reasons for that are included in the discussion of Issue 34.

21

1 **ISSUE 34** What are the appropriate rates for UNEs and related services provided
2 under the Agreement? (FDN Witnesses Ankum, Fischer, Morrison Direct
3 Testimony (Panel).)
4

5 **Q. Please state the primary issues addressed in the Panel testimony.**

6 A. The Panel testimony discusses issues regarding various inputs utilized by Sprint's
7 Loop Cost Model (SLCM) which was filed in the UNE Docket. The Panel also
8 addresses several issues regarding Sprint's non-recurring charges. Specifically,
9 the Panel testimony discusses SLCM's Customer Location methodology, Cable
10 Fill Factor methodology, Structure Sharing, Plant Mix Assumptions, Digital Loop
11 Carrier Assumptions, Annual Charge Factors, Non-recurring Charges, and
12 Geographic Deaveraging.
13

14 **Q. Were each of these issues addressed in the UNE Docket?**

15 A. Yes. On May 28, 2002, FDN filed its Post Hearing Brief where it presented the
16 same arguments addressed in the panel testimony filed on May 27^h, 2005. In its
17 order issued on January 8, 2003 in the above referenced docket, the Commission
18 weighed FDN's arguments, determined that they did not merit further
19 consideration, and ruled accordingly. On January 23, 2003 FDN filed a Joint
20 Motion for Reconsideration (MFR) in response to the January 8 Commission
21 Order. In the MFR, FDN once again addressed the issues of Deaveraging, Fill
22 Factors, Customer Locations, OSS Service Order Charges, and Non-Recurring
23 Charges for Work Times. On August 8, 2003, the Commission issued an Order

1 denying FDN's MFR on the grounds that FDN failed to identify anything that the
2 Commission might have overlooked or any mistake of fact made in rendering its
3 initial decision, and it was comfortable that the arguments put forth were part of
4 their weighing of evidence. Specifically, in its decision regarding Burden of
5 Proof in its Order denying FDN's MFR, the Commission stated that "FDN and
6 KMC have failed to demonstrate that we overlooked a point of fact or
7 law.....Thus, we find that we did not overlook a point of fact or law nor was there
8 an impermissible reversal of the burden of proof." (Docket No. 990649B-TP,
9 *Investigation into Pricing of Unbundled Network Elements*, Order Denying FDN
10 and KMC's Motion for Reconsideration of Sprint UNE Order, August 8, 2003, ¶
11 III.C.2, pg 12 – "Reconsideration Order".)

12
13 **Q. Does the Panel testimony in Docket 041464-TP offer any new evidence**
14 **regarding these issues that were originally addressed in the UNE Docket?**

15 A. No. In fact there are instances where, except for variations in references, the
16 testimony follows the language in the original Post-Hearing Brief verbatim. For
17 example, in its discussion regarding customer locations, the Panel testimony
18 language and citation beginning on page 13, line 6 and ending on page 13, line 27
19 appears the same as it does in the Post Hearing Brief on page 8. **Similar**
20 **redundancies** can be found in the panel's discussion on structure sharing where
21 the language and citation on page 17, lines 2 through 13 are identical to that used
22 on page 16 of the Post Hearing Brief. These examples, coupled with the fact that
23 the Panel merely paraphrases previous arguments on the remaining issues, clearly

1 indicate that FDN is unable to present new evidence that is required for
2 reconsideration of the Commission's January 8, 2003 ruling in the UNE Docket.

3
4 **Q. Please describe Exhibit JMM-3.**

5 A. Exhibit JMM-3 is a matrix that references where the issues presented in the
6 Panel's testimony have been previously put forth in FDN's Post Hearing Briefs,
7 The Commission's Final Order, FDN's Motion for Reconsideration, and the
8 Commission's Order Denying FDN's Motion for Reconsideration. The purpose
9 of this exhibit is to illustrate that each of the issues indicated have been addressed
10 previously by the Commission. The matrix also references the specific pages and
11 documents where the issues as well as the outcome can be reviewed. Further
12 review of these sections in the specified documents will indicate that no additional
13 evidence is being presented in the Panel's testimony.

14
15 **Q. Please provide examples of where issues presented in the Panel's testimony**
16 **have been previously addressed by this Commission.**

17 A. In their Post Hearing Brief filed in the UNE Docket, FDN argued that the Sprint
18 Loop Cost Model (SLCM) deploys a methodology "that does not reflect the most
19 cost effective method of distributing customers into serving areas." (Docket No.
20 990649B-TP, *Investigation into Pricing of Unbundled Network Elements*, Post
21 Hearing Brief of Florida Digital Network, Inc. for Sprint Florida Phase of
22 Proceeding, May 28, 2002, Issue No. 7, page 7. – "Post Hearing Brief".)
23 However, in its final order in the UNE Docket (Docket No. 990649B-TP,

1 *Investigation into Pricing of Unbundled Network Elements*, Order No. PSC-03-
2 0058-FOF-TP – “Final Order”), page 58, the Commission stated that “we find it
3 appropriate that the network design reflected in the SLCM shall be accepted for
4 purposes of establishing recurring UNE rates in this proceeding”. FDN also
5 addressed this issue in their MFR and presents the same argument that was
6 included in their Post Hearing Brief. After once again weighing FDN’s
7 arguments regarding SLCMs customer location methodology, the Commission
8 stated in ¶ VI.C, pg 24 of its Reconsideration Order that “we did not overlook or
9 fail to consider a point of fact or law regarding customer locations utilized in this
10 proceeding.” In the Panel testimony filed on May 27, 2005, FDN is once again
11 raising the same issues with Sprint’s cost model and the resulting rates but fails to
12 provide any new arguments.

13
14 **Q. Are there other issues being rehashed by FDN where the Commission not**
15 **only ruled against FDN’s argument in its final order in the UNE Docket, but**
16 **also denied FDN’s MFR?**

17 **A.** Yes. In their Post Hearing Briefs filed in the UNE Docket, FDN argued against
18 Sprint’s proposed deaveraging methodology on the grounds that only a limited
19 number of geographic areas have the lowest UNE prices.

20
21 **Q. Did the Commission adopt Sprint’s deaveraging proposal in the UNE**
22 **docket?**

1 A. No. The Commission adopted one of four deaveraging options developed by its
2 staff because they believed it had the greatest likelihood of promoting
3 competition. In the Final Order, page 29, the Commission stated that their
4 proposal “yields the lowest rate in Zone 1 and its four zone structure reasonably
5 reflects the Company’s distribution of costs.”
6

7 **Q. Do the rates that Sprint is proposing in this proceeding follow the deaveraged
8 rate structure adopted by the Commission in the UNE Docket?**

9 A. Yes. The current rate structure is the same as the one adopted by the Commission
10 in their decision in the final order in the UNE Docket and referred to directly
11 above.
12

13 **Q, Did FDN appeal this ruling in their MFR?**

14 A. Yes. However, the Commission determined that FDN’s claim presented in their
15 MFR was without merit and that “FDN and KMC’s mere disagreement is not
16 sufficient to meet the burden for a Motion for Reconsideration. In fact, we find
17 that we did not overlook or fail to consider a point of fact or law regarding the
18 deaveraging approach utilized in this proceeding.” (Reconsideration Order, ¶
19 III.C.2, pg 16.)
20

21 **Q. Has the Panel’s argument regarding the Cable Fill Factor Methodology used
22 by Sprint in their UNE rate calculation been previously addressed by the
23 Commission?**

1 A. Yes. FDN originally addressed the issue regarding fill factors in their Post
2 Hearing Brief, arguing that Sprint's fill factors are generally too low and do not
3 reflect a forward looking least cost network built for a reasonable projection of
4 actual demand. However, on page 83 of the Final Order the Commission
5 concluded that "when considering the placing of plant and the resulting fill, one
6 must consider the cost benefit relationship. We also agree that a company must
7 consider future needs, the availability of capacity only in certain sizes, and the
8 lead time for adding new facilities when it determines how to lay plant." The
9 Commission also noted on page 84 that there was nothing on the record to support
10 FDN's position and found that "the appropriate assumptions and inputs for fill
11 factors in the forward looking UNE cost studies shall be the fills filed by Sprint."
12 FDN also presented its argument regarding fill factors once again in their MFR
13 and once again, the Commission weighed FDN's arguments and ruled that they
14 did not overlook or fail to consider a point of fact or law concerning Sprint's fill
15 factors. Despite these definitive rulings and the overwhelming evidence
16 supporting them, FDN has once again resurrected this issue in the Panel's
17 testimony, citing the same arguments that were addressed in 2002 and 2003.

18
19 **Q. Has the Panel's argument concerning Sprint's fall out rate for CLEC Service**
20 **Orders (for manual intervention) been addressed by the Commission?**

21 A. Yes. FDN first argued in their Post Hearing Brief that the fall out rate for CLEC
22 Service Orders should be no more than 2%, citing commission orders from other
23 states for much larger and more competitively challenged RBOCs. However, on

1 page 162 of the Final Order the Commission ruled against FDN stating “There is
2 no requirement that Sprint, or any other ILEC, use some hypothetical, fully
3 automated, near perfect OSS as FDN would have us believe.” FDN again
4 rehashed the same point in their MFR and the Commission again ruled against
5 FDN in their Reconsideration Order while stating in ¶ X.C, pg 39 that FDN and
6 KMC “have mischaracterized the issue by focusing on what Sprint currently has
7 in place, instead of actually looking (as the issue is worded) to the appropriate
8 assumptions and inputs for purposes of forward looking non-recurring cost
9 studies.”

10
11 **Q. Have Sprint’s Non-Recurring Charge Work Times been previously**
12 **addressed by FDN and this Commission?**

13 A. Yes. As referenced on JMM-3, FDN exhaustively presented their arguments
14 concerning Sprint’s work times in both their Post Hearing Brief and again in their
15 MFR. The Commission acknowledged FDN’s arguments but ruled against them
16 through both the UNE Order and the Reconsideration Order.

17
18 **Q. What additional issues were addressed in Panel testimony that were**
19 **previously addressed by the Commission in its final Order in the UNE**
20 **Docket?**

21 A. The Panel testimony addresses the distribution and feeder plant mix used by
22 Sprint in its Florida UNE filing. In its testimony, the Panel makes a brief
23 comparison between the feeder and distribution plant mix that Sprint used in the

1 above referenced docket and the plant mix inputs contained in the FCC Federal
2 USF Inputs Order.

3

4 **Q. What conclusions does the Panel make regarding this comparison?**

5 A. The Panel concludes that Sprint's assumptions weight the distribution plant mix
6 toward the higher cost buried placement options. The Panel also concludes that
7 Sprint should be required to explain again why its plant mix differs so
8 significantly from the national averages determined by the FCC.

9

10 **Q. Did FDN comment on this issue in their brief?**

11 A. No. In fact the Commission order in the UNE Docket acknowledges on page 75
12 that "FDN waived its position on this issue".

13

14 **Q. Did the Commission consider the FCC USF Plant Mix Inputs versus Sprint –**
15 **Florida's proposed inputs and, if so, how did they rule?**

16

17 A. On page 75 of the Final Order the Commission considered the use of the plant
18 mix prescribed by the FCC for Federal USF but rejected it stating that "we agree
19 with Sprint that the FCC's USF Order is based on national averages rather than
20 state specific information. Since the USF inputs do not contain Florida-specific
21 information, we do not believe that they should be used in this proceeding."

22

23 **NEW Issue** At what rates, terms, and conditions should Sprint provide loop

1 prequalification? (FDN Witness Kevin P. Smith, Direct Testimony, pages
2 14-15.)
3

4 **Q. Are there any other issues included in FDN's direct testimony that you wish**
5 **to rebut?**

6 A. FDN witness Smith included a new issue beginning on page 14 of his direct
7 testimony that has to do with information available to it in pre-ordering. They
8 propose the following terms:

9
10 Sprint will provide CLEC a means for access on a pre-ordering basis
11 information identifying which Sprint loops are served through remote
12 terminals, such information to be no less accurate or reliable than what
13 Sprint has available to itself for provisioning its own services. (FDN
14 Witness Smith, Direct, page 15 at line 17.)
15

16 Sprint interprets this issue as having to do with FDN's access to loop pre-
17 qualification information and therefore stated the issue in that fashion. Sprint
18 currently provides this information and includes terms and conditions in the
19 agreement, which are not being disputed, at sections 46.1 and 47.
20

21 46.1 Sprint will offer unbundled access to Sprint's operations support
22 systems to the extent technically feasible in a non-discriminatory manner
23 at Parity. OSS consists of pre-ordering, ordering, provisioning,

1 maintenance and repair, and billing functions supported by Sprint's
2 databases and information. The OSS element includes access to all loop
3 qualification information contained in Sprint's databases, or other records,
4 including information on whether a particular loop is capable of providing
5 advanced services.

6
7 47. LOOP MAKE-UP INFORMATION

8
9 47.1 Sprint shall make available Loop Make-Up Information in a non-
10 discriminatory manner at Parity with the data and access it gives itself and
11 other CLECs, including affiliates. The charges for Loop Make-Up
12 Information are set forth in Table One to this Agreement.

13
14 47.2 Information provided to the CLEC will not be filtered or digested
15 in a manner that would affect the CLEC's ability to qualify the loop for
16 advanced services.

17
18 47.3 Sprint shall provide Loop Make-Up Information based on the
19 individual telephone number or address of an end-user in a particular wire
20 center or NXX code. Loop Make-Up Information requests will be rejected
21 if the service address is not found within existing serving address
22 information, if the telephone number provided is not a working number or

1 if the POI identified is not a POI where the requesting CLEC connects to
2 the Sprint LTD network.

3
4 **47.4 Errors identified in validation of the Loop Make-Up Information**
5 inquiry order will be returned to the CLEC.

6
7 47.5 Sprint may provide the requested Loop Make-Up Information to
8 the CLECs in whatever manner Sprint would provide to their own internal
9 personnel, without jeopardizing the integrity of proprietary information
10 (i.e. - fax, intranet inquiry, document delivery, etc.). If the data is
11 provided via fax, CLEC must provide a unique fax number used solely for
12 the receipt of Loop Make-Up Information.

13
14 47.6 If CLEC does not order Loop Make-Up Information prior
15 to placing an order for a loop for the purpose of provisioning of an
16 advanced service and the advanced service cannot be successfully
17 implemented on that loop, CLEC agrees that:

18 47.6.1 CLEC will be charged a Trouble Isolation Charge to
19 determine the cause of the failure;

1 47.6.2 If Sprint undertakes Loop Make-Up Information activity to
2 determine the reason for such failure, CLEC will be charged a
3 Loop Make-Up Information Charge; and

4 47.6.3 If Sprint undertakes Conditioning activity for a particular
5 loop to provide for the successful installation of advanced services,
6 CLEC will pay applicable conditioning charges as set forth in
7 Table One pursuant to Section XX of this Agreement.

8
9 **Q. Why does Sprint believe that the issue has to do with loop pre-qualification?**

10 A. The FCC established an ILEC's obligation to provide access to loop pre-
11 qualification information in the Third Report and Order (FCC 99-238, *In the*
12 *Matter of Implementation of the Local Competition Provisions of the*
13 *Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order
14 and Fourth Further Notice of Proposed Rulemaking, Released November 5,
15 1999). It described loop pre-qualification as follows:

16
17 427. We clarify that pursuant to our existing rules, an incumbent LEC must
18 provide the requesting carrier with nondiscriminatory access to the same
19 detailed information about the loop that is available to the incumbent, so
20 that the requesting carrier can make an independent judgment about whether
21 the loop is capable of supporting the advanced services equipment the
22 requesting carrier intends to install. Based on these existing obligations, we

1 conclude that, at a minimum, incumbent LECs must provide requesting
2 carriers the same underlying information that the incumbent LEC has in any
3 of its own databases or other internal records. For example, the incumbent
4 LEC must provide to requesting carriers the following: (1) the composition
5 of the loop material, including, but not limited to, fiber optics, copper; (2)
6 the existence, location and type of any electronic or other equipment on the
7 loop, including but not limited to, digital loop carrier or other remote
8 concentration devices, feeder/distribution interfaces, bridge taps, load coils,
9 pair-gain devices, disturbers in the same or adjacent binder groups; (3) the
10 loop length, including the length and location of each type of transmission
11 media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of
12 the loop, which may determine the suitability of the loop for various
13 technologies. Consistent with our nondiscriminatory access obligations, the
14 incumbent LEC must provide loop qualification information based, for
15 example, on an individual address or zip code of the end users in a
16 particular wire center, NXX code, or on any other basis that the incumbent
17 provides such information to itself.

18
19 The description lists the presence of remote concentration devices, including
20 digital loop concentrators as part of loop pre-qualification, which is what FDN is
21 requesting.

22 **Q. Does Sprint agree that it is part of the pre-ordering process?**

1 **A.** Yes. The FCC explicitly classified loop pre-qualification as part of the pre-
2 ordering process in its rules.

3

4 47 C.F.R. §51.319 (g) Operations support systems. An incumbent LEC
5 shall provide a requesting telecommunications carrier with
6 nondiscriminatory access to operations support systems on an unbundled
7 basis, in accordance with section 251(c)(3) of the Act and this part.
8 Operations support system functions consist of pre-ordering, ordering,
9 provisioning, maintenance and repair, and billing functions supported by
10 an incumbent LEC's databases and information. An incumbent LEC, as
11 part of its duty to provide access to the pre-ordering function, shall
12 provide the requesting telecommunications carrier with nondiscriminatory
13 access to the same detailed information about the loop that is available to
14 the incumbent LEC.

15

16 **Q.** **What is Sprint's obligation with respect to providing access to loop pre-**
17 **qualification information?**

18 **A.** As stated above, Sprint must provide non-discriminatory access to the same
19 information that Sprint has access to. That means that Sprint should provide
20 CLECs access to the same information that it has access to in the same manner.
21 The terms proposed by Sprint at 46.1 and 47 support this position.

22

23 **Q.** **Does Sprint's loop pre-qualification process meet these criteria?**

1 **A.** Sprint witness Davis will address the specifics regarding Sprint's loop pre-
2 qualification process.

3

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

5 **A.** Yes.

6

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