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September 1, 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

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 Post-Hearing Statement.

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 a returning a copy 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

CERTIFICATE OF SERVICE
DOCKET NO. 041464-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. mail on this 1st day of September, 2005 to the following:

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Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for arbitration of certain unresolved Issues associated with negotiations for Interconnection, collocation, and resale agreement With Florida Digital Network, Inc. d/b/a FDN Communications, by Sprint – Florida, Incorporated.	))))))	Docket No. 041464-TP Filed: September 1, 2005

SPRINT-FLORIDA, INCORPORATED'S POST-HEARING STATEMENT

Sprint-Florida, Incorporated ("Sprint"), pursuant to Order No. PSC-05-0496-PCO-TP, submits the following Post-hearing Statement.

INTRODUCTION

The Commission's goal in this proceeding is to resolve each issue in this arbitration consistent with the requirements of Section 251 of the Telecommunications Act of 1996 ("1996 Act"), the regulations prescribed by the Federal Communications Commission ("FCC") and also with the Commission's rulings. Sprint and FDN have continued to negotiate in good faith and have resolved a significant number of issues since Sprint's request for arbitration was filed with this Commission.

Nevertheless, there remain a number of issues for which the parties have been unable to reach agreement. These issues range in scope and complexity but the primary issue necessitating this arbitration is FDN's refusal to implement the Commission's January 8, 2003 Order No. PSC-03-0058-FOF-TP that approved new rates for Sprint for unbundled network elements ("Sprint UNE Order").

ISSUES, POSITIONS AND DISCUSSION

ISSUE 5: **How should "local traffic" be defined?**

Sprint's Position: **Local traffic should be defined as traffic that is originated and terminated within Sprint's local calling area or mandatory extended area service (EAS) area.**

Discussion: The purpose of the definition of "local traffic" in the parties' interconnection agreement is to establish the traffic exchanged between the parties that is subject to reciprocal compensation. FDN has proposed that "local traffic" for reciprocal compensation purposes be defined as traffic exchanged between Sprint and FDN that originate and terminates within the LATA, contingent upon FDN agreeing to interconnect with Sprint at all Sprint tandems within a LATA. The Commission has already considered and declined to adopt FDN's identical proposal in its order in the generic reciprocal compensation docket. (*In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996*, Order No. PSC-02-1248-FOF-TP in Docket No. 000075-TP, issued September 10, 2002, hereinafter "Generic Reciprocal Compensation Order" at page 52) In a review of the Commission's ruling in the Generic Reciprocal Compensation Order, the Florida Supreme Court affirmed the Commission's ruling that a LATA wide local calling area is discriminatory to ILECs and IXCs. [*Sprint-Florida, Inc. v. Jaber*, 885 So. 2d 286, 297 (Fla. 2004)]

FDN has offered no new arguments or evidence to justify its proposal, which it has specifically characterized as establishing a LATA-wide local calling area, not the originating carrier's local calling area. [See, Tr. 150, Smith Direct Testimony, page 7,

line 5, where Mr. Smith states, "FDN's proposal is not the same as the originating carrier proposal."] Even though FDN's counsel emphasized that the basis for the Supreme Court ruling overturning the Commission's "originating carrier" decision was because of a lack of evidence of competitive neutrality, not necessarily a lack of competitive neutrality, FDN has offered no evidence to support the competitive neutrality of its proposal in this proceeding. In fact, witness Smith stated that it wasn't necessary for FDN to do so. [Tr. 150, Smith Direct Testimony, page 7, line 4]

FDN's primary (perhaps only) argument in favor of its proposal is that it will make it easier for FDN to compete against Sprint if it is not bound by the same intercarrier compensation arrangements that bind Sprint, IXCs and other competitive carriers. [Tr. 64, Smith Rebuttal Testimony, page 6, lines 16-24; Tr. 138, Sywenki Rebuttal Testimony, page 6, lines 3-10] Of course, if FDN is allowed to pay lower reciprocal compensation rates (or zero under a bill and keep arrangement) for the same traffic for which other carriers are required to pay intrastate access rates, it will be easier for FDN to compete. Clearly, this is not competitive neutrality; rather, it is discriminatory treatment in favor of FDN.

Sprint has proposed that the most competitively neutral definition of local traffic for intercarrier compensation purposes is the ILEC's local calling area because it can be applied to all carriers (e.g., ILECs, CLECs and IXCs) in a nondiscriminatory fashion. [Hearing Exhibit 3, Sprint's Response to Staff's Interrogatory No. 52] Sprint recognizes that the Commission rejected the use of the ILEC's local calling area in the Generic Reciprocal Compensation Order on the basis that it was not competitively neutral. [Generic Reciprocal Compensation Order at page 55] Sprint does not dispute that the

Supreme Court did not invalidate that determination in its ruling. However, the basis of the Commission's ruling was primarily the effect of the cost of intercarrier compensation on CLECs' ability to offer more expansive local calling areas. [Id.] There has been a significant change in the regulatory landscape since the Generic Reciprocal Compensation Order was issued. In 2003 the Florida Legislature passed the Tele-competition Innovation and Infrastructure Enhancement Act [chapter 2003-32, Laws of Florida] The Act allowed ILECs to rebalance their rates for access and basic local services in a revenue neutral manner. In accordance with that Act the Commission approved Sprint's petition to reduce its intrastate access rates to the level of its interstate access rates through a four step process over a three year period.[1] The Florida Supreme Court recently upheld the Commission's Order and the rebalancing will begin shortly. [Crist v. Jaber, 2005 Fla. LEXIS 1447 (Fla. 2005)] Sprint's reduction of its intrastate access rates and commensurate increase in its basic local service rates more closely reflects its costs of providing service and will serve to make local service competition more attractive in its territory. [Rebalancing Order at pages 17, 28 and 38] In addition, this reduction in access rates will address and mitigate the concerns expressed by FDN and eliminate a primary reason for its LATA-wide local calling area proposal. [Tr. 137, Sywenki Direct Testimony, page 5, lines 17-22]

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[1] *In re: Petition by Verizon Florida, Inc. to reform intrastate network access and basic local telecommunications rates in accordance with Section 364.164, Florida Statutes; In re: Petition by Sprint-Florida, Incorporated to rduce intrastate switched network access rates to interstate parity in a revenue-neutral manner pursuant to Section 364.164(1), Florida Statutes; In re: Petition for implementtion of Section 364.164, Florida Statutes, by rebalancing rates on a revenue-neutral manner through decreases in intrastate switched access charges with offfsetting rate adjustments for basic services, by BellSouth Telecommunications, Inc.; In re: Flow-Through of LEC switched access reductions by IXCs, pursuant to Section 364.163(2), Florida Statutes*, Docket No.s 030867-TL, 030868-TL, 030869-TL and 030961-TI, Order No. PSC-03-1469-FOF-TL, issued on December 24, 2003. (hereinafter, "Rebalancing Order.") In that Order the Commission also approved similar petitions filed by BellSouth and Verizon.

Importantly, unlike FDN's proposal, which would benefit FDN at the expense of its competitors, rebalancing will facilitate competition for all providers while ensuring that Sprint and other ILECs can continue to meet their carrier of last resort obligations. Because the Rebalancing Order has addressed the concerns that led the Commission to support the "originating carrier's local calling scope" in the Generic Reciprocal Compensation Order, Sprint urges the Commission to revisit the rationale behind that decision and accept Sprint's position that Sprint's local calling area is the appropriate way to define "local traffic" for reciprocal compensation purposes in Sprint's agreement with FDN.

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

Sprint's Position: **Termination liability should apply if an end user chooses to transfer service to the CLEC before the contract terms are fulfilled.**

Discussion: Sprint offers Contract Service Arrangements (CSAs) to its customers in Florida consistent with Sprint's tariffs and with the statutory price regulation scheme. [Tr. 64, Maples Rebuttal Testimony, page 8, lines 8-11] CSAs allow Sprint to provide, among other things, competitive term and volume discounts. Since the pricing of these arrangements is based on the anticipation that Sprint will recover its costs over the life of a CSA, termination liability is imposed to allow Sprint to recover any unrecovered costs that result from early termination of a contract. [Tr. 28, Maples Direct Testimony, page 6, lines 3-5; Tr. 63, Maples Rebuttal Testimony, page 7, lines 21-23]

Consistent with section 251 of the Telecommunications Act and the Commission's rulings, Sprint offers these arrangements for resale by CLECs at the resale

discounts approved by the Commission. [FCC First Report and Order at ¶¶ 948 and 953] In this proceeding, FDN is asking that it be allowed to take advantage of a discount of the already discounted CSA rates, while Sprint is precluded from assessing the contractual termination liability on its customer, who chooses to terminate its CSA with Sprint and obtain services from FDN. Prohibiting ILECs from assessing termination liability when a customer cancels a CSA to obtain services from a competitor has been discussed under the rubric of a "fresh look." Neither the FCC nor the Commission has ultimately imposed a fresh look requirement.[2]

FDN's position is not supported by the Act or the rulings of this Commission. In addition, FDN's position is contrary to the decision of the state Division of Administrative Hearings overturning a proposed Commission rule that would have required a limited fresh look period when local service competition was initiated in Florida. DOAH ruled that the "fresh look" requirement was anticompetitive and that the Commission lacked the authority to adopt such an anticompetitive requirement. *GTE v. FPSC*, and *BellSouth v. FPSC*, Final Order in Case No. 99-5368RP and Case No. 99-5369RP, issued July 13, 2000, at pages 114, 115, and 117] There is nothing in FDN's proposal that mediates the anticompetitive nature of its proposed "fresh look" period. FDN asserts that its proposal will help it be more competitive. Certainly, FDN can better compete if it gains an unfair advantage over its competitors. However, FDN's advantage affirms the DOAH ruling that a fresh look period is anticompetitive, rather than negates it. The Commission should approve Sprint's termination liability language for inclusion in the parties' interconnection agreement.

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[2] See, Docket No. 980253-TX in which the Commission approved "fresh look" rules that were ultimately invaldidated in a rule challenge proceeding at the Division of Administrative Hearings.

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

Sprint's Position: **Sprint's process for determining when additional wire centers meet the threshold for nonimpairment and the DS1 cap proposed by Sprint are consistent with the TRRO and should be adopted.**

Discussion: This issue addresses FDN's dispute of the process the parties should follow to "delist" certain UNEs when Sprint wire centers meet the thresholds defined by the FCC in the TRRO. It also addresses FDN's dispute of Sprint's proposed cap on the number of DS1 dedicated transport circuits that a CLEC can lease on any given route. Sprint's position on each of these issues is discussed below.

Delisting Additional UNEs

The TRRO defined a specific process for an ILEC's initial determination that certain wire centers meet the thresholds for nonimpairment established in the TRRO. In paragraph 234 of the TRRO the FCC specifically provides that CLECs may challenge those determinations before state commissions. The FCC did not set forth a specific process for subsequent determinations that additional wire centers have met those thresholds. Sprint has proposed that the following process be incorporated into its agreement with FDN when Sprint determines that additional wire centers have met the FCC's threshold for nonimpairment: first, Sprint will provide a notice to all CLECs with which it has interconnection agreements that Sprint has determined that certain wire centers meet the FCC's thresholds; next, CLECs will have 30 days from receipt of the notice from Sprint to challenge Sprint's determination before the Commission; then, once a challenge is filed, all affected CLECs will have an opportunity to participate in the Commission proceeding; and, finally, if the Commission upholds Sprint's determination

Sprint will no longer offer the UNE to any CLEC. [Tr. 35, Maples Direct Testimony, page 13, lines 15-20; Tr. 69, Maples Rebuttal Testimony, page 13, lines 9-12] In addition, Sprint will continue to offer the UNE to all CLECs during the pendency of the dispute. [Tr. 69, Maples Rebuttal Testimony, page 13, lines 8-9] Sprint's proposed process is consistent with the provisions of the TRRO as it relates to the initial determination of nonimpairment. In addition, Sprint's process gives CLECs an adequate opportunity to challenge Sprint's wire center determinations before UNEs are removed from the list. It also promotes administrative efficiency and finality in that it allows the Commission to consider challenges to Sprint's determination in a single proceeding in which all CLECs have the ability to participate. Once the Commission rules on a challenge all CLECs are bound by the Commission's decision.

FDN has never made it clear what it disputes about the language Sprint has proposed. The process proposed by Sprint is reasonable and appropriate and should be adopted by the Commission.

DS1 Dedicated Transport Cap

Sprint has also proposed a cap of 10 on the number of DS1 dedicated transport circuits that a CLEC may order in all wire centers where DS1 dedicated transport is available. [Tr. 33, Maples Direct Testimony, page 11, lines 16-18] As proposed, Sprint's cap applies regardless of whether DS3 transport is available in a wire center. [Id.] Sprint's position is consistent with ¶ 128 of the the TRRO, in which the FCC states: "When a carrier aggregates sufficient traffic on DS1 facilities such that it effectively could use a DS3 facility, we find that our DS3 impairment conclusions should apply." Sprint's position is also consistent with the rules adopted by the FCC to codify its rulings

in the TRRO. FCC Rule 51.319(e)(2)(ii)(B) states that the cap applies to "each route where DS1 dedicated transport is available on an unbundled basis."

FDN has incorrectly interpreted the TRRO and the related rules to place a cap on the DS1 circuits only if DS3 transport is not available in a particular wire center.[3] FDN's position is not consistent with the FCC's rulings or with the rationale underlying the FCC's decision. FDN appears to rest its interpretation solely on a single statement in the TRRO taken out of context with the remainder of the FCC's rulings. While ¶ 128 of the TRRO begins with a determination that the cap applies on routes for which there is no unbundling obligation for DS3 transport, it goes on to state that the basis for the cap is the FCC's finding that it is economically efficient for a carrier to aggregate DS1 traffic to a DS3 facility when its needs exceed 10 DS1s. In wire centers where DS3 transport is not available as a UNE, CLECs must look to competitive opportunities for DS3 transport when their transport needs exceed 10 DS1s. In wire centers where DS3 transport is available as a UNE, these same pricing efficiencies mandate that a CLEC purchase DS3 transport from the ILEC when its transport needs exceed 10 DS1s. Sprint's interpretation is further supported by the FCC's reference to the DS1 cap in footnote 489 of the TRRO. Even if an argument could be made that the language in ¶ 128 supports FDN's position, although Sprint does not believe that it does, the unambiguous language of the rule would still govern.[4]

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[3] FDN does not address this issue specifically in its testimony, instead stating its intention to address the issue its brief. [Tr. 153 Smith Direct, page 10, lines 12-18] Sprint bases its understanding of FDN's position on discussions during negotiation sessions with FDN. [Tr. 36, Maples Direct Testimony, page 14, lines 17-81; Tr. 65, Maples Rebuttal Testimony, page 9, lines 14-15]

[4] See, the Massachusetts D..T.E's ruling in the Verizon Arbitration, D.T.E. Order No. 04-33, in which the Massachusetts D.T.E. stated, on page 77 of the Order, "The plain language of the rule must prevail over the claim of inconsistency with the FCC's Triennial Review Remand Order. "The Supreme Court has repeatedly emphasized the importance of the plain meaning rule, stating that if the language of a statute or regulation has a plain and ordinary meaning, courts need look no further and should apply the regulation as

Clearly, the cap on DS1 transport that Sprint proposes is economically efficient and is consistent with the TRRO and the related FCC rules. The Commission should adopt Sprint's proposal for incorporation into the interconnection agreement between Sprint and FDN.

ISSUE 24 **May Sprint restrict UNE availability where there is not a "meaningful amount of local traffic?" If so, what is a "meaningful amount of local traffic?"**

Sprint's Position: **All UNEs must be used to provide local exchange services. The rules established by the TRRO prohibit the use of UNEs for services which are deemed to be competitive. UNEs can be used to provide these services if they are also being used to provide local exchange services.**

Discussion: Sprint's position is that all UNEs purchased by a CLEC must be used to provide local telecommunications services. As long as a CLEC is providing local service with a UNE then other services, e.g., information services and long distance services, may also be provided using that UNE. Sprint's position is consistent with the Act and with the requirements established by the FCC in the TRRO. [Tr. 40-41, Maples Direct Testimony, page 18, line 6 through page 19, line 5] Section 251(c)(3) of the Act imposes on ILECs the duty to provide UNEs for the provision of "telecommunications services." Because the FCC considers the wireless and long distance markets to be competitive, in

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it is written." United States v. Lachman, 387 F.3d 42, 50 (1st Cir. 2004). "Agencies have an important role to play in the interpretation of statutes and regulations under [Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984)] and related doctrines . . . [b]ut we look to agency interpretations only when the statute or regulation remains ambiguous after we have employed the traditional tools of construction." Lachman, 387 F.3d at 54 (internal citations omitted). In this case, there is no ambiguity of the rule itself, which contains no limitation on its applicability based on the availability of unbundled DS3 transport. We have no occasion to look to the FCC's discussion of the rule, which only speaks to the availability of DS1s "[o]n routes for which we determine that there is no unbundling obligation for DS3 transport." Moreover, the FCC's discussion of its rule is merely silent as to the applicability of the DS1 cap on routes where unbundled DS3 transport is available. This silence does not create ambiguity in the plain meaning of the rule."

the TRRO it prohibited the use of UNEs solely for the provision of wireless or long distance telecommunications service. [TRRO at ¶¶ 15, 34-36; FCC Rule 51.309(b)] Combining the Act's requirement that UNEs must be provided only for telecommunications services with the FCC's ruling that UNEs need not be provided solely for wireless or long distance telecommunications services, the only logical interpretation is Sprint's interpretation that an ILEC is required to provide UNEs only if they will be used, at least partially, to provide local telecommunications services.

Although FDN has not fully elucidated its position on this issue in its testimony, reserving this for its brief, from FDN's position in negotiations Sprint has gleaned that FDN believes that Sprint must provide FDN with UNES to provide "information services" as long as FDN also provides any telecommunications service over the UNE, but not necessarily local service. Sprint believes that FDN's position is contrary to the plain language of the Act and the FCC's determination in the TRRO that UNEs need not be provided for the provision of the wireless or long distance telecommunications. Because Sprint's position is reasonable and consistent with the Act and the TRRO, the Commission should approve Sprint's proposal for incorporation into the parties' interconnection agreement.[5]

ISSUE 25 When and how should Sprint make subloop access available to FDN?

Sprint's Position: **Requests for subloop access should be made through the ICB process, consistent with the Sprint UNE Order. Once Sprint provisions a type of subloop

[5] Sprint's alternative language provides:

> CLEC must use any UNE purchased from Sprint for the purpose of providing local exchange services. CLEC may use a UNE for the provision of interexchange or information services if CLEC is also providing local exchange services over the same UNE.
> [Tr. 39, Maples Direct Testimony, page 17, lines 4-7]

to a CLEC in Florida, Sprint will make such subloop available under the same terms to other requesting CLEC's, upon a CLEC's acceptance of the pricing.**

Discussion: Sprint is not sure exactly what FDN is disputing about Sprint's proposed language. FDN has said that it wants Sprint to make subloops that it has made available to another CLEC available to FDN on at least as favorable terms and conditions as the other CLEC. [Tr. 155, Smith Direct Testimony, page 12, lines 4-8; Tr. 172-173, Smith Rebuttal Testimony, page 14, line 22 through page 15, line 2] Sprint's proposed language does just that. [Tr. 43, Maples Direct Testimony, page 21, lines 16-20; Tr. 73, Maples Rebuttal Testimony, page 17, lines 5-8] Sprint's language also provides that FDN must use the ICB process to request subloop access. [Tr. 43, Maples Direct Testimony, page 21, lines 10-13] This approach is consistent with the Sprint UNE Order.[6] The Commission considered the ICB process reasonable for Sprint's provisioning of subloop access because at that time Sprint had never received a request for subloops. [Sprint UNE Order, pages 36 and 39] Sprint still has not received a subloop request. [Tr. 44, Maples Direct Testimony, page 22, lines 11-12; Tr. 73, Maples Rebuttal Testimony, page 17, lines 20-21]

Sprint's proposal to address subloop access is reasonable and consistent with the Commission's ruling in the Sprint UNE Order. The Commission should approve Sprint's proposal for incorporation into the parties' interconnection agreement.

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

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[6] In *re: Investigation into pricing of unbundled network elements (Sprint/Verizon track)*, Order No. 03-0058-FOF-TP, in Docket No. 990649B-TP, issued January 8, 2003 (cited throughout this Post-hearing Statement as "Sprint UNE Order.")

Sprint's Position: **UNE rates or tariffed rates should apply for the loop, transport and special access components. Facilities required to connect UNEs should be charged at TELRIC rates. Requests for new combinations or commingled arrangements should be handled as Bona Fide Requests (BFRs).**

Discussion: The dispute between the parties on this issue apparently results from FDN's misinterpretation of Sprint's proposed language as allowing Sprint to charge FDN an unspecified amount to recover costs relating to combinations or commingling, other than the UNE prices set forth in the agreement or the special access rates set forth in Sprint's tariffs. [Tr. 155, Smith Direct Testimony, page 12, lines 11-16; Smith Rebuttal Testimony, page 16, lines 3-21] Sprint believes that it has clarified in Mr. Maples' Rebuttal Testimony that the charges Sprint will impose are either the charges for UNEs in the interconnection agreement or the special access charges set forth in Sprint's tariffs. [Tr. 75, Maples Rebuttal Testimony, page 19, lines 5-9, Hearing Exhibit No. 5, Sprint's Response to FDN's Interrogatory No. 82] The only exception to this pricing under Sprint's proposal is for new combinations or commingled arrangements, which would be handled through the Bona Fide Request process set forth in the agreement. [Tr. 49, Maples Direct Testimony, page 27, lines 1-3] The Commission should approve Sprint's proposed language, especially since it does not appear that there is a substantial dispute between the parties on this issue.

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

Sprint's Position: **Sprint has included prices, terms and conditions for common routine network modifications, i.e., rearrangement of cable, repeater and doubler installation, smart jack installation, and line card installations. Rates, terms and

conditions for all other routine network medications should be developed through the ICB process.**

Discussion: The dispute between Sprint and FDN on this issue appears to concern when Sprint may charge for routine network modifications that are not otherwise recovered in Sprint's UNE rates and when the ICB process will apply to a requested modification. In the TRRO, the FCC requires ILECs to make routine network modifications to UNEs requested by CLECs and to ensure that no double recovery of costs results from the ILECs' pricing for such modifications. [TRO ¶640]

Sprint's proposal contemplates charges for routine network modifications only when cost recovery for the modification is not included in Sprint's existing rates. [Tr. 51, Maples Direct Testimony, page 29, lines 20-22; Tr. 96-97, Davis Direct Testimony, page 3, line 20 through page 4, line 12; Tr. 107, Davis Rebuttal Testimony, page 2, lines 8-21] For routine network modifications not recovered in Sprint's existing UNE rates, Sprint has developed pricing for the most common routine network modifications and included them on the price list. [Tr. 51, Maples Direct Testimony, page 29, lines 18-20; Tr. 104, Davis Direct Testimony, page 11, lines 1-19; Hearing Exhibit 14, Exhibit JRD-1] The determination as to whether a requested modification warrants additional charges is based on the criteria Sprint applies to retail customers under the "Special Construction" provisions of Sprint's Intrastate Access Tariff. [Tr. 100-102, Davis Direct Testimony, page 7, line 22 through page 9, line 3] For less common network modifications, such as complex rearrangements, Sprint proposes pricing on an ICB basis. [Tr. 100, Davis Direct Testimony, page 7, lines 11-15]

While FDN has not made its disagreement with Sprint's proposal entirely clear, the additional language FDN has proposed leads Sprint to believe that FDN believes that rates in addition to UNE rates should be considered when determining if Sprint has already recovered its costs for a routine network modification. [Tr. 175, Smith Rebuttal Testimony, page 17, lines 9-13] FDN's proposal is not specific as to what "other rates" should be considered in making this determination. Sprint believes that FDN's proposal is redundant, given that the "Special Construction" criteria ensure that no charges apply unless the network modification is made solely for FDN's benefit. [Tr. 101, Davis Direct Testimony, page 8, lines 8-16] Rather, FDN's proposal appears to be a recipe for dispute and litigation, allowing FDN to argue in any and every case that no charges should apply because Sprint has already recovered its costs through some other mechanism.

Sprint's proposal for cost recovery for routine network modifications is imminently reasonable in that it provides for recovery only when certain criteria are met that demonstrate that the costs of a modification are incurred for FDN's sole benefit. In addition, the charges that Sprint proposes are reasonable and consistent with the TRO. FDN's proposal seems designed for the purpose of injecting ambiguity and the potential for dispute into the process. Sprint's proposal should be adopted by the Commission for inclusion in the parties' interconnection agreement.

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

Sprint's Position: **Sprint and FDN have reached agreement on the terms and conditions of loop conditioning but not on the rates. The rates approved by the FPSC in the Sprint UNE cost docket are the appropriate rates and should be incorporated into the agreement.**

Discussion: See Discussion of Issue 34.

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

Sprint's Position: **The UNE rates which the FPSC approved in the Sprint UNE Order are the appropriate rates and should be incorporated into the agreement between FDN and Sprint.**

Discussion: In a generic proceeding in which all CLECs were entitled to participate, and in which FDN did intervene and participate, the Commission approved UNE rates for Sprint in January 2003.[7] FDN filed several motions in an attempt to change the outcome of the decision, but was unsuccessful. Ultimately FDN appealed the decision to the federal district court. That appeal is still pending. While FDN filed a request for a stay of the Sprint UNE Order with the Commission, that request was never acted upon by the Commission. Pursuant to Rules 25-22.060(1)(c) and 25-22.061(2), Florida Administrative Code, a Commission final order is effective upon issuance unless affirmatively stayed by the Commission or a court.

The Commission has already determined correctly that FDN may not relitigate in this arbitration the cost studies and UNE rates approved by this Commission for Sprint in the Sprint UNE Order. [Order No. PSC-05-0732-PCO-TP, granting Sprint's Motion to Strike and Order No. PSC-05-0855-FOF-TP, denying FDN's Motion for Reconsideration of that Order] Pursuant to the Commission's Order on Sprint's Motion to Strike, the issue before the Commission is whether the Sprint UNE Order rates should be incorporated in the parties' interconnection agreement. Sprint's position is that the rates must be included in the FDN/Sprint interconnection agreement, consistent with the implementation

mechanism adopted by the Commission in the Sprint UNE Order.[8] In addition, the rates should be included to avoid treating FDN more favorably than the other CLECs who have adopted the Commission-approved rates in their interconnection agreements with Sprint. FDN has provided no credible factual or legal basis for treating FDN differently from any other CLEC by allowing FDN to continue to purchase UNEs under the rates in effect prior to the Sprint UNE Order.

Despite the fact that FDN intervened in the Sprint UNE docket and participated as a full party, FDN maintains that it has the unqualified right to relitigate Sprint's UNE rates de novo in this arbitration proceeding. In his ruling on FDN's Motion for Postponement and Sprint's Motion to Strike, the Prehearing Officer rejected FDN's arguments and emphasized that Sprint's UNE rates at issue in this proceeding were properly adopted in a generic proceeding in which FDN intervened and participated as a full party. [Order on Sprint's Motion to Strike at page 3] Because FDN was a party to the generic proceeding and because FDN never questioned the propriety of a generic docket to establish Sprint's UNE rates in that docket, the Prehearing Officer ruled that FDN could not relitigate the same cost studies and UNE rates in this arbitration. [Id.] Rather, the prehearing officer ruled that FDN's pending appeal of Sprint's UNE rates was the proper mechanism for FDN to challenge the Sprint UNE Order. [Id.]

FDN has presented no credible factual or legal basis for the Commission to thwart the implementation of the Sprint UNE Order by deciding that the approved rates should not be incorporated in the parties' agreement. As the Commission stated in distinguishing

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[7] Full cite for Sprint UNE Order

[8] The Sprint UNE Order states that "recurring and nonrecurring rates and charges shall take effect when existing interconnection agreements are amended to incorporate the approved rates, and the amended

FDN's request to revisit the Sprint UNE Order rates from Verizon's request to revisit its rates (subsequently withdrawn), to justify revisitation of the rates, at the very least FDN must demonstrate a change in circumstances significant enough to indicate that the previously approved rates no longer reflect the appropriate cost recovery for Sprint.[9] [Order Denying Reconsideration at page 4] FDN has failed to do this. FDN's primary "changed circumstances" arguments are that the rates are almost four years old and therefore, *ipso facto*, they must be obsolete. [Tr. 187, Panel Direct Testimony at page 9, line 15] However, FDN has offered no competent factual evidence to support that assertion.

FDN also argues that Sprint's Commission-approved UNE rates are too high to sustain competition. First, the Act and FCC rules implementing the Act require that UNE rates be set based on TELRIC costs – an objective standard independent of a subjective evaluation of the effect of UNE rates on competition. In the Sprint UNE Order, the Commission determined that the approved rates were compliant with TELRIC and with the Act and FCC rules. Second, FDN has produced no credible evidence that Sprint's UNE rates have had a negative effect on competition in Sprint's territory. According to the 2004 Commission Report on Competition, wireline competition has continued to increase in Sprint's local service territory. [Hearing Exhibit No. 7, Deposition Exhibit No. 3 to Maples Deposition, Florida Public Service Commission Annual Report to the Florida Legislature on the Status of Competition in the Telecommunications Industry in Florida, as of May 31, 2004, at page 22] More than 70 CLECs have adopted the rates in the Sprint UNE Order and continue to compete in Sprint's territory today. [Hearing

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agreements are deemed approved by us. For new interconnection agreements, the rates shall become effective when the agreements are deemed approved by us." [Sprint UNE Order, page 218]

Exhibit 3, Sprint's Response to Staff Interrogatory No. 42] And, contrary to FDN's assertions, the level of competition in Sprint's territory compares favorably to the level of competition in Verizon's territory (Verizon and Sprint serve a comparable number of customers in Florida). In fact, residential competition in Sprint's territory exceeds the level of residential competition in Verizon territory. [Hearing Exhibit No. 7, Deposition Exhibit No. 3 to Maples Deposition, Competition Report, page 22]

FDN's comparison of Sprint's UNE loop rates to the cost for a basic local service access line is misplaced. A UNE-based CLEC has the same opportunity to recover its costs through the provision of ancillary services and through access charges as Sprint does. [Tr. 162-163, Smith Rebuttal Testimony, page 4, line 8 through page 5, line 6] The proper basis on which to assess the profitability of offering service in Sprint's territory is a comparison of the UNE loop rate to the total revenue per access line, not simply the below cost rate for a basic access line. Finally, as discussed above, the purpose of the Rebalancing Order, which Sprint currently is in the process of implementing, is to attempt to address the regulatory imbalance between the cost of basic local service and the price of basic local service. As the Commission found in the Rebalancing Order, the increase in basic rates permitted by the Order will make competition for basic services more attractive in Sprint's markets. [Rebalancing Order at pages 17, 28 and 38-39]

FDN's implication that Sprint should somehow be penalized because Sprint did not file a Complaint with the Commission against FDN to enforce the provisions of the Sprint UNE Order (choosing instead to attempt to implement the Order through the parties' negotiations for a new agreement) is outrageous. When the Commission issues an Order, it does not intend that Commission enforcement action will be required to

[9] Docket No. 050059-TL. Verizon has since withdrawn its Petition.

implement the Order. Rather, the Commission expects that the affected parties will recognize and accept their rights and responsibilities under the Order and act accordingly. In fact, 73 CLECs have accepted voluntarily the UNE rates approved for Sprint. [Hearing Exhibit 3, Sprint's Response to Staff's Interrogatory No. 42] It is this type of voluntary negotiation that was contemplated by the Commission, by the change in law provisions of the parties' interconnection agreement and by section 252 of the Act. While recourse to the Commission to resolve an implementation dispute is permissible under the interconnection agreement, the Act and Florida law, such recourse is certainly not the preferred mechanism, due to the administrative burdens and costs it imposes on the parties and the Commission. Realizing both the spirit and intent of the Sprint UNE Order, the interconnection agreement and the negotiation provisions of the Act, Sprint acted above and beyond its obligations to negotiate in good faith to resolve this issue with FDN. It was only as a last resort, in the face of FDN's utter intransigence, that Sprint was forced to seek Commission enforcement of the Sprint UNE Order.

FDN categorically refused to incorporate the Commission-approved UNE rates in either the interconnection agreement that was in effect at the time the Sprint UNE Order was issued or into the follow on agreement that is the subject of this arbitration. [Tr. 19-20, Givner Dirct Testimony, page 7, line 10 through page 8, line 21; Hearing Exhibit 11, bate stamp page 5, e-mails exchanged between John Chuang (Sprint) and Scott Kassman (FDN)] In fact, were it not for the UNE rate issue, Sprint is confident that the parties would have been able to work through their differences on the remaining issues and this arbitration need never have been brought to the Commission for resolution. As FDN has pointed out, Sprint acquiesced in several delays of the arbitration deadline because Sprint

remained hopeful that the parties would be able to reach agreement (as Sprint had with more than 70 other CLECs). Finally, when it became clear that FDN had no intention of negotiating in good faith for a final interconnection agreement with Sprint, as long as that agreement would include the Commission-approved UNE rates, Sprint was forced to file this arbitration as the only mechanism for implementing the Commission's order. Because of the significant delay in implementing the Commission-approved rates caused by FDN's recalcitrance, as well as the additional delay implicit in the arbitration process (which FDN has attempted to exploit at every turn) Sprint has requested that the Commission not only order that the Sprint UNE Order rates be included in the parties' interconnection agreement, but that the rates be retroactive to the date Sprint filed the arbitration. FDN characterizes this as "retroactive ratemaking." Given that the Sprint UNE Order rates were adopted in by the Commission in January 2003 – more than two and a half years ago, FDN's characterization is ridiculous

FDN has benefited from its bad faith refusal to abide by the Sprint UNE Order for over two years, giving it an advantage in the marketplace over other CLECs in Sprint's territory who properly accepted the Commission's ruling. The Commission should approve Sprint's position that the Sprint UNE Order rates should be incorporated into the parties' agreement and that they should be effective back to December 30, 2004.

ISSUE 35 **What are the parties' obligations regarding interconnection facilities?**

Sprint's Position: **FDN should maintain a minimum of one POI per LATA. To the extent Sprint has more than one tandem in a LATA, FDN should establish a POI at each Sprint tandem where FDN terminates traffic.**

Discussion: See discussion of Issue 36.

ISSUE 36 **What terms should apply to establishing Points of Interconnection (POI)?**

Sprint's Position: **FDN should maintain a minimum of one POI per LATA with a POI at each Sprint tandem where FDN terminates traffic. As discussed in Issue 5, the local calling area for reciprocal compensation purposes should be Sprint's local calling area.**

Discussion: Sprint's proposed language requires that FDN establish a minimum of one POI per LATA, with a POI at each Sprint tandem where FDN terminates traffic. [Tr. 124, Sywenki Direct Testimony, page 8, lines 17-22] Sprint believes tht establihsing a POE at each tandem is the best approach to establish efficient interconnection arrangements and ensure a reasonable sharing of costs incurred to transport traffic between the parties. Furthermore, Sprint believes that this is the most efficient method of interconnection, in that it avoids the costs and expense of "double-tandeming." [Tr. 125, Sywenki Direct Testimony, page 9, lines 7-10; Hearing Exhibit No. 3, Sprint's Response to Staff's Interrogatory No. 71] As Mr. Sywenki explains in his Direct Testimony, "double tandeming occurs when calls pass through two tandem switches on route to their final destination." [Tr. 125, Sywenki Direct Testimony, page 9, lines 12-21] Sprint has two LATAs in Florida, the Ft. Myers LATA and the Pensacola LATA, where more than one tandem switch is located. [Hearing Exhibit Nos. 3 and 9, Sywenki Late-filed Deposition Exhibit No. 1]

Sprint is aware that prior Commission precedent has held that CLECs are required to establish only one POI per LATA at their option. [Generic Reciprocal Compensation Order at page 25] However, Sprint believes that the Commission should deviate from that prior precedent in this case for several reasons. First, the issue of "double tandeming"

was never raised or addressed in the Generic Reciprocal Compensation Order. Second, pursuant to undisputed terms in the interconnection agreement, Sprint has agreed to share the costs of any interconnection facilities, based on the proportionate use of the facilities by Sprint and FDN. [Hearing Exhibit No. 15, Exhibit SDG-1, Part F, Section 55.8] Therefore, as stated in Mr. Swyenki's Rebuttal Testimony, Sprint's proposal provides a "reasonable allotment of transport obligations between Sprint and FDN." [Tr. 142, Sywenki Rebuttal Testimony, page 10, lines 15-16] And, in this regard, Sprint's proposal goes beyond what many ILECs agree to assume from a cost perspective. [Hearing Exhibit No. 8, Sywenkin Deposition, page 27, lines 7-14] Third, Sprint's proposal for tandem interconnection provides FDN parity with Sprint, since Sprint does not use tandem-to-tandem routes for its own local traffic. [Tr. 142, Sywenki Rebuttal Testimony, page 10, lines 18-21] Finally, since Sprint has only two two-tandem LATAs in Florida, Sprint's proposal will require FDN to establish only two additional POIs. For these reasons, the Commission should approve Sprint's proposal for inclusion into the interconnection agreement between the parties.

ISSUE 37 **What are the appropriate terms for transport and termination compensation for:**
(a) local traffic
(b) non-local traffic
(c) ISP-bound traffic?

Sprint's Position: **Sprint and FDN should exchange (a) local traffic and (c) ISP-bound traffic on a Bill and Keep basis when that traffic is roughly in-balance. Tariffed access charges should apply to the (b) non-local traffic that is exchanged.**

Discussion: The dispute regarding this issue is not the appropriate compensation for the various types of traffic. Sprint and FDN have agreed to a "bill and keep" arrangement for

(a) local traffic and (c) ISP-bound traffic. [Tr. 126, Sywenki Direct Testimony, page 10, lines 10-12] In addition, the parties agree that tariffed access charges should apply to toll traffic. [Hearing Exhibit No. 15, Exhibit SDG-1, Part F, Section 55.3] The dispute is related to the definition of "local traffic" which is discussed thoroughly under Issue 5.

ISSUE 38 **What are the appropriate terms for compensation and costs of calls terminated to end users physically located outside the local calling area in which their NPA/NXXs are homes (Virtual NXXs)?**

Sprint's Position: **Consistent with the Commission's previous ruling, VNXX traffic should be subject to long distance access charges because the originating customer and terminating customer are not located within the same local calling area.**

Discussion: The language Sprint has proposed related to VNXX traffic is consistent with the Commission's ruling in the Generic Reciprocal Compensation Order. [Generic Reciprocal Compensation Order at pages 34-35] In fact, FDN does not dispute Sprint's proposed language per se, but merely insists that the language be "reciprocal." [Tr. 177, Smith Rebuttal Testimony, page 19, lines 4-5] Sprint has resisted FDN's reciprocity proposal because Sprint, as an ILEC, does not assign "VNXXs." Typically, a VNXX is used by CLECs to allow customers to dial-up a distant ISP using a local dialing pattern. [Tr. 143, Sywenki Rebuttal Testimony, page 11, lines 3-4] While Sprint does provide a service, called foreign exchange or FX, the restrictions in Sprint's tariffs do not allow FX service to be used in the same manner as the typical manner in which VNXX service is used. [Hearing Exhibit No. 8, Sywenki Deposition, page 7, lines 7-17] However, to the extent that FDN provides a service that is similar to the FX service that Sprint provides and that is used for a similar purpose, Sprint does not object to the reciprocity language FDN demands.

ISSUE 39 **What are the appropriate terms for compensation and costs of calls that are transmitted, in whole or in part, via the public Internet or a private IP network (VoIP)?**

Sprint's Position: **Intercarrier compensation for VoIP traffic should be the same as the compensation for non-VoIP traffic (e.g., reciprocal compensation, interstate access and intrastate access).**

Discussion: Sprint's position is that VoIP traffic that uses the public switched network should be subject to the same intercarrier compensation as the compensation for non-VoIP traffic. [Tr. 131, Sywenki Direct Testimony, page 15, ines 15-17] FDN advocates that the Commission defer a resolution of this issue until the FCC renders a decision in its IP-Enabled Services Rulemaking. [Tr. 157, Smith Direct Testimony, page 14, lines 13-16] Sprint believes FDN's position is wrong for several reasons. First, VoIP is a burgeoning technology. [Hearing Exhibit No. 7, Maples Deposition Exhibit No. 3, Competition Report, page 40] The potential impact on Sprint if the Commission does not resolve intercarrier compensation issues related to VoIP is significant, since without an explicit provision in the interconnection agreement that access charges apply to nonlocal VoIP traffic, CLECs will continue to assert that access charges do not apply. Ambiguity regarding the applicable intercarrier compensation for VoIP traffic provides substantial opportunities for arbitrage to Sprint's detriment and to the detriment of other non-VoIP competitors. [Tr. 131, Sywenki Direct Testimony, page 15, lines 17-19] Sprint disagrees that applicable law and FCC decisions support the position that VoIP is exempt from access charges. Sprint believes that it is better to resolve the issue proactively through language in the interconnection agreement, rather than through litigation. [Tr. 143, Sywenki Direct Testimony, page 11, line 19]

Contrary to FDN's implication that the FCC has not rendered any decisions about the appropriate compensation for VoIP traffic, the FCC has, in fact, addressed this issue multiple times. The only case where the FCC specifically exempted IP telephony from access charges is in the Pulver.com case where the VoIP traffic at issue used domain-name routing and did not access the public switched network. [*In the Matter of Petition for Declaratory Ruling tht pulver.com's Free World Dial Up is Neither Telecommunications nor a Telecommunications Service,* WC Docket No. 03-45, FCC 04-27 at ¶¶ 9-14]. In contrast, in the AT&T Declaratory Ruling, the FCC specifically has confirmed that access charges are applicable when the connections are phone to phone, undergo no network protocol change and use the North American Numbering Plan for routing the calls. [*In the Matter of Petition for Declaratory Ruling tht AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* WC Docket 02-361, FCC 04-97 at ¶¶ 12, 15]

In its most recent ruling relating to VoIP traffic, the Vonage Order, the FCC declared that certain broadband VoIP services are interstate in nature, but found that the services are jurisdictionally mixed and specifically declined to rule on the nature of such services as either telecommunications or information services or on the intercarrier compensation due for the use of the public switched network to originate or terminate Vonage-type VoIP calls. [*In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission,* WC Docket No. 03-211, FCC 04-267 at ¶¶ 18, 44]

While there may be some specific types of IP services which the FCC has determined to be exempt from access charges, e.g., Pulver.com, the FCC has not

exempted VoIP services in general, and specifically it has determined that phone-to-phone IP using the public switched network is not exempt from access charges. In fact, in the IP-Enabled Rulemaking Docket that FDN references as the basis for its suggestion that the Commission defer ruling on this issue, the FCC said "As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network." [IP-Enabled Services NPRM at ¶33] Lacking an order to the contrary by the FCC, there is no basis for defining an intercarrier compensation scheme for VoIP traffic different from what exists for voice traffic today. And, the FPSC has expressed its agreement with this policy in the Reply Comments it submitted to the FCC in the IP-Enabled Services NPRM docket.[10]

Therefore, the Commission should accept Sprint's position on this issue and adopt Sprint's VoIP language for inclusion into the interconnection agreement between FDN and Sprint.

ISSUE 62 **Should Sprint provide FDN a means for accessing on a pre-ordering basis information identifying which Sprint loops are served through remote terminals?**

Sprint's Position: **Yes. Sprint does provide this information as part of loop make-up. This is the same information that is available to Sprint. The Commission-approved rates for loop make-up are the rates applicable here.**

Discussion: This issue addresses the loop make-up information Sprint will provide FDN. In the Third Report and Order in the Local Competition docket, the FCC required ILECs to provide access to loop make-up information, including whether loops are served

[10] Reply Comments of the Florida Public Service Commission, *In the Matter of IP Enabled Services*, WC Docket NO. 04-36, filed July 14, 2004 at page 19.

through remote terminals, in a nondiscriminatory manner in parity with the information that is available to the ILEC. [Tr. 90-91, Maples Rebuttal Testimony, page 34, line 9 through page 35, line 21] The pre-order loop qualification process Sprint proposes complies with the FCC's requirements. [Tr. 92, Maples Rebuttal Testimony, page 36, line 21; Tr. 110, Davis Rebuttal Testimony, page 5, lines 18-20] As Mr. Davis explains in his Rebuttal Testimony, the rate Sprint charges for the loop make-up report is the rate approved by the Commission in the Sprint UNE Order. [Tr. 110, Davis Rebuttal Testimony, page 5, lines 20-21]

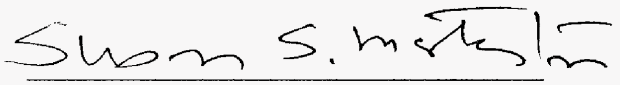
One of the concerns expressed in Mr. Smith's Direct Testimony appears to be that Sprint's process for preparing a loop make-up report is, to some extent, a manual rather than an automated process. [Tr. 158, Smith Direct Testimony, page 15, lines 5-6] In his Rebuttal Testimony, Mr. Davis explains how fully automating Sprint's process in light of the demand for loop make-up information would not be cost-effective for Sprint or the CLECs who request the information from Sprint. [Tr. 111, Davis Rebuttal Testimony, page 6, lines 4-12]

Sprint's loop prequalification process and loop make-up information comply with the FCC's requirements. In addition, the manner in which information is collected and the information provided are the same as that available to Sprint for its retail operations. Finally, Sprint's loop make-up reports are designed to provide the information regarding remote terminals that FDN seeks. Therefore, the Commission should approve Sprint's process for incorporation into the interconnection agreement between Sprint and FDN.

CONCLUSION

Wherefore, for the reasons set forth in the body of Sprint's Post-hearing Statement, the Commission should approve Sprint's positions regarding the disputed issues in this arbitration and order that Sprint's language reflecting these positions be included in the parties' interconnection agreement.

Respectfully submitted this 1st day of September, 2005.



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