

# FLORIDA PUBLIC SERVICE COMMISSION

## COMMISSION CONFERENCE AGENDA

**CONFERENCE DATE AND TIME:** December 20, 2005, 9:30 a.m.

**LOCATION:** Room 148, Betty Easley Conference Center

**DATE ISSUED:** December 9, 2005

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### NOTICE

Persons affected by Commission action on certain items on this agenda for which a hearing has not been held (other than actions on interim rates in file and suspend rate cases) may be allowed to address the Commission when those items are taken up for discussion at this conference. These items are designated by double asterisks (\*\*\*) next to the agenda item number.

Included in the above category are items brought before the Commission for tentative or proposed action which will be subject to requests for hearing before becoming final. These actions include all tariff filings, items identified as proposed agency action (PAA), show cause actions and certain others.

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Table of Contents  
 Commission Conference Agenda  
 December 20, 2005

1**	<b>Consent Agenda</b> .....	2
2	<b>Docket No. 050584-GP</b> – Petition for declaratory statement by Peninsula Pipeline Company, Inc. concerning recognition as a natural gas transmission company under Section 368.101, F.S., et seq.....	3
2A**	<b>Docket No. 050018-WU</b> – Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes. ....	4
3**	<b>Docket No. 050551-TP</b> – Joint application for approval of transfer of control of Sprint-Florida, Incorporated, holder of ILEC Certificate No. 22, and Sprint Payphone Services, Inc., holder of PATS Certificate No. 3822, from Sprint Nextel Corporation to LTD Holding Company, and for acknowledgment of transfer of control of Sprint Long Distance, Inc., holder of IXC Registration No. TK001, from Sprint Nextel Corporation to LTD Holding Company. (Deferred from December 6, 2005 conference; revised recommendation filed.) .....	5
4**PAA	<b>Docket No. 050836-TI</b> – Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to asset purchase agreement between Adelphia Telecommunications, Inc. and Telecom Management, Inc. d/b/a Pioneer Telephone. ....	6
5**PAA	<b>Docket No. 050838-TI</b> – Compliance investigation of Primo Communications, Inc. for apparent violation of Rule 25-24.470, F.A.C., Registration Required. ....	7
6**	<b>Docket No. 050548-EI</b> – Petition for approval of revisions to Bright Choices Outdoor Lighting Agreement and associated tariff by Tampa Electric Company. .	8
7**	<b>Docket No. 050805-EQ</b> – Petition for approval of new standard offer for purchase of firm capacity and energy from renewable energy facilities and approval of tariff schedule REF-1, by Gulf Power Company. <b>Docket No. 050806-EQ</b> – Petition for approval of renewable energy tariff and standard offer contract, by Florida Power & Light Company. <b>Docket No. 050807-EQ</b> – Petition for approval of amended standard offer contract tariff and renewable energy tariff, by Progress Energy Florida, Inc. <b>Docket No. 050809-EQ</b> – Petition for approval of renewable energy tariff by Florida Public Utilities Company. <b>Docket No. 050810-EQ</b> – Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company. ....	9
8**	<b>Docket No. 041369-SU</b> – Application for transfer of wastewater facilities to City of West Melbourne, and cancellation of Certificate No. 486-S, by Pine Lake Mobile Home Estates, Inc. ....	11

Table of Contents  
Commission Conference Agenda  
December 20, 2005

9	<b>Docket No. 040029-EG</b> – Petition for approval of numeric conservation goals by Florida Power & Light Company. <b>Docket No. 040660-EG</b> – Petition for approval of modifications to BuildSmart Program by Florida Power & Light Company. ....	12
10	<b>Docket No. 041464-TP</b> – 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. ....	14
11**	<b>Docket No. 041114-TP</b> – Complaint of XO Florida, Inc. against BellSouth Telecommunications, Inc. for alleged refusal to convert circuits to UNEs; and request for expedited processing.....	19

**ITEM NO.**

**CASE**

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1\*\*

**Consent Agenda**

PAA

A) Applications for certificates to provide competitive local exchange telecommunications service.

DOCKET NO.      COMPANY NAME

050865-TX      Vilaire Communications, Inc.

050861-TX      Alpha Phone Inc.

PAA

B) Application for certificate to provide pay telephone service.

DOCKET NO.      COMPANY NAME

050888-TC      Erskine R. Curry d/b/a Media & Telecom  
Ventures

**Recommendation:** The Commission should approve the action requested in the dockets referenced above and close these dockets.

**ITEM NO.**

**CASE**

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2

**Docket No. 050584-GP** – Petition for declaratory statement by Peninsula Pipeline Company, Inc. concerning recognition as a natural gas transmission company under Section 368.101, F.S., et seq.

**Critical Date(s):** 12/1/05 (Petitioner has waived 90-day period provided in Section 120.565, F.S., to permit consideration at December 20, 2005 agenda conference.)

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** GCL: Moore, Brown  
CMP: Bulecza-Banks  
RCA: Mills

**(Parties may participate at Commission's discretion.)**

**Issue 1:** Should the Commission grant Peninsula Pipeline Company, Inc.'s Petition for Declaratory Statement that it may qualify as a natural gas transmission company as defined in Section 368.103(4), Florida Statutes?

**Recommendation:** Yes. The Commission should grant the Petition for Declaratory Statement based upon the particular circumstances presented.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If the Commission votes to dispose of the petition for declaratory statement, the docket should be closed.

**ITEM NO.**

**CASE**

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2A\*\*

**Docket No. 050018-WU** – Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes.

**Critical Date(s):** 12/20/05 (Action needed by this date to facilitate further settlement negotiations.)

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Deason

**Staff:** GCL: Melson

ECR: Rendell

**Issue 1:** Should the Commission approve the letter agreement attached to staff's December 14, 2005 memorandum between Aloha and the Office of Public Counsel regarding the mechanism by which Aloha shall be entitled to recover the cost of preparing a conceptual, non-binding capital cost estimate for the installation of anion exchange facilities at several of Aloha's plant sites?

**Recommendation:** Yes. The letter agreement should be approved.

**Issue 2:** Should this docket be closed?

**Recommendation:** No.

**ITEM NO.**

**CASE**

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3\*\*

**Docket No. 050551-TP** – Joint application for approval of transfer of control of Sprint-Florida, Incorporated, holder of ILEC Certificate No. 22, and Sprint Payphone Services, Inc., holder of PATS Certificate No. 3822, from Sprint Nextel Corporation to LTD Holding Company, and for acknowledgment of transfer of control of Sprint Long Distance, Inc., holder of IXC Registration No. TK001, from Sprint Nextel Corporation to LTD Holding Company. (Deferred from December 6, 2005 conference; revised recommendation filed.)

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** GCL: Scott

CMP: Curry, Mailhot, Moses

ECR: Maurey

**Issue 1:** Should the Commission grant Sprint's Motion to Dismiss CWA's Petition for a Formal Administrative Hearing protesting Order No. PSC-05-0985-PAA-TP?

**Recommendation:** Yes. CWA has failed to adequately allege standing to proceed in this matter. Therefore, staff recommends that the petition be dismissed.

**Issue 2:** Should the Commission reconsider Order No. PSC-05-0985-PAA-TP?

**Recommendation:** No. Staff recommends that the Commission adopt Order No. PSC-05-0985-PAA-TP as a final order.

**Issue 3:** Should this Docket be closed?

**Recommendation:** Yes. If the Commission approves staff's recommendations in Issues 1 and 2, Order No. PSC-05-0985-PAA-TP should be adopted as a final order. Therefore, this docket should be closed as there are no further proceedings.

**ITEM NO.**

**CASE**

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4\*\*PAA

**Docket No. 050836-TI** – Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to asset purchase agreement between Adelphia Telecommunications, Inc. and Telecom Management, Inc. d/b/a Pioneer Telephone.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** CMP: Watts

GCL: Susac

**Issue 1:** Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from Adelphia Telecommunications, Inc. to Telecom Management, Inc. d/b/a Pioneer Telephone?

**Recommendation:** Yes. The Commission should approve the requested waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code.

**Issue 2:** Should this docket be closed?

**Recommendation:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

**ITEM NO.**

**CASE**

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5\*\*PAA

**Docket No. 050838-TI** – Compliance investigation of Primo Communications, Inc. for apparent violation of Rule 25-24.470, F.A.C., Registration Required.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** CMP: Buys

GCL: Scott

**Issue 1:** Should the Commission impose a penalty in the amount of \$25,000 on Primo Communications, Inc. for its apparent violation of Rule 25-24.470, Florida Administrative Code, Registration Required?

**Recommendation:** Yes. The Commission should impose a \$25,000 penalty on Primo Communications, Inc.

**Issue 2:** Should this docket be closed?

**Recommendation:** The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, F.A.C., within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13) (b), Florida Statutes, any issues not in dispute should be deemed stipulated. If Primo Communications, Inc. fails to timely file a protest and request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If Primo fails to pay the penalty within fourteen (14) calendar days after the issuance of the Consummating Order, the collection of the penalty should be referred to the Department of Financial Services and the company should be required to immediately cease and desist providing telecommunications services in Florida. This docket should be closed administratively upon either receipt of the payment of the penalty or upon referral of the collection of the penalty to the Department of Financial Services.

**ITEM NO.**

**CASE**

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6\*\*

**Docket No. 050548-EI** – Petition for approval of revisions to Bright Choices Outdoor Lighting Agreement and associated tariff by Tampa Electric Company.

**Critical Date(s):** 4/12/06 (8-month effective date)

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** ECR: Draper

GCL: Brown

**Issue 1:** Should the Commission approve TECO's proposed revisions to its Bright Choices Outdoor Lighting Agreement and associated tariffs?

**Recommendation:** Yes.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If Issue 1 is approved, this tariff should become effective on December 20, 2005. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

**ITEM NO.**

**CASE**

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7\*\*

**Docket No. 050805-EQ** – Petition for approval of new standard offer for purchase of firm capacity and energy from renewable energy facilities and approval of tariff schedule REF-1, by Gulf Power Company.

**Docket No. 050806-EQ** – Petition for approval of renewable energy tariff and standard offer contract, by Florida Power & Light Company.

**Docket No. 050807-EQ** – Petition for approval of amended standard offer contract tariff and renewable energy tariff, by Progress Energy Florida, Inc.

**Docket No. 050809-EQ** – Petition for approval of renewable energy tariff by Florida Public Utilities Company.

**Docket No. 050810-EQ** – Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.

**Critical Date(s):** 12/13/05 (60-day suspension date - waived by the utilities)

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Edgar

**Staff:** ECR: Haff, Harlow, Wheeler

GCL: C. Keating

**Issue 1:** Do the standard offer contracts proposed by FPL, PEF, TECO, Gulf, and FPUC satisfy the requirement of Section 366.91(3), Florida Statutes, to “continuously offer to purchase” energy from renewable facilities?

**Recommendation:** Yes. However, all proposed standard offer contracts, except for that of FPUC, should be denied, because they fail to include the date on which the contract expires, which is one of the minimum requirements of Rule 25-17.0832(4)(e)4, Florida Administrative Code. FPUC’s contract should be approved because a closure date is not necessary if a utility’s capacity and energy needs are completely met through purchased power agreements.

**Issue 2:** Are the standard offer contracts proposed by FPL, PEF, TECO, Gulf, and FPUC based on the utility’s full avoided cost, pursuant to Section 366.051, Florida Statutes?

**Recommendation:** Yes, with the exception of Gulf. Gulf’s standard offer contract is based on a hypothetical unit that is not currently planned for construction. Gulf should be directed to refile its standard offer contract based on its next identified planned generating unit.

**Issue 3:** Do the minimum terms contained in the standard offer contracts proposed by FPL, PEF, TECO, Gulf, and FPUC comply with Section 366.91(3), Florida Statutes?

**Recommendation:** Yes, with the exception of FPL. FPL’s standard offer contract included the period for early capacity payments as part of the minimum ten-year term, which does not comply with Rule 25-17.0832(4)(e)7, Florida Administrative Code. FPL should be directed to refile its standard offer contract based on a ten-year term starting with the in-service date of the avoided unit.

ITEM NO.

CASE

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7\*\*

Docket No. 050805-EQ – Petition for approval of new standard offer for purchase of firm capacity and energy from renewable energy facilities and approval of tariff schedule REF-1, by Gulf Power Company.

Docket No. 050806-EQ – Petition for approval of renewable energy tariff and standard offer contract, by Florida Power & Light Company.

Docket No. 050807-EQ – Petition for approval of amended standard offer contract tariff and renewable energy tariff, by Progress Energy Florida, Inc.

Docket No. 050809-EQ – Petition for approval of renewable energy tariff by Florida Public Utilities Company.

Docket No. 050810-EQ – Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.

(Continued from previous page)

**Issue 4:** Do the subscription limits contained in the standard offer contracts proposed by FPL, PEF, TECO, Gulf, and FPUC comply with Section 366.91(1), Florida Statutes?

**Recommendation:** Only the subscription limits proposed by FPL and FPUC comply with the intent of Section 366.91(1), Florida Statutes, to encourage the development of renewable resources. The standard offer contracts proposed by PEF, TECO, and Gulf do not appear to be consistent with the intent of the statute, because they have subscription limits of only 10 to 20 MW. Such small subscription limits may discourage potential developers of renewable energy projects from signing these standard offer contracts. PEF, TECO, and Gulf should be directed to refile standard offer contracts with subscription limits equal to the capacity of their next planned avoided units.

**Issue 5:** Should PEF's separate petition for approval of a standard offer contract be approved?

**Recommendation:** No. PEF's regular standard offer contract still contains provisions allowing renewable resources and solid waste facilities to sign the contract. This duplication could cause unnecessary confusion for renewable energy providers in choosing the appropriate standard offer contract.

**Issue 6:** Should these dockets be closed?

**Recommendation:** If the Commission approves staff's recommendation to approve FPUC's proposed standard offer contract and no person whose substantial interests are affected requests a hearing to address this matter, then Docket No. 050809-EQ should be closed. FPUC's tariff should become effective on January 1, 2006. If the Commission approves staff's recommendations to deny the other proposed standard offer contracts, Docket Nos. 050805-EQ, 050806-EQ, 050807-EQ, and 050810-EQ should remain open to allow FPL, PEF, Gulf, and TECO to file revised tariffs consistent with the Commission's vote.

**ITEM NO.**

**CASE**

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8\*\*

**Docket No. 041369-SU** – Application for transfer of wastewater facilities to City of West Melbourne, and cancellation of Certificate No. 486-S, by Pine Lake Mobile Home Estates, Inc.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** ECR: Clapp, Romig

GCL: Rodan

**Issue 1:** Should the transfer of Pine Lake Mobile Home Estates, Inc. wastewater facilities to the City of West Melbourne and the cancellation of Certificate No. 486-S be approved?

**Recommendation:** Yes. The transfer of Pine Lake Mobile Home Estates, Inc. wastewater facilities to the City of West Melbourne should be approved, as a matter of right, pursuant to Section 367.071(4)(a), Florida Statutes, and Certificate No. 486-S should be cancelled effective November 17, 2004.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. No further action need be taken and the docket may be closed.

**ITEM NO.**

**CASE**

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9

**Docket No. 040029-EG** – Petition for approval of numeric conservation goals by Florida Power & Light Company.

**Docket No. 040660-EG** – Petition for approval of modifications to BuildSmart Program by Florida Power & Light Company.

**Critical Date(s):** None

**Commissioners Assigned:** Bradley, Deason, Edgar

**Prehearing Officer:** Deason

**Staff:** ECR: Colson, Harlow, Sickel

GCL: Brown, Vining

**(Participation is limited to Commissioners and staff.)**

**Issue 1:** Is the BuildSmart program cost-effective?

**Recommendation:** Yes. The Modified BuildSmart program is cost-effective for both single-family detached and attached homes. The Commission-approved cost-effectiveness methodologies required by Rule 25-17.008, Florida Administrative Code, show that the modified BuildSmart program's benefit-to-cost ratios are: 1.05, 1.10, and 1.77, for the Ratepayer Impact, Total Resource Cost, and Participants tests, respectively. The proposed modifications should increase the participation of production builders, resulting in increased energy and demand savings, and providing FPL with cost savings on a per home basis due to economies of scale.

**Issue 2:** Is the modified BuildSmart program directly monitorable and will it yield measurable results?

**Recommendation:** Yes. FPL currently tracks program participation and efficiency measures through the BuildSmart database. FPL has proposed no changes to this procedure for the modified program. FPL employs 11 certified energy raters in the program, which should provide adequate quality control in the data collection process. Accuracy of the database is reviewed by a third-party consultant. FPL expects to conduct an increased level of evaluation of savings over the next five years.

**Issue 3:** Does the modified BuildSmart program advance the policy objectives of FEECA, Section 366.80 et seq., Florida Statutes, Commission Rule 25-17.001, Florida Administrative Code, and the applicable Commission policies?

**Recommendation:** Yes. The modified BuildSmart Program will reduce FPL's coincident peak demand and energy usage, and appears to be cost-effective. FPL has modified the program to increase participation by production builders, which should result in cost savings due to economies of scale.

**Issue 4:** Should the Commission approve the modified BuildSmart program?

**Recommendation:** Yes. The modified BuildSmart program is cost-effective, directly monitorable, and advances the objectives of FEECA. FPL's request to include the program in its 2005 DSM Plan, and apply the energy and demand savings from the program to its DSM goals, should also be approved. FPL should file detailed program

ITEM NO.

CASE

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9

Docket No. 040029-EG – Petition for approval of numeric conservation goals by Florida Power & Light Company.

Docket No. 040660-EG – Petition for approval of modifications to BuildSmart Program by Florida Power & Light Company.

(Continued from previous page)

standards within 30 days of the issuance of the Commission’s order. Staff requests the Commission’s permission to administratively approve these standards.

**Issue 5:** Does FPL's Residential Conservation Service Program comply with the requirements of Section 366.82(5), Florida Statutes, Rule 25-17.003, Florida Administrative Code, and applicable Commission policies?

**Recommendation:** Yes. FPL is required by Section 366.82(5), Florida Statutes, and Rule 25-17.003, Florida Administrative Code, to offer energy audits to all residential customers. FPL has proposed no changes to the existing Residential Conservation program. FPL’s advertising expenditures for the program were reviewed and approved by the Commission in Order No. PSC-04-1178-FOF-EG, issued November 30, 2004.

**Issue 6:** Should the Commission approve FPL's Residential Conservation Service Program?

**Recommendation:** Yes. FPL’s Residential Conservation Service Program complies with Section 366.82(5), Florida Statutes, and Rule 25-17.003, Florida Administrative Code. It is appropriate to include the program in FPL’s 2005 DSM Plan. FPL should file program standards with the Commission for administrative approval within 30 days of the issuance of the order.

**Issue 7:** Should these dockets be closed?

**Recommendation:** The dockets should be closed after the time for filing an appeal has run.

**ITEM NO.**

**CASE**

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10

**Docket No. 041464-TP** – 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.

**Critical Date(s):** None

**Commissioners Assigned:** Bradley, Deason, Edgar

**Prehearing Officer:** Deason

**Staff:** CMP: Beard, Broussard, Brown, Buys, Curry, Maduro, Mann, Watts, Wright  
GCL: Scott, Susac

**(Participation is limited to Commissioners and staff.)**

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

**Recommendation:** Staff recommends local traffic be defined as traffic originated and terminated in the LATA, provided the originating carrier transports its originated traffic at least as far as the tandem serving the called party.

**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?

**Recommendation:** The parties have agreed to most issues pertaining to the resale of Contract Service arrangements, Special arrangements, and Individual Case Basis arrangements. The outstanding aspect of this issue pertains to the application of termination liability. Staff recommends that termination liability should apply if an end user chooses to transfer service from Sprint to FDN prior to the expiration of the customer's contract with Sprint.

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

**Recommendation:** Staff recommends that Sprint afford reasonable opportunity to FDN to challenge Sprint's wire center determinations before UNEs are removed from the list. This should be accomplished by listing impairment decisions on the Sprint web site and by sending updated lists of unimpaired wire centers to all carriers that have interconnection agreements with Sprint. On the issue of a proposed cap on DS1 transport circuits, staff believes the Commission should adopt the standard outlined by the FCC in the TRRO of 10 DS1 circuits; therefore, staff recommends that the DS1 dedicated transport cap of 10 lines apply only on routes where DS3 dedicated transport is not required to be unbundled.

**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"?

**Recommendation:** No. Staff recommends that Sprint should not have the ability to restrict UNE availability where there is not a "meaningful amount of local traffic." So long as a competitive LEC is offering an "eligible" telecommunications service, *i.e.*, not

ITEM NO.

CASE

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10

Docket No. 041464-TP – 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.

(Continued from previous page)

exclusively long distance or mobile wireless services, it should have the ability to obtain that element as a UNE.

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

**Recommendation:** FDN should compensate Sprint for the costs of routine network modifications to unbundled loop facilities to the extent the costs are not recovered in the unbundled loop rates. If Sprint performs network modifications for its own benefit in the normal course of its business and such network modifications also meet FDN's requirement, Sprint should not charge FDN for the network modification. Sprint's proposed language should be incorporated into the Agreement along with the additional provisional language proposed by FDN (underlined text). The language should read as follows:

53.1.1 Sprint will make routine network modifications to unbundled loop facilities used by CLEC where the requested loop facility has already been constructed. Sprint will perform routine network modifications to unbundled loop facilities in a nondiscriminatory fashion, without regard to whether the loop facility being accessed was constructed on behalf, or in accordance with specifications, of any carrier. CLEC will compensate Sprint for the costs of such routine network modifications to unbundled loop facilities to the extent the costs are not recovered in the unbundled loop rates in accordance with Table One, or Sprint will provide a price quote via the ICB process. (TR p. 27) Where Sprint would perform network modifications for its own benefit in the normal course of its business due to market demand and such network modifications also meet a CLEC requirement, Sprint will not charge CLEC for the network modification. (Exh. 15 p. 72 & 73)

53.1.2 Sprint will make routine network modifications to unbundled dedicated transport facilities used by CLEC where the requested dedicated transport facilities have already been constructed. Sprint will perform routine network modifications to unbundled dedicated transport facilities in a nondiscriminatory fashion, without regard to whether the loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier. CLEC will compensate Sprint for the costs of such routine network modifications to unbundled dedicated transport facilities to the extent the costs are not recovered in the unbundled

ITEM NO.

CASE

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10

Docket No. 041464-TP – 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.

(Continued from previous page)

dedicated transport rates. Sprint will provide routine network modifications at the rates on Table One, or Sprint will provide a price quote via the ICB process. (TR p. 28) Where Sprint would perform network modifications for its own benefit in the normal course of its business due to market demand and such network modifications also meet a CLEC requirement, Sprint will not charge CLEC for the network modification. (Exh. 15 p. 73 & 74)

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

**Recommendation:** If the Commission approves the staff recommendation in Issue 34 and incorporates the rates established in the Sprint UNE Cost Docket, Docket No. 990649B-TP, the rates established for loop conditioning should be incorporated in the Agreement. Should the Commission deny the staff recommendation in Issue 34, then this issue should remain open and the rates for loop conditioning should be arbitrated in full.

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

**Recommendation:** Staff recommends that the UNE rates approved in Docket No. 990649B-TP be incorporated in the new interconnection agreement between Sprint and FDN. In addition, staff recommends that the new rates be implemented on a prospective basis only.

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

**Recommendation:** FDN should establish one Point of Interconnection (POI) per LATA. FDN may establish more than one POI per LATA at its discretion.

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

**Recommendation:** If the Commission determines in Issue 5 that the Local Calling Area is the entire LATA, FDN should voluntarily establish a POI at each tandem in each LATA where FDN terminates traffic, as FDN has proposed.

If the Commission determines in Issue 5 that the Local Calling Area is not the entire LATA, then FDN should establish one POI per LATA, and may establish more than one POI per LATA at its own discretion.

**Issue 37:** What are the appropriate terms for transport and termination compensation for:

- (a) local traffic
- (b) non-local traffic
- (c) ISP-bound traffic

ITEM NO.

CASE

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10

Docket No. 041464-TP – 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.

(Continued from previous page)

**Recommendation:** The parties have come to a mutual agreement on the appropriate compensation method for local, non-local, and ISP-bound traffic. The parties disagree as to the definition of local service, which is addressed in 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 homed (Virtual NXXs)?

**Recommendation:** VNXX traffic should be subject to long distance access charges based on the end points of the calls and the terms should be reciprocal such that both FDN VNXX and similar Sprint FX traffic, if any, is compensated in the same manner regardless of the directional flow of such traffic. The Agreement should incorporate the following language:

55.4 Calls terminated to end users physically located outside the local calling area in which their NPA/NXXs are homed (Virtual NXXs), are not local calls for purposes of intercarrier compensation and access charges shall apply. For CLEC or Sprint originated traffic terminated to the other party's Virtual NXXs or similar FXs neither party shall be obligated to pay reciprocal compensation, including any shared interconnection facility costs, for such traffic.

**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)?

**Recommendation:** If the Commission finds in Issue 5 that the Local Calling Area should be the entire LATA for the purposes of reciprocal compensation, the parties should incorporate the following language into the Agreement:

55.5 Neither Party will knowingly send voice calls that are transmitted by a Party at any point, in whole or in part, via the public Internet or a private IP network over local interconnection trunks for termination as local traffic by the other Party, nor shall either Party engage a third party for the purpose of sending such calls where the Party has actual knowledge that the third party shall do so, until a mutually agreed Amendment is effective. Except that either Party may send the other VoIP traffic that is also Local Traffic based on the originating and terminating geographical locations prior to executing such amendment. The Parties further agree that this Agreement shall not be construed against either Party as a “meeting of the minds” that VoIP traffic is or is not local traffic subject to

ITEM NO.

CASE

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10

Docket No. 041464-TP – 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.

(Continued from previous page)

reciprocal compensation in lieu of intrastate or interstate access. By entering into this Agreement, both Parties reserve the right to advocate their respective positions before state or federal commissions whether in bilateral complaint dockets, arbitrations under Sec. 252 of the Act, commission established rulemaking dockets, or in any legal challenges stemming from such proceedings.

Should the Commission find in Issue 5 that the local calling area is not the LATA, the Commission should hold this issue in abeyance until the FCC determines the status of VoIP traffic as it pertains to intercarrier compensation and allow the parties to amend the Agreement in accordance with the FCC's decision.

**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?

**Recommendation:** Yes. Sprint should provide FDN a means for accessing on a pre-ordering basis information identifying which Sprint loops are served through remote terminals.

**Issue 63:** Should this docket be closed?

**Recommendation:** No. The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

**ITEM NO.**

**CASE**

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11\*\*

**Docket No. 041114-TP** – Complaint of XO Florida, Inc. against BellSouth Telecommunications, Inc. for alleged refusal to convert circuits to UNEs; and request for expedited processing.

**Critical Date(s):** None

**Commissioners Assigned:** Deason, Edgar

**Prehearing Officer:** Deason

**Staff:** GCL: Fordham

CMP: K. Kennedy, Marsh

**Issue 1:** Should the Commission acknowledge XO's voluntary dismissal of its Complaint?

**Recommendation:** Yes. The Commission should acknowledge XO's voluntary dismissal of its Complaint. In addition, the Commission should find that the voluntary dismissal renders any and all outstanding motions moot.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. XO's voluntary dismissal is with prejudice and with a specific request that the Docket be closed. Therefore, the Docket should be closed.

