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RECORDS AND
REPORTING

July 28, 1999

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 990884-TP Sprint-Florida Incorporated's
Answer to the Complaint of Orlando Telephone Company
For Enforcement of its Interconnection Agreement with
Sprint-Florida, Incorporated

Dear Ms. Bayo:

Enclosed for filing is the original and seven (7) copies of
Sprint-Florida, Inc.'s Answer to the Complaint of Orlando
Telephone Company in this matter.

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

Thank you for your assistance in this matter.

Sincerely,

Charles J. Rehwinkel

RECEIVED & FILED

FPSC BUREAU OF RECORDS

AFA	_____	CJR/th
APP	_____	
CAS	_____	
CMR	_____	Enclosures
CTR	_____	
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LEG	_____	
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Orlando Telephone
Company for Enforcement of its
Interconnection Agreement with Sprint-
Florida, Incorporated

Filed: July 28, 1999

Docket No. 990884-TP

ANSWER OF SPRINT-FLORIDA, INCORPORATED

Sprint-Florida, Incorporated ("Sprint") hereby files its Answer to the Complaint of Orlando Telephone Company ["OTC"] for Enforcement of its Interconnection Agreement ["Agreement"] with. Sprint-Florida, Incorporated. Sprint states as follows:

Respondent is:

Sprint-Florida, Incorporated
555 Lake Border Drive
Apopka, Florida 32703

Respondent is represented by:

Charles J. Rehwinkel
Senior Attorney
1313 Blair Stone Rd.
MC FLTLHO0107
Tallahassee, Florida 32301

Service may be made at the above location.

I. ANSWER

1. Paragraph 1 of the Complaint is Admitted.
2. Sprint is without knowledge of Paragraph 2 of the Complaint.
3. Sprint is without knowledge of Paragraph 3 of the Complaint.
4. Sprint is without knowledge of Paragraph 4 of the Complaint.
5. Paragraph 5 of the Complaint is Admitted, with the exception that the last sentence is Denied.
6. Paragraph 6 of the Complaint is Denied.
7. Paragraph 7 of the Complaint is Denied.
8. Paragraph 8 of the Complaint is Admitted.
9. Paragraph 9 of the Complaint is Denied, except that Sprint admits that OTC filed a document with the FCC on or about December 1, 1997 containing a number identified as the rate for "terminating access."
10. Paragraph 10 of the Complaint is Admitted, except that Sprint denies that Sprint paid

OTC rates other than those required by the Interconnection Agreement between the parties.

11. Paragraph 11 of the Complaint is Denied, except that Sprint admits that an E-mail from Joan Seymour is attached to the Complaint.

12. Paragraph 12 of the Complaint is Denied.

13. Paragraph 13 of the Complaint is Denied.

II. ARGUMENT

Summary of Argument.

14. As a threshold matter, Sprint vigorously disagrees that this complaint is one that is ripe for the Commission to address. The parties have executed a Letter Agreement (Exhibit 1) that requires that resolution of this matter be guided by the outcome of a Federal Communications Commission ("FCC") proceeding. The Commission should, at a minimum, hold this proceeding in abeyance until the FCC makes its decision in that matter.

15. Substantively, the essence of Sprint's position is that the provisions the Agreement relied upon by OTC for purposes of compensation do not provide a basis for the relief that is requested. Sprint submits that the Commission should conclude that: (1) a *bona fide* dispute does not exist and thus Sprint should not be required to pay any interim

compensation amount pending resolution of the Complaint; (2) the Commission should not consider ruling on the appropriateness of the OTC interstate access charges until the FCC rules in CCB/CPD No. 98-63 on the appropriateness of a CLEC having higher access rates than the comparable ILEC; and (3) if the FPSC proceeds on the merits, that Sprint should pay no more compensation to OTC than the \$59,814.74 that has already been paid to OTC based on the level of Sprint's interstate access rates.

Background.

16. Sprint finds itself in this situation due to a set of circumstances that arise from its good faith efforts to meet regulatory and competitive requirements in the earliest days of local competition in Florida. In April 1997, Sprint entered into an Interconnection and Resale Agreement ("Agreement") with OTC. At the time, number portability was technically feasible only on an interim basis (interim number portability or INP) using a remote call forwarding (RCF) methodology¹. In an INP environment, the terminating call was delivered to the Sprint switch and a second call was forwarded to OTC for delivery to the customer. Because of the RCF, calls delivered to OTC could not be identified by OTC as local (entitling them to reciprocal compensation) or toll (entitling them to access). Additionally, OTC was unable to directly bill the IXC for access and thus needed Sprint to take steps to effectively bill that access and remit the receipts to OTC. Because of this, Sprint and OTC mutually developed a compensation formula ("formula") for apportioning the traffic between local and access.

¹Permanent Local Number Portability (LNP) was implemented by Sprint in the OTC service area (Greater Orlando area) in October 1998. .

17. Under the formula, the applicable access rate(s) was used to calculate the access portion of the monthly amount due to OTC. In this situation, Sprint acted only as a middleman in the access arena. For the time at issue (February 1998 through November 1998) Sprint billed the terminating IXC for access (for calls ultimately delivered to OTC) at Sprint's access rates and effectively remitted or passed through the revenues to OTC via the compensation formula. Sprint billed this access rate level in good faith and without knowledge of the OTC access charge or that OTC expected the inflated access level to be used.

18. It was not until December 1998 that Sprint became aware of OTC's contention that their (OTC's) FCC tariff was to be applied to the formula. Unfortunately, by this time, the total number of minutes of use (MOUs) at issue had become fixed. Sprint had already submitted final billing to IXCs for access and had essentially become unable to re-bill those carriers at the excessive OTC rate. Sprint was at all relevant times without notice (beginning with the time of negotiations, through the April 1997 execution of the Agreement, on up until December 1998) that OTC had intended to use an interstate access rate² above that of Sprint. By the beginning of 1999 it was clear that OTC expected Sprint to shoulder the entire burden of paying the higher access charges even when Sprint was only the middleman. In essence, OTC expects Sprint to pay the inflated access charges out of its own pocket.

19. In February 1999, Sprint and OTC met with the staff of the FPSC to seek resolution

²OTC also sought to include an intrastate rate in the formula based on a price list that was submitted to the FPSC. Sprint objected to using a rate higher than Sprint's intrastate access rates. In the course of discussion with Staff, the parties resolved this aspect of the dispute.

of this dispute. As a result of that meeting, the parties reached resolution of the intrastate rate and agreed to defer resolution of the interstate portion as reflected in the attached Letter Agreement, discussed *infra* at ¶ 22-23. Sprint has at all times in negotiations, however, maintained a continuing objection to the inflated OTC access charges as well as the after-the-fact notification of the intent to use highly inflated access rates that were not contemplated by the Agreement.³ Finally, on July 8, 1999, Sprint was served with this Complaint, despite the provisions of the Letter Agreement.

The "dispute."

20. The sole point of substantive dispute between the parties is the rate to be utilized in calculating the access compensation due OTC. Sprint has further relied on the understanding since March 1999 that the resolution of this interstate dispute will be guided by an anticipated decision by the FCC. Sprint further submits that since there was no "tariff" on file at the FCC on the date that the Parties executed the Agreement, OTC is precluded from unilaterally filing an access tariff seven months after execution of the Agreement and then notifying Sprint 12 months after that that the effective date of the tariff of OTC's intent to use the new rate for purposes of calculating compensation due to OTC where traffic was terminated to OTC in an interim number portability environment.

21. As to any claimed interim compensation, Sprint further submits that the dispute resolution provision in Section XVI.B.1 does not apply here because the dispute is not a

³Regardless of the timing of notification, Sprint still contends that the after-the-fact filing of the tariff at the highly inflated rate above Sprint's own rate renders the interstate access rate inoperative under the compensation provisions of the Agreement since it was not contemplated by the Agreement.

bona fide dispute as contemplated by the Agreement since the post-execution filing of the FCC tariff was not contemplated by the Parties. Sprint would never have rationally agreed to leave an open-ended, "blank check" provision in the Agreement that could be coupled with a provision that Sprint should pay 50% of any artificially created disputed amount. For the interim dispute provision to apply, the dispute would have to be *bona fide* within the contemplated terms of the Agreement. Only under such circumstances then could one party be reasonably expected to advance 50% of an amount in dispute to the other party. A terminating access rate that is inflated to five times Sprint's interstate access charge level is, on its face, unreasonable. This is especially true where Sprint has, and will have, no possible way to recover the associated revenue from the originating interexchange carriers. On these facts OTC's claim is unconscionable. There is no basis for a *bona fide* dispute, such that Sprint should advance OTC an interest-free loan of \$116,311.18 pending resolution of this matter.

22. Sprint does not take issue with the mathematical calculations submitted by OTC. We agree that the magnitude of the proposition advanced by OTC is correctly portrayed by the complaint. Sprint contends that the issue was raised in early 1999 via a complaint to the FPSC staff and it was resolved permanently with respect to the intrastate portion and on an interim basis with respect to the interstate portion. The E-mail attached to the OTC complaint confirms that the interstate portion is in dispute. Unfortunately, the omission of an executed Letter Agreement (which omission Sprint believes may have been based on inadvertence) creates an impression that Sprint agrees that the issue is ripe for Commission adjudication. In actuality, on March 15, 1999, the Parties executed a Letter Agreement that states in relevant part that:

Furthermore, the issue of the interstate rate is being litigated at the FCC level

(CCB/CPD No. 96-63) and the resolution of the issue there will guide the resolution of the interstate portion of this dispute.

23. This Letter Agreement is binding on the Parties and is consistent with Sprint's position that the dispute related to OTC's access charges that are five times Sprint's is not one that should trigger operation of the 50% interim payment provision. Since the FCC has not yet directly ruled on the matter, the dispute is not ripe for FPSC determination. Sprint also urges the FPSC to take note that the FCC indicated in its Access Charge Reform decision, that its reluctance to regulate CLEC access charges was predicated on a record showing (in 1996-997) that CLECs were charging access charges that were the same as or less than ILEC access charges.⁴ The FCC's recognition of the assumed state of the industry vindicates and completely supports Sprint's rational assumption contemporaneous with the execution of the Agreement that OTC's access rates would be no higher than Sprint's own.

24. Sprint would concede that if the FCC rules in a manner that favors OTC or that if the FCC declines to address the issue, then the FPSC might be in the uncomfortable position of adjudicating a claim based on an interstate access rate on the merits. If and when that situation arises, Sprint believes that then would be the appropriate time to address whether the contract should be construed to allow unilateral amendment (i.e., the filing of an access rate five times Sprint's) by OTC. If the Commission decides to proceed with adjudication on the merits, Sprint will vigorously contest any assertion that the Agreement contemplated application of such a subsequently filed tariff.

⁴Access Charge Reform, 12 FCC Recd 15982, 16410 (1997).

III. CONCLUSION.

25. Sprint submits that the Commission should decline to rule in OTC's favor. Instead, the Commission should immediately hold this proceeding in abeyance consistent with the binding Letter Agreement of March 15, 1999. In the event the Commission decides to proceed, Sprint will demonstrate at hearing that the Commission should rule:

- A. That a *bona fide* dispute does not exist;
- B. That Sprint should not be required to pay any interim amount pending resolution of the Complaint;
- C. That the Commission should not rule on the appropriateness of the OTC interstate access charges until the FCC rules in CCB/CPD No. 98-63 on the appropriateness of a CLEC having a higher access rate than the comparable ILEC; and
- D. If the FPSC proceeds on the merits, that Sprint should pay no more compensation to OTC than the \$59,814.74 that was paid based on the level of Sprint's interstate access rates.

RESPECTFULLY SUBMITTED this 28th day of July 1999.



Charles J. Rehwinkel
Senior Attorney
Sprint-Florida, Incorporated
P.O. Box 2214
MC FLTLHO0107
Tallahassee, Florida 3230-2214



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Field Service Manager
Carrier Sales and Service

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Altamonte Springs, Florida 32716-5000
Voice: 407 889 6257
Fax: 407 884 1706
Internet: js Seymour@banyan.mcfia.com

February 12, 1999

Orlando Telephone Company, Inc.
Attn: Herb Bornack
4558 S.W. 35th Street
Suite 300
Orlando, FL 32811

Dear Herb:

As a follow up to our February 10, 1999 conference call with you and the staff of the Florida Public Service Commission, Sprint proposes the following resolution of the intrastate portion of the terminating access dispute between our companies.

Sprint-Florida, Incorporated (Sprint) and Orlando Telephone Company (OTC) have a dispute regarding the appropriate switched access rate to be used in compensating OTC for calls terminated to OTC in an Interim Number Portability (INP) environment. OTC has requested compensation based on pricing documents (i.e. tariffs or similar documents) on file with the Florida Public Service Commission (FPSC) or the Federal Communications Commission (FCC). Sprint has disputed the applicability of such documentation. Furthermore, the issue of the interstate rate is being litigated at the FCC level (CCB/CPD No. 98-63) and the resolution of the issue there will guide the resolution of the interstate portion of this dispute.

In the interest of resolving the intrastate portion of the dispute, and without waiving any rights or claims that either party may have with respect to the validity of the interstate access rate in proceedings before the FCC, Sprint is willing to pay \$4,034.04 in resolution of the claim of OTC for intrastate terminating switched access compensation in an INP environment for the period of February, 1998 through November, 1998. Sprint has already agreed to pay OTC \$15,645.51 for intrastate terminating switched access compensation in an INP environment for the same period.

The additional payment is made solely in the spirit of compromise and to avoid the additional cost of litigation. Payment by Sprint of the additional amount is in no way to be construed as a concession that Sprint agrees that any price list or document styled "tariff" by OTC on file with the FPSC is a tariff or is controlling for purposes of compensation under any provision of the Resale and Interconnection Agreement entered into by Sprint and OTC on or about April 17, 1997.

In consideration for, and in acceptance of, this offer, OTC agrees by authorized signature below to withdraw the pending informal complaint or dispute with the FPSC and notify the agency that with respect to the intrastate rate applicable to terminating access in an INP *End of document* the matter has been resolved. Please indicate your concurrence by signing below and returning an original document to my attention.

We appreciate the opportunity to serve you look forward to a valued relationship.

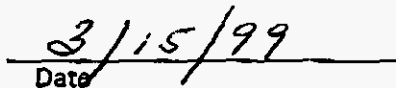
Sincerely,

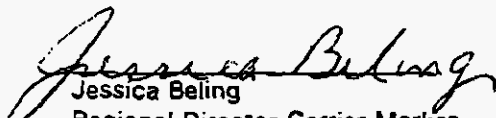

Joan E. Seymour
Field Service Manager

Acceptance:

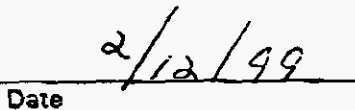


Herb Bornack
CEO
Orlando Telephone Company, Inc


Date



Jessica Beling
Regional Director-Carrier Market
Sprint-Florida, Incorporated


Date

CERTIFICATE OF SERVICE
DOCKET NO. 990884-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail or hand-delivery this 28th day of July, 1999 to the following:

Diana Caldwell
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

David B. Erwin
Attorney-At-Law
127 Riversink Road
Crawfordville, Florida 32327



Charles J. Rehwinkel