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September 2, 1999

ORIGINAL

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REPORTING

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Blanca Bayo
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

In re: Docket No. 990884-TP - Request for Arbitration Concerning Complaint of
Orlando Telephone Company, Inc. Regarding Enforcement of Interconnection
Agreement with Sprint-Florida, Incorporated.

Dear Ms. Bayo:

Enclosed please find the original and fifteen copies of the Motion of Orlando Telephone
Company to Require Immediate Compliance with Dispute Resolution Provisions of
Interconnection Agreement with Sprint-Florida, Incorporated.

Copies have been provided pursuant to the Certificate of Service.

Sincerely,



David B. Erwin

DBE:jm

Copy: Herb Bornack, OTC
Charles Rehwinkel, Sprint
Diana Caldwell, FPSC

- AFA _____
- APP _____
- CAF _____
- CMU Winton
- CTR _____
- EAG _____
- LEG 3
- MAS 3
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- SEC 1
- WAW _____
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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Arbitration Concerning)
Complaint of Orlando Telephone Company, Inc.)
Regarding Enforcement of Interconnection)
Agreement with Sprint-Florida, Incorporated)

DOCKET NO. 990884-TP

Filed: September 2, 1999

MOTION TO REQUIRE IMMEDIATE COMPLIANCE
WITH DISPUTE RESOLUTION PROVISIONS OF
INTERCONNECTION AGREEMENT

Orlando Telephone Company (OTC) moves that the Commission require immediate compliance with the dispute resolution provisions relating to billing in the interconnection agreement between OTC and Sprint-Florida, Incorporated (Sprint).

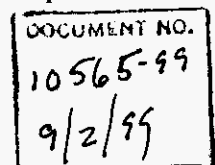
Sprint is obligated to pay to OTC fifty (50) percent of disputed amounts allegedly owed by Sprint to OTC. The interconnection agreement between the parties is quite clear about the obligation to pay:

XVI. MISCELLANEOUS

A.

B. Dispute Resolution -
Billing

1. If any portion of an amount due to a Party ("the Billing Party") under this Agreement, is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within thirty (30) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due (i) all undisputed amounts to the Billing Party and (ii) fifty (50) percent of the Dispute Amount. The remaining balance of the Disputed Amount not paid shall



thereafter be paid with appropriate late charges, if appropriate, upon final determination of such dispute.

There is no justification for Sprint to continue to ignore the plain requirements of the contract Sprint itself drafted and signed. Sprint says that there is no bona fide dispute. The American Heritage Dictionary defines "bona fide" as, "done or made in good faith, sincere," which is what we have here. On its face the claim that the dispute is not bona fide lacks merit when advanced in a docketed dispute before the Commission that Sprint has acknowledged in writing several times as a dispute. Sprint's Joan Seymour said in her February 16, 1999 email to OTC that, "We realize that Interstate billing is still in dispute." (See Appendix C to OTC's Complaint in this docket, attached hereto, as well.) Sprint's Charles Rehwinkel, says in his Answer to OTC's Complaint in this docket that, "The sole point of substantive dispute between the parties is the rate to be utilized in calculating the access compensation due OTC." (See paragraph 20, page 6 of Sprint's Answer to OTC's Complaint.)

Without getting to the merits of the dispute, it is abundantly clear that there is a bona fide dispute. Sprint has confused the merits of a bona fide dispute with the existence of a bona fide dispute. But even if one looks momentarily at the merits, Sprint has taken the puzzling position that OTC had to have an approved tariff on file with the FCC before entering into an interconnection agreement with Sprint. The interconnection agreement says no such thing. The agreement says that:

- IV. NETWORK INTERCONNECTION
- A.
- B.
- C.

- D. Compensation
1. Local Traffic
 2. IntraLATA toll traffic, switched access, and special access traffic, if separately chargeable, shall be charged the appropriate rate out of the terminating Carrier's tariff or via other appropriate meet point access arrangements. (Emphasis supplied.) (See Section IV, D, 2, page 15 of the Interconnection Agreement.)

OTC is the terminating carrier; the Agreement contains no requirement that the tariff of OTC or other meet point access arrangements must preexist the Agreement, and common sense would suggest that a tariff would not be filed even before the costs to be covered by tariffed charges were negotiated. In fact, it would appear that until now Sprint has simply ignored this provision of the agreement entirely. Otherwise, why would Sprint bill terminating access at Sprint's access rates, as Sprint now admits that it did. (See paragraph 17 of Sprint's Answer to OTC's Complaint.) Sprint is not the terminating carrier and Sprint's terminating access rates are not to be found in the terminating Carrier's tariff regardless of its effective date. Sprint says that Sprint billed its own access rate in good faith, but doing so was clearly contrary to Sprint's agreement to do otherwise. In fact, regardless of what rate Sprint billed, Sprint never sent any of the revenue collected to OTC until OTC's complaint to the Commission, which, long after amounts were due to OTC, resulted in a partial payment of \$59,814.74. If Sprint had complied with the Agreement early on, OTC would have been alerted to the billing dispute in time to have Sprint bill the proper amount on OTC's behalf. Instead, Sprint paid OTC nothing and now complains of prejudice due to its own tardiness.

One further matter needs to be addressed at this juncture. That matter is the contention of Sprint that there is a binding "Letter Agreement" between the parties that prohibits the Commission from determining this dispute, including this remedial billing dispute aspect. In fact, there is no such agreement. There is a letter from Sprint's Joan Seymour to OTC's Herb Bornack, dated February 12, 1999, which has been signed by Herb Bornack, but that letter has only one stated purpose. The letter ". . . proposes the following resolution of the intrastate portion of the terminating access dispute between our companies." (Emphasis supplied.) The letter contains a gratuitous and self evident statement that an AT&T and Sprint Petition for Declaratory Statement at the FCC regarding terminating interstate access charges will guide the outcome of any FCC proceeding involving Sprint and OTC. Regardless of what effect an FCC decision might have on another FCC proceeding, the "Letter Agreement" has no bearing upon any interstate dispute prosecuted pursuant to the provisions of the parties' interconnection agreement in which the parties have agreed to resolution by the Commission. The interconnection agreement states that

XVI. MISCELLANEOUS

A. . . .

B. Dispute Resolution -
Billing

1. . . .

2. . . .

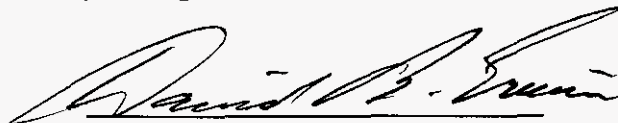
3. If the Parties are unable to resolve issues related to the Dispute Amounts within thirty (30) days after the Parties' appointment of designated representatives pursuant to subsection 2, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity. The Commission may direct payment of any or all funds plus

applicable late charges to be paid to either Party. (Emphasis supplied.)

OTC could have gone to the FCC seeking relief, but instead OTC went to this Commission, and this Commission does not need to wait for an FCC decision to address a matter that is capable of resolution pursuant to the contractual terms agreed upon by the Parties. As a point of fact, the FCC has now denied the AT&T petition upon which Sprint relies, and has initiated rulemaking that will among other things explore CLEC access charges. (See FCC 99-206, Fifth Report and Order and Further Notice of Proposed Rulemaking, adopted August 5, 1999, and released August 27, 1999.)

Regardless of what rule the FCC finally adopts, if any, it is hard to imagine that it will be a retroactive rule covering the period in question here, February through November, 1998. There is no justification for the Commission to wait for the FCC to adopt a rule or do anything related to OTC's Complaint. This proceeding is a matter of contract and concerns Sprint's refusal to abide by its own contract. The Commission should act now. OTC should be paid 50% of the disputed amount now, and the Commission should not delay addressing OTC's claim to the full amount. It is obvious that Sprint's inaction is an extreme burden to OTC as a new competitive entrant. There is no better way to interfere with a competitor than to withhold substantial money from that competitor at the commencement of competition.

Respectfully submitted, this 2nd day of September 1999.



David B. Erwin
127 Riversink Road
Crawfordville, Florida 32327

**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 2nd day of September, 1999 to the following:

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

**Charles Rehwinkel
Sprint
P. O. Box 2214
Tallahassee, Florida 32316**



David B. Erwin