

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 96-C-0864 - Petition of Sprint Communications Company L.P. for
Arbitration of an Interconnection Agreement with NYNEX.

PROCEDURAL RULING
ON SCOPE AND SCHEDULE

(Issued October 31, 1996)

JUDITH A. LEE, Administrative Law Judge:

This proceeding was established to address the petition for arbitration filed on September 19, 1996, by Sprint Communications Company L.P. (Sprint) pursuant to 252(b)(1) of the Telecommunications Act of 1996 (the Act).¹ On October 15, 1996, New York Telephone Company (New York Telephone) filed its response to Sprint's petition.

An on-the-record procedural conference regarding this proceeding was held before me in Albany on October 21, 1996. As stated in my letter to the parties dated October 11, 1996, the purpose of the procedural conference was to discuss the scope and schedule for arbitration. At the conference, I allowed both parties an opportunity to supplement the discussion by letters faxed to me and to each other by October 25, 1996. I received letters from both Sprint and New York Telephone, and this ruling reflects the contents of those letters along with the discussion at the October 21 conference.

Timetable

Given the deadline of January 15, 1997 for conclusion of the arbitration in accordance with the Act, the arbitration record must be closed (meaning that any necessary hearings have been completed and all briefs have been submitted to me) by December 2, 1996.

Mediation

In light of these time constraints, I continue to encourage both parties to keep negotiating as many issues as possible, in order to narrow the arbitration list. I also reminded the parties at the October 21 conference that the Act allows any party to request mediation from the state commission

47 U.S.C. 252(b)(1).

at any point in the negotiation.¹ Such a request for a mediator would be expeditiously handled.

Issues to be Arbitrated

The Act requires a party petitioning a state commission pursuant to 252(b)(1) to "at the same time as it submits the petition, provide the State commission all relevant documentation concerning (i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issue discussed and resolved by the parties."² The Act also provides that "the State commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues," and that "[i]f any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived."³

All issues necessary for the completion of the interconnection agreement between Sprint and New York Telephone will be arbitrated, unless they are otherwise resolved between the parties.

To the extent agreements in principle have been reached on certain issues, these issues will not be the subject of this arbitration. In addition, to the extent that issues are already in litigation in generic proceedings and are expected to reach the Commission prior to January 15, 1997, they will not be separately decided as part of this arbitration in order to avoid duplication of efforts.

In light of the ruling issued by Judge Linsider on September 9, 1996, in Cases 95-C-0657 et al. (the Resale Proceeding),⁴ issues regarding resale rates and other terms and conditions for the provision of resale service, which are

47 U.S.C. 252(a)(2).

47 U.S.C. 252(b)(2)(A).

47 U.S.C. 252(b)(4)(B).

Cases 95-C-0657 et al., The Resale Proceeding, Ruling on Motions (issued September 9, 1996).

expected to come before the Commission for decision prior to the expiration of the arbitration deadline in this case, January 15, 1997, need not be subject of this arbitration. These parties are both party to the Resale Proceeding, have had ample opportunity to litigate these issues, and will be bound by the determination of the Commission on these issues. However, it is unlikely that the Commission will decide, prior to the January 15, 1997 deadline for this arbitration, the issues related to pricing of unbundled network elements. Accordingly, an arbitration schedule will be set for the establishment of interim rates for these elements.¹

In its petition for arbitration, Sprint set forth the following list of arbitration issues:

- I. Pricing
 - A. Avoided Costs, and Rates for Wholesale Services
 - B. Costs and Rates for Transport and Termination of Traffic
 - C. Costs and Rates for Unbundled Elements
 - D. Nondiscrimination in Pricing
 - E. Interim Number Portability
- II. Operational Parity
- III. Branding
- IV. Miscellaneous
(covering indemnification issues)

Certain issues proposed for arbitration implicate policy issues currently being litigated or negotiated on an industry-wide basis, that will be decided generically by the Commission. Generic determinations rendered by the Commission during the course of this arbitration will be considered controlling on issues as to which parties seek arbitration. Therefore, as to

By notice from the Secretary dated October 21, 1996, the Commission stated its expectation th decisions regarding interim prices adopted by arbitration will be subject to subsequent Commissi decisions regarding permanent rates. Cases 95-C-0657 et al., The Resale Proceeding, Notice of Additional Procedures for Implementing Sections 251 and 252 of the Telecommunications Act of 199 (issued October 21, 1996), p. 2.

issues proposed for arbitration that will be decided by the Commission before January 15, 1997, no further submissions will be accepted in the arbitration.

At the October 21 procedural conference, New York Telephone proposed that most of the issues presented by Sprint were not appropriate for arbitration, because they were the subject of an agreement between the parties, addressed by Public Service Commission determinations, or not arbitrable for a different reason. According to New York Telephone, only the following two issues remained appropriate subjects of this arbitration:

- (1) interim rates for unbundled element pricing; and
- (2) branding of operator and directory assistance services (as to technical feasibility and scheduling).

In response, by letter dated October 25, 1996, Sprint stated that it agreed to narrow some of the arbitrable issues, either because the parties had agreed in principle, or because they were being addressed by Public Service Commission determinations. Specifically, Sprint agreed to remove issues related to branding of recordings, branding of leave-behind cards, "left-in dial-tone," and notice of network and technology changes, subject to written confirmation from New York Telephone of agreement.

Sprint further stated that the following pricing issues were being addressed by Public Service Commission determinations: avoided costs and rates for wholesale services, costs and rates for transport and termination of traffic, and costs and rates for unbundled elements. Sprint agreed to remove these from its list of arbitrable issues, subject to Sprint and New York Telephone entering into an agreement regarding the record in Cases 95-C-0657 et al.

Sprint was unwilling to limit the arbitrable issues to those two proposed by New York Telephone. Sprint argued that its Most Favored Nations issue remained one needing arbitration, in that it had not yet been addressed by the Commission. Additionally, according to Sprint, interim number portability rates should remain an arbitrable issue because the Commission-approved rates have not yet been cost-justified under the Act.

After careful consideration of both parties' arguments, the following issues will be the subject of this arbitration proceeding:

1. Electronic interface requirement
2. Collocation pricing
3. CIP (carrier identification) services for provision of local services
4. Interim rates for unbundled elements
5. Most Favored Nation rights
6. Geographic deaveraging
7. Pricing for interim number portability
8. Dialing plan reports
9. Operator rate quotes
10. Directory information pages
11. Directory listings
12. Alternatively billed messages
13. Branding for directory assistance and operator services (as to technical feasibility and scheduling only)
14. "Clip-on" fraud indemnification
15. Indemnification for fines

This list includes all the issues Sprint presented as arbitrable in its letter dated October 25, with the exception of reciprocal compensation (part of costs and rates for transport and termination of traffic), which is expected to be addressed by Commission decision before January 15, 1997.¹

Although New York Telephone argued that application of specific tariffs or previous Commission decisions controlled the outcome of many of the remaining issues,² I find that these tariffs or decisions are not controlling nor are they dispositive of the issues presented. Matters that have been

An order is expected to be issued regarding New York Telephone's 914 tariff in Cases 94-C-009 et al.

This regards issues #1, 2, 3, 5, 6, 7, 11, and 15.

previously addressed by the Commission must still be found to be consistent with the Act. Therefore, these matters must be fully briefed by the parties in order to determine the appropriate outcome.

Further, as to several issues, New York Telephone argued that agreement had been reached or that further negotiation appeared to have potential to achieve resolution.¹ Although for these issues it does not appear that Sprint has yet agreed with New York Telephone, the parties are again urged to continue to attempt to reach a negotiated resolution.

Regarding branding of operator and directory assistance, the Commission ruled in Cases 94-C-0095 et al. (on October 23) on the obligation to unbundle, unbrand, and rebrand. This decision as to those legal and policy issues will be incorporated, and no further submissions will be accepted. However, briefs and affidavits may address the technical feasibility of New York Telephone meeting Sprint's requirements as to operator and directory assistance branding, and scheduling issues.

To the extent that either party relies on a tariffed rate to resolve an issue in arbitration, that party will need to justify how that rate conforms to the Act. This justification must be thorough. Additionally, after the briefs are due, in order to ensure that the record is clear, the parties must submit a list of the rates proposed for specific items, with an analysis comparing that rate to current tariffs and the Act. Joint submissions will be preferred.

All submissions addressing the above issues must refer to the numbers listed, in chronological order. To the extent that any of these issues are resolved to the satisfaction of both parties, I must be informed, in writing, as soon as possible.

Applicability of FCC Order

The Sprint petition refers to the FCC Order as support for certain claims.² As both parties know, certain provisions of that order were stayed

This regards issues #8, 9, 10, 12, and 14.

FCC 96-325, First Report and Order, released August 8, 1996, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185 (the FCC Order).

by the Eighth Circuit Court of Appeals on October 15, 1996.¹ Because of the uncertainty about the applicability of the stayed provisions of the FCC order during the course of this arbitration, the parties are urged to rely on other reasons as well to support their arguments and positions.

Procedure to be Followed

In order to meet the Act's arbitration completion deadline of January 15, 1997, as the parties generally agreed on October 21, 1996, the following schedule is set:

November 8, 1996 Service of initial briefs and/or affidavits on all issues listed above, except for issue #4,² which is subject of hearings.

November 12, 1996 An evidentiary hearing on interim rates for unbundled elements (issue #4) will begin, with prefiled testimony due November 8, 1996,³ unless the parties agree to stipulate to the record being developed before Judge Linsider in Cases 95-C-0657 et al. The briefing schedule on unbundled elements will be determined at the close of the hearings but in no event will any briefs be served later than December 2, 1996.

November 22, 1996 Service of reply briefs and/or affidavits on all non-hearing issues.

December 2, 1996 Service of list of proposed rates, with analysis comparing specific rate to current tariffs and the Act.

United States Court of Appeals for the Eighth Circuit, Iowa Utilities Board v. Federal Communications Commission, No. 96-3321, Order Granting Stay Pending Judicial Review (October 15, 1996).

Issue # 4 involves interim rates for unbundled elements.

If a stipulation adopting the record in Case 95-C-0657 et al. is submitted by November 5, 1996 these hearings will be cancelled, and briefs on factual matters will be submitted in accordance with the schedule set by Judge Linsider, as long as all briefs are due in hand to me by December 1996. Separate copies of those briefs must be served on me, with specific notations as to the sections that are relevant to this arbitration (i.e., those sections that address Sprint and New York Telephone's witnesses and cross-examination thereof).

All service dates are in-hand, with the exception of reply briefs and the rate proposal analysis which are due in-hand to me only and otherwise mailed on that date. As the parties agreed at the October 21 procedural conference, service on other parties and me by telecopier machine is acceptable. Such service must be followed by a mailed copy. In accordance with Commission rules,¹ service by telecopier machine is not appropriate for the official filing of documents with the Secretary.

(SIGNED)

JUDITH A. LEE

16 NYCRR 3.5(g)(1).