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August 12, 1996

BY HAND DELIVERY

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. 960838-TP

Dear Ms. Bayo:

ACK

AFA _____

APP _____

CAF _____

CMU

CTR _____

EAG _____

LEG 1

LIN 5

OPC _____

RCH _____

SEC 1

WAS _____

OTH _____

Enclosed for filing in the above-styled docket are the original and fifteen (15) copies of Sprint-United and Sprint-Centel's Motion to Dismiss.

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.

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Yours truly,

John P. Forns

Enclosures

cc: All parties of record

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DOCUMENT NUMBER-DATE

08424 AUG 12 96

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

In the matter of)
)
MFS COMMUNICATIONS COMPANY,)
INC.)
)
Petition for Arbitration)
Pursuant to 47 U.S.C. § 252(b))
of Interconnection Rates,)
Terms, and Conditions with)
)
SPRINT UNITED-CENTEL OF)
FLORIDA, INC. (also known as)
CENTRAL TELEPHONE COMPANY OF)
FLORIDA AND UNITED TELEPHONE)
COMPANY OF FLORIDA))

DOCKET NO. 960838-TP
Filed: August 12, 1996

MOTION TO DISMISS

Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996,¹ and Rule 25-22.037, Florida Administrative Code, United Telephone Company of Florida, Inc. ("Sprint-United") and Central Telephone Company of Florida, Inc. ("Sprint-Centel") (together "Sprint" or the "Companies") Move to Dismiss the portion of the Petition² filed by

¹ Pub.L.No. 104-104 § 101(a), 110 Stat. 70 to be codified at 47 U.S.C. § 252(b). The Communications Act of 1934, as amended by the Telecommunications Act of 1996, is referred to herein as the 1996 Act.

² The Companies note that the style of the Petition refers to "Sprint United-Centel of Florida, Inc." as a legal entity that does not exist. The Companies have interpreted the petition to relate to United Telephone Company of Florida and Central Telephone Company of Florida, two separate legal entities, both of which are certificated local exchange companies and both of which are under common ownership, management and control.

DOCUMENT NUMBER-DATE

08424 AUG 12 96

FPSC-RECORDS/REPORTING

MFS Communications Company, Inc. ("MFS") on July 17, 1996 dealing with stipulated damages, and state:

1. MFS's petition identifies Sprint's refusal to agree on MFS's proposed stipulated damage clause as an unresolved issue to be arbitrated by the FPSC. See Petition at 8-9, ¶ F. MFS proposes that the Commission adopt § 23 of MFS's Comprehensive Interconnection Agreement as a means to resolve this unresolved issue. This portion of MFS's petition and request for relief should be stricken and/or dismissed by the FPSC for the following reasons.

2. First, the 1996 Act does not give the FPSC the power to arbitrate a dispute regarding the propriety of a stipulated damages clause. Section 252 of the 1996 Act empowers a state commission to arbitrate unresolved issues and the state commission is required to "ensure that such resolution and conditions meet the requirements of Section 251" and "establish any rates for interconnection, service, or network elements according to subsection (d) [Pricing Standards]. . ." A stipulated damages clause is not a requirement of Section 251 nor is it a rate for "interconnection, services, or network elements." Additionally, agreeing to a stipulated damages clause is not one of the express or implied duties or obligations of an incumbent local exchange company specified in Section 251. Accordingly, the FPSC does not have the authority under the 1996 Act to arbitrate Sprint's refusal to agree to MFS' proposed stipulated damages clause.


3. Second, because imposing a stipulated damages clause in arbitration is tantamount to awarding damages for breach of contract or failure to follow a Commission order, the FPSC does not have the power to impose a stipulated damages clause. Awarding damages is a judicial function beyond the power of the FPSC. See Southern Bell Telephone and Telegraph Co. v. Mobile America Corp., Inc., 291 So.2d 199, 201 (Fla. 1974).

4. Third, because the proposed stipulated damages provision involves the imposition of a \$75,000 payment for even a minor breach, the stipulated damages is not a valid liquidated damage provision but is, instead, a penalty which is against Florida public policy.

5. Accordingly, MFS' request for the FPSC to impose a stipulated damages clause should be dismissed from the Petition.

WHEREFORE, Sprint requests that the FPSC enter an Order dismissing the stipulated damages portions of the Petition as set forth in this Motion.

Dated this 12th day of August, 1996.



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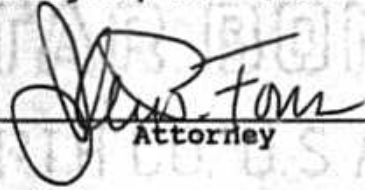
ATTORNEYS FOR CENTRAL TELEPHONE
COMPANY OF FLORIDA AND UNITED
TELEPHONE COMPANY OF FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail, hand delivery (*) or overnight express (**) this 12th day of August, 1996, to the following:

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Florida Public Service Comm.
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