Sprint

Benjamin W. Fincher
Director, State Regulatory

December 17, 1996

VIA AIRBORNE

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

Re: Docket No. 961173- TP - Petition by Sprint Communications Company Limited Partnership d/b/a Sprint for Arbitration with GTE Florida Incorporated Concerning Interconnection, Rates, Terms and Conditions, Pursuant to the Federal Telecommunications Act of 1996

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen (15) copies of Post-Hearing Statement of Issues and Positions and Post-Hearing Brief as submitted on behalf of Sprint Communications Company Limited Partnership. We are also enclosing a 3.5 inch diskette in WordPerfect 5.1 format.

A copy of this filing has been served on all parties of record as provided on the attached service list.

Sincerely,

Benjamin W. Fincher

BWF/rs

cc: C. Everett Boyd, Jr.
Parties of record

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the within and foregoing (1) Post-Hearing Statement of Issues and Positions and (2) Post-Hearing Brief of Sprint Communications Company Limited Partnership have been served upon the following via United States Mail, first class postage prepaid, this 10th day of December, 1996.

Monica Barone, Esq.
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, Florida 32399-0850

Wayne Stavanja
Florida Public Service Commission
Communications Department
2540 Shumard Oak Boulevard
Room 270
Tallahassee, Florida 32399-0850

Anthony P. Gillman
GTE Florida Incorporated
One Tampa City Center
Tampa, Florida 33601

Benjamin W. Fincher

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Sprint Communications Company Limited Partnership d/b/a Sprint for arbitration with GTE Florida Incorporated concerning interconnection rates, terms and conditions, pursuant to the Federal Telecommunications Act of 1996.	DOCKET NO. 961173-TP FILED: December 18, 1996

POST-HEARING BRIEF
OF
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP

COMES NOW, Sprint Communications Company Limited Partnership ("Sprint"), pursuant to Rule 25-22.056, Florida Administrative Code, and submits this its Post-Hearing Brief.

INTRODUCTION

This proceeding before the Florida Public Service Commission ("Commission") is but another piece of the puzzle in the Commission's structuring of a competitive local telephone exchange environment within the operating territory of GTE Florida Incorporated ("GTEFL"). Sprint, and other new entrants to the competitive local telephone exchange market, are requesting this Commission to set the rates, terms and conditions which will allow Sprint and others to compete with GTEFL and provide Florida consumers with choices that have not existed. It goes without saying that the decisions reached by the Commission in these proceedings will have far reaching implications as to how the competitive market will ultimately develop and if, when and how

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Florida consumers will benefit from the competition envisioned by the Telecommunications Act of 1996 ("Act").

GTEFL is the dominant incumbent local exchange carrier providing a virtual monopoly service to its customers within its franchised territory. GTEFL has the only ubiquitous local network in its area. With nearly 100 percent wireline local service penetration, GTEFL has substantial market power.

Sprint, on the other hand, is a new entrant attempting to compete with GTEFL under authority of the Act. Sprint seeks to resell the retail service offerings of GTEFL at appropriate discounts and to interconnect with GTEFL's unbundled network elements in order to compete with GTEFL in this market.

While there has been substantial progress in the negotiations between Sprint and GTEFL, having resolved a large number of issues, GTEFL has refused to agree to the terms here involved in these issues which are critical to Sprint if it is to provide local service to Florida consumers. Therefore, in the face of GTEFL's tremendous market power, Sprint has no viable option except to exercise its arbitration privilege under the Act.

It should be noted in this proceeding that Sprint believes that it is somewhat unique in the industry. In the State of Florida, Sprint operates both as an interexchange carrier and as an incumbent local exchange carrier, and, by the petition involved in this proceeding, Sprint is seeking terms and conditions to enter the market as an ALEC. Because of these varied interests, Sprint has attempted to balance those interests and present a reasonable

position on the issues.

Sprint is asking the Commission to accept the Sprint positions as a fair, balanced and reasoned approach in deciding these remaining issues in order that effective competition, as contemplated by the Act, will be realized. In this manner, the Florida consumers will be well served.

Sprint strongly believes in the benefits of competition. The passage of the Telecommunications Act of 1996 has set the stage for meaningful competition. Sprint believes that the intent of the Act was to create a level playing field for ALECs and ILECs competing in the market. This was accomplished by requiring that all rates, terms and conditions be reasonable and non-discriminatory. This applies whether Sprint is purchasing interconnection, unbundled elements or wholesale services. Sprint fully supports this concept and is ready to accept the decision of the Commission in the GTEFL arbitration proceeding involving AT&T and MCI, in Docket Nos. 960847-TP and 960980-TP. (Hunsucker, Tr. 135-136)

I. Issue 2: What should the rates be for each of the following items:

- **Network Interface Device;**
- **Local Loop;**
- **Local Switching;**
- **Interoffice Transmission Facilities;**
- **Tandem Switching;**
- **Signaling and Call Related Databases?**

POSITION OF SPRINT

The rates for unbundled network elements listed above should be based upon the TELRIC of a given element, utilizing forward-

looking, rather than historical, assumptions for investment, expenses and overhead loadings. GTEFL should deaverage its unbundled loops, switching and transport into at least three geographic zones, based on cost differences.

ARGUMENT

The Telecommunications Act of 1996 ("Act"), Section 252(d), provides the pricing standards for unbundled network elements. Specifically, Section 252(d)(1) addresses Interconnection and Network Element Charges as follows:

> Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such sections--
>
> (A) shall be-
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
> (ii) nondiscriminatory, and
> (B) may include a reasonable profit.

Sprint believes that (1) this Section of the Act clearly requires that the prices for unbundled elements be based on cost and may include a reasonable profit; (2) TELRIC or TSLRIC is the appropriate costing methodology; (3) rates must be nondiscriminatory; and (4) the Act allows geographic deaveraging in pricing unbundled elements. As noted by Sprint witness Stahly in direct testimony, (Stahly Direct Tr. 214-215) prices for interconnection and network elements must be based on economic cost. Specifically, Sprint recommends that:

- Prices for interconnection and unbundled elements

should be developed using the TELRIC based pricing methodology established by the FCC.

- The level of contribution to common costs should be a uniform loading that is limited to a level that reflects the common costs of an economically efficient local exchange carrier.
- The reasonable profit level to be included in TELRIC should be the most recent authorized intrastate rate of return or prescribed interstate rate of return.
- Prices for network elements should be geographically deaveraged; for example, according to high cost, medium cost and low cost areas.

As explained by Sprint witness Stahly, Total Service Long Run Incremental Cost ("TSLRIC") and Total Element Long Run Incremental Cost ("TELRIC") are essentially the same costing methodologies. The differences relate to the items being costed, not the method of developing the costs. TSLRIC studies determine the forward-looking, long run incremental cost of services, while TELRIC studies determine the forward-looking, long run incremental cost of network elements. The FCC chose the term TELRIC to reflect the fact that the "services" in question were, in reality, "elements" of the network. (Stahly Direct, Tr. 217)

Conceptually there should be no substantial difference between the TSLRIC cost of a network element and the TELRIC cost of a network element. TSLRIC costing methodology has been adopted by

this Commission in Docket 950984-TP, Order No. PSC-96-0811-FOF-TP, issued June 24, 1996.

Sprint believes that an appropriately developed TELRIC cost study should include the following:

1. The long run incremental costs caused by or directly attributable to the specific element. This will include both costs caused by facilities and operations dedicated to the element and those facility and operations costs shared by a group of elements.
2. Reflect per-unit costs derived from total costs using reasonable and accurate fill factors.
3. Reflect current wire center locations and the most efficient technology available.
4. Reasonable return on investment, e.g. profit.
5. Reflect economic depreciation rates.
6. Will not include embedded costs, retail costs, opportunity costs or subsidies to other elements or services. (Stahly Direct, Tr. 218-219)

GTEFL witness Sibley, advocated a pricing rule known as Market Determined Efficient Determined Pricing Rule. (M-ECPR) (Sibley Direct, Tr. 366) The M-ECPR price for an unbundled network element is equal to the sum of its TELRIC plus its opportunity cost, as constrained by market forces. However, this methodology was rejected by the Commission in its December 2, 1996 decision in the

GTEFL/AT&T and GTEFL/MCI arbitration proceedings.[1] (Sibley Cross, Tr. 390)

As indicated by Sprint witness Stahly, there are different pricing and costing techniques and methodologies advocated by the parties in the various arbitration proceedings. However, witness Stahly indicated that Sprint was seeking the same rates, terms and conditions as afforded to AT&T and MCI in the decision of this Commission in Docket Nos. 960847-TP[2] and 960980-TP[3]. (Stahly, Tr. 278) Sprint's position is one of simply going forward on a level playing field whereby Sprint is afforded the same rates, terms and conditions as those offered to competitors, such as AT&T and MCI (Stahly, Tr. 278)

GTEFL witness Sibley claimed that TELRIC pricing as advocated by Sprint, was a "taking" or confiscation of GTEFL's property. (Sibley Direct, Tr. 373); (Exhibit 11) This claim by GTEFL is totally without merit and has no basis in fact or law.

In order to succeed in its takings claim, GTEFL must show (1) that regardless of how it is applied to GTEFL, TELRIC would force GTEFL to operate a portion of its business at a loss; and (2) that

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[1]Docket Nos. 960847-TP and 960980-TP

[2]Petition by AT&T Communications of the Southern States, Inc. for arbitration of certain terms and conditions of a proposed agreement with GTE Florida Incorporated concerning interconnection and resale under the Telecommunications Act of 1996.

[3]Petition by MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for arbitration of certain terms and conditions of a proposed agreement with GTE Florida Incorporated concerning resale and interconnection under the Telecommunications Act of 1996.

the relevant legal standard is concerned with the profitability of certain of its services rather than the economic viability of the overall enterprise. GTEFL has failed to show either.

Apparently GTEFL is unwilling to wait until this Commission has had a chance to apply TSLRIC or TELRIC in this proceeding before raising its "takings" arguments. GTEFL is mounting what is essentially a "facial" attack to the TELRIC methodology. A facial challenge to the constitutionality of a regulation is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the [regulation] would be valid".[4] (emphasis added) See also, Keystone Bituminous Coal Ass'n v. DeBenedictis,[5] "because appellees' taking claim arose in the context of a facial challenge....the only issue properly before...this court is whether the mere enactment of the [law] constitutes a taking".

GTEFL cannot know at this time whether or not TSLRIC or TELRIC, as proposed by Sprint, will necessarily require it to operate any portion of its business at a loss. Nor can GTEFL know that its asserted costs will not be recovered, and if not, to what degree. GTEFL's "takings" facial attack has no merit and should be accorded no weight by this Commission.

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[4]Rust v. Sullivan, 500 U.S. 173, 183 (1991)

[5]480 U.S. 470, 495 (1987)

II. **Issue 3: Should GTEFL be prohibited from placing any limitations on Sprint's ability to combine unbundled network elements with one another, or with resold services, or with Sprint's, or a third party's facilities to provide telecommunications services to consumers in any manner Sprint chooses?**

POSITION OF SPRINT

GTEFL should be prohibited from restricting Sprint's ability to combine network elements. The FCC spoke extensively on this issue in its Order, paragraphs 292, 328-329, and established FCC Rules Sections 51.309 and 51.315. Also, See Section 251(c) of the Act.

ARGUMENT

Section 251(c)(3) of the Act clearly requires that GTEFL, as the incumbent local exchange carrier, has the duty to:

> ...provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just reasonable, and nondiscriminatory...[A]n incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

The plain reading of this section of the Act clearly permits the rebundling of network elements in any manner Sprint may choose, including the recreation of an existing GTEFL service.

The FCC's rules on this issue are clear that a requesting telecommunications carrier can provide any telecommunications service that can be offered by means of network elements.

> An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element.[6] (emphasis added)
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> An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner that the requesting telecommunications carrier intends.[7]
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> An incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carrier to combine such network elements in order to provide a telecommunications service.[8]
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> Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination is:
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> (1) technically feasible; and
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> (2) would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnection with the incumbent LEC's network.[9]

The FCC Order addressed this point by clearly stating that there should be no restrictions on the manner in which requesting carriers can combine unbundled elements.[10] The FCC considered the

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[6]Section 51.307(c)

[7]Section 51.309(a)

[8]FCC Rules, Section 51.315(a)

[9]FCC Rules, Section 51.315(c)

[10]FCC First Report & Order CC Docket No. 96-98/95-185 Paragraphs 317-341.

positions of the parties in its proceeding and concluded explicitly that "Congress did not intend Section 251(c)(3) to be read to contain any requirement that carriers must own or control some of their own local exchange facilities before they can purchase and use unbundled elements to provide a telecommunications service."[11] Further, the FCC found that "it is unnecessary to impose a limitation on the ability of carriers to enter local markets under the terms of Section 251(c)(3) in order to ensure that Section 251(c)(4) retains functional validity as a means to enter local phone markets."[12]

GTEFL is simply attempting to place restrictions on the type of market entry that may occur, making a difficult process even more difficult. The Commission should require GTEFL to allow Sprint the ability to combine unbundled network elements in any manner Sprint chooses, including recreating existing GTEFL services as provided in Section 251(c)(3) of the Act and the FCC's Orders and Rules.

III. Issue 4: What services provided by GTEFL, if any, should be excluded from resale?

POSITION OF SPRINT

GTEFL services available for resale should include, without unreasonable or discriminatory conditions or limitations, all services offered at retail to end user, including, but not limited

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[11]FCC Order at par. 328.

[12]FCC Order at par. 331.

to: volume discounted products, grandfathered products, individual case basis products, operator services, directory assistance, vertical services and promotions.

ARGUMENT

Section 251(c)(4) of the Telecommunications Act is clear that the only potential restriction on resale is in the area of cross class selling, i.e., purchasing residential service and reselling it as a business service. Moreover, Subpart G (Resale) Section 51.603(a) of the FCC Rules obligates LECs to "make its telecommunications services available for resale to requesting telecommunications carriers on terms and conditions that are non discriminatory." (Hunsucker Direct, Tr. 86)

FCC Rule 51.613 provides that restrictions may be imposed on cross-class selling and short term promotions by state commissions. Any other restrictions must be shown to be reasonable and non-discriminatory. (FCC Rules Sec. 51.613(b)) GTEFL has failed to show that any other restrictions are reasonable and non discriminatory.

Specifically, under cross examination, GTEFL witness Menard admitted that GTEFL has taken the position that it should not be required to sell residential service to Sprint, because it is priced below cost, and Sprint should not be permitted to purchase network elements and rebundle to provide residential service. (Menard Cross, Tr. 752-753) The unreasonableness of the GTEFL position becomes clear, as by its own admission, GTEFL believes that any competitor should build out its own facilities in order to

provide residential service. Obviously, such a position is not consistent with the Act or any of the FCC Rules and is totally unreasonable and unrealistic.

Examples of the two specific exceptions permitted by FCC Rule 51.613 would be (1) Sprint cannot purchase residential service and resell it to a business and (2) Sprint cannot purchase promotions of less than 90 days at a wholesale discount.

Sprint fully supports the decision of the Commission in Docket Nos. 960847-TP and 960980-TP. Sprint requests the Commission apply to Sprint the same restrictions on resale as contained in that decision. (Hunsucker, Tr. 140) Accordingly, Sprint requests that no restrictions should be allowed except for the resale of the following services to end users who are eligible to purchase such service directly from GTEFL: grandfathered services, residential services and Lifeline/Linkup.

IV. Issue 5: What are the appropriate wholesale recurring and non-recurring charges, terms and conditions for GTEFL to charge when Sprint purchases GTEFL's retail services for resale?

POSITION OF SPRINT

Generally, pricing of wholesale recurring and non-recurring services should be based on the retail services prices less avoided costs. All retail sales expenses are avoided costs. In no instance should "opportunity costs" be included as an offset to avoided costs.

ARGUMENT

The Act clearly directs state commissions to determine the appropriate methodology for local exchange companies to determine wholesale discount rates for retail services.

> For the purpose of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.[13]

The language of the above stated provision of the Act is clear. The question becomes one of interpretation of the language concerning costs "that will be avoided".

Section 51.609(b) of the FCC rules provide that "avoided retail costs shall be those costs that reasonably can be avoided when an incumbent LEC provides a telecommunications service for resale at wholesale rates to a requesting carrier." The FCC rejected the LEC's arguments that operating expenses must actually be reduced to be considered "avoided" for purposes of Section 252(d)(3) and concluded that an avoided cost study must include indirect, or shared, costs as well as direct costs. (Stahly Direct, Tr. 250)

The second issue that arises concerns the identify of those expense accounts that will be avoidable and how much will be avoided. The FCC specifically identified 20 (Uniform System of

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[13]Section 252(d)(3), Telecommunications Act 1996

Accounts) USOA cost accounts that contain avoidable costs.[14]

All costs in the following accounts are avoided:

Account 6611 Product Management
Account 6612 Sales
Account 6613 Product Advertising
Account 6621 Call Completion
Account 6622 Number Services
Account 6623 Customer Services

The costs contained in the following accounts are avoidable in proportion to the avoided direct expense identified in accounts 6611-6613 and 6621-6623 because wholesale operations will reduce general overhead activities such as customer inquires, billing and collection, etc:

Accounts 6121-6124 General Support Expenses
Accounts 6711, 6612, 6721-6728 Corporate Operations Expenses
Account 5301 Telecommunications Uncollectibles
(Stahly Direct, Tr. 251)

The Sprint witness suggested that, in lieu of one uniform discount rate, there should be five separate categories of service to more accurately reflect the different underlying avoided costs inherent in the five categories. (Stahly Direct, Tr. 253) However, in view of the Commission's decision in the GTE/AT&T/MCI arbitration proceedings,[15] Sprint agreed that it would accept the same rates, terms and conditions set out in that decision. (Stahly, Tr. 278); Specifically, Sprint witness Hunsucker stated: "Again,

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[14]FCC Order 96-325, Par. 909,928; The FCC Order actually applied a factor of 90% to these accounts in determining the default range in order to recognize that some of these costs are not avoided by selling services at wholesale.

[15]Dockets 960847-TP; 960980-TP

we are willing to accept the outcome of Monday's action by this Commission in the GTE arbitration with MCI and AT&T because we believe that will ensure a nondiscriminatory market." (Hunsucker, Tr. 142)

Accordingly, Sprint supports the adoption of the 14.04 percent wholesale discount rate for Sprint as determined by the Commission in the AT&T/MCI/GTE proceedings.

V. Issue 9: Is it appropriate for GTEFL to provide customer service records to Sprint for pre-ordering purposes?

POSITION OF SPRINT

Yes. A customer's service record may be disclosed for the purposes of enabling Sprint to provide service. Sprint should be able to issue a blanket letter of agency and be allowed to retrieve this information on line during "pre-ordering" and "ordering" phases.

ARGUMENT

If Sprint is to provide prompt and efficient service to its new customers in Florida, it must have on-line access to certain GTEFL Customer Service Records ("CSR") database entries for these customers during the "pre-ordering" phase. The "pre-ordering" phase is defined as after Sprint has obtained the customer's choice of Sprint as their new local provider, but before an actual resale order has been placed by Sprint to GTEFL. Without access to basic information pertaining to which services a customer currently

subscribes, Sprint may be unable to provide resold services in a transparent manner (i.e., without discontinuance of all or some portion of current service).

Specifically, if Sprint does not have timely order status information, it is not in a position to answer questions from the customer. Sprint's access to "as is" customer information, without the necessity of a written authorization to GTEFL, is critical to the smooth and accurate initial transaction with its customer. The inability to identify and offer to the customer the same services the customer enjoyed with GTEFL at time of the sale will create an obstacle in obtaining the customer's business.

Not having access to "as is" information will require the Sprint sales representative to take the customer through a menu of services, features, etc., while the customer may or may not recall what services were subscribed when service was provided by GTEFL. This creates a level of customer service confusion and complexity that can only interfere with Sprint's ability to provide service to new customers in a quality manner. It most certainly creates an unlevel playing field and a disparity situation in relation to GTEFL.

When Sprint is in the preordering process, it must have access to customer service records in order that service can be properly and promptly initiated with the assurance that the customer is receiving all of the same services from Sprint that it was receiving from GTEFL. Moreover, Sprint will also have the same CPNI requirements placed upon it as GTEFL. Section 222 of the Act

applies to all carriers to afford the same confidentiality. (Hunsucker, Tr. 140)

It is important that Sprint have access to this "as is" information at this critical point in the relationship between Sprint and its new customer in order to avoid an inconvenience to the customer from the very beginning of the relationship, or worse yet, losing the relationship before it begins.

Sprint supports this Commission's decision on this issue in Dockets Nos. 960847-TP and 960980-TP. (Hunsucker, Tr. 141) Accordingly, Sprint requests the Commission to order GTEFL not to require Sprint to obtain prior written authorization from each customer before allowing access to the operational support systems ("OSSs"). Sprint should only be required to issue a blanket letter of authorization to GTEFL which provides that Sprint will obtain the customer's permission before accessing the operational support systems. GTEFL should be directed to develop a real-time operational interface to deliver OSSs to ALECs, and the interface should only provide the customer information necessary for Sprint to provision telecommunications services.

VI. Issue 10: What rates are appropriate for the transport and termination of local traffic between Sprint and GTEFL?

POSITION OF SPRINT

Sprint agrees with GTEFL's use of TELRIC as the appropriate cost methodology. Sprint does not agree with GFTEFL's input and

loading assumptions and resulting prices.

ARGUMENT

Section 251(b)(5) of the Act requires all LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." Section 252(d)(2)(A) of the Act sets forth two standards for determining if reciprocal compensation rates are just and reasonable.

The first standard is that "such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."

The second standard is that it is necessary to "....determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."

Section 251(d)(2)(B)(i) of the Act provides that the rules do not "preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)..." (Stahly Direct, Tr. 238)

Sprint's position regarding the pricing of reciprocal compensation is that rates for transport and termination under reciprocal compensation arrangements should be based on the TELRIC-based pricing methodology. In the interim period, until such rates are set, the Commission should implement bill-and-keep. (Stahly Direct, Tr. 240)

However, as previously indicated, Sprint is in agreement with the Commission's decision in Docket Nos. 960847-TP and 960980-TP, the AT&T/MCI/GTE arbitration proceedings. Sprint is asking that the Commission apply the same terms and conditions approved in that decision to Sprint. (Stahly Tr. 278)

Accordingly, Sprint requests that the Commission approve a reciprocal rate of $.00125 per minute for tandem switching and $.0025 per minute for end office termination.

VII. Issue 23: Should GTEFL make available any price, term and/or condition offered to any carrier by GTEFL to Sprint on a Most-Favored Nation's (MFN) basis?

POSITION OF SPRINT

Any price, term or condition offered to any carrier by GTEFL should be made available to Sprint on a Most Favored Nations ("MFN") basis. GTEFL should notify Sprint of the existence of such other price, term or condition and make available to Sprint effective on the same date as available to other carrier.

ARGUMENT

Sprint cannot overemphasize the significance of this issue to ensure a level playing field for Sprint and all ALEC competitors. If local exchange competition is to develop in Florida, there must be non-discriminatory treatment of all competing local exchange carriers by the incumbent local exchange carriers. The rationale for Sprint's position on this issue was summarized by Sprint witness Hunsucker:

> Non-discriminatory treatment in the MFN context is essential to the creation of a truly competitive local telephone service market. In this period of emerging competition where negotiations are rapidly progressing simultaneously, it is critical that the regulator establish rules that ensure equity among the various market entrants. This is important so that any one entrant does not gain an advantage due simply to its size, or trade-offs within agreements with an ILEC. For example, to the extent one carrier is able to gain a more favorable rate or condition through its individual negotiations, that carrier would have lower costs or superior terms and would then be able to under price its competitors or better serve its customers. Such a situation would have a chilling effect on competition and would unfairly and unreasonably predetermine which carriers will succeed and which carriers will fail. Each new entrant should be provided with an equal opportunity to succeed and an equal opportunity to fail. In the end, it should be consumers which select the winners and losers in a competitive marketplace by voting with their pocketbook, not the ILEC through discriminatory pricing or conditions with preferred CLECs. (Hunsucker, Tr. 91) (emphasis added)

Section 252(i) of the Telecommunications Act of 1996 plainly supports the MFN concept and Sprint's position.

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The language used by Congress is plain and clear:..."Any interconnection, service or network element provided under an agreement....upon the same terms and conditions..." If Congress had intended the construction offered by GTEFL - that an ALEC must choose an entire agreement, it certainly would have done so. The Act does not say that "the terms and conditions of an entire agreement must be offered to other carriers." The Commission should follow the plain meaning of the statute.

It is clearly within the discretion of this Commission to interpret Section 251(i) according its plain reading and the intent of Congress in using that plain language. The Supreme Court of the United States addressed the issue of an administrative agency's construction of a statute as follows:

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. Chevron U.S.A. Inc. v. Natural Resources Defense Council, 467 U.S. 837, 842-43, 104 S.Ct. 2778,2781 (1984) (emphasis added)

The FCC correctly construed the intent of Congress as reflected in its First Report and Order in CC Docket No. 96-98 ("First Report and Order") and agreed that new entrants into the local exchange market are entitled to pick and choose individual interconnection terms, rates and conditions. There the FCC stated:

> Congress's command under Section 252(i) was that parties may utilize any individual interconnection, service, or element in publicly filed interconnection agreements and incorporate it into the terms of their interconnection agreement. This means that any requesting carrier may avail itself of more advantageous terms and conditions subsequently negotiated by any other carrier for the same individual interconnection, service, or element once the subsequent agreement is filed with, and approved by, the state commission. We believe the approach we adopt will maximize competition by ensuring that carriers' obtain access to terms and elements on a nondiscriminatory basis. (First Report and Order, CC Docket No. 96-98, Par. 1316.)

> Congress drew a distinction between "any interconnection, service, or network element[s] provided under an agreement," which the statute lists individually, and agreements in their totality. Requiring requesting carriers to elect entire agreements, instead of the provisions relating to specific elements, would render as

> mere surplusage the words "any interconnection, service, or network element." (First Report and Order, CC Docket No. 96-98, Par. 1310)

Sprint recognizes that the "pick and choose" rule contained in the First Report and Order has been stayed pending a final decision on the merits, and is pending before the Eighth Circuit Court of Appeals[16] However, Sprint believes that the FCC applied the correct statutory interpretation to Section 252(i) of the Act to ensure non-discriminatory treatment of all competing ALECs. Sprint would urge the Commission to adopt the FCC's reasoning and apply the same statutory construction to Section 252(i) and find that Sprint is entitled to non-discriminatory treatment by GTEFL and can "pick and choose" those rates, terms and conditions offered by GTEFL to Sprint's competitors, which Sprint deems to be more appropriate than those offered to Sprint. There is no language in the Stay of the Eighth Circuit Court of Appeals that would prohibit this Commission from so finding.

Sprint, however, does agree that there are some reasonable restrictions that should be applied when determining which rates, terms and conditions should be available to other competing local providers. Specifically, there are five (5) situations in which reasonable restrictions should be imposed in the MFN context proposed by Sprint.

1. Cost based volume discounts: where appropriate,

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[16] Iowa Utilities Board v. FCC, No. 96-3321, Order Granting Stay Pending Judicial Review (8th Cir., issued October 15, 1996). The "pick and choose" rule here involved is found in Final Rule Section 51.809, Appendix B of the First Report and Order.

cost-based discounts are offered, the volume levels must be attained by Sprint to obtain the discount.

2. Term discounts: discounts based only on the length of the service contract are appropriate; Sprint must commit to the same contract term in order to obtain the discount.

3. Significant differences in operational support interfaces: quantitative, objective differences in a service or facility (such as an interface) will justify differences in price.

4. Technical Sequential Feasibility: feature and function availability may require the purchase of all necessary elements (e.g., local switching must be purchased to obtain call waiting).

5. Geographic deaveraging: geographically deaveraged rates which are cost-based should logically be available to Sprint only within the identical geographic area over which the cost was calculated. (Hunsucker Direct, Tr. 92)

GTEFL takes the position that Sprint has only two alternatives with respect to obtaining prices, terms and conditions negotiated by GTEFL with other carriers. Sprint can either (1) accept a complete agreement or (2) negotiate another contract. (Menard Cross, Tr. 771) Clearly GTEFL's position is contrary to Section 252(i) of the Act. The issue then becomes one of whether or not, and at what level, Sprint, or any competing local exchange carrier,

may choose the rates, terms and conditions authorized by Section 252(i).

For reasons stated above, Sprint submits that with only the five (5) exceptions enumerated herein, Section 252(i) permits Sprint to pick and choose those rates, terms and conditions which, in its opinion, are more favorable to its competitors. This is the only interpretation of this statutory provision that makes sense and will provide non-discriminatory treatment to the new entrants in the local exchange market.

VIII. Issue 24: Should the agreement be approved pursuant to Section 252(e)?

POSITION OF SPRINT

Yes. The arbitrated agreement should be approved pursuant to the provisions of Section 252(e) of the Telecommunications Act of 1996.

ARGUMENT

Section 252(e)(1) of the Telecommunications Act of 1996 provides that "[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." In addition, Section 252(e)(1) also requires that "[a] State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies." Accordingly, this Commission should approve the arbitrated agreement between the parties.

IX. Issue 25: What are the appropriate post-hearing procedures for submission and approval of final arbitrated agreement?

POSITION OF SPRINT

The parties should file a comprehensive agreement within 14 days, and file proposed contractual language for the unresolved issues within 20 days, from date of the Order. The Commission should adopt, on an issue-by-issue basis, the proposed contractual language that reflects its decisions.

ARGUMENT

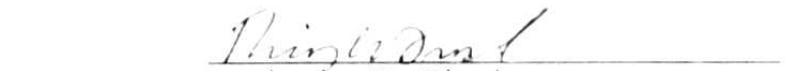
Sprint would propose that the deadline for filing an agreement should be 14 days from the date of the issuance of the Order setting out the Commission's decisions on the issues in this proceeding. If no agreement is reached, the parties should then file their respective proposed contractual language for each issue that remains unresolved within 20 days after date of the issuance of the Order. The Commission should then adopt, on an issue by issue basis, the proposed contractual language that best reflects the Commission's determinations in its Order.

X. CONCLUSION

For reasons stated herein, Sprint respectfully requests that the Commission adopt Sprint's position on the issues in this proceeding.

Respectfully submitted,

Sprint Communications Company
Limited Partnership



Benjamin W. Fincher
3100 Cumberland Circle
Atlanta, Georgia 30339
(404) 649-5145

C. Everett Boyd, Jr.
Ervin, Varn, Jacobs & Ervin
P.O. Drawer 1170
Tallahassee, Florida 32302
(904) 224-9135

Attorneys for Sprint Communications
Company Limited Partnership