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January 10, 1997

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:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Sprint-Florida Inc.'s Response to Motion for Reconsideration by Metropolitan Fiber Systems of Florida, Inc.

We are also submitting the Motion on a 3.5" high-density diskette generated on a DOS computer in WordPerfect 5.1 format.

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,

John P. Fons

Enclosures
cc: Parties of Record
jtd\838.byo

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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: January 10, 1997

SPRINT-FLORIDA INC.'S RESPONSE TO MOTION FOR RECONSIDERATION BY METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC.

Pursuant to Rule 25-22.060(1)(b), Florida Administrative Code, Sprint-Florida, Inc. ("Sprint")[1] responds to the Motion for Reconsideration ("Motion") filed by Metropolitan Fiber Systems of Florida, Inc. ("MFS"), stating as follows:

1. In its Motion, MFS requests that the Commission reconsider the Commission's decision regarding geographic deaveraging of unbundled loop rates and compensation for call transport. Although acknowledging the standard for reconsideration set forth in Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962), MFS' Motion completely fails to meet that standard. Contrary to MFS' assertions, there is nothing in MFS' Motion which demonstrates

[1] Effective December 31, 1996, Central Telephone Company of Florida was merged into United Telephone Company of Florida and the surviving company's name was changed to Sprint-Florida, Inc.

that the Commission's decision in this proceeding "overlooked or failed to consider the significance of certain evidence presented" or "ignored, misinterpreted or misapplied the law." MFS fails to provide any record support for matters which it claims the Commission overlooked or failed to consider. Finally, as to matters which MFS is unhappy with the result, MFS has failed to show how the Commission's decision is defective from a factual or a legal standpoint. For all of these reasons, MFS' Motion should be denied.

I.

Geographically Deaveraged
Unbundled Local Loop Prices

2. MFS states that the Commission ought to reconsider its order declining to require that unbundled local loop prices be geographically deaveraged. Motion, page 2. The Commission properly declined to require Sprint to geographically deaveraged local loop prices for three reasons:

- The Act permits, but does not require, geographic deaveraging.
- The FCC's pricing rules and its order implementing the rules have been stayed pending appeal.
- The only methodology to deaverage loop prices proposed by the parties to the proceeding is not based on sufficient cost data, and it produces the absurd result of placing some of Sprint's largest and most dense wire centers in the high cost rural Zone 3.

Order, page 8. Each of the foregoing reasons is unquestionably true and accurate, and supported by the record, despite MFS' assertions to the contrary.

3. MFS' contention that Section 252(d)(1) of the Act requires geographic deaveraging is wrong. It is true that Section 252(d)(1) of the Act requires "cost-based" rates for unbundled elements. This does not mean, however, that any rate that is not geographically deaveraged is not "cost-based." Such a strained interpretation could lead to absurd results and ignores the realities of cost analysis. For example, if the rates for a network interface device (NID) or end office switching port are not geographically deaveraged, are the rates not "cost/based?" This is not to say that unbundled local loops should never be geographically deaveraged. Neither Sprint nor this Commission has taken this position.

4. MFS' reliance on the stayed FCC Order also is misplaced. Indeed, the quote from the FCC Order cited in MFS' footnote 2 is instructive. There the FCC concludes that "cost-based rates should be implemented on a geographically deaveraged basis." "Should" in the context of the quoted paragraph (¶ 797) does not mean "must." In any event, that portion of the FCC Order has been stayed and this Commission is free to follow its own interpretation of the Act. More importantly, MFS' argument ignores that portion of this Commission's Order that requires Sprint "to develop TELRIC cost studies in order to establish permanent loop rates that can be deaveraged based on cost." Order, page 8. Clearly, this

Commission's decision reflects a recognition of the potential for geographically deaveraged unbundled loops when reliable data is available. Indeed, in the MCI/Sprint Arbitration proceeding just concluded, Sprint provided TELRIC-based, geographically deaveraged unbundled local loop prices. MFS is clearly welcomed to substitute those prices for the FCC proxy price agreed to in the MFS/Sprint Partial Agreement.

5. Even assuming, arguendo, that MFS is correct with regard to what the Act and the FCC Order require, MFS' Petition must, nonetheless, be rejected because the Commission correctly rejected MFS' methodology for geographically deaveraging the FCC loop proxy price. First, the FCC proxy is, by definition, not cost-based. Second, the record evidence, contrary to MFS' assertion in its Motion, clearly demonstrates that MFS' methodology does not produce cost-based rates - only an absurdly deaveraged proxy price. While MFS relied upon loop length as the sole criteria for geographic deaveraging of the FCC proxy price, MFS's witness acknowledged that there are other valid criteria, including loop density and topography, for establishing geographic deaveraging. However, he ignored these criteria which, had he only looked, would have shown that loop length as the sole criteria would not produce reliable results.

6. Having failed to provide reliable evidence for geographically deaveraging unbundled loop rates, MFS cannot now be heard to complain that the Commission's decision is wrong because the Commission did not adopt MFS' proposal. MFS' suggestion that

the Commission ought to have used MFS' proposed geographically deaveraged unbundled loop rates as interim subject to a true-up provides no basis for reconsideration. Motion, page 6. If the MFS-proposed rates are so patently flawed as to produce absurd results, which they do, the Commission rightfully ignored using those rates as interim rates subject to a future true-up. MFS would condition the true-up on Sprint providing TELRIC studies supporting geographically deaveraged unbundled loop rates. As previously noted, Sprint has filed TELRIC-based, geographically deaveraged unbundled loops in the MCI/Sprint Arbitration proceeding, and there is now no need for interim rates based on MFS' defective proposed rates.

II.

Reciprocal Compensation for Tandem Switching and Transport

7. In its Motion, MFS contends that the "Commission's Decision misapprehends how the 1996 Act applies to call transport compensation and overlooks the fact that Sprint has voluntarily agreed that MFS's facility is to be treated as equivalent to that of Sprint." Motion, page 7. This contention is based on the faulty premise that the 1996 Act requires Sprint to compensate MFS for a function it will not provide and that "Sprint has agreed to pay MFS a premium tandem switching rate in addition to the charge for call termination." Motion, page 8. Additionally, MFS' interpretation of the Act is based upon the FCC's interpretation of the Act which has been stayed by the Eighth Circuit Court of

Appeals.[2] Bottom line, MFS' Motion is simply a rehash of the arguments presented in its original pleadings, testimony and brief and, thus, MFS' Motion fails to meet the Diamond Cab Co. case criteria.

8. MFS' Motion ignores the very specific findings of the Commission:

> The evidence in the record does not support MFS' position that its switch provides the transport element; and the Act does not contemplate that the compensation for transporting and terminating local traffic should be symmetrical when one party does not actually use the network facility for which it seeks compensation. Accordingly, we hold that MFS should not charge Sprint for transport because MFS does not actually perform this function.

Order, page 6.

MFS offers no record evidence that the Commission ignored or misconstrued in reaching this decision. Instead, MFS again argues

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[2] On August 8, 1996, the Federal Communications Commission ("FCC") issued its First Report and Order and Rules in CC Docket No. 96-98, In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 ("First Report and Order"). Appeals of the First Report and Order were filed by numerous parties, including this Commission, to the United States Court of Appeals for the Eighth Circuit ("the Court"). Additionally, several parties, including this Commission, requested a stay of the First Report and Order pending outcome of the appeals. On September 27, 1996, the Court granted a temporary stay of the entire First Report and Order and, following oral argument on October 3, 1996, granted a stay of the operation and effect of the pricing provisions and the "pick and choose" rules contained in the First Report and Order pending the Court's final determination of the appeals. The pricing provisions refer to First Report and Order, Appendix B - Final Rules §§ 51.501-51.515 (inclusive), §§ 51.601-51.611 (inclusive), §§ 51.701-51.717 (inclusive) and to the default proxy range for the line ports used in the delivery of basic residential and business exchange services established in the FCC's Order on Reconsideration, dated September 27, 1996. The "pick and choose" rule refers to First Report and Order, Appendix B - Final Rules §§ 51.809.

that reciprocal compensation is controlled by the FCC First Report and Order and Rules and that this Commission has not followed the FCC's mandate. Motion, pages 10-11. The Commission correctly interpreted the Act, upon which the FCC's Order and Rules depend for their efficacy, that MFS is entitled to reciprocal compensation, but only if MFS incurs the cost of providing the function for which it seeks compensation. There is nothing in the Act that requires MFS to be compensated for a transport and termination function it does not provide. See Section 252(d)(2)(A)(i) of the Act.

9. Apparently in recognition of the weakness of its argument, MFS attempts to sidestep the clear impact of the Act, the FCC's Order and Rules, and this Commission's rationale, by arguing that Sprint has conceded the point by agreeing "to pay MFS a premium tandem switching rate in addition to the charge for call termination." Motion, page 8. MFS relies upon language in the Partial Interconnection Agreement for LATA 458 ("Partial Agreement"), § 7.5 and Schedule 1.0. As MFS correctly notes, Sprint has filed a Motion to Reject that portion of the Partial Agreement now relied upon by MFS because of changed circumstances. Sprint's position throughout the negotiations was that it should not have to compensate MFS for tandem switching MFS did not provide. It was only because Sprint believed that the FCC Order and Rules required such compensation that Sprint reluctantly agreed in the Partial Agreement to tandem switching compensation rather than seek arbitration. Now that the FCC Rules have been stayed,

Sprint has sought freedom from that requirement to the same extent and on the same basis that this Commission rejected reciprocal transport compensation in this arbitration proceeding. In any negotiations, especially negotiations covering a myriad of issues as is the case here, there is always some give and take and some issues are compromised to reach a consensus. Thus, it is inappropriate for MFS to argue that Sprint has conceded this point when it is well known that Sprint did so only under the circumstances of this proceeding and in the context of the known rules in effect at the time, and has now repudiated that portion of the Partial Agreement.

WHEREFORE, having fully demonstrated that MFS' Motion does not meet the standards for reconsideration of a Commission decision in any respect, Sprint urges the Commission to deny MFS' Motion for Reconsideration.

Dated this 10th day of January, 1997.

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(904) 224-9115

ATTORNEYS FOR SPRINT-FLORIDA, INC.

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 10th day of January, 1997, to the following:

Martha Carter Brown*
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Tallahassee, FL 32399-0850

Richard Rindler **
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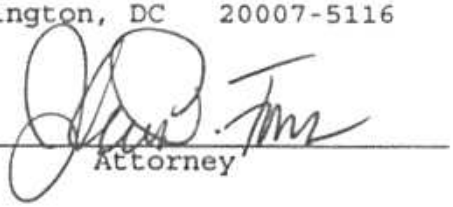

Attorney

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