Sprint

Charles J. Rehwinkel
Senior Attorney

VP Law/External Relations
P.O. Box 2214
Tallahassee, FL 32316-2214
Voice 850 847 0244
Fax 850 878 0777
charles.j.rehwinkel@mail.sprint.com

ORIGINAL

VIA HAND DELIVERY

September 17, 1998

Blanca Bayo'
Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0853

Re: Docket 990884-TL

Dear Ms. Bayo':

Enclosed is the original and seven copies of Sprint's Response to the Motion of Orlando Telephone Company ["OTC"] to Require Immediate Compliance with Dispute Resolution Provisions of the Interconnection Agreement with Sprint-Florida, Incorporated

Please acknowledge receipt of this filing by stamping and initialing a copy of this letter and returning same to the courier. If you have any questions, please do not hesitate to call me at 850/847-0244.

Sincerely,

Charles J. Rehwinkel

Enclosure

AFA
APP
CAF
CMU Hinton
CTR
EAG
LEG 1
MAS 3
OPC
RCH 1
SEC
WAS
OTH

BEFORE THE F LORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Orlando Telephone Company for Enforcement of its Interconnection Agreement with Sprint-Florida, Incorporated	Filed: September 17, 1999 Docket No. 990884-TP

RESPONSE OF SPRINT-FLORIDA, INCORPORATED

Sprint-Florida, Incorporated ("Sprint") hereby files its Response to the Motion of Orlando Telephone Company ["OTC"] to Require Immediate Compliance with Dispute Resolution Provisions of the Interconnection Agreement with Sprint-Florida, Incorporated. In response, Sprint states as follows:

1. Sprint objects to the filing and any consideration of the Motion filed by Orlando Telephone Company. The Motion is not authorized or contemplated under Commission Rules. The Commission should decline to consider the Motion, which is offered for several improper purposes.

2. First, the motion repeats Orlando Telephone Company's request, contained in the Complaint, that the Commission act "immediately" on Orlando Telephone Company's request for an advance of funds based 50% of Orlando Telephone Company's bogus claim that Sprint should pay phantom "access" revenues which Orlando Telephone Company cannot even demonstrate it would have collected had it direct-billed them to the IXCs carrying the calls.

3. Second, Orlando Telephone Company seeks to respond to Sprint's Answer. Again, this is an improper purpose. Orlando Telephone Company has presented its claim, Sprint has provided its answer (including a good faith, well-reasoned position that the agreement envisions a difference between a bona fide dispute --- i.e. one contemplated between the parties in the Agreement, and other disputes such as the one created by

Orlando Telephone Company). No further pleadings on the merits should be entertained.

4. Third, Orlando Telephone Company seeks to respond to Sprint's Answer on the issue of Letter Agreement, the existence of which Orlando Telephone Company omitted from it's complaint. The Letter Agreement has a direct bearing upon the ripeness of this complaint. Having secured the payment of a compromise amount of intrastate access charge-based revenues, payment of which was given as consideration for holding in abeyance resolution (including filing of this complaint) of the interstate-based revenue dispute, OTC has attempted to evade the requirements of the Letter Agreement. Despite OTC's efforts at revisionism, the Letter Agreement clearly evinces an agreement that resolution of the matter at hand will be guided by the resolution of the issue before the FCC. Specifically, the relevant sentence reads:

> Furthermore, the issue of the interstate rate is being litigated at the FCC level (CCB/CPD No. 98-63) and the resolution of the *issue* there will guide resolution of the interstate portion of this dispute.

(Sprint Answer, Exh. 1) [Emphasis added]

5. Contrary to Orlando Telephone Company's assertion, the FCC has not resolved the **issues** raised in the AT&T Petition. In denying the Petition on purely procedural grounds, the FCC merely exercised its prerogative to resolve the matter in rulemaking instead of in the declaratory statement vehicle. The FCC stated in *its Access Charge Reform Fifth Report and Order, and Notice of Further Rulemaking*, FCC 99-206, adopted August 5, 1999) at ¶¶187-189 (footnotes omitted) that:

> 187. The Commission has the discretion, on a case-by-case basis, to determine whether it is best to resolve a controversy by the adoption of a general rule or by an individual ad hoc proceeding such as a declaratory ruling. The presence or absence of factual disputes is a significant factor in deciding whether a declaratory ruling is an appropriate method for resolving a controversy. AT&T contends that a declaratory ruling is appropriate here

because the "facts are essentially undisputed and the governing law is clear." Despite AT&T's allegations to the contrary, however, the facts are not undisputed here. A number of carriers assert that AT&T's calculations of CLEC originating and terminating access rates are either incorrect or misleading. In response to these assertions, AT&T addressed only one of the concerns raised by commenters. Without agreement by the parties on the calculation and accuracy of both the incumbent LEC and CLEC rates, it is impossible compare them. Nor can the Commission evaluate AT&T's claim that its request for declaratory ruling is consistent with the Commission's statements in the *Access Reform First Report and Order* that CLEC terminating access rates that exceed those of the incumbent LEC may be excessive.

188. Moreover, the parties also dispute the applicable law. A number of opponents to AT&T's petition assert that AT&T mistakenly relies upon the *Capital Network* decision, in which the Commission found that an attempt to charge a party for a service that the party did not order would constitute an unreasonable practice within the meaning of section 201(b) of the Act, 47 U.S.C. § 201 (b). These opponents assert that AT&T failed to address the application of the constructive ordering doctrine, established in *United Artists*. In *United Artists*, the Commission found that affirmative consent was unnecessary to create a carrier-customer relationship when a carrier is interconnected with other carriers in such a manner that it can expect to receive access services, and when it fails to take reasonable steps to prevent the receipt of access services and does in fact receive such services. For all the foregoing reasons, and in the exercise of our discretion, we decline to address AT&T's concerns regarding CLEC access charges through a declaratory ruling. We therefore deny AT&T's petition.

189. In the *Access Reform First Report and Order*, however, the Commission committed to review the issue of CLEC access charges if there were evidence that CLECs were imposing unreasonable terminating access charges. The *AT&T Petition for Declaratory Ruling*, the comments provided in support of it, and the Bureau's recent decision in *MGC Communications* suggest the need to revisit the issue of CLEC access rates. Accordingly, in the accompanying Notice, we initiate a rulemaking to examine CLEC originating and terminating access rates.

6. Clearly, instead of settling the issue, the conversion of the AT&T Petition into a rulemaking brought to the surface an issue on which the FCC may well have been hoodwinked previously. At virtually the identical time Sprint and Orlando Telephone Company executed the agreement (April 17, 1997) the FCC issued its *Access Charge Reform First Report and Order*, FCC 97-158, adopted May 7, 1997. Like Sprint did in

negotiation, the FCC assumed -- in abstaining from regulating CLEC access charges -- that CLEC access charges would not exceed ILEC access charges. Now the FCC -- eyes newly opened -- has expanded the scope of the 98-96 proceeding and its issue (CLEC terminating access rates) to investigate and take action on CLEC access charges. Far from the conclusive action suggested by Orlando Telephone Company, the "denial" of AT&T's petition has only ignited the FCC's investigation. The FPSC should acknowledge the intent of the Letter Agreement, await FCC final action and let resolution of this matter be guided by the FCC interpretation as agreed by the Parties.

7. In conclusion, Sprint does not assert its position in this matter cavalierly. Sprint steadfastly maintains that Orlando Telephone Company is seeking payment based on a "terms" that were never contemplated in the agreement. For this reason, there is no *bona fide* dispute. Payment of the 50% claim by Orlando Telephone Company would, of necessity, pre-judge the validity of Orlando Telephone Company's access charges and, thus, the ultimate issue. Sprint urges the Commission not to take action that will prevent Sprint from presenting its case in this matter as soon as it becomes ripe.

Wherefore, in light of the above, Sprint urges the Commission to refrain from entertaining Orlando Telephone Company's improper request.

RESPECTFULLY SUBMITTED this 17th day of September 1999.

Charles J. Rehwinkel
Senior Attorney
Sprint-Florida, Incorporated
P.O. Box 2214
MC FLTLHO0107
Tallahassee, Florida 32301-2214

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 17th day of September, 1999 to the following:

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

David B. Erwin
Attorney-At-Law
127 Riversink Road
Crawfordville, Florida 32327

Charles J. Rehwinkel