

FILE COPY

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August 26, 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:

Enclosed for filing in the above docket are the original and fifteen (15) copies of United Telephone Company of Florida and Central Telephone Company of Florida's Memorandum in Opposition to MFS' Motion to Compel.

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,

  
J. Jeffrey Wahlen

- ACK
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU  *Shelby*
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
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- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Enclosure  
cc: All parties of record

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DOCUMENT NUMBER DATE  
**09073** AUG 26 1996  
FPSC-RECORDS/REPORTING

ORIGINAL FILE COPY

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: August 26, 1996

UNITED TELEPHONE COMPANY OF FLORIDA'S  
 AND CENTRAL TELEPHONE COMPANY OF FLORIDA'S  
 MEMORANDUM IN OPPOSITION TO  
 MFS' MOTION TO COMPEL

Pursuant to Rule 25-22.037, Florida Administrative Code, United Telephone Company of Florida ("Sprint-United") and Central Telephone Company of Florida ("Sprint-Centel") (together "Sprint"), respond as follows to MFS' Motion to Compel Discovery ("Motion").

Update

1. On August 19, 1996, Sprint served its Answers to MFS's First Set of Interrogatories and its Response to MFS's First Request to Produce. Therein, Sprint made a good faith effort to identify documents as requested by MFS in its First Set. As noted in Sprint's answer to interrogatory number one, most of the documents identified by Sprint for production to MFS are already in MFS's possession or are available to MFS from a public source.

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2. Nevertheless, Sprint has gathered approximately 4 bankers boxes of documents that may be responsive to MFS's requests and have made those available to MFS for its review. On August 19, 1996, in the spirit of cooperation, Sprint sent to MFS the parts of the 4 boxes of documents that Sprint believes MFS does not have. Sprint continues to be vigilant for additional documents that may be responsive to MFS' requests and will produce them as they are discovered.

3. Sprint does not expect that the Prehearing Officer will need to resolve any of the issues raised in Sprint's Objections or MFS's Motion to Compel, as the parties have discussed discovery and seem committed to resolving any differences amicably. This opposition to MFS's Motion to Compel is being filed to ensure that Sprint does not concede the issues raised in that Motion, and to put Sprint's objections in the proper perspective.

#### Argument

4. Sprint's basic objection is that MFS's discovery requests are overbroad and ambiguous, and do not request the identification and production of documents with sufficient specificity to enable Sprint to search for and produce what MFS wants. While MFS has argued the contrary, MFS's discovery requests are confusing, Sprint's objections are meritorious, and MFS's Motion should be denied.

5. For example, MFS has requested that Sprint produce "all documents that support Sprint's position on each unresolved issue and each unidentified unresolved issue." [Request to Produce No.

2.] Aside from the fact that MFS' view of the unresolved issues appears to be changing and/or was not clearly expressed in its Petition, asking Sprint to identify and produce all documents that "support its position" puts Sprint in a position where it cannot possibly respond fully and completely to the request with certainty, and is unfair.

6. For example, there is a difference between all documents created by Sprint employees to support Sprint's position and "all documents that support Sprint's position." There is also a difference between documents that explain Sprint's position and "all documents that support Sprint's position." Exactly what MFS wants is unclear from its request.

7. Throughout Sprint's offices there are countless documents that "support" Sprint's position. Sprint's positions are consistent with position taken by other telecommunication companies around the country, so all copies of pleadings and testimony for those other companies can be said to "support" Sprint's position. Whether or not Sprint specifically relied on them when it prepared its position, there may be economic and engineering textbooks, periodicals, articles and other materials in the possession of Sprint employees, which Sprint does not intend to rely on at the hearing, and did not read to prepare its positions in this case, that could fall within the broad scope of MFS' requests. Sprint raised its objections not because it intends to withhold documents that it prepared to support its position or from which its positions are actually developed, but because it does not want to

be criticized by MFS or anyone else for reading MFS' discovery requests too narrowly.

8. Another example is MFS' request for Sprint to produce "all documents [it] intend[s] to introduce or otherwise rely on in the arbitration hearing on the matter. [Request to Produce No. 6.] While MFS may think this request is clear, Sprint does not, primarily because the term "or otherwise rely on" is vague.

9. Indeed, Sprint cannot tell whether the request encompasses the materials that Sprint might have used to develop its testimony and exhibits or will use generally to prepare for the hearing, or just those documents that Sprint might use as the basis for cross-examination of MFS witness at the hearing. Sprint might read the deposition of MFS Witness Devine in another proceeding in another state and use that deposition to prepare for the hearing, but not introduce the deposition or use it on cross examination. This kind of document is clearly beyond the scope of discovery; however, it is not clear from the request whether this type of document is contemplated by MFS to be within the scope of its request. That is why Sprint raised the objection.

10. Second, MFS clearly misunderstands American Optical and City of Miami. It is perfectly appropriate to cite these cases in an objection to MFS's overbroad interrogatories because the interrogatories propounded by MFS are designed to require Sprint to identify documents so that they can be produced pursuant to MFS' First Request for Production of Documents. MFS' attempt to distinguish American Optical and City of Miami as cases that only


apply to document requests is a distinction that is illogical in light of the interrogatories propounded by MFS.

11. Third, MFS' position that Sprint has failed to meet its burden to prove the need for a protective order is without merit. Sprint has raised its objections in a timely manner and explained why the discovery requests sent by MFS are insufficient under the rules of civil procedure. If anyone has failed to meet its burden, it is better to say that MFS has failed to show that its requests are proper and why its motion to compel should be granted.

12. Fourth, as discussed above, Sprint is making a good faith effort to comply with MFS' vague and overbroad requests. Despite and subject to its objections, Sprint filed answers and produced documents to MFS on the twentieth day as required by the procedural order. As noted earlier, Sprint continues to be vigilant for additional documents that may be responsive to MFS' requests and will produce them as they are discovered.

WHEREFORE, Sprint respectfully requests that MFS' Motion to Compel be denied.

Dated this 26th 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 26th day of August, 1996, to the following:

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