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June 17, 1996

**BY HAND DELIVERY**

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

Re: Resolution of Petition to Establish Non-Discriminatory Rates, Terms and Conditions for Interconnection Involving Local Exchange Companies and Alternative Local Exchange Companies Pursuant to Section 364.162, Florida Statutes; Docket No. 950985-TP

Dear Ms. Bayo:

Enclosed for filing in the above-styled docket are the original and fifteen (15) copies of the Response of AT&T Communications of the Southern States, Inc. to Motions for Reconsideration filed by GTE Florida, Inc. and United Telephone Company of Florida and Central Telephone Company of Florida. Please also find enclosed a 3.5" diskette formatted for WordPerfect 5.1 containing another copy of the Response.

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,

Mark K. Logan

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**CERTIFICATE OF SERVICE**

**DOCKET NO. 950985-TP**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by next day express mail, U. S. Mail or hand-delivery to the following parties of record this 17th day of June, 1996.

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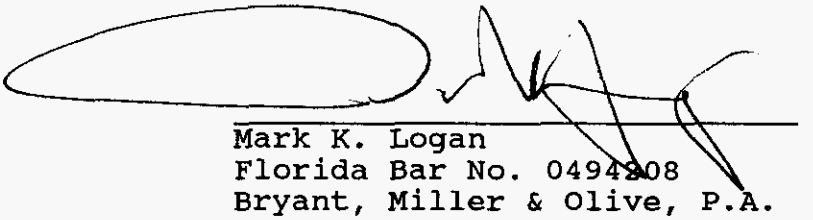

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | |
|---|---|
| In re: Resolution of Petition to Establish Non-Discriminatory Rates, Terms, and Conditions for Interconnection Involving Local Exchange Companies and Alternative Local Exchange Companies Pursuant to Section 364.162, Florida Statutes) | DOCKET NO. 950985-TP<br><br>Filed: June 17, 1996 |



**RESPONSE OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. TO MOTIONS FOR RECONSIDERATION FILED BY GTE FLORIDA, INCORPORATED AND UNITED TELEPHONE COMPANY OF FLORIDA AND CENTRAL TELEPHONE COMPANY OF FLORIDA**

AT&T Communications of the Southern States, Inc. ("AT&T"), pursuant to Rule 25-22.060(1)(b), Fla. Admin. Code, files its response to the Motions for Reconsideration filed by United Telephone Company of Florida and Central Telephone Company of Florida ("Sprint/United") and GTE Florida Incorporated ("GTE") and states:

## I. Sprint/United

### A. Rates and Charges for Local Interconnection

1. Sprint/United's request for reconsideration of the portions of the Order[1] pertaining to rates and charges for local interconnection is predicated upon the Telecommunications Act of 1996 ("the Act"). Sprint/United asserts that Section 252(d)(2) of the Act prohibits the permanent imposition of any arrangement for reciprocal compensation unless the costs of transport and termination can be reasonably approximated. Sprint/United goes on to claim that because there is allegedly insufficient cost study

[1] Final Order Establishing Nondiscriminatory Rates, Terms and Conditions for Local Interconnection, Florida Public Service Commission Order No. PSC-96-0668-FOF-TP, May 20, 1996 ("Order").

information in the record, the Commission cannot impose mutual traffic exchange as the terms for interconnection.

2. This docket was litigated pursuant to Section 364.162 Florida Statutes (1995). Accordingly this case was tried pursuant to Florida law, not the Telecommunications Act of 1996.[2] However, even assuming, arguendo, that an eleventh hour application of the Act to Sprint/United's docket is proper, Sprint/United's analysis assertions are insufficient to support reconsideration of the rates and charges for local interconnection.

3. Sprint/United asserts that, under Section 252 (d)(2) of the Act, there cannot be a permanent imposition of mutual traffic exchange if the costs of transport and termination cannot be reasonably approximated. Sprint/United goes so far as to underline the word permanent in its Motion for Reconsideration. However, no where within the four corners of Section 252(d)(2) is the word permanent. Thus it makes no difference under the Act whether the Commission's action in this docket is to impose mutual traffic exchange on a permanent, semi-permanent or any other basis.

4. Sprint/United also suggests that, due to an insufficient record, it is impossible for the Commission to reasonably approximate the additional cost of terminating calls as required by Section 252(d)(2)(A)(ii) of the Act. Of course the fact is that it

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[2] Section 252 of the Act provides for a twin-pronged mechanism for achieving terms of interconnection between an incumbent LEC and a ALEC; voluntary negotiations and compulsory arbitration. Both of these avenues ultimately require the Commission's approval pursuant to a petition filed under the Act itself, not state law. Section 252(a)(1); (b)(2)(A).

was Sprint/United that submitted uncertain cost information. Final Order at P. 12. But, still the Commission was able to ascertain from the data submitted that the costs submitted by Sprint/United appeared overstated. Id. Thus the Commission ordered Sprint/United to submit adequate data within 60 days of the issuance of the Final Order. Id. Now Sprint/United attempts to avail itself of relief from the Commission's Order based upon its own faulty presentation of data at the hearing. Such relief should not be afforded Sprint/United.

5. The Commission's Final Order imposes mutual traffic exchange as the most efficient, least-cost method of interconnection. Final Order at p. 19. The Commission also provided the parties an avenue to revisit the issue should traffic be found to be out of balance between a LEC and ALEC Id. at p. 21-22. What Sprint/United misses is that mutual traffic exchange itself is a reasonable approximation of the cost of terminating calls as contemplated in Section 252(d)(2)(A)(ii) of the Act. In fact, the very next subsection of Section 252(d) provides:

> "(B) Rules of Construction -This paragraph shall not be construed -
>
> "(1) to 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). . ."

Thus, the Act itself recognizes in its own rules of construction that bill-and-keep or mutual traffic exchange expressly satisfies the "reasonable approximation" requirements. Despite this abundantly clear language, Sprint/United attempts to invoke an

absurd logic requiring a call-by-call calculation of costs as a pre-requisite to interconnection. The Commission has already considered and rejected Sprint/United position on this issue. Thus there is nothing in the Motion for Reconsideration that points to some material and relevant point of fact or law which was overlooked, or which it failed to consider when it rendered the order in the first instance. In re: Intermedia Communications of Florida, Inc., Florida Public Service Commission Order No. PSC-95-1188-FOF-TP (September 21, 1995); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962). Moreover the substantial, competent evidence in this docket suggests that mutual traffic exchange is the least-cost method for achieving interconnection. Accordingly, Sprint/United's Motion for Reconsideration of the rates and charges portion of the Final Order should be rejected.

**B. Toll Default and Cross-Connect**

6. AT&T suggests that this issue should be addressed consistently with the Commission's action in the recent BellSouth order. Final Order Establishing NonDiscriminatory Rates, Terms and Conditions for Local Interconnection Between BellSouth Telecommunications, Inc. and Metropolitan Fiber Systems of Florida, Inc. and MCI Metro Access Transmission Services, Inc., Florida Public Service Commission Order No. PSC-96-0445-FOF-TP (March 29, 1996). Thus the originating carrier, here Sprint/United, would be able to charge originating switched access charges if it could not determine whether the call was local or toll. However the Commission should keep in mind that BellSouth is the NXX code

administrator for Florida. To the extent ALECs do not have adequate NXX codes, the Commission may want to re-visit the toll-default aspect of its order.

7. Sprint/United's argument with respect to cross-connection is also without merit. The Commission did not disregard Sprint/United's testimony; it specifically considered the testimony and rejected it. Final Order at p. 26-27. Sprint's burden under Diamond Cab is to demonstrate that a particular point of fact or law has been overlooked. That burden has not been met. Therefore this portion of the Motion for Reconsideration should be denied.

**C. E911**

8. Absent an affirmative demonstration by Sprint/United that it cannot provide the functionality in question, the Commission should not reconsider this issue.

**D. Directory Issues**

9. The Final Order specifically found that there was insufficient evidence in the record to determine whether there would be a gain or loss specific to ALEC directory services. Final Order at p. 26. Thus the finding is neutral. Since Sprint/United failed to demonstrate that there would be a cost associated with providing those services (thus a loss from providing them) due to the fact that such work is provided by an affiliated directory company, there is no basis for reconsideration of that issue now.[3]

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[3] Furthermore, Sprint/United's characterization of Time Warner's witness McGrath is inaccurate. The witness testified regarding the impact of existing Sprint/United Customers. (McGrath, Tr. 303) Implicit in this statement is the fact that new ALEC customers will benefit either Sprint or its directory affiliate

## II. GTE

### A. Interconnection Charges

10. GTE's first argument for reconsideration is that the Commission's adoption of mutual traffic exchange or "bill-and-keep" for the termination of local traffic is contrary to the requirements of Section 364.162, Florida Statutes (1995), as mutual traffic exchange does not establish a rate or charge. GTE's position is simply a regurgitation of its position at hearing and arguments contained in its post-hearing brief on the issue. The Commission's rejection of GTE's position on this issue does not give rise to a motion of reconsideration in and of itself. GTE must identify what was not considered by the Commission during its original consideration of the matter at hearing.

11. The Commission has specifically found, based upon competent and substantial evidence, that mutual traffic exchange is "akin to a payment in kind." Final Order at p. 19. In fact, the Commission specifically noted the existence of mutual traffic exchange components of GTE's agreement with Intermedia. Having pointed to no other matter of fact or law which the Commission did not consider, GTE's Motion must fail.

12. In light of the failure of GTE to meet its burden in moving the Commission for reconsideration of its decision to adopt mutual traffic exchange, it is unnecessary for AT&T to address the statutory construction arguments of GTE. However, for the record,

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based upon a unified listing.

AT&T notes that the Commission's interpretation of its own statutes is to be given great weight and may not be overturned unless it is contrary to the language of the statute. Smith v. Crawford, 645 So. 2d 513 (Fla. 1st DCA 1994). If the agency's construction is reasonably defensible, it should not be rejected simply because there is another view of the statute. Ford Motor Co. v. N.L.R.B., 441 U.S. 488, 497 (1979). Here, the Commission has adopted a readily defensible interpretation of the statute which achieves the legislatively mandated purpose of fostering competition. Accordingly, the Commission's Order with respect to mutual traffic exchange comports with Section 364.162 and should not be disturbed.

**B. Costs of Interconnection**

13. GTE's second argument is that mutual traffic exchange does not cover the costs of interconnection thus the final order again violates Section 364.162. However the evidence presented at hearing and considered by the Commission suggests otherwise. The Commission specifically noted the evidence of MCI witness Cornell:

> "Mutual traffic exchange simply involves each carrier 'paying' for the other to terminate local calls originated by its subscribers be mutual termination local calls originated by the customers of the other carrier. That is why I referred to it as payment 'in kind'." Final Order at p. 18.

Thus, there was competent, substantial evidence presented on this point and accepted by the Commission. GTE's disappointment with the Commission's decision on this point does not give rise to a reason for the Commission to consider its well-founded decision.

14. The Commission noted that since interconnection is new to

Florida there is no empirical evidence to predict traffic. Final Order at p. 15. Thus, until such evidence exists that demonstrates traffic will be out of balance one way or the other, mutual traffic exchange remains the least cost alternative. This issue has been fully and thoroughly considered by the Commission and therefore should not now be reopened. Of course, GTE is free to present such additional balance of traffic information as it deems appropriate in a future petition. Final Order at p. 20.

**C. Costs of Measurement and Billing**

15. GTE's arguments that the portions of the Commission's Final Order pertaining to the excessive costs of measurement and billing which would be avoided by mutual traffic exchange, is without merit. The Commission specifically considered GTE's testimony and arguments. Final Order at p. 15. The Commission also considered the testimony and arguments of the petitioners and intervenors on this issue. Final Order at p. 16-17. The Commission rejected GTE's evidence and arguments, finding that until a threshold level was reached where the imbalance of traffic was sufficient to warrant the costs of measurement and billing, then the charges were excessive. Id. This point has been considered once and therefore should not be reconsidered.

**D. Discrimination**

16. The essence of the GTE's motion is the allegedly disparate treatment it has received in two Commission orders. The first order approved a stipulation between GTE and Intermedia pursuant to Section 364.162(2), Florida Statutes (1995). Order

Approving Agreement, Florida Public Service Commission Order No. ("Stipulation"). The Final Order, of course, sets the rates, terms and conditions of interconnection between GTE and MFS. GTE is correct in stating that the Stipulation and Final Order impose different conditions of interconnection. However, those different conditions do not result in discriminatory treatment.

17. Section 364.162, Florida Statutes contemplates negotiated agreements between a LEC and an ALEC concerning the rates, terms and conditions of interconnection. That is exactly what GTE and Intermedia did in entering the Stipulation. Adopting GTE's construction of Section 364.162 would render an absurd result. The first times rates, terms and conditions of interconnection are set by the Commission, either via approval of a negotiated agreement or by arbitration, would then govern any subsequent agreement or arbitration proceedings. However, there would be no additional proceedings because there could be no variance from the first order. Had the Legislature intended that there be just one meaningful hearing to set rates, terms and conditions of interconnection then it would have said so. Instead the plain language of the statute contemplates several individual sets of negotiations or arbitration hearings between specific parties.

18. The rates, terms and conditions of interconnection established pursuant to Section 364.162, Florida can only be discriminatory if they are not readily available equally. Here, either Intermedia or MFS can avail themselves of the other set of

interconnection terms because the terms must be tariffed. So there is no way any party, including GTE, can be discriminated against solely on the basis of the existence of the Intermedia agreement and this Final Order.

**E. Constitutional Issues**

19. GTE's assertion that the Commission's Final Order results in a taking in violation of the U.S. and Florida Constitutions is also without substance. First that argument is expressly predicated upon the assumption that GTE is required to provide a service or use of its property without compensation. As already discussed, the record in this docket is clear that GTE will receive compensation for its provision of interconnection services to ALECs. GTE simply wants to pretend that the "mutual" components of mutual traffic exchange do not exist. Yet they do. GTE will receive the benefit of having its traffic terminated by ALECs. If traffic is found to be out of balance in favor of an ALEC, GTE can recover those costs upon presentation to the Commission. Therefore, GTE has suffered and will not suffer a deprivation or loss of any of its property.

**F. Market Subsidy**

20. There is simply no language in the Final Order that suggests the Commission is advocating or mandating GTE's subsidization of market entry by ALECs. Indeed, the Commission has only provided a mechanism for the "lowest barrier" to entry by ALECs. Final Order at 19. This is the mandate of Section 364.162(5), Florida Statutes. The Commission has adequately

carried out that requirement and should not re-visit an issue that has been abundantly considered by the Commission.

**G. Intermediary Handling of Local Traffic**

21. GTE's assertion that the Commission's Order establishing a rate of $.00075/minute for intermediary handling of local traffic was not based upon competent, substantial evidence is without merit. The Commission specifically found that the $.00075 matches the tandem switching rate agreed to by GTE in another docket. Final Order at p. 24. The Commission endorsed testimony of several parties that the cost studies used to arrive at the tandem switching rate approximate TSLRIC. Id. Therefore there is competent, substantial evidence supporting the $.00075 rate and reconsideration of this issue is inappropriate.

Respectfully submitted,

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