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September 27, 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. 950838-TP

Dear Ms. Bayo:

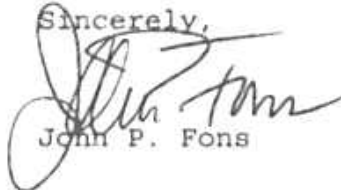
Enclosed for filing in the above docket are the original and fifteen (15) copies of Joint Brief and Posthearing Statement of United Telephone Company of Florida and Central Telephone Company of Florida.

We are also submitting the Joint Brief and Posthearing Statement 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
utd\838.byn

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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-CENDEL OF)
FLORIDA, INC. (also known as)
CENTRAL TELEPHONE COMPANY OF)
FLORIDA AND UNITED TELEPHONE)
COMPANY OF FLORIDA))
)

DOCKET NO. 960838-TP
Filed: September 27, 1996

**JOINT BRIEF AND POSTHEARING STATEMENT OF
UNITED TELEPHONE COMPANY OF FLORIDA AND
CENTRAL TELEPHONE COMPANY OF FLORIDA**

United Telephone Company of Florida and Central Telephone Company of Florida ("Sprint") file this Joint Brief and Posthearing Statement of Issues and Positions.

I.

INTRODUCTION

This arbitration proceeding was instituted at the request of MFS pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"). Subsequent to the bringing of this arbitration proceeding, the Federal Communications Commission ("FCC") issued its First Report and Order and Rules ("FCC Order and Rules") on August 8, 1996, in which the FCC established a new costing methodology and interim default proxy prices for interconnection, unbundling and resale.

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Against this background, MFS and Sprint entered into good-faith negotiations and reached partial agreement resolving most of the issues which had been designated for arbitration in this proceeding. The remaining substantive issues (Issues 2, 3 and 5) address: (a) whether the local call termination proxy rates should be applied reciprocally and symmetrically; (b) whether the proxy rate for unbundled loops should be deaveraged; (c) which interim rate for the unbundled cross-connection should be imposed; and (d) whether Sprint should be required to be the intermediary between MFS and the information service providers ("ISP") for the billing, rating and collection of information services traffic. The one remaining procedural issue (Issue 14) asks the rhetorical question of whether the Commission should approve the MFS/Sprint agreement pursuant to Section 252(e) of the Act. The parties agree that the Commission must, not just should, approve the agreement, and this issue should have been stipulated.

II.

BASIC POSITION

As to the remaining substantive issues (Issues 2, 3 and 5), Sprint takes the position that: (a) the local call termination proxy rates, which the parties agree should be used during the interim until Sprint establishes rates based upon an acceptable Total Element Long Run Incremental Cost ("TELRIC") study, should be applied reciprocally and symmetrically only if MFS employs the same facilities in terminating Sprint's local traffic that Sprint

employs in terminating MFS' local traffic on Sprint's local network; (b) the FCC-established proxy for unbundled local loops, which the parties agree should be used during the interim until Sprint establishes rates based upon an acceptable TELRIC study, must not be geographically deaveraged; (c) the Commission should adopt Sprint's tariffed collocation rates for the unbundled cross-connection as the interim rate until Sprint establishes permanent rates based upon an acceptable TELRIC study; and (d) Sprint should not be required to act as MFS' intermediary for the rating, collecting and billing of information services traffic originated by MFS' customers on MFS' network.

III.

ISSUES AND POSITIONS

ISSUE 2: What is the appropriate reciprocal compensation rate and arrangement for local call termination between MFS-FL and Sprint United/Centel?

SPRINT POSITION: The parties agree to provide local interconnection on a reciprocal basis using the FCC's proxy rates. The rate Sprint charges MFS will consist of tandem switching, transport, and end office switching. Sprint opposes paying MFS a rate that includes an element for transport unless MFS provides a transport facility.

* * * *

The only issue left to be decided with respect to the appropriate local interconnection compensation rate is whether Sprint will pay MFS a local interconnection charge that includes an

element for transport when MFS does not provide a transport facility. Resolution of this issue depends upon whether the Act and the FCC's Order and Rules implementing the Act require such treatment. It is Sprint's position that the Act and the FCC's Order and Rules require Sprint to compensate MFS for local interconnection elements only if MFS actually provides the transport element or an equivalent element. MFS concedes that it will not provide a transport or equivalent element when terminating Sprint's local traffic in the Winter Park/Maitland service area. Devine, Tr. 125-26.

Traditionally, and as contemplated by the Act and the FCC's Order and Rules, "transport" consists of the facility linking a carrier's tandem switch to its end office switch. Exhibit No. 4. (See also FCC Rule, Section 51.701(c).) There may also be a separate transport facility linking each end office subtending a tandem switch. Devine, Tr. 127.

MFS argues, however, that while that may, in fact, be the traditional definition of "transport," that definition is based upon the historical, incumbent local exchange company ("ILEC") network architecture. The new, competitive local exchange companies ("CLECs"), MFS argues, will employ a forward looking, more efficient network architecture which does not employ traditional transport. Devine, Tr. 125-26. MFS' contends that instead of a network architecture employing tandem switches and distance-removed, subtending local end offices, MFS will employ a network architecture which incorporates but one switch that

includes both tandem and end office functions and longer local loops. Exhibit No. 5. MFS believes this network architecture to be more efficient, but since the total length the traffic must be carried under either architecture is the same, MFS is entitled to the same local interconnection compensation, including "transport" even when MFS does not provide a "transport" facility. Devine, Tr. 138.

MFS' novel argument fails for several reasons. First, neither the Act nor the FCC's Order and Rules contemplates that the compensation for transporting and terminating local traffic be symmetrical when one party does not actually employ the network facility for which it seeks compensation. MFS points to Section 51.701(c) of the FCC's Rules to support its contention that because MFS will perform an equivalent function it is entitled to the same compensation as Sprint. Devine, Tr. 138. Contrary to MFS's assertion, however, Section 51.701(c) requires equal compensation only when MFS provides the equivalent facility to that provided by Sprint. Devine, Tr. 136. As noted previously, MFS does not provide the same or equivalent transport facility.

Second, this Commission can adopt MFS' request for compensation for the phantom local transport only if the Commission redefines "transport" to mean the facility from MFS' switch to its end user (the local loop). MFS insists being compensated by Sprint for transporting the call from Sprint's customer to MFS' end user taking into account the total distance from MFS' switch to the end user. That distance must include all, or a portion, of the local

loop because MFS has no transport facility to measure or bill for and no way to calculate its local transport costs. Exhibit No. 6, pp. 25-26; 67-70. Not only would MFS' definition of "transport" be inconsistent with the FCC's Rules, adoption of such a definition would also seriously undermine the current access structure which requires the interexchange carriers ("IXCs") to pay the carrier common line ("CCL") charge for use of the local loop. Cheek, Tr. 259-60.

During MFS' cross-examination of Sprint's witness William E. Cheek, MFS' counsel suggested that Section 51.711 of the FCC's Rules requires symmetrical reciprocal compensation even when the CLEC does not provide a transport facility as MFS concedes it does not do in this case. Cheek Tr., 265-66. MFS' suggestion, and the argument which is sure to follow, is inappropriate because (a) it ignores the requirement of Section 51.701(c) that a CLEC is entitled to transport compensation only if it provides a transport facility or a facility equivalent to the ILEC's transport facility; and (b) Section 51.711 only applies when the ILEC and CLEC are providing the same transport and termination services. Here MFS concedes it is not providing Sprint with any transport service in connection with the termination of Sprint's local interconnection traffic, while Sprint is providing both the transport and termination services required to deliver MFS' local telecommunications traffic to Sprint's end users. Devine, Tr. 126.

Additionally, the FCC has established a proxy rate for transport separate from the tandem rate and, additionally,

established different proxy rates for direct and shared transport. FCC Rules, Section 51.513(c) (3) and (4). If the FCC had concluded that transport would be a compensation element regardless of whether transport was in fact provided, there would have been no need to set a separate proxy transport rate in the first place, nor would the FCC, in any event, have differentiated between direct and shared transport and established separate proxy rates. Clearly, if MFS is not furnishing Sprint transport, there is no way of knowing how to calculate the transport charges as required by the FCC Rules, Section 51.513(c) (3) and (4).

In view of MFS' total failure of proof, MFS is not entitled to be compensated for transport as part of the local interconnection it will provide to Sprint.

ISSUE 3: Is it appropriate for Sprint United/Centel to offer the following unbundled loops and, if so, at what rate:

- a. 2-wire analog voice grade loop;
- b. 4-wire analog voice grade loop; and
- c. 2-wire ISDN digital grade loop.

SPRINT POSITION: The parties agree that Sprint will provide MFS with unbundled loops at the FCC's proxy prices until Sprint develops acceptable, cost-based permanent prices. Sprint does not believe it is required or appropriate that the loop proxy prices be geographically deaveraged. Sprint will, however, provide geographically deaveraged permanent unbundled loop prices. Because the FCC did not establish a proxy for unbundled cross-connection, the Commission should use Sprint's tariffed collocation rates during the interim.

* * * *

Although this issue originally only addressed the unbundling of, and rates for, local loops, this issue was expanded at the hearing to accommodate a previously unaddressed issue regarding the rate for the unbundled cross-connection. Sprint has agreed to provide MFS with unbundled local loops and cross-connections. Sprint and MFS have agreed that the FCC proxy price will be used for unbundled loops. Harris, Tr. 181. MFS, however, argues that the FCC proxy price should be geographically deaveraged. Harris, Tr. 191. The FCC did not establish a proxy price for unbundled cross-connections, and the parties have been unable to resolve the appropriate interim price. Cheek, Tr. 256-57.

A. Geographically Deaveraged Proxy Prices

Sprint believes that deaveraging of the FCC's unbundled loop proxy is not required by the FCC Order and Rules, and to do so would make no sense. Cheek, Tr. 254-55. Moreover, MFS' proposed deaveraging methodology, and resulting deaveraged unbundled loop prices, is ill-conceived and inappropriate.

The FCC's Order states that cost-based prices of unbundled local loops should be geographically deaveraged. FCC Order, ¶ 797. It is clear that the FCC-ordered proxy prices, which are to be used for an interim period only, are not cost-based prices. Cheek, Tr. 272. Sprint is committed to submitting TELRIC-based unbundled loop prices on a geographically deaveraged basis, consisting of several density zones, in the near future. Cheek, Tr. 273-74. In the meantime, provision of unbundled local loops using the FCC's proxy

price of \$13.68 without any geographic or zone density deaveraging is both fair and appropriate. Cheek, Tr. 271-72.

Even if this Commission were to conclude that the FCC Order and Rules authorize the deaveraging of the FCC's proxy price into three zones, there is no competent, substantial record evidence to support deaveraged prices. The only testimony offered on how deaveraging might be accomplished, and the resulting rates, was offered by MFS through its witness Alex Harris. Harris, Tr. 145; 182-190. Yet, the methodology offered by MFS is fatally flawed, and the resulting zones and prices are inconsistent and unreliable.

Indeed, if the Commission were to adopt MFS' proposal, 81 of the 101 Sprint wire centers identified in MFS' Composite Exhibit No. 8 (DNP-5), including Maitland, Naples and Tallahassee, would be included in MFS' proposed Zone 3. Harris, Tr. 189-90. This 80% of the Sprint wire centers in Zone 3 violates MFS' own criteria that the zones consist of roughly 25 to 50 percent of the total loops. Harris, Tr. 176-77. According to MFS' witness Alex Harris, Zone 3 includes the wire centers which are most costly to provide based exclusively on average loop lengths. Harris, Tr. 186-87. The rate MFS recommends for Zone 3 is \$22.54 per unbundled loop, per month. Composite Exhibit No. 8 (DNP-5), p. 15 of 15.

MFS' proposed Zone 1, on the other hand, includes only 11 Sprint wire centers, including Kingsley Lake which, according to MFS' Composite Exhibit No. 8 (DNP-5), page 3 of 15, has a density of 3 loops per square mile. (The average loop density in Florida is 300 loops per square mile. Composite Exhibit No. 8 (DNP-5),

page 15 of 15.) MFS claims the unbundled loops in Zone 1 are the least costly to provide, and recommends a deaveraged price of \$7.56 per minute per unbundled loop. Composite Exhibit No. 8 (DNP-5), p. 15 of 15. MFS witness Alex Harris agreed that loop density is one criteria that can be used to determine loop cost, but that MFS did not consider loop density or use loop density as a screen for aberrations or anomalies. Harris, Tr. 187-89.

Even though MFS' proposed deaveraging methodology and recommended unbundled loop prices might be beneficial to Sprint during the interim, Sprint still does not believe it is appropriate to geographically deaverage the FCC's proxy price into density zones. The FCC's proxy price is an interim measure to be replaced with economic cost-based prices. Sprint is already working on developing TELRIC-based prices utilizing an updated Benchmark Cost Model 2 (BCM 2) approach, and will have permanent deaveraged unbundled loop prices in the near future. Cheek, Tr. 255.

B. Cross-Connection Interim Prices

MFS' Petition for Arbitration addresses a number of issues which MFS identified were subjects of negotiation, but were unresolved. Although unbundled cross-connection was not formally identified as an unresolved issue until it was addressed in the rebuttal testimony of David N. Porter, later adopted by Alex J. Harris, as part of the ongoing negotiation process, Sprint agreed to provide MFS with unbundled cross-connections. Cheek, Tr. 256. The unresolved issue is the interim price, and the parties agree the Commission should arbitrate that issue.

The unbundled cross-connections in question are the facilities which link the unbundled local loops furnished to MFS to MFS' collocated equipment in the Sprint wire center. Harris, Tr. 178. MFS proposes an interim price of .21¢ per month, per unbundled cross-connection regardless of the cross-connection required, based upon an Ameritech tariff rate filed in Illinois. Harris, Tr. 179. Sprint, on the other hand, using its previously approved Florida collocation tariff, proposes interim prices which will vary depending upon the type of cross-connection requested: DS-0 is \$1.30 per month; DS-1 is \$4.45 per month; and DS-3 is \$53.55 per month. Cheek, Tr. 256-57. Additionally, based upon a preliminary TELRIC study, Sprint has proposed to MFS a range of prices for cross-connection associated with collocation which have a range of \$.35 to \$1.00 for DS-0; \$1.35 and \$5.00 for DS-1; and \$13.50 and \$20 for DS-3. Cheek, Tr. 277-78; Exhibit No. 10, p. 102.

Sprint is proposing that for the interim the Commission adopt Sprint's tariffed Florida collocation rates, and when the final rates are adopted based upon Sprint's TELRIC studies that there be a true-up with a retroactive adjustment. Cheek, Tr. 278. The Commission should not adopt MFS' proposed interim cross-connection price because it is based upon an Ameritech Illinois tariff, and MFS has not furnished any information to demonstrate that the rate is cost-justified or even as to its application. Harris, Tr. 179. The cost structure for Ameritech would not necessarily be the same as Sprint's cost structure because cost will vary by company. Cheek, Tr. 275.

ISSUE 5: What are the appropriate rates, terms and conditions, if any, for billing, collection and rating of information services traffic between MFS-FL and Sprint United/Centel?

SPRINT POSITION: Sprint does not agree that it is Sprint's responsibility to act as MFS' intermediary with information services providers. This issue was previously decided by this Commission in Docket No. 950985-TP, Order No. PSC-96-0668-FOF-TP, page 39. Nothing has changed since the Commission's prior decision to require any revision.

* * * *

MFS is requesting that Sprint be required to act as MFS' intermediary with information services providers ("ISPs") when an MFS end user generates a call to an ISP. Devine, Tr. 112-13. MFS takes the position that because Sprint already has an agreement with the ISP for billing, collecting and rating of information services traffic that it is more efficient and less expensive for Sprint to continue to handle that function, even when the party initiating the call is an MFS customer. Devine, Tr. 56-58. There is nothing, however, that prevents MFS from entering into its own agreement with the same ISPs. Devine, Tr. 120. Sprint currently has its own agreements with ISPs available to its customers but located in BellSouth's adjoining service area. Cheek, Tr. 264.

This identical issue was submitted to the Commission for arbitration pursuant to Section 364.162, Florida Statutes, and the Commission rejected MFS' position. Docket No. 950985-TP, Order No. PSC-96-0668-FOF-TP, page 39. The suggestion that what MFS is requesting now amounts to an unbundled network element under the

Federal Act is without justification. The Federal Act defines "network element" as follows:

The term 'network element' means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including numbers, databases, signaling systems, and information sufficient for billing and collection as used in the transmission, routing or other provision of a telecommunications service.

Act, Section 3 (45).

If what MFS is requesting is not a "network element" used in the provision of a "telecommunications service," then Sprint is not required to provide it to MFS on an unbundled basis. Act, Section 251(c)(3). A reasonable appraisal of what MFS is requesting demonstrates that what MFS is requesting is not a network element used to provide a telecommunications service, nor is it a feature, function or capability provided by means of a network element. What MFS really is requesting is the ability to piggy-back on a relationship Sprint has with a third-party ISP. As MFS acknowledges, if its proposed approach is adopted, the ISP will probably not even know that the MFS end user receiving the ISP's services is, in fact, an MFS customer. Devine, Tr. 120.

The intention of the Act was to require the incumbent LEC to make its monopoly facilities available to new entrants. Even stretching the Act's intent, here Sprint does not have a monopoly relationship with the third-party ISP. Even MFS does not contend that Sprint has a monopoly and acknowledges that MFS wants Sprint to be its intermediary simply because MFS is too busy to deal

directly with the ISPs. Devine, Tr. 120-21. Yet, if MFS wanted to it could contract with the ISPs and provide its customers access to the information services on the same basis as Sprint provides its customers with access to the ISPs. Cheek, Tr. 264.

In reality, the issue arises because of local interconnection, not unbundling. The scenario is very simple; MFS' customer dials the number of an ISP served by Sprint; the call traverses the MFS network and enters Sprint's network at the point of interconnection; the call then traverses Sprint's network and is delivered to the ISP, and the information service is provided to MFS' customer. Under Sprint's contract with the ISP, Sprint would bill its end user, deduct Sprint's costs and remit the balance to the ISP. Under MFS' proposal, MFS will bill its end user, deduct its costs and deliver the balance to Sprint for ultimate delivery to the ISP. Devine, Tr. 119. This remission of payments from one carrier to another is not a "billing and collection" function, nor is it essential to the provision of a telecommunication service, nor is it a feature, function or capability provided by means of a network element.

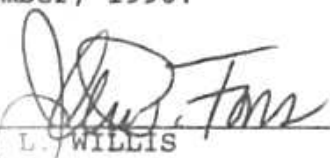
ISSUE 14: Should the agreement be approved pursuant to Section 252(e) of the Act?

SPRINT POSITION: Yes. Any interconnection agreement adopted by negotiation or arbitration must be submitted to the Florida Public Service Commission for approval.

* * * *

Sprint and MFS are in agreement that the Act requires any negotiated or arbitrated agreement to be approved by the Florida Public Service Commission.

Dated this 27th day of September, 1996.



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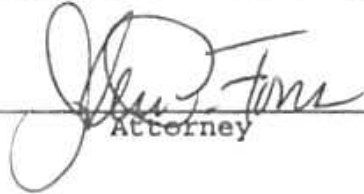
ATTORNEYS FOR CENTRAL TELEPHONE
COMPANY OF FLORIDA AND UNITED
TELEPHONE COMPANY OF FLORIDA

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 27th day of September, 1996, to the following:

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