BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Metropolitan Fiber Systems of Florida, Inc. for arbitration of certain terms and conditions of a proposed agreement with Central Telephone Company of Florida and United Telephone Company of Florida concerning interconnection and resale under the Telecommunications Act of 1996.	DOCKET NO. 960838-TP ORDER NO. PSC-97-0274-FOF-TP ISSUED: March 11, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

FINAL ORDER GRANTING MOTION FOR STAY AND DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

On February 8, 1996, Metropolitan Fiber Systems of Florida, Inc., now known as MFS Communications Company, Inc. (MFS) began negotiations with Central Telephone Company of Florida and United Telephone Company of Florida, now collectively known as Sprint-Florida, Inc. (Sprint). On July 17, 1996, MFS filed with us a petition requesting arbitration with Sprint under the Telecommunications Act of 1996 (the Act). Following negotiations, three substantive issues remained to be arbitrated: reciprocal compensation rate and arrangement for local call termination; the appropriate rate for unbundled loops, including 2-wire and 4-wire analog grade and 2-wire ISDN digital grade; and the appropriate rates, terms, and conditions for billing, collection, and rating of information services traffic. To resolve these issues, we conducted a hearing on September 19 and 20, 1996.

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order in CC Docket No. 96-98 (FCC Order). The FCC Order established the FCC's requirements for interconnection, unbundling and resale based on its interpretation of the Act. We appealed certain portions of the FCC Order, and

requested a stay of the order pending that appeal. On October 15, 1996, the Eighth Circuit Court of Appeals granted a stay of the FCC's rules implementing Section 252(i) and the pricing provisions of the Act.

On December 16, 1996, we issued Order No. PSC-96-1532-FOF-TP, resolving the issues in MFS' petition for arbitration with Sprint. In that Order, we directed the parties to file a written agreement memorializing and implementing our arbitration decision within 30 days of issuance of the Order. On December 31, 1996, MFS filed a Motion for Reconsideration. On January 10, 1997, Sprint timely filed a Response to Motion for Reconsideration. On January 14, 1997, the parties filed a Joint Motion for Stay of a Portion of the Commission's Order on Petition for Arbitration, in which they requested that we defer the requirement to file a written agreement pending disposition of MFS' motion for reconsideration. We address both motions herein.

Joint Motion for Stay

The parties state in their motion for stay that if they file an agreement reflecting our arbitration decision before we address MFS' motion for reconsideration, if we grant MFS' motion, the parties will have to file another agreement reflecting the reconsidered decision. The parties suggest that it would be more administratively efficient to file the agreement after the decision on the motion for reconsideration, when they can be certain of what the agreement should contain. The parties ask that they be permitted to file the agreement 30 days after we make our decision on reconsideration. This is a reasonable request; therefore, the motion for stay is granted.

Motion for Reconsideration

The proper standard of review for a motion for reconsideration is whether the motion identifies some material and relevant point of fact or law which was overlooked or which we failed to consider in rendering our order. See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters which have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958).

In its motion, MFS states that it seeks reconsideration of our decisions on geographic deaveraging of unbundled loop rates and compensation for call transport set forth in Order No. PSC-96-1532-FOF-TP. MFS asserts that we misinterpreted our obligation under

the Act to require geographically deaveraged loop rates and to institute reciprocal compensation for call transport. We address each issue below.

Geographic Deaveraging

MFS asserts that we ignored the Act's requirement that geographically deaveraged loop rates should be instituted. MFS further asserts that it presented the only evidence by which geographic deaveraging could be accomplished; thus, we were obligated to apply MFS' method of deaveraging. MFS adds that we ignored the fact that MFS sought only to set interim rates. Any dissatisfaction with such interim rates, asserts MFS, could have been remedied by reopening the record or ordering a true-up of interim rates.

MFS also argues that loop rates must be deaveraged in spite of the Eighth Circuit's stay of the FCC Order and rules. MFS states that the Act requires cost-based pricing. MFS argues that we were, therefore, required to either apply MFS' deaveraging method or explain how we would fulfill our obligation to set cost-based rates. MFS asserts that we took neither action.

MFS states that we also failed to consider the fact that neither party disagreed that deaveraging was necessary. MFS states that Sprint only disagreed that the FCC Order required deaveraged interim rates.

Furthermore, MFS asserts that we must clarify our decision on geographic deaveraging. In doing so, MFS states that we must explain when and how we will consider any cost studies Sprint develops for establishing permanent loop rates.

Sprint responds by stating that we correctly decided not to require Sprint to establish geographically deaveraged rates because the Act permits, but does not require geographic deaveraging. Also, Sprint argues that we were correct in our decision because the FCC pricing rules have been stayed by the Eighth Circuit. In addition, Sprint asserts that we made the appropriate decision because the only methodology submitted by the parties was based upon insufficient cost data and produced absurd results for some of Sprint's wire centers.

Sprint argues that MFS is incorrect that the Act requires geographic deaveraging. Sprint states that the Act does require cost-based rates, but that does not mean that rates which are not geographically deaveraged are not cost-based. Sprint asserts that such an assumption could lead to senseless results. Sprint,

however, adds that neither it nor this Commission should take the position that loops should never be deaveraged.

Sprint also argues that MFS should not have relied on the stayed FCC Order. Nevertheless, Sprint asserts that we did, in fact, recognize the potential for geographically deaveraged rates. In so doing, we ordered Sprint to develop TELRIC studies by which permanent loop rates will be set that can be deaveraged on cost.

In addition, Sprint asserts that we correctly rejected MFS' petition because neither the FCC proxy rates nor the rates produced by MFS' methodology are cost-based. Thus, Sprint argues that we were correct to ignore those rates as interim rates subject to true-up.

As it pertains to geographic deaveraging, we find that MFS' motion has not set forth a basis upon which a motion for reconsideration may be granted.

First, the fact that we interpret the Act's provisions on deaveraging differently than MFS does not indicate that we ignored or failed to consider some material point of fact or law regarding this case. We did, in fact, clearly explain our reasoning for not requiring geographic deaveraging. See Order at 8. The fact that MFS' interpretation of the Act and our interpretation are divergent does not indicate a material legal or factual basis for reconsideration of our Order.

Second, the FCC pricing rules and order have been stayed. We were not, therefore, required to rely upon the stayed provisions. As such, we were free to consider all of the available evidence of record in an effort to determine the best way to derive cost-based rates. We determined that there was insufficient evidence to deaverage the proxy rate for the pertinent geographic zones. Thus, we determined that the proxy rate should not be deaveraged. We stated that Sprint should, however, continue to develop TELRIC studies in order to obtain sufficient cost data whereby permanent rates can be established and deaveraged based on cost. In reaching this finding, we clearly considered all relevant information. We did not ignore or fail to consider any material point of fact or law.

Finally, we determined that geographic deaveraging of the interim proxy rates was inappropriate because the only methodology presented by the parties was "not based on sufficient cost data. . ." and produced an "absurd result." See Order at 8. Although neither party contested the necessity for deaveraging, deaveraged rates were not stipulated by the parties. We, therefore, had to

set rates based on the evidence presented. In doing so, we were not required to accept a methodology based on insufficient data and producing a bizarre result. We considered all relevant information. We did not ignore or fail to consider any material point of fact or law.

Reciprocal Compensation for Call Transport

MFS asserts that we misapplied the Act to call transport compensation and ignored the fact that Sprint had already agreed that MFS' facility would be treated as equal to Sprint's facility. MFS asserts, therefore, that we set non-reciprocal compensation for call transport that is inconsistent with the Act.

MFS argues that the parties had already agreed that MFS' and Sprint's facilities were equal. MFS states that Sprint had agreed to pay MFS a premium tandem switching rate in addition to the charge for call termination. MFS argues that we, therefore, only had to decide whether MFS was entitled to reciprocal compensation for call transport. Under the Act, MFS asserts that our answer should have been "yes."

Citing FCC Order 96-325 at Paragraph 1090, MFS argues that the FCC Order presumes that the compensation arrangements between incumbent LECs and non-incumbent LECs will be symmetrical and reciprocal. MFS states that the only exception in the FCC Order applies to local transport and termination. MFS states that it did not request that this exception be applied. MFS, therefore, argues that it is entitled to a reciprocal transport rate.

In addition, MFS argues that we ignored that MFS and Sprint had already agreed that reciprocal termination and switching charges are appropriate. MFS asserts that we improperly based our ruling upon MFS' network architecture, rather than upon Sprint's and MFS' use of equivalent facilities. MFS argues that we should reconsider our decision in light of the Act and the agreement between Sprint and MFS on termination and switching charges.

Sprint, however, argues that MFS' argument is marred by the fact that the Act does not require Sprint to compensate MFS for a function that MFS does not provide. Sprint further asserts that MFS' argument fails because the portions of the FCC Order upon which MFS relies have been stayed. Sprint adds that MFS is simply "rehashing" arguments that MFS previously set forth in its pleadings, testimony, and briefs.

Sprint argues that we correctly interpreted the Act to require reciprocal compensation only if the competitive LEC incurs the cost of providing the function for which it seeks compensation. Sprint asserts that MFS has tried to maneuver around this point by arguing that Sprint had already agreed to pay a premium tandem switching rate in addition to the call termination charge. Sprint argues, however, that it had agreed to that premium rate only because it believed that the FCC Order and rules required it. Now that the FCC Order and rules have been stayed, Sprint has filed a Motion to Reject that portion of the Partial Interconnection Agreement. Sprint asserts that it agreed to reciprocal rates for tandem switching based on the rules in effect at the time, but that circumstances have changed. Sprint, therefore, argues that MFS should not rely on Sprint's prior agreement on tandem switching to buttress its argument.

We interpret Section 51.701 of the Act to require reciprocal compensation only if MFS provides the equivalent facility to that provided by Sprint. See Order at 5. In rendering our Order, we examined the record presented and found that MFS does not perform a transport function. We, therefore, found that MFS is not entitled to compensation for transport. We do not believe that we are obliged to require reciprocal transport charges simply because the parties had agreed to reciprocal charges for other functions. MFS has identified no other material point of fact or law which is pertinent to this issue.

MFS has not identified any factual or legal basis for its Motion for Reconsideration. Its motion falls short of the standard set forth in Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962). Based on the foregoing, MFS' Motion for Reconsideration of Order No. PSC-96-1532-FOF-TP is denied.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that MFS Communications Company, Inc. and Sprint-Florida, Inc.'s Joint Motion for Stay of a Portion of the Commission's Order on Petition for Arbitration is granted. It is further

ORDERED that MFS Communications Company, Inc.'s Motion for Reconsideration of Order No. PSC-96-1532-FOF-TP is denied. It is further

ORDERED that this docket shall remain open pending completion of the arbitration process.

By ORDER of the Florida Public Service Commission, this 11th day of March, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: _____
Chief, Bureau of Records

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).