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March 31, 1997

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. 961230-TP

Dear Ms. Bayo:

Enclosed are the original and fifteen (15) copies of Sprint-Florida, Inc.'s Motion for Reconsideration and/or Clarification and Motion of Sprint-Florida, Inc. for Stay of a Portion of the Commission's Order on Petition for Arbitration.

We are also submitting the Motion for Reconsideration and/or Clarification 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.

Yours truly,

John P. Fons

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cc: All Parties of Record

Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MCI Telecommunications Corporation for arbitration with United Telephone Company of Florida and Central Telephone Company of Florida concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996	DOCKET NO. 961230-TP Filed: March 31, 1997

SPRINT-FLORIDA, INC.'S MOTION FOR RECONSIDERATION AND/OR CLARIFICATION

Pursuant to Rule 25-22.060, Florida Administrative Code, Sprint-Florida, Inc. ("Sprint" or the "Company") moves the Florida Public Service Commission ("FPSC" or the "Commission") to reconsider and/or clarify Order No. PSC-97-0294-FOF-TP ("Order"), and alleges:

I. Introduction

1. This motion seeks reconsideration of the Commission's decisions with respect to requiring Sprint to offer voice mail for resale purposes; requiring that TSLRIC must be used for costing purposes; rejecting Sprint's recovery of common costs; and requiring Sprint to include switching features in the unbundled switching price. Reconsideration is appropriate when the decision maker either ignored, misinterpreted or misapplied the law applicable to the evidence in the proceeding, or overlooked and failed to consider the significance of certain evidence. See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962). In light of

this standard, and for the reasons set forth below, the Commission should reconsider and change its decisions with respect to: requiring Sprint to offer voice mail for resale purposes; requiring that TSLRIC must be used for costing purposes; rejecting Sprint's recovery of common costs; and requiring Sprint to include switching features in the unbundled switching price.

2. Additionally, with respect to the Commission's decision to require Sprint to study each and every end office switch, Sprint seeks clarification because costing procedures have consistently relied upon sampling as an acceptable costing technique rather than studying the entire universe. Sprint, therefore, requests that the Commission clarify its Order to make certain that Sprint does not have to expend resources in an unnecessary exercise.

II. Voice Mail is not a "telecommunications service" subject to resale.

3. Based on its interpretation of the Act[1], this Commission concluded that voice mail meets the definition of "telecommunications" and "telecommunications service," and required Sprint to offer voice mail for resale to MCI. Order, p. 26. In reaching its decision, this Commission rejected the FCC's classification of voice mail as an "enhanced service" and not a "telecommunications service." The rationale offered by this Commission for rejecting the FCC's classification is that the FCC's

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[1] The Communications Act of 1934, as amended by the Telecommunications Act of 1996, is hereinafter referred to as the "Act."

classification was made prior to "the enactment of the operative definitions used to establish resale obligations under the Act." Order, p. 26. This Commission, however, ignored the most salient point of the FCC's decision - that voice mail does not constitute "transmission" - as required by the Act's definition of "telecommunications," and overlooked the Act's definition of voice mail as "telemessaging" service at Section 260(c) of the Act.

4. In reaching its decision, this Commission brushed aside the evidence that voice mail is a "store and forward" technology and, for reasons not supported by competent, substantial record evidence, concluded that it is a "transmission" technology. That the FCC's classification of voice mail as something other than a "telecommunications service" is correct is underscored by the fact that the Act, at Section 260(c), defines "telemessaging service" to mean "voice mail and voice storage and retrieval services..." It is clear that, contrary to this Commission's decision that "(T)he FCC's decision was made prior to the enactment of the operative definitions used to establish resale obligations under the Act," the Act, in fact, has adopted and reaffirmed the FCC's classification of voice mail as an "enhanced" service or an "information" service. If voice mail were a "telecommunications service," there would be no reason to define "telemessaging service" to mean "voice mail."

5. In its Orders implementing the procedures required by Section 260(b) of the Act, the FCC reaffirmed that "telemessaging" is an "information service." See In the Matter of Implementation

of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996 - CC Docket No. 96-150, Report and Order, released December 24, 1996. It is also worth noting that MCI, in its response to the FCC's Notice of Proposed Rulemaking in CC Docket No. 96-150, agreed with the Commission's tentative conclusion that "telemessaging is an information service." MCI Response, Summary page ii, and page 11. MCI was fully aware that "telemessaging service" meant "voice mail" because that is the way it is defined in Section 260(c) of the Act.

6. In light of the fact that Section 260(c) of the Act reaffirms the FCC's classification of voice mail as an "enhanced" service, as opposed to a "telecommunications" service, this Commission's sole basis for concluding that "voice mail" is a "telecommunications service" subject to resale is without legal or factual support. The Commission should, therefore, grant reconsideration of its decision on this issue and declare that "voice mail" is not subject to resale under the Act.

III. The Commission has improperly required TSLRIC as the costing methodology when the parties have each recommended TELRIC as the appropriate costing methodology.

7. The Commission has required the use of TSLRIC for costing interconnection and unbundled network elements. Order, pp. 11 to 13 and 20. There is, however, no record evidence that either MCI or Sprint has requested or supported the use of TSLRIC for such purposes. Indeed, both parties, in all of their pleadings, testimony, exhibits and briefs, have unqualifiedly relied upon and

supported TELRIC methodology for the costs presented. This arbitration proceeding is pursuant to Section 252 of the Act. The Act clearly limits the Commission's "consideration of any petition . . . (and any response thereto) to the issues set forth in the petition and the response . . ." Section 252(b)(4)(A). This requirement of the Act limiting the Commission's authority to address only those issues submitted by the parties is consistent with Section 682.13(c), Florida Statutes, and Florida case law that an arbitrator may not decide an issue not pertinent to the resolution of an issue submitted for arbitration. See Applewhite v. Sheen Financial Resources, Inc., 608 So.2d 80 (4th DCA 1992). Additionally, there was no evidence presented by anyone in this proceeding that TSLRIC is the appropriate cost methodology. There is, therefore, no record basis - contrary to the Order's conclusion - that "the appropriate cost methodology for setting rates for unbundled network elements is TSLRIC."

8. The Commission's failure to limit its decision to record evidence is further compounded by its requirement that Sprint conduct extensive, new TSLRIC studies for unbundled loops. Order, p. 22. Both parties used proxy models to develop forward-looking costs for unbundled loops; developing unbundled loop costs without the use of a proxy model will require extensive time and resources. Certainly, it will be impossible to conduct such a study in the time frames (60 days from March 14, 1997) required by the Order. For these reasons, the Commission should reconsider its decision on

this issue and determine that a TELRIC-based unbundled loop study using Sprint's proxy is appropriate.

9. In the event the Commission does not grant Sprint's request for reconsideration of this issue, the Commission should grant Sprint an extension of time to complete the unbundled loop studies. In view of the need to collect deaverage cost data, Sprint should have a minimum of six months from the date of the Commission's Order on Reconsideration to complete and submit the required studies. Likewise, the Commission has required Sprint to file TSLRIC estimates for loop distribution to assist the Commission in setting permanent rates for that element. Because loop distribution has never been offered and will have significant variances in cost, dependent upon the location, density and circuit length, Sprint cannot, without forecasts from MCI, complete the required TSLRIC studies. Consequently, Sprint requires an extension of time for preparing those studies to sixty days after MCI furnishes Sprint with forecasts of loop distribution demand and locations where loop distribution will be ordered. In the interim, Sprint will provide MCI with loop distribution on a bona fide request basis at prices that are site-specific.

10. In its Order, the Commission acknowledges that both parties have presented differing, but cost-driven, deaveraged prices for unbundled local loops. The Commission then rejected deaveraged rates, requiring, for interim purposes, a single averaged unbundled loop rate. Order, p. 21. While not specifically stating so, the clear import of the Commission's

decision is that Sprint cannot use its proxy methodology to deaverage the cost of unbundled loops. Because MCI has requested deaveraged unbundled loops and Sprint is willing to furnish unbundled loops on a deaveraged price basis, Sprint is now confronted with the task of deaveraging unbundled local loop costs without any reasonable mechanism to do so. Because the Commission has rejected TELRIC and the BCM, Sprint does not have the resources to produce a deaveraged cost study within a short time frame. Sprint, therefore, requests, that the Commission reconsider or clarify its Order so that Sprint may use TELRIC and its proxy studies to develop deaveraged unbundled loop costs. Otherwise, Sprint is requesting a minimum extension of time of six months from the date of the Commission's Order on Reconsideration to submit deaverage unbundled loop costs.

IV. The Commission has improperly concluded that the alleged overstatement of the Annual Change Factor eliminates the need for any recovery of common costs.

11. At page 21 of the Order the Commission opines that

> "Where Sprint has supplied TELRIC estimates, we find its Annual Charge Factors are overstated. However, this overstatement, with respect to the cost of capital, maintenance factors, and unbilled expenses, is sufficient to provide an adequate contribution to common costs; we therefore find that Sprint's additional 14.58% for common costs is unnecessary."

Order, page 21. The Commission has provided no record support or analysis to conclude that the alleged Annual Charge Factor overstatements approximately equal the 14.58% for common costs.

Nowhere in the record is the amount of alleged annual charge cost factor overstatements quantified or supported with evidence. Likewise, nowhere in the record is there any competent substantial evidence that Sprint's common cost factor is inappropriate. The Commission's conclusion that one offsets the other is, therefore, arbitrary and capricious. Consequently, the Commission should reconsider its Order and permit Sprint to increase the costs of its unbundled elements by 14.58%.

V. The Commission's requirement that Sprint study all end offices to cost local call termination is inconsistent with traditional Commission study techniques.

12. In its Order, the Commission has required that for local call termination Sprint must provide cost studies for every end office for which Sprint did not provide cost studies. Order, p. 6. Read literally, this requirement will result in cost studies for one-hundred percent of Sprint's end office switches. In the past, the Commission has accepted sampling as appropriate in recognition of the substantial cost burden to prepare cost studies for the total universe. Additionally, the Commission, in this proceeding, accepted a less-than-total-universe for developing tandem switching costs. In view of these "less-than-the-universe" studies as an acceptable costing technique, Sprint asks that the Commission clarify its Order with respect to end office switching.

13. Sprint has a variety of end office types, the predominant number of which are DMS 100, which represent over 55% of the total end office switches serving over 67% of the working access lines.

In its switching study, 26 of the 38 DMS 100 switches were studied, representing 47% of the total lines served. Of the remaining 31 end office switch types, the DSS 1210 (16 offices) are an outdated technology which are being phased out and do not fit forward-looking requirements of TSLRIC or TELRIC; the DMS 10 switches (4 offices) serve only 13,735 lines, and are well represented by the studied DMS 100 switches; and the #5ESS switches (11 offices) serve less than 20% of Sprint's access lines and are little different in functionality than the studied DMS 100 switches.[2] Sprint's use of a surrogate office is a reasonable alternative to undertaking the effort and expense of modeling each and every office. Sprint has completed switching cost studies for over one hundred central office switches in nineteen states. Based on Sprint's experience, the cost of switching is a function of several variables, primarily the number of lines served, the number of remotes served, and usage attributes (such as busy hour traffic). It does not appear that studying Sprint's entire end office switching universe will provide any more valid cost data than supplied by the sampling already provided by Sprint. Accordingly, the Commission should clarify its Order to remove what appears to be an erroneous and unnecessary cost study requirement.

[2] Sprint does not have a SCIS model for the #5ESS switches and would have to purchase the model and train its personnel to run the model.

VI. The Commission has misinterpreted the Act in requiring Sprint to include switching features in unbundled local switching price.

14. In its Order, the Commission erroneously concludes that switching features, such as Call ID, Call Waiting, and Centrex are required by the Act to be included in the price for unbundled local switching. Order page 22. This conclusion misconstrues the requirements of the Act and, in any event, requires Sprint to price unbundled local switching at a level which does not include the costs of providing those features. In fact, the Commission's adoption of an interim price for unbundled local switching fails to reflect the costs of the unbundled features. The Commission Order should, therefore, be reconsidered.

15. Section 3 (45) of the Act defines "network element" to mean "a facility or equipment used in the provision of a telecommunications service." The definition goes on to state that "[s]uch term also includes features, functions, and capabilities that are provided by means of such facility or equipment . . ." The Commission has mistakenly interpreted the phrase "[s]uch term also includes features, functions and capabilities" to require that the features, functions and capabilities must be provided as part of the local switching element. This is not the case. Congress intended that the LEC's features, functions and capabilities are network elements and may also be unbundled. Thus, the switching features referenced by the Commission are not required by the Act to be incorporated into the unbundled switching rate, but may be offered separately.

16. In any event, even assuming, arguendo, that the Commission is correct in its interpretation of the Act, the effect of the Commission's decision is to require Sprint to offer unbundled switching at a price that does not cover the cost of the switching plus the features and functions. Section 252(d)(1) of the Act requires that the charges for unbundled elements must be based on the cost of providing the unbundled network element. In developing the unbundled switching price, Sprint specifically excluded the costs of the switching features. There are hardware and software costs associated with switching features such as Caller ID, Call Waiting, Centrex, etc., which Sprint did not include because it proposed to separately price those features "at 22% of retail rates." If Sprint had not excluded those costs from unbundled switching and the Commission had approved Sprint's approach, Sprint would have been accused of double recovery. As it is, however, the Commission's decision makes the unbundled switching rate inadequate to cover the cost of unbundled switching, plus the included features. If the Commission does not grant Sprint's request for reconsideration of the Commission's erroneous legal interpretation, the Commission must allow Sprint to submit a revised unbundled switching rate that covers all of the costs.

WHEREFORE, for the reasons explained above, the Commission should reconsider or clarify its Order and issue a decision consistent with this motion.

DATED this 31st day of March, 1997.

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ATTORNEYS FOR SPRINT-FLORIDA, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail or hand delivery (*) this 31st day of March, 1997, to the following:

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