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

April 9, 1997

Re: Docket No. 961173-TP
Petition of Sprint Communications Company Limited Partnership for Arbitration of Proposed Interconnection Agreement with GTE Florida Incorporated Pursuant to the Telecommunications Act of 1996

Dear Ms. Bayo:

Please find enclosed an original and 15 copies of GTE Florida Incorporated's Opposition to Sprint Communications Company Limited Partnership's Motion for Approval of Agreement and Order Directing Execution of Agreement. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please call me at (813) 483-2617.

Sincerely,

Kimberly Caswell

KC:tas
Enclosures

A part of GTE Corporation

03643

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Sprint Communications Company Limited Partnership for Arbitration of Proposed Interconnection Agreement with GTE Florida Incorporated Pursuant to the Telecommunications Act of 1996	)	Docket No. 961173-TP Filed: April 9, 1997

GTE FLORIDA INCORPORATED'S OPPOSITION TO SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP'S MOTION FOR APPROVAL OF AGREEMENT AND ORDER DIRECTING EXECUTION OF AGREEMENT

GTE Florida Incorporated (GTE) asks the Commission to deny the Motion for Approval of Agreement and Order Directing Execution of Agreement that Sprint Communications Company Limited Partnership (Sprint) filed on March 28, 1996.

Sprint and GTE have proposed separate contracts in this proceeding. GTE's contract consists of: (1) language Sprint and GTE negotiated and agreed to outside of arbitration;[1] and (2) language conforming the contract to the Commission's rulings in this arbitration between Sprint and GTE.

Sprint's proposed contract consists of: (1) language AT&T and GTE negotiated and agreed to outside of arbitration; (2) language conforming the contract to the Commission's rulings in the arbitration between AT&T and GTE; and (3) language the Commission deleted from AT&T's proposed contract in its arbitration with GTE.

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[1] GTE understands that Sprint agreed to some of this language in recognition of GTE's stated obligation to file contracts in compliance with arbitration orders by various state commissions. GTE further understands that Sprint negotiated the language because of its desire for input into the contract filing, but that Sprint would not jointly submit the language because of its change in position that it would seek to adopt the AT&T/GTE contract.

The contract Sprint has submitted, then, has nothing to do with this arbitration Indeed, Sprint's proposed agreement was not even approved in the AT&T/GTE arbitration There is thus no basis for the Commission to grant Sprint's Motion In fact, Sprint itself does not claim a right to the AT&T/GTE agreement under the Telecommunications Act of 1996 (Act), Florida law, or any other authority It simply complains that GTE has in Sprint's view, unreasonably refused to accept Sprint's proposal to use the AT&T document as the basis for Sprint's agreement with GTE What Sprint fails to understand is that GTE has no obligation to accept any Sprint position during negotiations, just as Sprint has no obligation to accept any GTE position The nature of negotiations is not fiat but compromise Sprint's Motion is nothing more than an attempt to use the Commission's muscle to force GTE to accept a Sprint proposal GTE rejected months ago in negotiations Approving Sprint's proposed contract would thus irretrievably subvert the negotiations process envisioned by the Telecommunications Act of 1996 (Act), as well as nullify this entire arbitration proceeding It would require this Commission to ignore its own arbitration order, its procedural rules, and the Act's requirement of good faith negotiation

The only option consistent with the Commission's procedures and rulings in this arbitration is to approve GTE's proposed agreement That agreement includes language that conforms to the Order in this case and language that GTEFL and Sprint agreed upon

To help put Sprint's contentions about its negotiations with GTE into the proper perspective, Sprint has attached (as Exhibit A) the affidavit of Laurel L Parr who led GTE's negotiations with Sprint at the national level

A. Sprint Asks the Commission to Violate Section 252 of the Act and the Commission's Own Procedural Requirements

The arbitration process is governed by Section 252 of the Act and this Commission's established procedures implementing that Section Sprint's request ignores these manuates, thus asking the Commission to undermine the integrity of the entire arbitration process Sprint itself set in motion

Section 252 of the Act prescribes three ways a competitive local exchange carrier (CLEC) may obtain an interconnection agreement with an incumbent local carrier (ILEC) First, carriers may engage in negotiations to arrive at a voluntarily agreed to interconnection agreement (Section 252 (a)) Second, if the parties cannot reach a voluntary agreement, they may seek binding arbitration on those issues on which they cannot agree. (Section 252 (b)) Third, a CLEC may purchase interconnection services or network elements from an ILEC under an interconnection agreement between an ILEC and another CLEC (Section 252 (i) [2])

In this case, Sprint sought to negotiate an agreement with GTE under Section 252 (a). In the course of those negotiations, GTE and Sprint settled many of the issues between them Nevertheless, GTE and Sprint could not agree on all issues and Sprint petitioned this Commission for arbitration under Section 252 (b)

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[2] It should be noted that the Act does not explicitly allow (nor should it be construed to allow) a CLEC to breach an agreement adopted by negotiation under Section 252 (a) or an agreement adopted through binding arbitration under Section 252 (b) in order to take services under another CLEC's interconnection agreement pursuant to Section 252 (i) Contrary to Sprint's apparent understanding, (Motion at 2), no GTE witness has ever testified that Sprint has an unfettered right to obtain another company's agreement after an entire arbitration has been completed and an order issued

The issues for which Sprint sought arbitration were fewer than those brought by AT&T in its arbitration with GTE and to some extent narrower in scope. Sprint ultimately sought resolution of only 10 issues, while the Commission was asked to resolve 31 issues in GTE's arbitration with AT&T. GTE and Sprint thus settled many issues that had not been settled with AT&T, several even after the arbitration began, as Sprint's own Prehearing Statement indicates. (See Sprint Prehearing Statement at 9-10, 12.) To this end, the Staff's Recommendation in this case reflects that 16 issues were "withdrawn or stipulated." (Staff Rec., Jan. 13, 1997, at 7.)

For instance, the operations support systems (OSS) issues that figured prominently in the AT&T arbitration were resolved between Sprint and GTE during the hearing itself. Other examples of issues removed from arbitration included access to poles and rights-of-way, access to GTE's directory assistance database, and collocation and cross-connect terms and conditions. In the OSS and other instances, the settlement reached by GTE and Sprint did not comport with the Commission's decision in the AT&T arbitration.

Under Section 252 (b), the CLEC must specify all unresolved issues in its petition to the Commission. The Commission under Section 252 (b)(4) must limit its consideration of any petition to the issues set forth in the petition and in the response filed thereto. This federal mandate reinforces this Commission's longstanding procedures which require parties to explicitly identify and state their position on the issues they want resolved in the proceeding, both before and after the hearing. (Commission Rules 25-22.038, 25-22.056.) In fact, the Commission's Rules admonish that "Any issue or position not included in a post-hearing statement shall be considered waived." (Commission Rule 25-22.056((3)(a).)

As a regular participant in dockets at this Commission, Sprint is well aware of these Rules and procedures. But now, well after extensive proceedings on the issues identified for hearing, briefed by the parties, and decided by the Commission, Sprint asks the Commission, in the context of submitting an interconnection agreement, to decide that Sprint should be allowed to incorporate all the issues AT&T arbitrated, but that Sprint did not. Sprint's request, if granted, would thus violate Section 252 (b)(4) and this Commission's own procedural requirements. Sprint has waived its right to bring these issues before the Commission. The agency cannot lawfully approve Sprint's attempt to effectively negate the outcome of its own arbitration, not to mention months of negotiations with GTE.

B. Sprint Has Violated the Arbitration Order

Under the Order, the parties are to submit an agreement consisting of (1) agreed-upon language produced through negotiation and (2) language memorializing the Commission's arbitrated Order. (Order at 60-64.) With regard to this second category, if the parties cannot agree on appropriate implementing language, the Commission will choose among the competing proposals. (Order at 64.)

Sprint has refused to even try to negotiate language conforming the GTE/Sprint contract to the Order. GTE submitted its proposed language on arbitrated issues to Sprint on March 24, 1997. Sprint refused to comment on this language or to propose to GTE any other language. GTE was not surprised at Sprint's failure to respond to GTE's proposed

conforming language, since Sprint had earlier unilaterally rejected the GTE/Sprint contract the parties had spent months negotiating. (See Ex. A.) The language Sprint submitted as "conforming" is nothing more than the language the Commission approved for the issues arbitrated in the AT&T/GTE case.

Sprint's refusal to even discuss language conforming to the Order in this arbitration with GTE violates that Order, which contemplates that the parties will at least try to agree on language implementing the Commission's arbitration rulings in this proceeding. (Order at 64.) GTE's experience in post-hearing negotiations with AT&T and MCI proves that joint drafting of conforming language has generally been quite successful. Sprint's tactics here have prevented the parties from reaching similar agreement on conforming language, thus adding to the Commission's already heavy workload in determining appropriate contract language.

More fundamentally, the Commission has prescribed no category for review of language that was neither arbitrated nor negotiated by the parties. Yet most, if not all, of Sprint's proposed contract is such language.

The language Sprint has presented as conforming to the Order in this case should not be accepted as such, because it has been lifted from the AT&T/GTE arbitration, and as noted, Sprint made no attempt to negotiate language conforming the GTE contract with the Order. Even if, however, the Commission accepted all of Sprint's proposed conforming language, there would be nothing else in its contract. That is because none of the remaining provisions--the bulk of the contract--were the product of negotiation with Sprint. As explained above, Sprint threw out all of the language it had negotiated with GTE.

submitting instead language that it represents as approved by the Commission in the AT&T/GTE arbitration. (Motion at 3.)

The Commission has repeatedly made clear that it will not approve language concerning issues that were not arbitrated or resolved by the parties. It will, instead eliminate such language from the contract as approved. (See, e.g., Staff Recs. in Docket 960847-TP at 5; 960846-TP at 5); 960980-TP, all approved by the Commission. Order numbers PSC-97-0309-FOF-TP (March 21, 1997), PSC-97-0300-FOF-TP (March 19, 1997.) Thus, the Commission must reject all of the language Sprint borrowed from the AT&T/GTE contract.

Denial of Sprint's request is doubly necessary because much of the language Sprint has presented was never even approved by the Commission in the AT&T/GTE arbitration. Sprint claims that it has submitted "the AT&T/GTE agreement, as filed with the Commission, reflecting the most current changes as approved by the Commission." (Motion at 3.) That is not true. The Commission deleted from the AT&T/GTE contract scores of provisions that concerned issues that were not arbitrated or successfully negotiated by GTE and AT&T. (See Staff Rec. In Dkt. 960847-TP at Ex. B.) Sprint has now resurrected the language AT&T proposed for these sections--and that the Commission rejected--and presented it to the Commission in this case. Thus, Sprint does not want the agreement AT&T got--it wants an even better one. Since the Commission did not approve AT&T's language when AT&T proposed it in its own arbitration with GTE, there is certainly no reason to accept that same AT&T language as proposed by Sprint in this arbitration.

C. **Sprint's Abandonment of Its Arbitration Shows Bad Faith**

Sprint's Motion and associated actions demonstrate its intention to effectively abandon the arbitration process that it initiated. Nothing in the Act, or, for that matter, this Commission's procedures, allows for such unilateral abandonment of the arbitration process, especially at this late stage when the order has been issued and only the approval process remains. In fact, Sprint's refusal to continue negotiations or cooperate further in this arbitration process could well be considered a violation of the good faith obligations of the Act. Section 252(b)(5) states:

> The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

As GTE explained above, Sprint has refused to negotiate conforming language, as directed by the Commission, it has ignored this Commission's established arbitration procedures, and it has ended negotiations with GTE and declined to even submit the language it and GTE had already drafted to resolve non-arbitrated issues. Sprint's Motion, in effect, asks the Commission to condone this extreme behavior.

The Commission should reject this request, as the Washington Utility and Transportation Commission did when it denied a similar Sprint motion:

> The Act does not provide for the unilateral abandonment of the approval process by a party to the arbitration... the fact of the matter is that GTE has filed a proposed agreement based upon negotiation and arbitration between the parties. The Act mandates that the Commission take action to approve the agreement which has been filed. GTE's argument that the negotiations and arbitration which were conducted between the parties imposed a substantial cost on GTE is well taken. The Commission has incurred

> substantial costs over the course of this proceeding as well The Commission agrees with GTE that an abandonment of the approval process by either party is contrary to the parties' obligation to "negotiate in good faith". (§ 252 (b)(5))

In the Matter of Sprint Communications Company and GTE Northwest Incorporated. No UT-960348 (Wash. Util. & Trans. Comm'n, filed September 25, 1996, at pages 3-4)

The Texas Public Utility Commission likewise was unpersuaded by Sprint's arguments that "linking the filing in the instant [Sprint] case to approval of the AT&T interconnection agreement is appropriate, in light of the time, effort and expense already expended in this [Sprint] proceeding, or that it is foreseeably dispositive of this matter." (Order No. 16 in Dkt. No. 16476, Denying Motion for Extension of Time for Filing Interconnection Agreement, at 1-2 (Mar. 5, 1997).) The Virginia State Corporation Commission denied a similar Sprint request to tie the GTE/Sprint contract filing to approval of the GTE/AT&T contract. (Order Denying Motion, Case No. PUC960131 (Mar. 20, 1997).)

As these decisions confirm, granting Sprint's request in this case would set precedent inconsistent with prudent public policy and the Act's preference for negotiation as a means of ordering competitive relationships.

The arbitrations under the Act have imposed an unprecedented strain on GTE's resources, and GTE believes the Commission's resources have been also been severely taxed. Sprint has engaged GTE in protracted negotiations and convened an arbitration proceeding complete with the Commission's full procedural complement--issues identification and prehearing conferences, prehearing statements, prefiled testimony and exhibits, discovery, evidentiary hearings, briefing, an arbitration order, and contract review

and approval. The time and expense invested in this process by both GTE and the Commission are staggering; these burdens are exacerbated by the fact that both the Commission and the Company have been compelled to participate in numerous other arbitrations at the same time.

Allowing Sprint to now disavow the results of this arbitration and instead obtain a contract that has nothing to do with this arbitration (and that has not been approved in any other arbitration either) would set precedent that sanctions gaming of the regulatory process and ignores the Act's good faith negotiation standard. GTE is confident that the Commission will not accept such behavior by Sprint or any other company.

D. Conclusion

Sprint's failure to comply with the Act, the Commission's Order and its procedures leaves the Commission with no option other than to deny Sprint's Motion and instead approve the contract GTE has submitted. In accordance with the Commission's instructions, GTE's contract consists of language that was negotiated and agreed to by Sprint and GTE and other language memorializing and implementing the Commission's rulings in this arbitration.

Respectfully submitted on April 9, 1997.

By ______________________

Anthony Gillman
Kimberly Caswell
Post Office Box 110, FLTC0007
Tampa, Florida 33601
Telephone: 813-483-2615
Attorneys for GTE Florida Incorporated

EXHIBIT A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Sprint Communications Company Limited Partnership for Arbitration of Proposed Interconnection Agreement with GTE Florida Incorporated Pursuant to the Telecommunications Act of 1996	) Docket No. 961173-TP) Filed:

AFFIDAVIT OF LAUREL L. PARR

STATE OF TEXAS)
) SS.
COUNTY OF DALLAS)

I, Laurel L. Parr, sworn under oath, depose and say as follows:

I am employed by GTE Telephone Operations (GTE) as Manager - Local Interconnection, with responsibility for the negotiations with Sprint Communications Company (Sprint) for local exchange service interconnection, resale, and unbundling agreements in the 28 states Sprint has requested negotiations for such agreements. The following statements are made of my personal knowledge, and if called as a witness herein, I would testify in accordance herewith.

1. GTE began its negotiations with Sprint for interconnection as early as January 1996, and I began meeting with Sprint in approximately April 1996, and I have been working full time on these negotiations since then.

2. While Sprint had provided its own draft of an interconnection agreement during the negotiations and the arbitration process, the parties agreed that the GTE form of contract was more comprehensive and the structure more readily adaptable as a baseline for an agreement between our companies. Thus, we both agreed that the GTE form of contract should be used to develop our interconnection agreement. While

the GTE model contract was used as the starting point, it has been significantly altered to reflect the agreements we have reached during the negotiations process.

3. In the September, 1996 time frame, the parties began the development of contract language for the issues which the parties had reached agreement outside of arbitration. As a result of these negotiations, the parties reached agreement on contract language for essentially all the issues resolved short of the issues presented for decision to the Commission in the Florida arbitration. The reduction of the joint issues list submitted to the Commission during the proceedings from 26 arbitrable issues to just 10 is evidence of the parties' negotiating, stipulation, and agreement on various issues. For the California and Michigan contracts we likewise agreed to language reflective of the arbitration decisions.

4. In mid-December, John Ivanuska from the Sprint negotiating team indicated that he was spending a significant amount of time reviewing drafts of the GTE/AT&T contract and suggested that we consider using that draft as the baseline contract for our California contract. I indicated that it would take more time to start over using the AT&T/GTE contract as a baseline than to continue using the GTE/Sprint contract, and that GTE was not in agreement to all the language in the AT&T/GTE draft contract. Mr. Ivanuska agreed to continue using the GTE/Sprint contract.

5. On or about the first week of January 1997, Sprint submitted a draft of the GTE/Sprint contract with significant amounts of additional language included from the GTE/AT&T contract and from Sprint itself which covered new issues not raised in the negotiations.

6. In our negotiations during the week of January 6, 1997, the parties

completed agreement on language incorporating the issues settled outside of the arbitration. During the rest of the month, the parties resolved contract language for other issues raised by Sprint during the first part of January.

7. On February 17, 1997, Sprint indicated in a letter that it intended to now pursue obtaining the AT&T contract rather than continue negotiating a GTE/Sprint contract. Furthermore, Sprint requested that GTE negotiate changes to the AT&T/GTE contract that would customize the contract to incorporate the past GTE/Sprint stipulations, specific business practices and the Sprint/GTE arbitration decision.

8. Sprint has refused to negotiate language to the GTE/Sprint Agreement to reflect the Commission's decision in its Order number PSC-97-0230-FOF-TP (Order) in this proceeding.

9. In compliance with the Commission's Order, GTE has included language in the GTE/Sprint contract that it filed reflecting the arbitration decision. This was submitted to Sprint for concurrence, but Sprint has refused to discuss including this language in this contract.

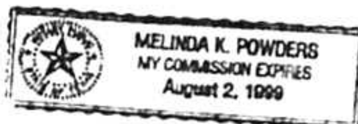
Further Affiant sayeth naught.

LAUREL L. PARR

Subscribed and sworn to before me this 8th day of April, 1997.

Notary Public, State of Texas

My commission expires: 8/2/99



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Opposition to Sprint Communications Company Limited Partnership's Motion for Approval of Agreement and Order Directing Execution of Agreement in Docket No 961173-TP were sent via overnight delivery on April 8, 1997 to the parties listed below

Monica Barone/Charlie Pellegrini
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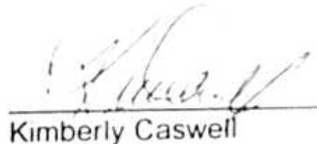

Kimberly Caswell