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1 cc: Parties of Record
FRS/amb
Enclosure

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Floyd R. Sell

Sincerely,

Thank you for your assistance with this filing.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Enclosed for filing on behalf of AT&T Communications of the Southern States, Inc., a corporate communications, Inc., Florida Cable Telecommunications Association, Florida Competitive Carriers Association, MCI Telecommunications Corporation, and WorldCom Technologies, Inc. is an original and fifteen copies of the Joint Response to GTE Florida, Inc.'s Response in Support of Sprint Florida's Motion for Reconsideration in the above captioned docket.

Dear Ms. Bayo:

Re: Docket No. 980696-TP

Ms. Blanca Bayo, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
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BY HAND DELIVERY

February 15, 1999

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of Cost of Basic Local
Telecommunications Services)
_____)

Docket No. 980696-TP
Filed: February 15, 1999

**JOINT RESPONSE OF AT&T, e.spire, FCCA, FCTA, MCI,
AND WORLDCOM TO GTE FLORIDA, INC.'S RESPONSE
IN SUPPORT OF SPRINT FLORIDA'S MOTION FOR RECONSIDERATION**

COMES NOW, AT&T Communications of the Southern States, Inc. ("AT&T"), e.spire Communications, Inc. ("e.spire"), Florida Cable Telecommunications Association ("FCTA"), Florida Competitive Carriers Association ("FCCA"), MCI Telecommunications Corporation ("MCI"), and WorldCom Technologies, Inc. ("WorldCom") (hereinafter collectively "Joint Respondents"), through undersigned and file this joint Reply to GTE Florida, Incorporated's ("GTE") Response in Support of Sprint-Florida, Inc.'s ("Sprint-FL") Motion for Reconsideration and state as follows:

1. On January 7, 1999 the FPSC entered Order No. PSC-99-0068-FOI-TP, and thereafter on January 22, 1999 GTE filed a Petition for Reconsideration pursuant to Rule 25-22.060, Florida Administrative Code and Sprint-FL also filed a Petition for Reconsideration. On February 2, 1999 the Joint Respondents filed a Joint Response to both Petitions.

2. Apparently not satisfied with the substance of the petition which it had originally filed, GTEFL on February 3, 1999 filed a "Response in Support of Sprint-Florida's Motion for Reconsideration." This latter pleading is nothing more than a poorly disguised attempt to submit a second Petition for Reconsideration, and the Commission should recognize it as such and disregard this filing.

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FILED FOR THE REPORTING

3. The pleading filed by GTE goes far beyond any semblance of a "response" to Sprint's Motion. Instead, GTE offers 6 pages of argument in support of reconsideration — far more than necessary to concur with Sprint's petition. The rules of the Commission permit a party to file a Petition for Reconsideration of an order of the Commission, and this GTE did. The rules also permit a party to file a response to a Petition for Reconsideration. GTE's filing is not a response — it is simply more argument for additional matters GTE wants reconsidered.

4. In contrast to the "response" filed by GTE, Joint Respondents filed a response in opposition to both petitions on February 2. A copy of that response is attached. Should the Commission consider the filing of GTE, then the Joint Respondents would refer to the joint response as a substantive reply to the latest GTE filing.

Respectfully submitted,

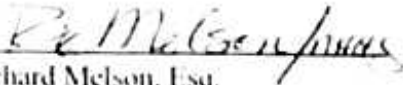
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Joint Response of AT&T, espire, FCCA, MCI and WorldCom to the GTE Florida, Inc.'s Response in Support of Sprint Florida's Motion for Reconsideration in Docket No 980696-TP has been furnished by Hand Delivery (*) and/or U.S. Mail to the following parties of record this 15th day of February, 1999.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of Cost of Basic Local)
Telecommunications Services)
_____)

Docket No. 980696-TP
Filed: February 1, 1999

**JOINT RESPONSE OF AT&T, e.spire, FCCA, FCTA, MCI,
AND WORLDCOM TO THE GTE AND SPRINT
REQUESTS FOR RECONSIDERATION**

AT&T Communications of the Southern States, Inc. ("AT&T"), e.spire Communications, Inc. ("e.spire"), Florida Cable Telecommunications Association ("FCTA"), Florida Competitive Carriers Association ("FCCA"), MCI Telecommunications Corporation ("MCI"), and WorldCom Technologies, Inc. ("WorldCom") (hereinafter collectively "Joint Respondents"), pursuant to Rule 28-106.204(1), Florida Administrative Code, hereby submit this Joint Response to the separate requests for reconsideration of Order No. PSC-99-0068-FOF-TP, issued January 7, 1999 ("Order"), filed by GTE Florida Incorporated ("GTEFL") and Sprint-Florida, Inc. ("Sprint-FL"), and respectfully request that both requests for reconsideration be denied, and state as follows:

I. INTRODUCTION AND BACKGROUND

1. GTEFL filed its Petition for Reconsideration on January 22, 1999. According to the attached Certificate of Service, counsel for AT&T, FCTA, and MCI were served by overnight courier and counsel for e.spire, FCCA and WorldCom were served by U.S. mail.

2. Sprint-FL filed its Motion for Reconsideration also on January 22, 1999. According to the Sprint-FL Certificate of Service, counsel for each of the Joint Respondents were served by U.S. Mail.

3. In view of the different modes of service and the different requirements of Rule 28-106.103, F.A.C., the Joint Respondents are filing this response on the earliest required due date for

any of them.

4. The proper standard of review for a request for reconsideration "is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering our Order." Order No. PSC-98-0844-FOF-TP, citing Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). While both GTEFL and Sprint-FL claim to bring to the Commission's attention matters overlooked or not considered, both requests reargue issues that were decided differently by the Commission than were advocated by GTEFL and Sprint-FL. Thus, both requests should be denied.

II. GTEFL'S PETITION

5. GTEFL argues in its Petition for Reconsideration that the Commission's decisions regarding GTEFL's depreciation lives and cost of capital were arbitrary and without proper evidentiary support. GTEFL's Petition is mere reargument of the position it took in the hearing.

6. GTEFL's first issue with the Order is that it does not utilize the depreciation lives GTEFL uses for financial reporting or which the Commission had in the past approved. However, AT&T MCI witness Michael Majoros provided extensive testimony as to why financial reporting depreciation lives would be inappropriate for modeling and why the FCC's prescriptions are forward looking. Tr. 87-91 (Majoros Rebuttal at 9-13). In addition, the Order specifically discusses the FCC's Universal Service Order and how the FCC's requirements, including depreciation expenses, provide the "groundwork" for this Commission's actions. Order, at 21-22. In short, GTEFL's objections to the depreciation lives decision appear predicated on a fundamental misunderstanding of the purpose of this proceeding -- here, the Commission is following a specific, one-time, 1998

legislative directive to model, on a forward-looking basis, the cost of basic local telecommunications services. Section 364.025(4)(b), Florida Statutes; Order, at 9. As such, GTEFL is wrong to assert at page 6 of its Petition that the 1995 revisions to Chapter 364 bind the Commission in this matter.¹ This is neither a rate case nor is it supposed to be a snapshot of GTEFL's current business operations. GTEFL's argument is simply reargument that constitutes an inappropriate basis for reconsideration.

7. GTEFL's second claim, that the cost of capital decision lacks evidentiary support, is repudiated by the the Order and the supporting record. As the Commission specifically noted in this section of the Order, the universal service purpose of the Commission's inquiry in this proceeding is different from the distinctly different and far less risky businesses of the GTE holding company. Order, at 88. In rejecting witness VanderWeide's testimony, the Commission specifically relied upon the testimony of witness Hirshleifer, and he provided extensive evidence regarding an appropriate capital structure and the problems with GTEFL's proposals. Tr. 152-203, 209-250. (Hirshleifer Direct at 5-56, Rebuttal at 2-42). In particular, on the question of business risk, GTEFL's own motion makes clear that its complaint with the Order is the weight and interpretation given to the GTEFL testimony. As Mr. Hirshleifer testified, the risk associated with the provision of universal service will be minimal. Tr. 155 (Hirshleifer Direct at 8). The Commission, in considering the testimony, evaluated and weighed the testimony of Mr. Hirshleifer which is clearly its prerogative. Gulf Power Co. v. FPSC, 453 So.2d 799 (Fla. 1984); United Telephone Co. v. Mayo, 345 So.2d 648 (Fla. 1977). GTEFL's arguments are merely "sour grapes" over the

¹ To the extent there is a conflict between the 1995 statute and the 1998 statute, the later enactment will supersede the earlier law. McKendry v. State, 641 So.2d 45 (Fla. 1994).

Commission's decision to reject GTEFL's evidence and accept Mr. Hirshleifer's. In view of GTEFL's reargument, its reconsideration is improper and should be denied.

III. SPRINT-FLORIDA'S MOTION

8. Sprint-FL request for reconsideration of the Commission's decision to cap loop cost investment at \$4,350 was both appropriate and with proper record support. Interestingly, Sprint-FL does not dispute the fact that BellSouth provided record evidence of a \$4,350 loop cost cap. Rather, Sprint-FL's twist is that the Commission "misapprehended the value of the evidence" in uniformly applying this cap to each of the big three LECs. This is clearly inappropriate reargument of matters already considered. Sherwood v. State, 111 So.2d 96 (Fla. 3d DCA 1959). It is Sprint-FL that misapprehended the evidence and the purpose of this proceeding.

9. Sprint-FL offers an extensive outside the record discussion about wireless service to contend that the \$4,350 per line cap is not an economically achievable alternative for Sprint. Such an argument, predicated entirely on information outside the record, certainly does not constitute matters overlooked or ignored in the record as is required for reconsideration, and cannot be considered.² Fundamentally, Sprint-FL is questioning the Commission's evaluation of the evidence proffered as to a loop cost investment cap—i.e., the ultimate credibility and reliability of a national, default value versus the results of a BellSouth study as testified to by Ms. Caldwell. In comparing the \$10,000 plug-in number, standing alone, and the testimony of Ms. Caldwell, it was entirely appropriate for the Commission to choose Ms. Caldwell. Gulf Power Co. v. Fla. Pub. Serv. Comm'n., 453 So.2d 799 (Fla. 1984); United Telephone Co. v. Mayo, 345 So.2d 648 (Fla. 1977)

²Indeed, the "facts" represented to the Commission by Sprint-FL are highly questionable and suspect, and likely would be proven untrue if subjected to a vigorously litigated proceeding.

This choice was appropriate even if the study was not Florida-specific or Sprint-territory specific, since again, the purpose of this proceeding is modeling not rate setting, and the BellSouth data is more precise and localized than the national default.

10. Sprint's second argument relies on data submitted in its motion that corrects data filed in its January 12, 1999 compliance filing to suggest that the Commissioners may have been mistaken in December when they voted. Sprint-FL's attempt to manufacture confusion about the materiality of the \$4,350 cap seeks to call into question each Commissioner's individual thoughts and considerations at the time of the vote. The Commission speaks through its orders and not through comments made or thoughts considered at agenda. See Section 120.52(7), Florida Statutes. So long as there is a proper evidentiary basis for the Commission's decision, Sprint-FL cannot question how each Commissioner weighed the evidence.

11. Sprint-FL's third and final argument that the \$10,000 default cap constitutes a stipulation of the parties cannot, in any way, be considered true. Inherent in a stipulation is the fact that opposite sides of a cause engage in an agreement. Black's Law Dictionary 1259 (5th ed. 1979). At no time did any party, including Sprint-FL, proffer or accept any stipulation on this subject. An examination of the pleadings, the prehearing order, the transcript, and the Order do not at any point reflect a stipulation on this question, let alone acceptance by the Commission. The fact that other states may have accepted the \$10,000 cap does not make a stipulation in Florida. Moreover, the attempt to borrow Mr. Wells' testimony to substantiate an argument that there is insufficient record support takes his testimony out of context and ignores the Commission's evaluation of the default amount versus Ms. Caldwell's testimony on the \$4,350. In the final analysis, Sprint-FL's whole argument seems predicated on the assumption that any deviation from the default requires

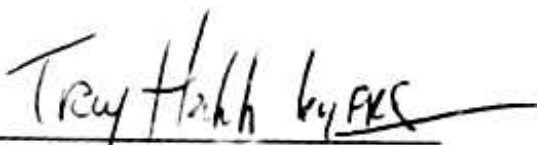
overcoming an extraordinary evidentiary burden, whereas it is Sprint-FL's job to prove to the Commission its case, defaults included. Sprint-FL did not do this.

12. Again, it is the Commission's job to weigh the credibility and reliability of the evidence and witnesses and to make its decision. In this case, the Commission found Ms. Caldwell's testimony more appropriate. Sprint-FL's arguments do not meet the requirements for reconsideration.

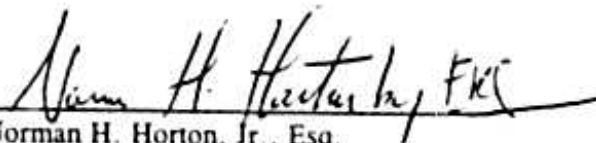
IV. CONCLUSION

For the foregoing reasons, the Commission should deny GTEFL's and Sprint-FL's requests for reconsideration.

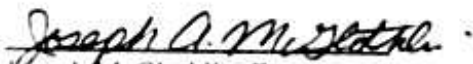
Respectfully submitted,



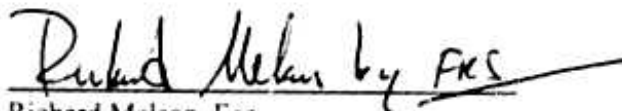
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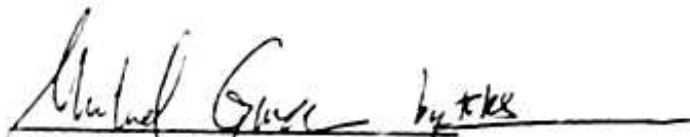
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