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September 23, 1997

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

Re: Docket No. ~~961150-TP~~
Petition of Sprint Communications Company Limited Partnership for Approval of Section 252(i) Election of Interconnection Agreement with GTE Florida Concerning Interconnection Rates, Terms and Conditions, Pursuant to the Federal Telecommunications Act of 1996

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen copies of GTE Florida Incorporated's Opposition to Petition of Sprint Communications Company Limited Partnership For Approval of Section 252(i) Election of Interconnection Agreement. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at (813) 483-2615

Very truly yours,

Anthony P. Gillman

APG:tas
Enclosures

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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| In re: Petition of Sprint Communications Company Limited Partnership for Approval of Section 252(i) Election of Interconnection Agreement with GTE Florida Concerning Interconnection Rates, Terms and Conditions, Pursuant to the Federal Telecommunications Act of 1996 | Docket No. 971159-TP<br>Filed: September 23, 1997 |

**GTE FLORIDA INCORPORATED'S OPPOSITION TO PETITION OF SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP FOR APPROVAL OF SECTION 252(I) ELECTION OF INTERCONNECTION AGREEMENT**

GTE Florida Incorporated (GTEFL) opposes the Petition of Sprint Communications Company Limited Partnership (Sprint) for Approval of Section 252(i) Election of Interconnection Agreement (Sprint Petition), filed on September 3, 1997. Sprint asks the Commission to sanction the breach of its interconnection contract with GTEFL--a contract executed by order of this Commission--and to allow it to take instead the interconnection contract between GTEFL and AT&T. This action would contravene this Commission's Orders in the GTEFL-Sprint arbitration (Docket no. 961173-TP) and the Telecommunications Act of 1996 (Act), under which that arbitration was conducted.

Sprint begins its Petition by vaguely stating that, "Sprint has indicated its intention to elect the interconnection agreement ultimately approved by the Florida Public Service Commission...between GTE and AT&T." (Sprint Petition at 1 ) What Sprint does not remind the Commission, however, is that the agency has already formally disapproved Sprint's post-arbitration, post-decision efforts to obtain the GTEFL-AT&T contract.

As the Commission knows, Sprint requested arbitration with GTEFL when negotiations did not produce an interconnection agreement satisfactory to Sprint. The Commission conducted a full evidentiary hearing on Sprint's arbitration petition and then issued its Order resolving the issues presented in the arbitration. (Order no. PSC-97-0230-FOF-TP (Feb. 26, 1997).) That Order directed the parties to file an agreement implementing the Commission's decision. Sprint, however, refused to do so, instead submitting a version of a proposed agreement between GTEFL and AT&T and asking the Commission to Order GTEFL to sign it. (Sprint's Motion for Approval of Agreement and Order Directing Execution of Agreement, Mar. 28, 1997.) Shortly thereafter, Sprint asked, in the alternative, that the Commission stay the post-arbitration proceedings to accommodate its election of the GTEFL-AT&T agreement in place of an agreement memorializing the results of negotiations and arbitration between GTEFL and Sprint. (Sprint's Amendment to Motion for Approval of Agreement and Order Directing Execution of Agreement of Sprint Communications Company Limited Partnership, Apr. 9, 1997.)

The Commission denied Sprint's request for stay pending the planned election and rejected Sprint's submission of a GTEFL-AT&T contract. (Order no. PSC-97-0550-FOF-TP (May 13, 1997).) In doing so, the Commission noted that it had voted on the GTEFL-AT&T arbitration agreement on December 2, 1996, even before the GTEFL-Sprint hearing began (on December 5, 1996), and well before the Commission voted on the GTEFL-Sprint arbitration (on January 17, 1997). The Commission concluded that:

> Sprint, therefore, had ample opportunity prior to the Commission's final decision in this docket to withdraw its Petition for Arbitration and request the AT&T/GTEFL agreement. It chose not to do so. Rather, the arbitration continued. The issues were framed, litigation ensued and we made our determination on the evidence in the record. This, we believe, is the procedure contemplated by the Act. We do not believe Congress intended to permit parties to take parallel tracks in arbitration proceedings: one track to pursue the best deal possible in an arbitration, and the other track to keep all options open so that either party can abandon an arbitration order simply because it does not like what it gets.

(Order no. PSC-97-0550-FOF-TP, at 9.)

Exactly the same logic applies to Sprint's latest post-decision attempt to abandon the arbitration order. The instant Petition, like Sprint's previous request to accommodate its election of the AT&T contract, would render meaningless the entire arbitration process and the Act's structure for attainment of interconnection agreements. In fact, the new Petition is even worse, in that it would disaffirm not just the arbitration itself, but the binding and fully effective contract that emerged from that arbitration.

As the Commission has already explained, the Act requires new entrants to make a choice among the options for development of an interconnection agreement. The arbitration and section 252(i) election options are mutually exclusive. (Id. at 10.) Otherwise, the "credibility and viability" of the arbitration process would be defeated. (Id. at 11.) Moreover, under Sprint's approach, "the process of submitting an agreement could potentially never end, thus thwarting competition in the local exchange market." (Id. at 8.) Sprint could avoid the results of the arbitration, elect the AT&T contract, then tomorrow elect another contract it believed more favorable. Sprint would never be bound by any agreement, regardless of the contract's stated duration.

GTEFL and Sprint entered into an interconnection and resale contract in accordance with the Commission's arbitration Orders. This Commission believed that assuring the bindir nature of the agreement was so important that it threatened GTEFL and Sprint with $25,000 daily fines if they did not sign the agreement by a designated date. (Order no. PSC-97-0550-FOF-TP at 17.) All of the Commission's efforts to ensure the agreement would bind the parties will mean nothing if Sprint can reject that agreement by merely choosing to operate under another one. GTEFL is confident that the Commission will not permit Sprint to flout the agency's authority in this way.

As the Commission knows, GTEFL itself is not pleased with the results of its arbitration with Sprint. GTEFL did not voluntarily sign the resulting agreement. It did so only upon direction of the Commission. Nevertheless, that being the case, GTEFL cannot unilaterally choose to impose a different agreement on Sprint. If GTEFL is bound, Sprint must be bound as well. Otherwise, the contract is illusory.

The necessity for parties to be bound by an agreement is firmly rooted in the Act, as the U.S. Court of Appeals for the Eighth Circuit has made clear. The Court struck down the FCC's "pick-and-choose" provisions, which would have allowed a carrier which is a party to one agreement to unilaterally incorporate into that agreement more advantageous provisions from other agreements with other carriers. It observed that the FCC's interpretation undermined the Act's design to promote negotiated agreements and conflicted with "the Act's requirement that Agreements be 'binding,' 47 U.S.C.A. sec. 252(a)(a)." Iowa Util. Bd. v. Bell Atlantic Corp. et al., Nos. 96-3321, etc., 1997-2 Trade Cas. (CCH) P71,876, 1997 U.S. App. LEXIS 18183 at 38 (8th Cir. July 18, 1997). Sprint's

attempt to negate its existing interconnection contract with GTEFL is squarely at odds with tha requirement that agreements be binding.

GTEFL does ot dispute that section 252(i) of the Act allows a carrier to obtain interconnection terms by electing another carrier's agreement. And GTEFL's witness in the arbitration testified that Sprint could accept the whole contract executed with another carrier. But Sprint ignores the critical fact that it already has a binding agreement with GTEFL, entered after conclusion of arbitration. The election option is not "unqualified," as Sprint argues. (Sprint Petition at 3.) It is a mechanism for obtaining terms for interconnection, not a mechanism to escape existing contract obligations. It is available only as an alternative to arbitration. Election is not a "parallel track" to be taken along with arbitration. After having forced GTEFL and the Commission to undergo costly and protracted arbitration proceedings, Sprint cannot decide the result is not to its liking and opt out of the associated contract. Election would have been proper only before arbitration, or possibly if Sprint's arbitration proceeding had been dismissed. Contrary to Sprint's implications, none of the other state Commission decisions Sprint cites allowed Sprint to elect an interconnection agreement after another interconnection had already been executed between GTE and Sprint.

The Eighth Circuit confirms the mutual exclusivity of election and arbitration. In overturning the FCC's pick-and-choose rules, the Court dismissed the FCC's contention that requiring entrants to elect entire agreements, rather than giving them the right to choose only particular provisions from those agreements, would motivate the LECs to make initial agreements as onerous as possible. The Court commented that "the

incumbent LECs have as much interest in avoiding the costs of prolonged negotiations or arbitrations as do the requesting carriers, which gives the incumbent LECs an incentive to negotiate initial agreements that would be acceptable to a wide range of later requesting carriers." Iowa Util. Bd., 1997 U.S. App. LEXIS 18183 at 39-40. The Court thus assumes that elections will avoid the trouble and expense of arbitrations. This observation would make no sense if a single carrier were permitted to take advantage of both arbitration and election, as Sprint claims. Under Sprint's thinking, election would present no opportunity to avoid arbitration, because an ILEC could be forced to undergo arbitration first in any event, on the chance that it might produce a more favorable contract than would an election.

Sprint's post-decision attempt to elect another agreement is, in effect, no different from a post-decision withdrawal of its petition for arbitration--behavior which the Commission has already found violates the Act's good faith negotiation standard reflected in section 252(b)(5). (Order no. PSC-97-0550-FOF-TP at 17.) In either case, the arbitration process and results are rendered meaningless. Sprint's latest Petition invites the Commission, once again, to become an accomplice to bad faith behavior.

The Commission should continue to reject Sprint's opportunistic arguments. Sprint contends, as it did in its other post-decision filings, that it would be "placed at a competitive disadvantage" if it is required to interconnect with GTE under terms and conditions that are different than those in the GTEFL-AT&T agreement. If exact parity with AT&T were truly important to Sprint, it could have avoided arbitration entirely, simply waiting until the AT&T contract went into effect to elect it. Or, as the Commission has pointed out, it could have

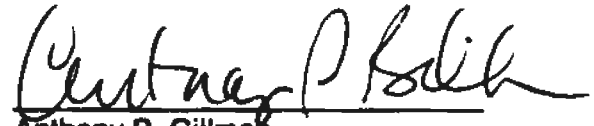
withdrawn its Petition for Arbitration before the Commission's final decision in the GTEFL-Sprint arbitration proceeding. If Sprint's only objective all along has been parity with AT&T, it would have taken one of these legitimate options to obtain the GTEFL-AT&T contract. The actual terms of that contract would have been immaterial, as long as they were the same as those offered to Sprint.

Sprint's actions, however, belie its competitive parity arguments. As the Commission pointed out, Sprint knew what the terms of the GTEFL-AT&T contract were even before Sprint's arbitration hearing began. But Sprint proceeded to hearing in the hope that it could get more favorable terms than those awarded to AT&T. When the arbitration did not, in Sprint's estimation, fulfill this hope for a competitive advantage over AT&T, only then did Sprint decide it wanted the AT&T contract.

This is not, as the Commission has recognized, the way arbitration under the Act is supposed to work: "It simply is inappropriate and unfair for a party to impose on another party the time, effort, and expense of an arbitration proceeding, only to back out in the end because it did not get what it wanted from the proceeding." (Order no. PSC-97-0550-FOF-TP at 11.)

For all the reasons discussed in this filing, GTEFL asks the Commission to deny Sprint's Petition.

Respectfully submitted on September 23, 1997.

By: 

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Opposition to Petition of Sprint Communications Company Limited Partnership for Approval of Section 252(i) Election of Interconnection Agreement in Docket No. 971159-TP were sent via overnight delivery on September 22, 1997, to the parties listed below.

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