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January 7, 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. 950737-TP

Dear Ms. Bayo:

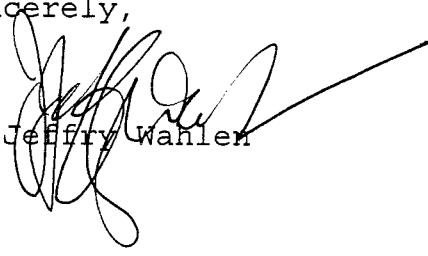
Enclosed for filing in the above-styled docket are the original and fifteen (15) copies of Joint Brief and Posthearing Statement of United Telephone Company of Florida and Central Telephone Company of Florida.

We are also submitting the Joint Brief 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.

Sincerely,

  
J. Jeffrey Wahlen

- ACK
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU Green
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 2
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- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Enclosures

cc: All parties of record

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

00142 JAN-75

FPSC-RECORDS/REPORTING

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In re: Investigation into temporary )  
local telephone number portability )  
solution to implement competition in )  
local exchange telephone markets )  
\_\_\_\_\_ )

DOCKET NO. 950737-TP  
FILED: January 7, 1997

**JOINT BRIEF AND POSTHEARING STATEMENT OF  
UNITED TELEPHONE COMPANY OF FLORIDA AND  
CENTRAL TELEPHONE COMPANY OF FLORIDA**

United Telephone Company of Florida and Central Telephone Company of Florida ("Sprint") file this Joint Brief and Posthearing Statement of Issues and Positions.

**I.**

**INTRODUCTION**

By Order No. PSC-95-1604-FOF-TP, issued on December 28, 1995 ("Initial Order"), the Florida Public Service Commission ("FPSC" or "Commission") established Remote Call Forwarding ("RCF") as the temporary number portability solution in Florida. The Initial Order also established the price to be charged and the cost recovery mechanism to be used for RCF. Subsequently, on July 2, 1996, the Federal Communications Commission ("FCC") released its First Report and Order and Further Notice of Proposed Rulemaking in the Matter of Telephone Number Portability ("First Report and Order"). Therein, the FCC discussed cost recovery for temporary number portability.

This phase of this docket was initiated to review the impact of the First Report and Order on the cost recovery mechanism set

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forth in the Initial Order. A hearing was held before the Commission on November 25, 1996. Sprint sponsored one witness, F.B. (Ben) Poag, whose direct and rebuttal testimony was inserted into the record as though read. See Tr. 306 and 316. Mr. Poag had one exhibit (FBP-1, Hearing Exhibit Number 16), which was admitted into the record at Tr. 347.

## II.

### BASIC POSITION

The Commission should revise its interim number portability cost recovery policy and adopt a per ported number charge based on a rate which is approximately 50% of the cost of RCF. This results in an approximately equal sharing of the cost of interim number portability by the ILEC and the CLEC (i.e., the relevant carriers), and is consistent with the First Report and Order.

## III.

### ISSUES AND POSITIONS

**ISSUE 1:** Is Order No. PSC-95-1604-FOF-TP inconsistent with the Federal Communications Commission's First Report and Order and Further Notice of Proposed Rulemaking in The Matter of Telephone Number Portability in CC Docket No. 95-116?

**SPRINT POSITION:** \* Yes. The portion of the Initial Order which places the full cost recovery of interim number portability on the new entrant appears to be inconsistent with the First Report and Order.

\* \* \* \* \*

Section 251(e)(2) of the 1996 Telecommunications Act provides that the cost of "number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the [Federal Communications] Commission." This statement appears to give the FCC considerable authority in the area of number portability cost recovery. The First Report and Order is the FCC's first pronouncement on number portability under the 1996 Act.

Cost recovery for currently available number portability measures is addressed in paragraphs 117 through 140 of the First Report and Order. Therein, the FCC outlined two broad principles for number portability cost recovery, gave examples of cost recovery mechanisms that pass and fail its two broad cost recovery principles, and expressed its intent to give the states flexibility in this area. While the order does not identify all acceptable cost recovery mechanisms, it does address the type of mechanism adopted by the FPSC in its Initial Order.

Paragraph 138 of the First Report and Order states: "Imposing the full incremental cost of number portability solely on new entrants would contravene the statutory mandate that all relevant carriers share the cost of number portability." [Tr. 307] The cost recovery mechanism set forth in the Initial Order requires the new entrant to pay the full incremental cost of RCF as the temporary number portability solution. Thus, while the cost recovery mechanism set forth in the Initial Order complies with Florida law, that portion of the Initial Order which places the

full cost recovery of interim number portability on the new entrant appears to be inconsistent with the 1996 Act as interpreted in the First Report and Order. [Tr. 307] Accordingly, the FPSC should revise its Initial Order by adopting a cost recovery mechanism that complies with the First Report and Order.

**ISSUE 2: What is the appropriate cost recovery mechanism for temporary number portability?**

**SPRINT POSITION:** \* Sprint proposes a per ported number charge based on a price which is approximately 50% of the cost of providing RCF as a temporary number portability solution.

\* \* \* \* \*

**DISCUSSION:** Sprint's proposal should be adopted by the Commission for the reasons explained below.

**A. Basic Principles**

The First Report and Order articulates two basic cost recovery principles. First, the cost recovery mechanism may not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber. [Tr. 309] The First Report and Order states: "The share of this incremental cost borne by the new entrant that wins the customer cannot be so high as to put it at an appreciable cost disadvantage relative to the cost the incumbent LEC would incur if it retained the customer." First Report and Order at para. 133. Second, the cost recovery mechanism may not have a disparate effect on the ability of competing providers to earn normal returns on their investment. Id. Both of these criterion are linked to costs and

prices and, therefore are closely related to each other. [Tr. 310] According to the FCC, a cost recovery mechanism developed using these principles will be "competitively neutral" as required by the 1996 Act.

#### **B. Flexibility Allowed**

While the First Report and Order lists certain cost recovery mechanisms that the FCC believes will satisfy its two broad principles, the FCC did not adopt one specific cost recovery method. Rather, it was careful to give the states flexibility to develop cost recovery mechanisms that comply with the Act and the First Report and Order. In paragraph 127, the First Report and Order states: "We seek to articulate general criteria that conform to the statutory requirements, but give the states some flexibility during this interim period to continue using a variety of approaches that are consistent with the statutory mandate." [Tr. 307-308] Thus, the FPSC should not feel constrained to adopt one of the methods specifically listed in the First Report and Order. Rather, the FPSC should adopt Sprint's proposal.

#### **C. Sprint's Proposal**

Sprint's proposal is a per ported number charge based on a rate which is approximately 50% of the cost. [Tr. 310] This results in an approximately equal sharing of the cost of interim number portability by the ILEC and the CLEC, i.e., the relevant carriers. [Tr. 310] Mr. Poag's exhibit (FBP-1, Hearing Exhibit Number 16) outlines the costs and proposed rates for RCF as the

temporary number portability solution for both business and residential ported numbers. [Tr. 310]

Sprint's proposal includes three separate cost recovery elements, and each element is related to the costs of establishing and maintaining the service. [Tr. 310-311] The monthly recurring rates for residence service, including six additional call paths, and business service, including ten additional call paths, are \$0.45 and \$1.16, respectively. [Tr. 311] Additional call paths for both business and residence are \$.31 each. [Tr. 311] There is also a \$10.00 nonrecurring order charge which allows for ordering multiple ported numbers on the same order without additional charges. [Tr. 311]

As noted by Mr. Poag, Sprint's proposed rates are 45% of the costs of RCF as a temporary number portability solution. [Tr. 311] Thus, the costs of interim number portability are shared equitably among the relevant carriers and do not impose costs on other carriers that do not use or require number portability. [Tr. 311] Sprint's proposal also has efficiency incentives that will enhance the reuse of telephone numbers, reduce number administration costs and more efficiently allocate resources. [Tr. 311] The plan also has the added benefit of being easy to implement and administer relative to some of the other alternatives that have been proposed. [See Guedel, Tr. 69]

#### **D. Sprint's Proposal is Competitively Neutral**

While Sprint's proposal is not one of the methods identified in the First Report and Order, Sprint's proposal is a good

compromise between the proposals of the new entrants and the FPSC's Initial Order, does not put the new entrant at an appreciable cost disadvantage, and would not have a disparate effect on the ability of competing providers to earn normal returns. Accordingly, Sprint's proposal is competitively neutral and should be adopted by the Commission. Mr. Poag's testimony provides a solid foundation for this conclusion.

As noted by Mr. Poag, sharing the costs of temporary number portability on an approximately equal basis and on a per number basis is competitively neutral. [Tr. 311-312] There is substantial data that supports the conclusion that the proposed plan does not put the new entrant at an appreciable cost disadvantage or have a disparate effect on the ability of competing service provider's ability to earn normal returns. [Tr. 312]

For example, for a new entrant to be at an appreciable cost disadvantage, the new entrant's cost would have to be so appreciable as to put the new entrant at a cost disadvantage in terms of its ability to compete for customers and still earn a normal return. [Tr. 312] However, in making this determination, the analysis must include total cost and total revenues, not just the cost of a single input to the process, i.e., the cost to the new entrant of interim number portability. [Tr. 312] This is the correct approach, because when an ILEC loses a customer, it loses not only the basic local service revenues, but also the vertical services revenues, toll revenues and access revenues. [Tr. 313] However, because of traditional telecommunications rate setting



policies, there are significant mismatches between costs and revenues for most services. [Tr. 313] In other words the revenues that will be lost with the customer will far exceed the cost. [Tr. 313] It is also important to recognize that all of the ILEC's costs for that particular customer do not go away. [Tr. 313]

Assuming the new entrant is an efficient competitor, or it would not be competing in the market place, its cost must be at or below the ILEC's cost. [Tr. 313] Thus the new entrant's added costs for the newly gained customer's services plus the cost of interim number portability will be more than offset by the revenues gained. [Tr. 313] Therefore, under Sprint's proposal, there will not be appreciable cost differential between the new entrant and the ILEC. [Tr. 313] Similarly, for these same reasons the proposed rates will not have a disparate effect on a new entrant's ability to earn a normal return. [Tr. 313]

The FPSC should not adopt a mechanism that requires each carrier to pay for its own costs. This mechanism places virtually all of the costs of temporary number portability on the incumbent resulting in the most extreme form of cost sharing. [Tr. 317] Moreover, while certain witnesses have attempted to justify this approach on the basis of cost comparisons, those comparisons are flawed because they do not compare similar cost elements. [See, Kistner, Tr. 237-239]

More importantly, as noted by Mr. Poag, it is important from an economic perspective to impose some cost on the users of a temporary number portability solution. If the price for the

service is free, or close to free, then there would be no incentive to not use the service. [Tr. 324]. Likewise, if there is no price for the service, or the price is close to zero, there would be a tendency to use the service when the value of doing so is less than the cost. [Tr. 324] If there was an unlimited supply of telephone numbers, this would not be an issue; however, because telephone numbers are a scarce resource, and RCF involves issuing a new number and retaining the old, it is important to impose an economically efficient price on the user of the service. [Tr. 324-326]

The Commission should also reject the two other approaches suggested by the new entrants. Specifically, the FPSC should not adopt an "incremental cost" approach to cost recovery and proposed by the FCTA. The FPSC has never used "short run" incremental cost as a basis for price setting [Tr. 346], and should not do so in this case. It simply does not make economic sense to do so. [Tr. 346-47] Likewise, the pooling of cost methods promoted by MFS and some of the other new entrants are too complex and expensive to administer. [Tr. 317-318] These proposals would require the development of a cost allocation system and would require all CLECs to provide their forecasted quantities of INP services by types of switches and numbers of paths. [Tr. 318] Each new CLEC would require an updated cost and change the denominator of the allocator on a pro rata basis. [Tr. 318] Sprint's proposal is the only plan that equitably shares the cost among relevant carriers, is easy to

administer and bill, and promotes efficient utilization of resources.

#### **E. Relevant Carriers**

One of the key parts of this issue involves who must pay whatever price is set, i.e., all telecommunications carriers or just those directly involved in the porting of calls. This is also an area where the First Report and Order gives the states flexibility. In paragraph 130 of the First Report and Order, the FCC gives discretion to the states in establishing how number portability cost will be apportioned by stating: "States may require all telecommunications carriers....to share the cost...." [Tr. 308] The First Report and Order also explains that "States may apportion the incremental costs of currently available measures among relevant carriers by using competitively neutral allocators, such as gross telecommunications revenues, number of lines, or number of active telephone numbers." First Report and Order at para. 130.

Here, the key words are: "states may require," "states may apportion" and "among relevant carriers," because they show that states have flexibility to apportion the burden of temporary number portability among relevant carriers. [Tr. 308]

The meaning of "relevant carrier" can be determined from the First Report and Order as being those carriers directly involved in the porting of numbers, either as the porting or receiving company. For example, in paragraph 136, the FCC provides several examples of recovery mechanisms which it concludes are competitively neutral.

[Tr. 308] Only the third example appears to be applicable to all telecommunications carriers. [Tr. 308] In the other examples the cost allocations are tied to the number of ported numbers of the carriers or to the cost of the individual carriers. [Tr. 308] This reflects the meaning of the "among relevant carriers" language in paragraph 130. [Tr. 308]

Thus, if a plan for number portability cost recovery is applicable to relevant carriers, i.e., those with ported numbers or ported number costs, the plan can meet the FCC's competitively neutral criteria, that is, it need not be applicable to all telecommunications carriers or all of the carriers within a class of carriers. As shown by the FCC's example in Footnote 382, the charges may be based on the number of ported numbers as proposed by Sprint.

#### **F. Conclusion**

Sprint's proposal is competitively neutral and should be adopted by the FPSC. It shares the costs of temporary number portability approximately equally between the porting and receiving carrier. It will not impose an undue cost burden on the new entrants and will not have a disparate effect on the ability of competing providers to earn normal returns on their investment. Sprint's proposal is easy to administer, promotes the efficient use of numbering resources, is fair and should be adopted by the Commission.


ISSUE 3: Should there be any retroactive application of the Commission's decision in this proceeding, and if so what should be the effective date?

SPRINT POSITION: No. Since there has not been a significant amount of ported number activity, retroactive application would likely cost as much or more to implement than has been spent on ported numbers.

\* \* \* \* \*

Sprint does not believe there should be any retroactive application. [Tr.314] First, the FCC's Order does not take effect until 45 days after published in the Federal Register. Second, there has not been a significant amount of ported number activity. [Tr.314] Any retroactive application process would likely cost as much or more to implement than has been spent on ported numbers in Sprint's service areas. [Tr.314]

DATED this 7th day of January, 1997.

  
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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 7th day of January, 1997, to the following:

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