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April 18, 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. 970242-TP

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Sprint-Florida, Inc.'s Memorandum in Opposition to KMC's Motion to Strike or, in the Alternative, Motion for Leave to Accept Supplemental Direct Testimony.

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,  
  
John P. Fons

ACK \_\_\_\_\_  
ATA \_\_\_\_\_  
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RDP \_\_\_\_\_  
SEL \_\_\_\_\_  
WSP \_\_\_\_\_  
OTH \_\_\_\_\_

Enclosures  
cc: Parties of Record  
970242-150

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FLORIDA DIVISION OF RECORDS

DOCUMENT CONTROL

03965 APR 18 1997

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the matter of )

KMC TELECOM, INC. )

Petition for Arbitration Pursuant )  
to 47 U.S.C. §252(b) of Inter- )  
connection Rates, Terms, and )  
Conditions with )

SPRINT UNITED - CENTEL OF FLORIDA )  
INC. (ALSO KNOWN AS CENTRAL )  
TELEPHONE COMPANY OF FLORIDA AND )  
UNITED TELEPHONE COMPANY OF )  
FLORIDA) )

DOCKET NO. 970242-TP

Filed: April 18, 1997

**SPRINT-FLORIDA, INC.'S MEMORANDUM IN OPPOSITION  
TO KMC'S MOTION TO STRIKE**

OR

**IN THE ALTERNATIVE**

**MOTION FOR LEAVE TO ACCEPT SUPPLEMENTAL DIRECT TESTIMONY**

Pursuant to Rule 25-22.037, Florida Administrative Code, Sprint-Florida, Inc. ("Sprint" or the "Company"), files this Memorandum in Opposition to KMC's Motion to Strike, or, in the Alternative, Motion to Accept Supplemental Direct Testimony, and states:

**Background**

1. On February 24, 1997, KMC Telecom, Inc. ("KMC") filed a Petition for Arbitration pursuant to 47 U.S.C. Section 252(b) ("Petition"). Therein, KMC claims that it is entitled to reciprocal compensation for local call termination at the same rate as set forth in Section 5.4 of the Partial Interconnection

DOCUMENT IDENTIFICATION

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FPSC-RECORDS/REPORTING

Agreement between Sprint and MFS ("Sprint/MFS Agreement"). Sprint refuses to provide such reciprocal compensation because KMC will not be providing Sprint with the tandem switching and transport functions. As this Commission has determined in the MCI/Sprint Arbitration proceeding, Docket No. 961230-TP, reciprocal compensation is not required in such circumstances. This position was discussed in the Direct Testimony of F. Ben Poag, filed on March 21, 1997, with Sprint's Answer and Response to KMC's Petition.

2. At the same time it filed its Petition, KMC filed the direct testimony of Tricia Breckenridge. Therein, Ms. Breckenridge explains KMC's position that it should be allowed to "opt-in" to Section 5.4 of the MFS/Sprint Agreement.

3. The CASR in this case set April 11, 1997 as the date for filing rebuttal testimony. The CASR says: "Testimony - Rebuttal - All 4/11/97." The word "all" on the CASR was included to make it clear that either party could file rebuttal testimony on or before April 11. In the absence of a procedural order setting dates, the CASR controls the schedule of the case.

4. After KMC filed its Petition and Direct Testimony, Sprint advised MFS that because of the Commission's ruling in the MCI/Sprint Arbitration proceeding the reciprocal local call termination in the Sprint/MFS, Section 5.4, is no longer operable. The basis for Sprint's position on this point is Section 26.2 of the Sprint/MFS Agreement, which states that the agreement is at all times subject to change or modification as may be ordered by this

Commission in any arbitration proceeding which applies to Sprint-Florida. This provision is known as the "take-out" provision.

5. At the Issue Identification meeting held on April 11, 1997, KMC's attorney advised that the only issue to be heard by the Commission was whether "Under Section 252(i) of the Telecommunications Act of 1996, is Sprint permitted to refuse to allow a carrier to opt into a provision in a previously approved interconnection agreement?" This issue is far different from KMC's petition for arbitration under Section 252(b) of the Act. Indeed, KMC is not seeking an arbitration of any issue, but rather is seeking an enforcement of Section 252(i).

6. On April 11, 1997, Sprint timely filed the Rebuttal Testimony of F. Ben Poag. That testimony addresses KMC's issue relating to Section 252(i) of the Act and explains that Section 5.4 of the Sprint/MFS Agreement is no longer operable, the reason why it is not operable (i.e., the "take-out" provision), and how that effects KMC's request to "opt-in" to Section 5.4. A copy of the "take-out" provision in the Sprint/MFS Agreement, which KMC failed to include with its petition and testimony, is attached to Mr. Poag's rebuttal testimony.

#### **Argument**

7. KMC's Motion to Strike should be denied. Mr. Poag's Rebuttal Testimony was filed on time according to the CASR and properly rebuts a subject addressed in the direct testimony of Tricia Breckenridge. The CASR clearly contemplates the filing of rebuttal testimony by both Sprint and KMC, so KMC's suggestion that

Sprint should not be allowed to file rebuttal testimony has no merit. Sprint's pre-hearing statement properly reflects Sprint's positions and reflects the evidence reflected in Mr. Poag's rebuttal testimony. For these reasons, Sprint requests that the Commission deny KMC's Motion to Strike.

8. If, however, the Commission finds that Sprint was not allowed to file rebuttal testimony and that Mr. Poag's rebuttal testimony was not properly filed, Sprint requests in the alternative that the Commission allow Sprint to file and offer at the final hearing the Supplemental Direct Testimony of F. Ben Poag that is attached to this pleading. This testimony is the same as the rebuttal testimony filed by Mr. Poag, except that it is called "Supplemental Direct Testimony." It explains that KMC cannot "opt-in" to Section 5.4 of the Sprint/MFS Agreement because that section has been "taken-out" of the Sprint/MFS Agreement by operation of Section 26.2, and other related matters.

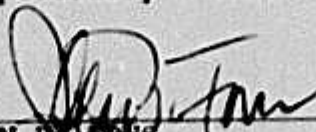
9. Accepting the Supplemental Direct Testimony of F. Ben Poag is in the public interest. KMC has demanded that Sprint agree to a provision in the MFS/Sprint Partial Interconnection Agreement that is no longer viable by operation of law and the express terms of that agreement. KMC's Motion to Strike is designed to prevent the Commission from having all of the relevant information at its disposal when it makes what ever decision it will be making in this case. Without Mr. Poag's Rebuttal Testimony, or the Supplemental Direct Testimony attached to this pleading, the Commission will be forced to make a determination without all of the facts.

10. While the evidence in Mr. Poag's Supplemental Direct Testimony prejudices KMC's case on the merits by defeating its "opt-in" argument, KMC will not be prejudiced in a procedural sense by the filing of this Supplemental Direct Testimony. If KMC can show some procedural prejudice caused by the filing of Mr. Poag's Rebuttal Testimony or his Supplemental Direct Testimony, Sprint would be amenable to the filing of limited rebuttal testimony by KMC relating specifically to Section 26.1 of the Sprint/MFS agreement.

WHEREFORE, Sprint respectfully requests that the Commission deny KMC's Motion to Strike, or in the alternative, accept the Late-Filed Supplemental Direct Testimony of F. Ben Poag giving KMC leave to file limited rebuttal testimony as necessary to cure any procedural prejudice that may exist.

Dated this 18th day of April, 1997.

Respectfully Submitted,



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JOHN P. GONS  
J. JEFFRY WAHLEN  
Ausley & McMullen  
P. O. Box 391  
Tallahassee, Florida 32302  
(904) 224-9115

ATTORNEYS FOR SPRINT-FLORIDA, INC.

1                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
2                   SUPPLEMENTAL DIRECT TESTIMONY  
3                   OF  
4                   F. BEN POAG  
5

6   **Q.**   Please state your name, business address and title.  
7

8   **A.**   My name is F. Ben Poag. I am employed as Director-  
9   Tariffs and Regulatory Management for Sprint-Florida,  
10   Inc. My business mailing address is Post Office Box  
11   2214, Tallahassee, Florida, 32301.  
12

13   **Q.**   Are you the same F. Ben Poag that filed direct testimony  
14   in this proceeding?  
15

16   **A.**   Yes.  
17

18   **Q.**   What is the purpose of your supplemental direct  
19   testimony?  
20

21   **A.**   In KMC's Petition for Arbitration and in the direct  
22   testimony of Tricia Breckenridge, KMC takes the position  
23   that Sprint-Florida must give KMC the same provision with  
24   respect to tandem-switching reciprocal compensation as  
25   contained in the Partial Interconnection Agreement for

1 provision contained in the MFS/United Partial  
2 Interconnection Agreement, Sprint-Florida has advised MFS  
3 that the provision has been changed by the Commission's  
4 decision and is no longer operable. Therefore, the  
5 provision sought by KMC is no longer in existence in any  
6 Sprint-Florida interconnection agreement and is not  
7 available to KMC.  
8

9 Q. Is it your understanding that KMC is seeking the same,  
10 identical agreement as entered into by MFS and Sprint-  
11 Florida in all respects?  
12

13 A. Yes.  
14

15 Q. If that is the case, won't KMC be bound by the same  
16 Section 26.2 contained in the MFS/Sprint-Florida Partial  
17 Agreement?  
18

19 A. Yes. Because KMC will be agreeing to the same provision,  
20 the decision in the MCI/Sprint Arbitration proceeding  
21 will be equally applicable, and KMC will not be entitled  
22 to reciprocal tandem switching compensation.  
23

24 Q. Does this conclude your supplemental direct testimony?  
25



1     **A.   Yes.**

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**PARTIAL INTERCONNECTION AGREEMENT FOR LATA 458**

**Dated as of September 19, 1996**

**by and between**

**UNITED TELEPHONE COMPANY OF FLORIDA**

**and**

**MFS COMMUNICATIONS COMPANY, INC.**

26.2 This Agreement shall at all times be subject to changes or modifications with respect to the rates, terms, or conditions contained herein as may be ordered by the Commission or the FCC in the exercise of their respective jurisdictions, whether said changes or modifications result from a rulemaking proceeding, a generic investigation or an arbitration proceeding which applies to Sprint or in which the Commission makes a generic determination. This Agreement shall be modified, however, only to the extent necessary to apply said changes where Sprint-specific data has been made available to the Parties and considered by the Commission. Any rates, terms conditions thus developed shall be substituted in place of those previously in effect and shall be deemed to have been effective under this Agreement as of the effective date of the order by the Commission or the FCC, regardless of whether such action was commenced before or after the effective date of the Agreement. If any such modification renders the Agreement inoperable or creates any ambiguity or requirement for further amendment to the Agreement, the Parties will negotiate in good faith to agree upon necessary amendments to the Agreement.

## 27.0 QUALITY OF SERVICE STANDARDS

27.1 Sprint shall provide MFS provisioning, repair and maintenance support at the same times and durations as Sprint provides for itself and/or its customers. Sprint shall accept orders from MFS during the hours of operation of the appropriate ordering center.

27.2 Sprint shall provide MFS maintenance and repair services on wholesale and/or unbundled facilities in a manner that is timely, consistent and at parity with unbundled service provided to Sprint's end users and/or other carriers.

27.3 Within 120 days of the effective date of this Agreement, Sprint and MFS will jointly develop a method to monitor, on a monthly basis, the following key measurements:

- a) the number each of unbundled loop, number portability (RCP) and Traffic Exchange trunk installations in the month completed by the MFS desired due date or missed due to end user or MFS actions, divided by the number of MFS installations for unbundled loop, number portability (RCP) and Traffic Exchange trunks for the month;
- b) the number of justified customer-generated trouble reports on unbundled loops, number portability (RCP) and Traffic Exchange trunks entered during the given month divided by the total number of MFS circuits, and
- c) the average interval, expressed in hours to the nearest tenth, from receipt of the unbundled loop, RCP or Traffic Exchange trunk trouble report until the time that the trouble report is cleared with the end user customer.

27.4 For the key measurements listed in Section 27.3, Sprint will have the following target objectives:

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery (\*) or fax and overnight express (\*\*) this 18th day of April, 1997, to the following:

Martha Carter Brown, Esq. \*  
Charles J. Pellegrini, Esq.  
Division of Legal Services  
Florida Public Service Comm.  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

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\_\_\_\_\_  
Attorney

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