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97

November 19, 1997

**VIA FED EX**

Ms. Blanca S. Bayó  
Director, Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

In Re: Docket No. 971159-TP

Dear Ms. Bayó:

Enclosed for filing, are the original and fifteen (15) copies of Legal Memorandum in Support of Petition of Sprint Communications Company Limited Partnership for Approval of Section 252(i) Election of Interconnection Agreement.

We are enclosing an extra copy of this transmittal letter. We ask that you please acknowledge receipt thereon and return to the undersigned in the enclosed self addressed stamped envelope.

ACK \_\_\_\_\_  
AFA \_\_\_\_\_ Thank you for your cooperation.

APP \_\_\_\_\_

CMU \_\_\_\_\_

CTR \_\_\_\_\_

EAG \_\_\_\_\_  
LEG | BWF:vw

LIT -cc-5 Everett Boyd

OPC \_\_\_\_\_  
RCI \_\_\_\_\_ Parties of Records

REC RECEIVED & FILED  
WAS [Signature]  
OTHER BUREAU OF RECORDS

Sincerely,

[Signature]  
Benjamin W. Fincher

DOCUMENT NUMBER 11949

NOV 20 1997

FPSC 1150 5200000000

In Re: Petition of Sprint Communications )  
Company Limited Partnership for Approval )  
of Section 252(i) Election of Interconnection ) Docket No. 971159-TP  
Agreement with GTE Florida Concerning )  
Interconnection Rates, Terms and Conditions, ) Filed: November 20, 1997  
Pursuant to the Federal Telecommunications )  
Act of 1996 )  
\_\_\_\_\_ )

**Legal Memorandum in Support of  
Petition of Sprint Communications Company Limited Partnership  
for Approval of Section 252(i) Election of Interconnection Agreement**

COMES NOW Sprint Communications Company Limited Partnership ("Sprint"),  
Petitioner herein, and respectfully submits this its Legal Memorandum in Support of its  
Petition for Approval of Section 252(i) Election of Interconnection Agreement.

**I.**

**INTRODUCTION**

Sprint filed its Petition for Approval of Section 252(i) Election of Interconnection  
Agreement on September 3, 1997. By its petition Sprint is seeking Commission approval  
to elect the interconnection agreement, as approved by the Florida Public Service  
Commission ("Commission"), between GTE Florida Incorporated ("GTE") and AT&T.  
Sprint's request is based on Section 252(i) of the Telecommunications Act of 1996  
("Act"). The purpose of the legal memorandum herein is to set out, in part, the legal  
basis upon which Sprint's petition should be granted.

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## II.

### **SECTION 252(i) OF THE ACT IMPOSES A DUTY UPON GTE TO MAKE THE AT&T/GTE AGREEMENT AVAILABLE TO SPRINT**

Section 252(i) of the Act provides:

**Availability to Other Telecommunications Carriers. --**

**A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.<sup>1</sup>**

The plain language of this statutory provision imposes an unqualified duty on GTE to offer to Sprint, or any other requesting telecommunications carrier, the terms and conditions of the AT&T/GTE Interconnection Agreement as approved by this Commission.

The primary purpose of this "most favored nation" provision of the Act is to prevent discrimination among carriers and to help ensure a more level playing field for competition based on pricing, quality, and service. See S. Conf. Rep. 104-230, at 124-25 (1996) (provision is intended "to help prevent discrimination among carriers" and to make interconnection on non-discriminatory terms more efficient); First Report and Order Sec. 1315 ("the primary purpose of section 252(i) [is] preventing discrimination"); id. Sec. 1316 ("section 252(i) entitles all parties with interconnection agreements to 'most favored nation' status regardless of whether they include 'most favored nation' clauses in their agreements"). (emphasis added)

Given the scope and complexity of interconnection agreements, the accelerated timeframes for their negotiation, arbitration and approval, and the uncharted waters of competitive local telephone service, Congress recognized that even the most diligent efforts by private parties and state commissions to ensure non-discriminatory access through negotiation and arbitration process might fall short. Section 252(i) thus provides an independent means by which requesting carriers can choose, based on their own

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<sup>1</sup> 47 U.S.C. Sec. 252(i) (emphasis added)

competitive business judgments, to interconnect with an incumbent carrier by adopting another, prior approved interconnection agreement.<sup>2</sup>

### III.

#### **OTHER STATE COMMISSIONS HAVE INTERPRETED SECTION 252(i) TO PERMIT SPRINT TO ADOPT THE AT&T/GTE INTERCONNECTION AGREEMENTS**

Other state commissions have considered this issue and determined that Section 252(i) requires GTE to make the AT&T/GTE interconnection agreements available to Sprint and other requesting carriers for adoption in their entirety. Sprint's petitions for adoption of the AT&T/GTE interconnection agreements have been routinely granted or otherwise accommodated.<sup>3</sup> (See Exhibit A, attached hereto.) Indeed, to date, no state commission has denied a request by Sprint, pursuant to Section 252(i), to adopt an approved AT&T/GTE agreement in its entirety.

<sup>2</sup> See First Report and Order Sec. 1315; S. Conf. Rep. No. 104-230, at 126.

<sup>3</sup> See In re Petition of Sprint Communications Co. L.P. (U-5112-C) for Arbitration of Interconnection Rates, Terms and Conditions & Related Arrangements with GTE California, Inc., Pub. Utils. Comm'n of Cal. Application No. 96-09-039, Opinion & Order at 6 (Mar. 18, 1997) (granting Sprint's adoption of the AT&T/GTE agreement under Section 252(i)); In re Petition of Sprint Communications Co. L.P. for Arbitration of Interconnection Rates, Terms, Conditions, & Related Arrangements with GTE Hawaiian Telephone Co. Inc., Pub. Utils. Comm'n of Haw. Docket No. 96-0375, Order No. 15428 at 4 & Order No. 15482 at 2-3 (Mar. 7 & Apr 3, 1997)(same); In re Sprint Communications Co. L.P.'s Petition for Arbitration of Interconnection Rates, Terms, Conditions & Related Arrangements with GTE of the North, Inc., Ind. Util. Regulatory Comm'n Cause No. 40625-INT-02, Order at 2 (Feb. 21, 1997)(granting an extension of time for Sprint to adopt the AT&T/GTE agreement, once finally approved); In re Sprint Communications Co. L.P.'s Petition for Arbitration of Interconnection Rates, Terms, Conditions, & Related Arrangements, Minn. Pub. Utils. Comm'n Docket No. P-407, 466/M-96-1111, Oral Decision (Apr. 15, 1997) (granting Sprint's adoption of the AT&T/GTE agreement under Section 252(i)); In re Sprint Communications Co. L.P.'s Petition for Arbitration of Interconnection Rates, Terms, Conditions, & Related Arrangements with GTE North, Inc., Pub. Utils. Comm'n of Ohio Case No. 96-1021-TP-ARB, Entry at 4 (Apr. 10, 1997) (same); In re Petition of Sprint Communications Co. L.P. for Arbitration of Interconnection Rates, Terms, Conditions, & Related Arrangements with GTE North, Inc., Pa. Pub. Util. Comm'n Docket No. A-310183F0002, Opinion & Order at 3 (Mar. 13, 1997) (granting an extension of time for Sprint to adopt the AT&T/GTE agreement, once approved).

#### IV.

#### THE DUTY IMPOSED ON GTE BY SECTION 252(i) IS UNQUALIFIED

Section 252(i) imposes an unqualified duty on GTE to make the approved AT&T/GTE interconnection agreements available to Sprint and "any other requesting telecommunications carrier." This "most favored nations" obligation imposed on GTE by Section 252(i) is without qualification. There is no exception.

The fact that Sprint negotiated, arbitrated and ultimately signed an approved interconnection agreement with GTE does not, in any way, waive any right that Sprint has under the plain language of Section 252(i) to elect the AT&T/GTE interconnection agreement. To adopt such an interpretation would, in effect, rewrite 252(i) to terminate GTE's duty under this statutory provision in any situation where a requesting carrier has negotiated, arbitrated or executed an interconnection agreement with GTE. Such an interpretation is contrary to the plain language, intent and purpose of the statute and would render Section 252(i) meaningless.

The statutory language clearly requires that GTE "shall make" its approved interconnection agreements available to "any other requesting telecommunications carrier," without qualification. If Congress had intended to limit GTE's Section 252(i) obligations only to those requesting carriers that have not previously negotiated, arbitrated or executed interconnection agreements, it would have written Section 252(i) to so reflect such a qualification. Clearly, Congress did not write Section 252(i) to punish new entrants for seeking early entry into the local exchange market through negotiation, arbitration and execution of interconnection agreements. Congress did not intend such an absurd result and, rightly so, did not attach such qualification or exception to Section 252(i).<sup>4</sup>

This fact was recognized by the state commissions of Washington and Minnesota.<sup>5</sup> The Washington state commission found that:

The rights which are established by Section 252(i) are available to any "requesting telecommunications carrier" who is not a party to that approved agreement [i.e., the AT&T/GTE agreement]. While GTE may argue that the rights which are

<sup>4</sup> See S. Conf. Rep. No. 104-230, at 1 (explaining Congress's intent to promote rapid local competition)

<sup>5</sup> See Exhibit A.

established by Section 252(i) are only available to any requesting telecommunications carrier who is not a party to "an" approved agreement [i.e., the Sprint/GTE agreement], this interpretation is contrary to the express language of the Act. The Commission finds no language in the act which would otherwise restrict any telecommunications carrier to make a request pursuant to Section 252(i).<sup>6</sup>

The Minnesota state commission reached the same conclusion. In addition, the Minnesota state commission addressed Sprint's arbitration process:

While the Commission agrees that significant resources have been expended in the arbitration proceeding, it is difficult to see how Sprint could have acted differently. In light of the swiftly opening competitive market, Sprint reasonably chose not to wait to see how other entrants' contracts developed before entering into interconnection negotiations with GTE. Once Sprint had started the negotiation process, federal deadlines dictated the timetable for progressing through arbitration and the final contract process. Sprint's actions were consistent with the policies and procedures of the Federal Act; they do not justify an abridgment of [Sprint's] right to adopt existing contracts under Section 252(i).<sup>7</sup>

## V.

### CONCLUSION

WHEREFORE based on the foregoing, Sprint respectfully requests that the Commission (1) find that Sprint has the right to elect the AT&T/GTE interconnection agreement under Section 252(i) as a matter of law and (2) grant the relief sought by Sprint in its petition as filed in this proceeding.

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<sup>6</sup> In re Petition for Arbitration of an Interconnection Agreement Between Sprint Communications Co. L.P. & GTE Northwest, Inc. Wash. Utils. & Transp. Comm'n Docket No. UT-960348, order at 2-3 (Feb. 27, 1997)

<sup>7</sup> In re Sprint Communications Co. L.P.'s Petition for Arbitration with Centel of Minnesota, Inc. d/b/a GTE Minnesota. Minn. Pub. Utils. Comm'n Docket No. P-407,466M-96-1111, Order Granting Right to Adopt Arbitration Agreement at 4 (May 8, 1997) (emphasis added)

Respectfully submitted,

Sprint Communications Company  
Limited Partnership



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Atlanta, Georgia 30339  
(404) 649-5145

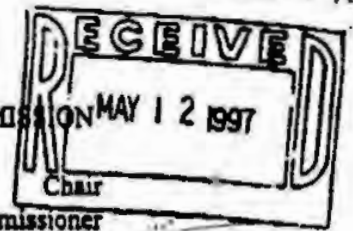
C. Everett Boyd, Jr.  
Ervin, Varn, Jacobs & Ervin  
P. O. Drawer 1170  
Tallahassee, Florida 32302  
(850) 224-9135

Attorneys for Sprint Communications Company  
Limited Partnership

EXHIBIT A



cc: [unclear] [unclear] [unclear] [unclear]



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

- Edward A. Garvey
- Joel Jacobs
- Marshall Johnson
- Don Storm

Chair  
 Commissioner  
 Commissioner  
 Commissioner

File No. \_\_\_\_\_

Orders  Sprint  O.P.

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Other

In the Matter of Sprint Communications Company L.P.'s Petition for Arbitration with Contel of Minnesota, Inc. d/b/a GTE Minnesota Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996

ISSUE DATE: May 8, 1997

DOCKET NO. P-407,466/M-96-1111

ORDER GRANTING RIGHT TO ADOPT ARBITRATION AGREEMENT

DATE RECEIVED MAY 1 1997

PROCEDURAL HISTORY

On April 19, 1996, Sprint Communications Company L.P. (Sprint) served Contel of Minnesota, Inc. d/b/a GTE Minnesota (GTE) with a written request to negotiate under the Federal Act. The parties subsequently failed to reach full agreement on the negotiated issues. On September 25, 1996, Sprint petitioned the Commission for arbitration pursuant to the Federal Telecommunications Act of 1996 (the Federal Act or the Act).

Arbitration proceedings were held on November 18 and 19, 1996. The Administrative Law Judge conducting the proceedings submitted her recommended arbitration decision on December 23, 1996.

On January 21, 1997, the Commission issued its ORDER RESOLVING ARBITRATION ISSUES. In that Order the Commission decided the issues which had been submitted for arbitration. The Commission ordered the parties to submit a final contract containing all arbitrated and negotiated terms by February 21, 1997 for Commission review under § 252(e) of the Federal Act.

On February 14, 1997, Sprint filed a motion to extend the deadline for filing the contract to April 11, 1997, or four weeks from the date the Commission was expected to approve a final contract in the pending arbitration between AT&T Communications of the Midwest, Inc. (AT&T) and GTE. In the motion, Sprint stated that it wished to adopt the AT&T/GTE contract in its entirety under § 252(i) of the Federal Act, which reads as follows:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

On February 25, 1997, the Commission issued its ORDER EXTENDING DEADLINE FOR FILING CONTRACT. In that Order, the Commission found that administrative efficiency required resolving Sprint's § 252(f) claim before the companies filed a final contract. The Commission therefore deferred the date for submission of the final contract until a later Commission Order. In the meantime, the Commission directed Sprint to submit its request and established a timetable for parties' comments.

On February 26, 1997, Sprint filed its Motion for Determination of Right to Adopt AT&T/GTE Agreement.

On March 14, 1997, Sprint filed its Memorandum in Opposition to Sprint's Motion.

On March 14 and March 21, 1997, the Department of Public Service (the Department) filed reply comments.

On March 14, 1997, the Commission issued its Order approving the final contract in the AT&T/GTE arbitration, ORDER RESOLVING ISSUES AFTER RECONSIDERATION AND APPROVING INTERCONNECTION AGREEMENT.<sup>1</sup>

On March 21, 1997, Sprint filed reply comments.

On April 15, 1997, the matter came before the Commission for consideration.

## FINDINGS AND CONCLUSIONS

### I. POSITIONS OF THE PARTIES

#### A. Sprint

Sprint stated that it has now determined that adoption of the entire AT&T/GTE contract under § 252(f) of the Act is necessary to obtain both a reasonable and nondiscriminatory interconnection agreement with GTE and competitive parity in the services obtained from GTE.

Sprint argued that GTE has an unqualified duty under § 252(f) of the Act to allow Sprint to adopt the entire AT&T/GTE contract. The duty of an incumbent local exchange carrier (ILEC) to allow a new entrant's adoption of another contract is also indicated by

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<sup>1</sup> In the Matter of AT&T Communications of the Midwest, Inc.'s Petition for Arbitration with Cotel of Minnesota, Inc. d/b/a GTE Minnesota under Section 252(f) of the Federal Telecommunications Act of 1996, Docket No. P-442,407/M-96-939.

§ 251(c)(2)(D) of the Act, which requires interconnection "on rates, terms, and conditions that are just, reasonable and nondiscriminatory." Sprint also cited § 251(c)(3) of the Federal Act, which requires ILECs to provide "nondiscriminatory access to network elements on an unbundled basis...on rates, terms, and conditions that are just, reasonable, and nondiscriminatory," and § 251(c)(4)(B), which precludes ILECs from imposing "unreasonable or discriminatory conditions or limitations" on the resale of services.

Sprint distinguished its right under § 252(i) to adopt another entire interconnection contract from the "pick and choose" interpretation of that section under FCC rules at 47 CFR § 51.809. Under the FCC interpretation, competitive local exchange carriers (CLECs) would be allowed to pick and choose any *individual* interconnection, service or network element arrangement from another agreement. As Sprint noted, the "pick and choose" provision of the FCC rules has been stayed by the Eighth Circuit Court of Appeals. In contrast, § 252(i) of the Act, which allows a CLEC to adopt an ILEC's contract with another entrant *in its entirety*, has not been stayed by any court or challenged by any party.

Sprint argued that there is no statutory language or underlying policy which would limit the time in which a CLEC could exercise its rights under § 252(i) of the Act. Although Sprint regretted the time and resources parties had expended on this arbitration proceeding, Sprint argued that it could not have chosen the AT&T/GTE contract until it knew how it would develop.

Finally, Sprint asked the Commission to clarify if it would be necessary for Sprint to bring the adopted AT&T/GTE contract before the Commission for approval pursuant to § 252(e) of the Act.

## B. GTE

GTE acknowledged that there is no specific statutory language creating a window period in which a CLEC must exercise its right to adopt an existing contract under § 252(i) of the Act. GTE argued that the right must nevertheless be balanced against certain basic goals underlying the Act: the encouragement of negotiated interconnection agreements and the development of a level competitive playing field. If the Commission properly weighs these competing elements of the Act, the Commission will conclude that a CLEC may only exercise its § 252(i) right up to the point that an arbitration proceeding begins. To allow a CLEC to pull out of the overall negotiation/arbitration proceeding after that time would waste resources and prejudice parties who expect to complete the process contemplated under the Act.

GTE also noted that it has appealed the Commission's decision approving the AT&T/GTE contract. GTE argued that the pending federal court action raised issues which Sprint had failed to address in its request to adopt the AT&T/GTE agreement.

### C. The Department

The Department supported Sprint's motion for Commission approval of the adoption of the AT&T/GTE contract.

The Department argued that both law and policy support Sprint's motion. The Department stated that a CLEC has the clear legal right under § 252(i) of the Act to adopt in full a Commission-approved contract between an ILEC and another CLEC. No language in the Act limits that right to the pre-arbitration stage. According to the Department, public policy is better served by allowing Sprint to adopt a contract, even after attempting arbitration, than by adopting GTE's position that Sprint must choose at the onset between another contract or an arbitration process.

## II. COMMISSION ACTION

### A. Sprint's Adoption of the AT&T/GTE Contract

Section 252(i) of the Federal Act gives CLECs the clear right to adopt existing contracts between incumbents and other new entrants. The language conferring that right is consistent with other language in the Act requiring reasonable, nondiscriminatory rates and terms of interconnection and nondiscriminatory access to network elements on rates that are reasonable and nondiscriminatory. As GTE has acknowledged, no specific language in the Federal Act limits the CLEC's right to exercise the § 252(i) option.

GTE has offered no compelling policy reason to construe a time limitation in the overall text of the Act. While the Commission agrees that significant resources have been expended in the arbitration proceeding, it is difficult to see how Sprint could have acted differently. In light of the swiftly opening competitive market, Sprint reasonably chose not to wait to see how other entrants' contracts developed before entering into interconnection negotiations with GTE. Once Sprint had started the negotiation process, federal deadlines dictated the timetable for progressing through arbitration and the final contract process. Sprint's actions were consistent with the policies and procedures of the Federal Act; they do not justify an abridgment of the CLEC's right to adopt existing contracts under § 252(i).

Although GTE seems to have withdrawn its argument that Sprint's actions constitute an attempt to "pick and choose" under the stayed FCC rules interpretation, the Commission will clarify this point. Sprint's adoption of an entire existing contract under § 252(i) of the Federal Act is distinct from the FCC's "pick and choose" provision and appears unaffected by the stay in the Eighth Circuit Court of Appeals.

Neither is Sprint's proposed action affected by GTE's appeal of the AT&T/GTE contract to federal district court. The federal court has taken no action at this time and the matter remains pending. Sprint has stated that it will remain subject to the adopted agreement upon resolution

of the federal action. To the extent the court alters the agreement, Sprint has agreed that it will be subject to those modifications. The Commission agrees that this overall process is consistent with § 252(f) of the Federal Act, which provides that the electing party will take the interconnection agreement under the same terms and conditions as the party that negotiated the agreement. The Commission therefore finds that the district court appeal of the AT&T/GTE contract offers no basis to delay or reject Sprint's adoption of the contract.

For all of the above reasons, the Commission grants Sprint's motion for a determination of its right to adopt the AT&T/GTE contract in this proceeding. The Commission will allow Sprint to adopt the AT&T/GTE contract for the purposes of this proceeding.

#### B. Substitution of the Contract for Commission Approval

In its motion, Sprint asked the Commission to determine the necessity of submitting the adopted AT&T/GTE contract for Commission approval under § 252(e) of the Federal Act. The Commission finds that Sprint must submit the contract for approval.

The Act places the responsibility of final contract approval on state commissions. State commissions have the authority under the Act to determine if a contract is discriminatory, contrary to the public interest, or inconsistent with the provisions of the Act. The language of the Act does not exempt adopted contracts from the state commission approval process.

State commission approval of adopted contracts is logical for several reasons. The formal approval process will make clear to Minnesota regulatory agencies and consumers the contracts and parties that are operating in the state. The approval process is consistent with the Commission's arbitration procedure in this docket (and similar dockets), in which the Commission gave all interested parties an opportunity to comment on the final interconnection agreement between Sprint and QTE when it is filed with the Commission. If the Commission eliminated the approval process at this stage, parties' participation rights would be abrogated and the public interest would be compromised.

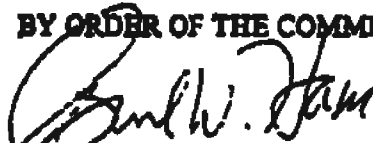
Requiring Commission approval of the adopted AT&T/GTE contract is consistent with the language of the Federal Act and the public interest. The Commission will require Sprint and QTE to submit the contract for Commission approval under § 252(e) of the Act.

#### ORDER

1. The Commission grants Sprint's motion to find that Sprint has the right to adopt the AT&T/GTE interconnection contract in this proceeding, pursuant to § 252(f) of the Federal Act.

2. Within 20 days of the date of this Order, Sprint and GTE shall file the adopted AT&T/GTE contract, with the necessary language changes to substitute Sprint for AT&T, for Commission approval under 47 U.S.C. § 252(e). The parties shall serve the contract on the service list provided by the Commission. The contract must be served on the date it is filed with the Commission.
3. Any interested person who wishes to file comments on the final contract shall do so within ten days of the date the final contract is submitted.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burt W. Haar  
Executive Secretary

(SEAL)

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Mailed  
MAR 19 1997

Decision 97-03-048 March 18, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of  
Sprint Communications Company  
L.P. (U-5112-C) for Arbitration of  
Interconnection Rates, Terms,  
Conditions, and Related Arrangements  
with GTE California, Inc.

Application 96-09-039 Sprint OF  
(Filed September 25, 1996)

File No. \_\_\_\_\_  
Orders   
Lead   
Disc   
List   
Brief   
Other

DATE RECEIVED \_\_\_\_\_

OPINION

Procedural History

On September 25, 1996, pursuant to provisions of the Telecommunications Act of 1996 (the Act), Sprint Communications Company L.P. (U-5112-C) (Sprint) filed a petition seeking arbitration of interconnection rates, terms, conditions and related arrangements with GTE California, Inc. (GTEC).

At the time the pleadings were filed, there were approximately 75 issues in dispute between the parties. While it is not necessary at this point to discuss these issues in detail, it is worthy of note that Sprint's position with respect to each issue was that it would accept whatever AT&T of California, Inc. (AT&T) obtained in the interconnect agreement with GTEC, which would result from the AT&T/GTEC arbitration proceeding (Application (A.) 96-08-041) then pending before the Commission. That "offer" was rejected by GTEC.

While agreement on several issues was reached pending hearing, agreement between the parties on all issues proved elusive, and as a result, hearings on 47 disputed issues were held before the arbitrator on November 4, 5, 7, and 8, 1996. Once again, we note that with respect to those issues actually heard by the arbitrator, Sprint indicated that it was willing to accept the AT&T/GTEC arbitration results on those issues, whatever they might

ultimately be, but GTEC rejected that offer. Post-hearing briefs were filed by the parties on November 25, 1996, and Reply Briefs were filed on December 2, 1996. During the course of the hearings and the post-hearing briefing period, agreement was reached on several more issues and by the time the Arbitrator's Report was filed on December 27, 1996, only 11 issues were addressed by it.

On January 13, 1997, in A.96-08-041, the Commission issued Decision (D.)97-01-022, approving the AT&T/GTEC agreement,

On January 15, 1997, the parties Jointly filed an Interconnection Agreement as required by the Arbitrator's Report, however, this "joint agreement" was, in fact, not an agreement in that it contained extensive differences in language in several of its provisions, and the parties noted that each side anticipated filing comments on that document explaining their respective positions as provided in Rule 4.2.2 of ALJ Resolution 168. On January 27, 1997, each of the parties filed Comments on the Arbitrator's Report. While Sprint explained the language it used in the "joint agreement", it noted once again that it would accept the results achieved in the AT&T/GTEC arbitration agreement.

On January 23, 1997, the AT&T/GTEC agreement was filed with conforming modifications.

#### Post-hearing Motions

On February 5, 1997, Sprint filed a motion requesting that it be permitted to elect to take the contract between AT&T and GTEC and on February 22, 1997, GTEC filed an opposition to Sprint's motion. Meanwhile, on February 18, 1997, GTEC filed a "Motion Requesting that the Commission Approve Agreement Incorporating Terms of the Arbitrator's Report Pursuant to Rule 4.2.3 of ALJ Resolution 168" and on March 5, 1997, Sprint filed a "Response" in opposition thereto.

In its opposition to Sprint's motion GTE stated: "Sprint professes to be requesting that it elect the entire GTE/AT&T agreement in a cursory acknowledgement of the Court's stay of the



pick and choose rules. However, Sprint's correspondence and even its motion reflect that its true effort is aimed at convincing GTE to use the AT&T agreement as a 'baseline' from which Sprint would select certain provisions." (Opposition, pp 5, 6.) Further, GTE stated: "While Sprint purports now to accept the GTE/AT&T agreement in its entirety, the clear import of these passages from its own election motion is the desire to bind GTE to the AT&T agreement and then recommence negotiations to 'conform the contract more closely to its operational and other practices.'" (Opposition, p. 7.)

Thus, the Commission is faced with two mutually exclusive competing motions; one advocating acceptance of the Commission approved AT&T/GTEC interconnect agreement, and the other advocating approval of an agreement incorporating terms of the Arbitrator's report.

Because GTEC inferred that Sprint's version of the AT&T/GTEC agreement was at variance with the AT&T/GTEC agreement and amounted to little more than an attempt by Sprint to "pick and choose" terms favorable to it while rejecting unfavorable terms, the arbitrator issued a ruling directing GTEC to furnish the Commission and the arbitrator with a copy of the agreement tendered by Sprint marked or highlighted to show each and every claimed variance from the AT&T/GTEC agreement. On March 7, 1997, GTEC advised the arbitrator that "GTE has not alleged in its filings that the text of the agreement filed by Sprint with Sprint's motion requesting that it be permitted to elect the AT&T/GTE contract varies from the text of the AT&T/GTE agreement except that the names of the companies have been changed."

#### Discussion

Section 252(i) of the Telecommunications Act of 1996, provides:

- "(i) Availability to Other Telecommunications Carriers--A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a

party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

We find that the agreement sought to be elected by Sprint in this proceeding is, except for the name of the second contracting party and authorship of certain technical manuals referred to therein, the same as that entered into between GTEC and AT&T, which was approved by the Commission under Section 252 of the Act in D.97-01-022.

We find that, pursuant to the above quoted section of the Act, Sprint is, as a matter of law, entitled to the same interconnect agreement with GTEC as exists between GTEC and AT&T as approved in D.97-01-022, and we hereby grant Sprint's motion to elect that contract in this proceeding, and approve the same. By necessity, we deny GTEC's February 18, 1997, Motion Requesting that the Commission Approve Agreement Incorporating Terms of the Arbitrator's Report Pursuant to Rule 4.2.3 of ALJ Resolution 168.

We are concerned that GTEC either negligently or deliberately attempted to mislead the Commission as to the nature of Sprint's request. We disagree with GTEC's characterization of its motion in its response to the Arbitrator's Ruling. GTEC's allegation that Sprint was seeking something other than the AT&T agreement was taken seriously and our own staff spent considerable effort evaluating that claim prior to the issuance of the ALJ's Ruling asking GTEC to demonstrate variances from the AT&T agreement.

Findings of Fact

1. On September 25, 1997, pursuant to the Telecommunications Act of 1996, Sprint filed a petition seeking arbitration of an interconnection agreement with GTEC.
2. Hearings were held in November 1996 to consider certain issues.
3. On December 27, 1996, the Arbitrator's Report was filed.

4. On January 15, 1997, the parties jointly filed an Interconnection Agreement as required by the Arbitrator's Report.

5. In actuality, the Interconnection Agreement was not an agreement in that it contained extensive differences in language in several of its provisions.

6. On January 27, 1997, each of the parties filed comments on the Arbitrator's Report.

7. Both during the hearings and in its post hearing submissions, Sprint indicated that it would accept the results of the AT&T/GTEC arbitration in A.96-08-041, when rendered.

8. On January 13, 1997, the Commission issued D.97-01-022 approving the AT&T/GTEC agreement which was filed with conforming modifications on January 23, 1997.

9. On February 5, 1997, Sprint filed a motion that it be permitted to elect to take the contract between AT&T and GTEC.

10. On February 22, 1997, GTEC filed an Opposition to Sprint's motion and advocated approval of an agreement incorporating terms of the Arbitrator's Report; GTEC also represented that Sprint was seeking something at variance from the AT&T contract.

11. Sprint's tendered agreement is, except for the name of the second contracting party and authorship of certain technical manuals, the same as the contract between GTEC and AT&T approved by D.97-01-022.

#### Conclusions of Law

1. Section 252(1) of the Telecommunications Act of 1996 requires a local exchange carrier to make any interconnection, service or network element provided under an approved agreement to which it is a party available to any other requesting carrier on the same terms and conditions as those provided in the approved agreement.

2. GTEC provides interconnection, services and network elements to AT&T under an agreement approved in D.97-01-022.

3. Section 252(1) of the Act requires that the interconnection, services and network elements made available to AT&T pursuant to the agreement approved in D.97-01-022 be made available to Sprint on the same terms and conditions.

4. Sprint's motion to elect to take the AT&T/GTEC agreement should be granted

5. GTEC's motion requesting that the Commission approve an agreement incorporating the Arbitrator's Report should be denied.

6. GTEC knowingly or negligently misrepresented to the Commission the nature of the Sprint tendered agreement.

O R D E R

IT IS HEREBY ORDERED that:

1. Sprint's motion to elect to take the AT&T of California, Inc. (AT&T)/GTE-California, Inc. (GTEC) interconnection agreement is granted.

2. GTEC shall make available to Sprint the ~~interconnection~~ motion, service, and network elements available to AT&T under the AT&T/GTEC interconnection agreement on the same terms and conditions approved in D.97-01-022.

3. The parties shall file an executed copy of such agreement within 10 days of the date of this order and shall supplementally provide two copies to the Telecommunications Division, together with a version thereof in electronic form in hyper text markup language format.

4. GTEC's motion requesting that the Commission approve an agreement incorporating the Arbitrator's Report is denied.

5. This proceeding is remanded to the Division of Administrative Law Judges for further proceedings to determine whether the misrepresentations referred to in Finding of Fact 10 and Conclusion of Law 6 were negligent or deliberate, and whether any sanctions should be imposed on GTEC.

This order is effective today.

Dated March 18, 1997, at San Francisco, California.

P. GREGORY CONLON  
President  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEPPER  
RICHARD A. HILAS  
Commissioners

4190142707.0 002  
CLMTV 3.7.97

FILE COPY

File  
HJ  
96-0375  
Orders

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of  
SPRINT COMMUNICATIONS COMPANY L.P.  
For Arbitration of Interconnection  
Rates, Terms, Conditions and  
Related Arrangements with  
GTE Hawaiian Telephone Company  
Incorporated.

DOCKET NO. 96-0375

File No \_\_\_\_\_  
Orders   
Sprint  O.P.   
Corr    
Plead    
Disc    
Est    
Brief    
Other \_\_\_\_\_

DATE RECEIVED

ORDER NO. 15828

Filed March 7, 1997  
At 2:15 o'clock p.M.

for Andrew Chiu  
Chief Clerk of the Commission

cc: Tolamson  
Mike Smith  
B. K. Schuman  
CLM  
RAP

Post-Net Fax Note 7871  
Date 3/7/97 Page 6  
To Carol Anderson  
Cc/Dept Legal  
From A. Valdez  
Phone 1  
Phone 2  
Fax 1 1-800-762-2977 Fax 2

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
SPRINT COMMUNICATIONS COMPANY L.P.) Docket No. 96-0375  
For Arbitration of Interconnection) Order No. 15428  
Rates, Terms, Conditions and )  
Related Arrangements with )  
GTE Hawaiian Telephone Company )  
Incorporated. )

ORDER

I.

By Decision No. 15316, filed on January 17, 1997, the commission ordered SPRINT COMMUNICATIONS COMPANY L.P. (Sprint) and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED (GTE Hawaiian Tel) to submit for review and approval an interconnection agreement incorporating the results of that decision. The interconnection agreement was due on February 18, 1997; however, the parties were granted a one-week extension in which to submit the interconnection agreement.

On February 21, 1997, Sprint filed a motion for further extension of time to file the interconnection agreement. Sprint requests an extension of time until two weeks after the commission has approved an interconnection agreement between GTE Hawaiian Tel and AT&T Communications of Hawaii, Inc. (AT&T) in Docket No. 96-0329. Sprint requests the extension of time so that it may elect to take the commission-approved AT&T-GTE Hawaiian Tel contract as its own interconnection agreement with GTE Hawaiian Tel.

On February 24, 1987, GTE Hawaiian Tel filed a proposed interconnection agreement for commission approval. GTE Hawaiian Tel's proposed agreement incorporates the commission's Decision No. 15316, but it also includes GTE Hawaiian Tel's position on matters not arbitrated and still in dispute. Sprint has provided no comments or counter-proposals on these disputed items. GTE Hawaiian Tel filed a memorandum opposing Sprint's motion for extension of time on February 27, 1987.

## II.

Sprint's motion is premised on its belief that, under 47 United States Code (U.S.C.) § 281(i), it is entitled to all of the terms of the AT&T-GTE Hawaiian Tel interconnection agreement that this commission may finally approve. It, thus, seeks to postpone the filing of an agreement until after commission approval of the AT&T-GTE Hawaiian Tel's interconnection agreement. GTE Hawaiian Tel submitted its proposed interconnection agreement, in light of Sprint's request to postpone the filing of an agreement, and asks that we approve the proposed agreement.

Neither Sprint's nor GTE Hawaiian Tel's request is reasonable. While we make no determination on the merits of Sprint's claimed right to adopt, in toto, the AT&T-GTE Hawaiian Tel interconnection agreement as finally approved, for present purposes Sprint and GTE Hawaiian Tel must submit an agreement incorporating our arbitration decision, for commission approval or rejection. We, thus, reiterate our order that GTE Hawaiian Tel and Sprint submit to the commission an agreement incorporating the terms agreed to by the parties and the results of Decision No. 15316.



Where the parties disagree on certain unarbitrated issues, each party shall submit its proposed resolution. The parties shall follow the format used by GTE Hawaiian Tel and AT&T in the submission of their agreement on February 26, 1997 in Docket No. 96-0329. The GTE Hawaiian Tel-AT&T format sets forth the arbitrated and agreed to provisions in language mutually satisfactory to the parties. Where the parties disagree on issues, each party has proposed its own version. One party's version is presented in bold; and the other party's version is double-underlined.

To expedite the process, GTE Hawaiian Tel and Sprint shall use the February 26, 1997, GTE Hawaiian Tel-AT&T submission in Docket No. 96-0329 as the base. That submission should be revised to reflect GTE Hawaiian Tel-Sprint agreements and the commission's Decision No. 18316.

Finally, the parties are noticed that the 30-day period for commission adoption or rejection of "an agreement adopted by arbitration," as provided in 47 U.S.C. § 252(e)(4) does not begin to run until the parties have submitted a completed "agreement" to the commission. The commission, thus far, has not received any such agreement.

### III.

#### THE COMMISSION ORDERS:

1. Sprint's motion for further extension of time to file its interconnection agreement with GTE Hawaiian Tel until two weeks after the commission has approved an interconnection agreement between AT&T and GTE Hawaiian Tel is denied.

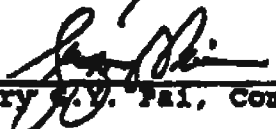
2. GTE Hawaiian Tel and Sprint shall submit, not later than March 27, 1997, an interconnection agreement incorporating the terms agreed to by the parties and the results of Decision No. 15316, together with each party's proposal on issues still in dispute. The submission shall be in the format of and be based on the GTE Hawaiian Tel-AT&T submission to the commission on February 26, 1997, in Docket No. 96-0329.

DONE at Honolulu, Hawaii this 7th day of March, 1997.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Yukio Naito, Chairman

By   
Dennis R. Yamada, Commissioner

By   
Gregory S.V. Fai, Commissioner

APPROVED AS TO FORM:

  
Anthony D. Valdez  
Commission Counsel

96-0329.1

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing Order No. 15A28 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.


DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

P. KEVIN PAYNE, VICE PRESIDENT-EXTERNAL AFFAIRS  
GTE HAWAIIAN TELEPHONE COMPANY INC.  
P. O. Box 2300  
Honolulu, HI 96841

CAROL MATCHETT, ESQ.  
SPRINT COMMUNICATIONS COMPANY L.P.  
1880 Gateway Drive, 7th Floor  
San Mateo, CA 94404

STEVEN NAGATA, ESQ.  
ARLENE WITH BALL WICKMAN CASE AND ICWIKI  
1001 Bishop Street  
Pacific Tower, Suite 2200  
Honolulu, HI 96813

BERT T. KOBAYASHI, ESQ.  
CLIFFORD S. HIGA, ESQ.  
ROD S. AOKI, ESQ.  
KOBAYASHI, SUGITA & GODA  
First Hawaiian Center  
999 Bishop Street, Suite 2600  
Honolulu, HI 96813

  
\_\_\_\_\_  
Sandra C. Leong  
Clerk

DATED: March 7, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
SPRINT COMMUNICATIONS COMPANY L.P.)  
For Arbitration of Interconnection )  
Rates, Terms, Conditions and )  
Related Arrangements with )  
GTE Hawaiian Telephone Company )  
Incorporated. )

File No. **DOCKET NO. 96-0375**

Orders  Sprint  O.P.

Corr.  State H1

Plead  C.F. 96-0375

Jsc  Orders

est.  Sonnet  O.P.

trial  Plead

Other  Test

DATE RECEIVED  Discovery

Other

DATE RECD

ORDER NO. 15682

APR 03 '97

WILLKIE FARR & GALLAGHER  
**RECORDED**  
APR - 7 1997  
WASHINGTON, D.C.

Filed April 3, 1997  
At 11:15 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

ATTEST: A TRUE COPY  
KAREN HIGASHI  
Chief Clerk  
Public Utilities Commission  
State of Hawaii

Karen Higashi

cc: CLM  
RAP  
J. Ivanuika - by Fax  
Mike Smith - by Fax  
Renee Callaghan  
J. Toledo

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII**

In the Matter of the Petition of )	
SPRINT COMMUNICATIONS COMPANY L.P.)	Docket No. 96-0375
)	
For Arbitration of Interconnection)	Order No. 15482
Rates, Terms, Conditions and )	
Related Arrangements with )	
GTE Hawaiian Telephone Company )	
Incorporated. )	
_____ )	

**ORDER**

I.

By Order No. 15428, filed on March 7, 1997, the commission ordered SPRINT COMMUNICATIONS COMPANY L.P. (Sprint) and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED (GTE Hawaiian Tel) to submit, not later than March 27, 1997, an interconnection agreement incorporating the terms agreed to by the parties and the results of Decision No. 15316, together with each party's proposal on issues still in dispute. The submission was to be in the format of and based on the GTE Hawaiian Tel-AT&T Communications of Hawaii, Inc. (AT&T) submission to the commission on February 26, 1997, in Docket No. 96-0329.

On March 17, 1997, GTE Hawaiian Tel filed a motion for reconsideration of Order No. 15428. Sprint filed a reply to GTE Hawaiian Tel's motion for reconsideration on March 21, 1997.

On March 27, 1997, Sprint requested an extension of time until April 11, 1997, to file the interconnection agreement. On

the same date, GTE Hawaiian Tel filed a reply to Sprint's request for an extension of time.

## II.

In its motion for reconsideration of Order No. 15428, GTE Hawaiian Tel requests that the commission reconsider its ruling requiring the parties to negotiate from the GTE Hawaiian Tel-AT&T submission and order the parties to continue negotiating from the GTE Hawaiian Tel-Sprint document. Having considered the arguments made by GTE Hawaiian Tel, we see no reason to change our decision with respect to the format and basis of the GTE Hawaiian Tel-Sprint interconnection agreement. We, thus, deny GTE Hawaiian Tel's motion for reconsideration.

Sprint's request for an extension of time up to April 11, 1997, to file an interconnection agreement is reasonable in light of the ongoing negotiations. We, thus, grant Sprint's request.

## III.

### THE COMMISSION ORDERS:


1. GTE Hawaiian Tel's motion for reconsideration of Order No. 15428 is denied.
2. Sprint's request for an extension of time up to April 11, 1997, to file an interconnection agreement in the format of and based on the GTE Hawaiian Tel-AT&T document is granted.
3. If the parties are unable to file a joint submission by April 11, 1997, each party shall file its version of an interconnection agreement by that date. The interconnection agreement shall follow the format (i.e., the headings and section

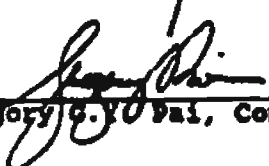
numbers) and text of the GTE Hawaiian Tel-AT&T document. For the uncontested issues, the interconnection agreement may either defer to the language of the GTE Hawaiian Tel-AT&T document or reflect the parties' agreed upon text. For issues still in dispute, each party shall submit its proposal on the issue. The parties shall clearly indicate where the text or format of the interconnection agreement deviates from the GTE Hawaiian Tel-AT&T document.

DONE at Honolulu, Hawaii this 3rd day of April, 1997.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Yorio Waiho, chairman

By   
Dennis R. Yamada, Commissioner

By   
Gregory C. Y. Pai, Commissioner

APPROVED AS TO FORM:

  
Anthony D. Valdez  
Commission Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing Order No. 15482 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

P. KEVIN PAYNE, VICE PRESIDENT-EXTERNAL AFFAIRS  
GTE HAWAIIAN TELEPHONE COMPANY INC.  
P. O. Box 2200  
Honolulu, HI 96841

CAROL MATCHETT, ESQ.  
SPRINT COMMUNICATIONS COMPANY L.P.  
1880 Gateway Drive, 7th Floor  
San Mateo, CA 94404

STEVEN NAGATA, ESQ.  
CARLSMITH BALL WICHMAN CASE AND ICHIKI  
1001 Bishop Street  
Pacific Tower, Suite 2300  
Honolulu, HI 96813

SEIT T. KOBAYASHI, ESQ.  
CLIFFORD S. HIGA, ESQ.  
ROD S. AOKI, ESQ.  
KOBAYASHI, SUGITA & GODA  
First Hawaiian Center  
999 Bishop Street, Suite 2600  
Honolulu, HI 96813

*Karen Higashi*  
\_\_\_\_\_  
Karen Higashi  
Chief Clerk

DATED: April 3, 1997



STATE - INDIANA



INDIANAPOLIS, 46204

INDIANA UTILITY REGULATORY COMMISSION  
302 W. WASHINGTON STREET, ROOM 8308

FEB 24 1997

IN THE MATTER OF SPRINT COMMUNICATIONS )  
COMPANY L.P.'S PETITION FOR ARBITRATION )  
OF INTERCONNECTION RATES, TERMS, )  
CONDITIONS AND RELATED ARRANGEMENTS )  
WITH GTE OF THE NORTH, INC. )

REGULATORY COMMISSION  
CAUSE NO. 40625-INT-02  
APPROVED: [Signature]

DATE RECEIVED

You are hereby notified that on this date the Indiana Utility Regulatory Commission has caused the following entry to be made:

On January 15, 1997, the Commission issued its arbitration order in this Cause. In that order, the parties were required to file an interconnection agreement with the Commission within thirty (30) days.

On February 14, 1997, the Commission received a Verified Application from one of the parties, GTE of the North ("GTE") which states that along with the Application, it is submitting the interconnection agreement between GTE and Sprint Communications Company, L.P. ("Sprint") for approval by the Commission within thirty (30) days, pursuant to §252(e) of the Telecommunications Act of 1996 (the "Act"). The Application further states that in certain instances, the parties have been unable to agree on contractual language because either (a) the Commission did not specifically resolve the disputed matter in the January 15, 1997 Order, or (b) the disputed matter was not specifically addressed in the other arbitrations. The Application states that despite their diligent efforts to do so, the parties are unable to resolve their disagreements over the disputed language.

On February 14, 1997, Sprint filed its Motion for Extension of Time for Filing of Interconnection Agreement. The Motion states that Sprint intends to exercise its right pursuant to §252(i) of the Act to elect the Indiana AT&T/GTE approved agreement for use as Sprint's contract with GTE in Indiana. Sprint states that it has concluded that it is unlikely that Sprint will be able to obtain a reasonable and nondiscriminatory interconnection agreement without adopting a different approach regarding the form of the agreement. The Motion states that Sprint believes that in order to ensure Sprint achieves competitive parity in the services obtained from GTE, it is necessary for Sprint to adopt, as a whole, the interconnection agreement between AT&T and GTE which is to be

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FEB 28 1997

approved by the Commission. Further, the Motion states that in order to accomplish that result, Sprint will need to obtain the final AT&T/GTE agreement approved by the Commission and make the modifications necessary to have the agreement applicable to Sprint before filing it with the Commission. Therefore, Sprint requests an extension to two weeks after Commission approval of the AT&T/GTE agreement to file the Sprint/GTE agreement.

The presiding Commissioner and Administrative Law Judge, being sufficiently advised in the premises, now find that the filing made by GTE on February 14, 1997 is not an interconnection agreement as defined in the Act and therefore, the thirty (30) days for Commission review have not begun. Further, Sprint's Motion for Extension of Time should be granted.

IT IS SO ORDERED.

Camie J. Swanson-Hull  
Camie J. Swanson-Hull, Commissioner

Abby R. Gray  
Abby R. Gray, Administrative Law  
Judge

Dated: \_\_\_\_\_

2/21/97

Brian J. Cohee  
Brian J. Cohee, Executive Director  
and Secretary to the Commission

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Sprint Communications )  
Company L.P.'s Petition for Arbitration of )  
Interconnection Rates, Terms, Conditions )  
and Related Arrang ements With GTE North )  
Incorporated. )

File No. \_\_\_\_\_  
Order No. **96-1021-TP-ARB**  
Sprint O.P.  
Corr.    
Head    
Disc    
Est.    
Misc.    
DATE RECEIVED

ENTRY

The Commission finds:

- (1) On January 30, 1997, the Commission issued an Arbitration Award in this case, directing Sprint Communications Company L.P. (Sprint) and GTE North Incorporated (GTE) to file an interconnection agreement incorporating the Commission's determinations therein by February 13, 1997.
- (2) On February 13, 1997, Sprint filed a motion for an extension of time in which to file the agreement until two weeks after the Commission approves an interconnection agreement between AT&T and GTE in Case No. 96-832-TP-ARB. In support of its motion, Sprint indicates that it intends to exercise its right to elect the AT&T/GTE contract pursuant to Section 252(l) of the Telecommunications Act of 1996 (the Act) to use as Sprint's Ohio contract with GTE. Sprint requests the additional time in order to allow it to receive a copy of the approved agreement and to change names and other references in the contract to apply to Sprint. Specifically, Sprint asserts that in order to ensure that it achieves competitive parity in the services obtained from GTE, it is necessary for Sprint to adopt, as a whole, the interconnection agreement between AT&T and GTE.
- (3) On March 4, 1997, GTE filed a memorandum contra. GTE objects to Sprint's request for the following reasons: (1) Sprint did not raise in this case as many or the same issues as did AT&T; (2) Sprint agreed to settle several issues on bases that are inconsistent with the AT&T arbitration decision; (3) Sprint and GTE have never negotiated based on the AT&T agreement; (4) the AT&T agreement itself was never an issue in the Sprint arbitration; (5) to allow Sprint to adopt the AT&T/GTE agreement would violate the Commission's Arbitration Award issued in this case; (6) to allow Sprint to adopt the agreement would subvert the good faith negotiation

by GTE and the arbitration provisions of Section 252; (7) having commenced arbitration, Sprint lost its right to elect to accept the AT&T/GTE agreement; and (8) to allow Sprint to adopt the agreement would establish an unsound precedent. Further, GTE recognizes that a requesting carrier under Section 252 of the Act has three options for obtaining an interconnection agreement: (1) engage in negotiations to arrive at a voluntarily agreed to interconnection arrangement; (2) seek binding arbitration if an agreement cannot be reached; and (3) purchase interconnection services or network elements from an incumbent local exchange carrier under an interconnection agreement between that carrier and another requesting exchange carrier. Thus, GTE argues that, since Sprint opted to arbitrate the unresolved issues, it is precluded from utilizing the third option by electing to take the AT&T agreement.

Initially in its memorandum, GTE indicates that it is not clear as to whether Sprint intends to elect the entire agreement or negotiate further changes or additions to the AT&T agreement. Specifically, GTE cites to a letter from Sprint, dated February 5, 1997, and attached to GTE's memorandum, which indicates that Sprint desires "to negotiate any other changes that will make the AT&T agreement more closely reflect the business practices of the two parties." GTE argues that Sprint's request should still be denied even if Sprint is willing to elect the AT&T contract in its entirety based on the timing of the request. GTE relies on the stay of the Eighth Circuit Court of Appeals of Section 51.809 of the FCC's First Report and Order<sup>1</sup> as it relates to the "picking and choosing" of rates, terms, and conditions of another interconnection agreement. Specifically, GTE cites to the court's finding that "the 'pick and choose' rule will operate to further undercut any agreement that are actually negotiated or arbitrated." In sum, GTE argues that Sprint's request at this late juncture undermines the integrity of the entire arbitration process provided for under Section 252 of the Act and is an example of what the court was attempting to prevent by staying the FCC's "pick and choose" provision.

- (4) On March 13, 1997, Sprint filed a reply memorandum to GTE's memorandum contra. In its reply, Sprint clearly indicates that it has moved for an extension of time for the purpose of electing the entire interconnection agreement, once

---

<sup>1</sup> The Federal Communication Commission's First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-95 (Aug. 8, 1996).

the agreement is approved. Sprint, therefore, argues that GTE's reliance of the stayed "pick and choose" provision is irrelevant and moot. Further, Sprint expresses concern that initiation of arbitration proceedings should not act as a "cut-off" of Section 252(i) election rights. Sprint points out that a party requesting interconnection has only a limited window under the statute to petition for arbitration or suffer potential waiver:

- (5) We understand GTE's frustration with Sprint's request after having expended time and expense to arbitrate this case. The Commission shares in GTE's frustration in that it is costly and time consuming for the Commission to arbitrate these cases. Nevertheless, we do not believe that Sprint's initiation of the arbitration should necessarily preclude it from electing the AT&T contract in its entirety. We believe that Sprint is entitled to the same terms and conditions as are contained in the AT&T/GTE contract pursuant to Section 252 of the Act. We also recognize Sprint's concern that requesting carriers have a window of opportunity to initiate arbitration, or otherwise waive its right to arbitrate unresolved issues. While this is a legitimate concern, the Commission would suggest that requesting carriers consider the possibility of holding the arbitrations in abeyance pending further negotiations or for the purpose of determining whether it desires to elect another contract that may be pending before the Commission before it initiates an arbitration. The Commission would consider such requests on a case-by-case basis.
- (6) Sprint's request for additional time and motion to elect the AT&T/GTE contract will be granted. Accordingly, Sprint and GTE are directed to submit the executed agreement for approval in a NAG docket, pursuant to the Commission's guidelines in Case No. 96-463-TP-UNC. By approving the agreement, we would not be automatically approving any modifications or amendments approved in the AT&T/GTE case in the future. therefore, the parties shall file any proposed amendments or modifications to the approved agreement in a separate NAG docket. Since there are no matters left for the Commission to resolve in this case, this case should be closed of record.

It is, therefore,

ORDERED, That Sprint's request for additional time and motion to elect the AT&T/GTE contract are granted. It is, further,

ORDERED, That this case be closed of record. It is, further,

ORDERED, That a copy of this Entry be served upon all telephone companies in Ohio and all new local exchange companies with pending applications.

THE PUBLIC UTILITIES COMMISSION OF OHIO

*[Handwritten signature of Craig A. Glazer]*

Craig A. Glazer, Chairman

*[Handwritten signature of Jolynn Barry Butler]*

Jolynn Barry Butler

*[Handwritten signature of Ronda Hartman Bergus]*

Ronda Hartman Bergus

*[Handwritten signature of David W. Johnson]*

Richard M. Fennelly

David W. Johnson

MKF:geb

Entered in the Journal

APR 10 1997

A True Copy

*[Handwritten signature of Gary E. Nigro]*  
Gary E. Nigro  
Secretary

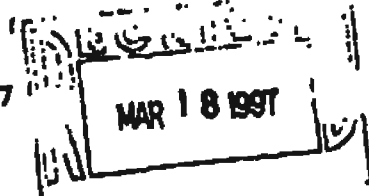


COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3285, HARRISBURG, PA 17105-3285

KS

IN REPLY PLEASE  
REFER TO OUR FILE

March 14, 1997



A-310183 F. 2

CHRISTOPHER D MOORE ESQUIRE  
SPRINT COMMUNICATION COMPANY  
1850 "M" STREET NW STE 1110  
WASHINGTON DC 20036

State	
File No.	
Orders	<input type="checkbox"/>
Sprint	<input type="checkbox"/>
O.P.	<input type="checkbox"/>
Corr.	<input type="checkbox"/>
Feed.	<input type="checkbox"/>
Comm.	<input type="checkbox"/>
Test	<input type="checkbox"/>
Blot	<input type="checkbox"/>
Other	<input type="checkbox"/>
Date Received	

File No.	
Orders	<input type="checkbox"/>
Sprint	<input type="checkbox"/>
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Corr.	<input type="checkbox"/>
Feed.	<input type="checkbox"/>
Blot	<input type="checkbox"/>
Other	<input type="checkbox"/>
Date Received	

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Petition of SPRINT COMMUNICATIONS COMPANY L.P. for arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with GTE NORTH, INC.

Dear Sir:

This is to advise you that an Opinion and Order has been issued in public meeting held March 13, 1997 on the above entitled proceeding.

A copy of the Opinion and Order is enclosed for your records.

Very truly yours,

John G. Alford, Secretary

EMD

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, Pennsylvania 17105

Public Meeting held March 13, 1997

Commissioners Present;

- John M. Quain, Chairman
- Lisa Crutchfield, Vice Chairman
- John Hanger
- David W. Rolka
- Robert K. Bloom

In Re: Petition of Sprint  
Communications Company L.P.  
for Arbitration of Interconnection  
Rates, Terms, Conditions and Related  
Arrangements with GTE North, Inc.

A-310183F0002

OPINION AND ORDER

BY THE COMMISSION:

This matter comes before the Commission on a Motion for Extension of Time filed by Sprint Communications Company L.P. ("Sprint") on February 11, 1997. By Opinion and Order entered January 13, 1997 at this Docket, this Commission directed Sprint and GTE North, Inc. ("GTE") to, inter alia, file their final interconnection agreement within thirty days following entry of that Opinion and Order as set forth in In re: Implementation of the Telecommunications Act of 1996, Docket No. M-00960799 (Order entered June 3, 1996). By its Motion, Sprint seeks an extension of time within which to file its final interconnection agreement with GTE to two weeks beyond the date upon which the



interconnection agreement between GTE and AT&T Communications of Pennsylvania, Inc. ("AT&T") is approved. The GTE-AT&T interconnection proceeding at Commission Docket No. A-310125F0002 has been concluded, but no final interconnection agreement has been filed at this time. In its Motion, Sprint indicates that GTE will support a one week extension of time beyond the approval of the AT&T interconnection agreement.

In support of its Motion, Sprint asserts that throughout its arbitration proceeding with GTE, Sprint has sought parity with AT&T. The concept of parity, according to Sprint, requires that Sprint be afforded the same rates, terms and conditions of interconnection provided to AT&T by GTE to provide service in GTE's service territory. Sprint asserts that it is entitled to the terms of the AT&T-GTE agreement pursuant to Section 252(f) of the Telecommunications Act of 1996 ("Act"), 47 U.S.C. §252(i). Sprint argues that a Sprint-GTE agreement based upon the GTE proposed form will not provide Sprint with an adequate interconnection agreement when compared to the AT&T-GTE agreement.

Sprint also asserts that it has formally requested GTE to enter into an agreement which is identical in its terms and conditions to that between AT&T and GTE. According to Sprint, Section 252(i) of the Act requires that GTE make those terms and conditions available to Sprint. Sprint argues that Section 252(i) of the Act provides that incumbent local exchange carriers "shall" make available the terms and conditions of approved agreements to other telecommunications providers. Sprint concludes its Motion by stating that the extension of time is sought to enable

Sprint to exercise its "entitlement" under Section 252(i) of the Act to elect the AT&T-GTE agreement.

GTE has not filed a formal response. As noted above, Sprint represents that GTE is willing to support an extension of one week after the approval of an AT&T-GTE interconnection agreement.

In this instance, both parties to the arbitration support the request for extension of time. We are cognizant of Sprint's arguments relating to Section 252(i) of the Act, but need not address them in the context of the limited request before us. In view of the fact that both parties are in support of the requested extension of time, we will grant it. Also, considering the nature of the matter before us, we will approve an extension of time of two weeks beyond the date upon which the AT&T-GTE interconnection agreement is approved in the proceeding at our Docket No. A-310125F0002. While we note GTE's support is only for a one week period following the AT&T agreement, we see no reason why Sprint's request should not be granted in full;  
**THEREFORE,**

**IT IS ORDERED:**

1. That the Motion for Extension of Time filed by Sprint in this proceeding is hereby granted.

2. That Sprint and GTE shall have an extension of time of two weeks beyond the date upon which the interconnect'on agreement of GTE and AT&T is approved in the matter now docketed at Docket No. A-310125F0002 within which to file their interconnection agreement in this proceeding.

BY THE COMMISSION

  
John G. Ryland  
Secretary

(SEAL)

ORDER ADOPTED: March 13, 1997

ORDER ENTERED: MAR 14 1997

**SERVICE DATE**

State        **FEB 27 1997**

**TELECOMMUNICATIONS AND TRANSPORTATION COMMISSION**

Case No.	_____
File No.	_____
Order	_____
Priority	_____
Disc.	_____
Adm.	_____
Reg.	_____
Int.	_____
Ext.	_____
Other	_____

In the Matter of the Petition for Arbitration  
of an Interconnection Agreement Between )  
)  
**SPRINT COMMUNICATIONS COMPANY L.P.** )  
and )  
**GTE NORTHWEST INCORPORATED** )  
)  
Pursuant to 47 USC Section 252. )  
..... )

**DOCKET NO. UT-980289**

**ORDER DENYING REQUEST  
FOR EXTENSION OF TIME TO  
FILE INTERCONNECTION  
AGREEMENT**

RECEIVED

The Arbitrator's Report and Decision, dated January 17, 1997, in this matter directed the parties to file an agreement with the Commission within 30 days, pursuant to 47 USC § 252(e) of the Telecommunications Act of 1996 ("Act"), and the Commission's Interpretive and Policy Statement, Docket No. UT-980289 (June 27, 1996). On the due date, February 18, 1997,<sup>1</sup> Sprint Communications Company L.P. ("Sprint") filed Motion for Extension of Time to File Interconnection Agreement ("Agreement"). Also on that date, GTE Northwest Incorporated ("GTE") filed Interconnection, Resale, and Unbundling Agreement Between GTE and Sprint.

A teleconference was conducted between the parties and Arbitrator Larry Berg on the afternoon of the due date to discuss Sprint's request. Arbitrator Berg notified the parties that the Commission granted a temporary extension of time in order for the parties to fully present their respective positions with regards to the issues raised in Sprint's motion and to whether good cause for a continuance had been established. Written comments were requested to address the impact of Sprint's stated intent to request the terms and conditions of the AT&T-GTE arbitration agreement under Section 252(f) of the Act, once the contract is approved by the Commission, on the requirements for approval of arbitrated agreements under Section 252(e). The deadline for submitting an interconnection agreement to the Commission for approval under Section 252(e) was extended until February 28, 1997, and the notice of extension was signed and filed on February 19, 1997.

GTE argues that the Commission did not issue its "temporary extension" ruling until February 19, 1997, the day after the deadline, and that GTE timely filed an agreement on February 18, 1997; therefore, there would be no point in a "further continuance" of the agreement filing date. It is readily apparent from Sprint's argument that it does not seek to continue the filing date of an agreement between GTE and Sprint per se, but that it seeks to avoid the filing and approval of an interconnection agreement arising out of the negotiation and arbitration which was

<sup>1</sup>The due date would have been February 17, 1997 except for the Presidents' Day holiday.

conducted between the parties in its entirety. Sprint seeks to extend the time for filing an interconnection agreement for Commission approval until there is an AT&T-GTE contract approved and available for election in its entirety, at which time Sprint proposes that the AT&T-GTE contract be approved in this proceeding as well.

Postponements, continuances, and extensions of time may be requested pursuant to WAC 480-09-440, and may be granted upon a showing of good and sufficient cause. Furthermore, requests which are not timely made must specify the nature of the circumstances which prevented making a timely request. The Sprint motion, which was made on the date of the deadline, was not timely made. Sprint states that it had communicated its intent to seek a continuance to GTE as early as February 5, 1997, that it pursued a stipulation for continuance with GTE up to the date prior to the deadline, and that the demand to respond to numerous other arbitration deadlines prevented Sprint from timely filing its request. While the Commission agrees with GTE that a heavy and demanding workload is the present day norm, rather than the exception, in this instance GTE experiences no prejudice arising out of the late request and the motion will be considered.

In its attempt to meet its burden of establishing good cause Sprint repeats its arguments that it needs parity with AT&T in order to effectively compete in state as Washington's local market opens up. Sprint also makes reference to the Arbitrator's Report and Decision wherein Sprint was denied the opportunity to request the terms and conditions of the AT&T-GTE agreement until such time that an agreement was approved by the Commission. Sprint states that it has determined that it is necessary to adopt an approved contract in its entirety once that contract has been approved by the Commission. Sprint's arguments relating to the relative merits of the proposed agreements which have been filed in this proceeding and the AT&T-GTE proceeding is not germane.

Section 252(f) of the Act establishes rights on behalf of any requesting telecommunications carrier to receive terms and conditions arising out of agreements which are approved by the Commission:

**Availability to other Telecommunications Carriers:** A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The rights which are established by Section 252(f) are available to any "requesting telecommunications carrier" who is not a party to that approved agreement. While GTE may argue that the rights which are established by Section 251(f) are only

available to any requesting telecommunications carrier who is not a party to "an" approved agreement, this interpretation is contrary to the express language of the Act. The Commission finds no language in the Act which would otherwise restrict any telecommunications carrier to make a request pursuant to Section 252(f).

Sprint also refers to the Federal Communications Commission ("FCC") First Report and Order ("Order"),<sup>3</sup> and it argues that it should be permitted to obtain its statutory rights pursuant to § 252(f) on an expedited basis in this proceeding. Paragraph 1321 of the FCC Order states:

Since agreements shall necessarily be filed with the states pursuant to section 252(h), we leave to state commissions in the first instance the details of the procedures for making agreements available to requesting carriers on an expedited basis.

At this point in time, the Commission has not established the details of the procedures for making agreements available to requesting parties on an expedited basis. The Commission finds that it is not necessary to establish the details of expedited procedures in order to determine whether Sprint has established good cause for a continuance in this proceeding. Sprint's entitlement to otherwise fully exercise its rights pursuant to § 252(f) is not prejudiced by the absence of expedited procedures because its rights have not ripened at this time.

The FCC has expressed the view that section 252(f) appears to be a primary tool of the Act for preventing discrimination under section 251.<sup>4</sup> Requiring the availability of agreements provides new entrants with realistic benchmarks upon which to base negotiations which further the Congressional purpose of increasing competition. Furthermore, as of this date it is judicially unresolved as to whether requesting telecommunications carriers will be allowed to choose among providers of prior interconnection agreements or to accept an agreement in its entirety. There is a clear public interest to be served by approving agreements arising out of arbitrations in the State of Washington.

More importantly, Section 252(a) of the Act states:

(1) Approval required: Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to

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<sup>3</sup>First Report and Order, CC Docket No. 96-65, August 1, 1996, para. 1321).

<sup>4</sup>See FCC Order, para. 1298.

which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

The Act does not provide for the unilateral abandonment of the approval process by a party to the arbitration. Although the deadline for the time within which to file an interconnection agreement has been extended, 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)(6)).

Accordingly, the Motion for Extension of Time to File Interconnection Agreement filed by Sprint Communications Company L.P. is denied on the basis that it fails to make a good and sufficient showing. The parties are required to file an interconnection agreement with the Commission in accordance with the terms of the temporary extension which was previously granted.

DATED at Olympia, Washington and effective this 27th day of February 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



STEVE McLELLAN  
Secretary

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and exact copy of the within and foregoing Legal Memorandum in Support of Petition of Sprint Communication Company Limited Partnership for Approval of Section 252(i) Election of Interconnection Agreement has been served upon the following, via United States Mail, first class postage prepaid.

Jim Butler  
Cox Communications  
4585 Village Ave.  
Norfolk, VA 23502

Beverly Y. Menard  
GTE Florida Incorporated  
% Mr. Ken N. Waters  
106 East College Ave., Ste. 1440

Anthony P. Gillman  
GTE Florida Incorporated  
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Scheffel Wright  
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Tallahassee, FL 32302

This 19<sup>th</sup> day of November, 1997

  
\_\_\_\_\_  
Vickie Wade