

ORIGINAL



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September 11, 2001

Ms. Blanca Bayó
Division of Commission Clerk and
Administrative Services
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0805

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COMMISSION
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RE: Docket No. 011177-TP, MCImetro ("MCI") Complaint against Sprint

Dear Ms. Bayó:

This letter (and 15 copies) is filed in response to MCI's request to handle this Complaint under expedited procedures detailed in a Memorandum from Commission Staff to Melinda Butler, Assistant to Commission Chairman Jacobs, dated May 1, 2001. (Although MCI refers to a June 19, 2001 Memorandum, the document provided to Sprint by Commission Staff is dated May 1, 2001.) As far as Sprint is aware this Memorandum has never been made publicly available and Sprint was not aware of the procedure outlined in the Memorandum until obtaining a copy from Staff subsequent to the filing of MCI's Complaint.

Sprint first notes that, prior to MCI's filing of its Complaint, Sprint had verbally communicated to MCI its agreement to continue providing services to MCI, including processing new orders and allowing access to Sprint's IRES system used for pre-ordering and ordering of services, for the 90 day transition period specified in the termination section of the agreement. This agreement is embodied in the attached letter dated September 5, 2001. Therefore, MCI's request for emergency relief requiring Sprint to reinstate such services is now moot, as the services are currently being provided by Sprint.

In reviewing the procedures detailed in the Staff Memorandum, Sprint notes that there is no opportunity provided for Sprint to submit a response to MCI's request for expedited processing within the scheduled time frame for the Prehearing Officer to make a determination as to whether expedited relief is appropriate to resolve the Complaint. In consultation with Staff legal counsel, Sprint was advised to file a letter expressing any concerns it has regarding whether the Complaint meets the criteria for expedited treatment detailed in the Memorandum. This letter is filed pursuant to that advice and is not intended as Sprint's Answer to the Complaint, which Sprint is entitled to file pursuant to Rule 28-106.203, Florida Administrative Code. That Answer will be filed at the

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appropriate time (either 20 days from the filing of the Complaint or such other time as designated in a procedural order issued by the Prehearing Officer).

Sprint shares MCI's desire for a speedy resolution of this Complaint and concurs with MCI's willingness to use negotiation and mediation to resolve the Complaint outside of the formal hearing process. However, Sprint disputes certain claims made by MCI concerning whether the Complaint satisfies the criteria for expedited processing set forth in the Staff Memorandum. First, Sprint does not agree that MCI has adequately set forth the issues that must be determined to resolve the Complaint. MCI has stated in its petition that there are only two issues to be resolved: 1) Did Sprint properly terminate its Interconnection Agreement with MCImetro and 2) What relief should the Commission order. Sprint believes that, at the very least, there is one additional issue that must be addressed, that is, are certain provisions of the contract: a) in conflict with decisions of the FCC or the Commission promulgated subsequent to the execution of the agreement or b) rendered insufficiently clear to be effectuated as a result of subsequent invalidation of rules or orders of the FCC that were in effect at the time the agreement was entered into. Sprint also suggests the inclusion of an additional specific issue addressing whether MCI failed to negotiate in good faith to resolve these conflicting or invalidated provisions of the contract, although this issue could be discussed and addressed under MCI's Issue 1.

Second, Sprint does not agree that the third criteria for expedited treatment has been met in that Sprint does not agree with the facts that MCI has set forth regarding the actions that it took (rightly or wrongly) pursuant to the agreement. Specifically, to the best of Sprint's knowledge and belief, Sprint never received the June 22, 2001 letter referred to in Mr. Martinez's testimony (page 4, lines 15-19) and attached to the testimony as an exhibit. Sprint questions whether that letter was, in fact, ever sent to Sprint. John Clayton's August 31, 2001 letter terminating the agreement due to MCI's breach makes clear that Sprint was unaware of the June 22, 2001 letter when it states "MCImetro has not responded to Sprint's June 21 notice." Sprint's belief that MCI had failed to respond to the June 21 notice was a material fact in its determination that MCI had breached the agreement by failing to initiate negotiations within the 45 day period allowed under the agreement and referenced in the June 21 letter.

Finally, Sprint disagrees with MCI's assertion that there are no disputed issues of material facts related to this Complaint (Complaint, paragraph 20). In fact, Sprint disputes Mr. Monroe's assertion as to the meaning of the word "conflict" in the change of law provisions of the agreement (Monroe Direct Testimony, p. 5). Sprint also disputes Mr. Monroe's implied allegations as to the intent of the parties concerning when the change of law provisions would apply that are evidenced throughout his discussion of the

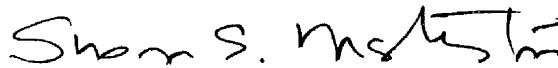
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provisions identified by Sprint as subject to the change of law provisions. The word "conflict" is not defined in the agreement. Sprint asserts that the meaning cannot be ascertained within the four corners of the agreement and, therefore, must be determined by ascertaining the intent of the parties based on the facts and circumstances existing at the time the parties entered into the agreement. This intent is a disputed issue of material fact in that it goes to the heart of the issue of whether the change of law provisions apply and whether MCI failed to negotiate in good faith as required by the agreement.

Sprint also notes an additional concern with the process laid out in the Staff Memorandum. It appears that the process fails to provide adequate opportunity for the parties to present legal argument regarding the issues in dispute. Such arguments are typically included in post-hearing briefs filed by the parties; however, the Staff process contemplates a bench decision with no opportunity for post-hearing filings (such filings are authorized by Rule 28-106.215, F.A.C). While MCI attempts to address this deficiency by presenting its attorney as a witness and embodying his legal arguments in his testimony, the filed testimony (assuming it would even be admissible) includes merely legal conclusions without citation to supporting legal authority, thereby, failing to provide the Commission an adequate basis for determining the legal merits of the Complaint. As far as Sprint can surmise from the procedure set forth in the Staff Memorandum there is no opportunity to cure this deficiency provided in the current expedited procedures.

Sprint stands ready to work with the Commission and with MCI to ensure a swift resolution of this Complaint. However, Sprint cannot agree with MCI that the Complaint meets the criteria set forth in the Staff Memorandum. Also, Sprint has serious reservations concerning whether the process as set forth provides an adequate opportunity to present the facts and legal arguments supporting each party's position regarding the disputed issues. Such an opportunity is necessary to provide the Commission a sufficient factual and legal basis for the decision it ultimately renders to resolve the Complaint.

Sincerely,



Susan S. Masterton
Attorney for Sprint-Florida, Incorporated

Attachment

Cc: Pursuant to attached Certificate of Service



William E. Cheek
Vice President
Sales & Account Management

Local Telecommunications Division
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Mailstop KSOPHM0316-3B925
Voice 913 315 8026
Fax 913 315 0627

Via Fed Ex

September 5, 2001

Mr. Bryan Green
Southern Financial Operations
MCI Telecommunications Corporation
2520 Northwinds Parkway, 5th Floor
Alpharetta, GA 30004

Re: Post Termination Services in Florida

Dear Bryan:

In an August 21, 2001 letter, Sprint notified MCImetro of our exercise to terminate the Florida Interconnection Agreement due to MCImetro's breach of contract and failure to cure. Pursuant to subsequent conversations, however, Sprint has agreed to accommodate MCImetro's request to continue processing new orders for a period of ninety (90) days which mirrors the timeframe provided in the post-termination services provision of Section 20.3 of the Interconnection Agreement.

The post-termination services provision under Section 20.3 is invoked in the event of termination for breach. Section 20.3, however, only provides for the continuation or transition of existing services and does not contemplate the provision of new services. As agreed to by Sprint and MCImetro, Sprint will continue to process new orders for a ninety (90) period commencing August 21 and ending on November 19, 2001.

For new services after November 19, 2001, MCImetro will need to have a valid interconnection agreement with Sprint. As noted in Sprint's August 21 letter to MCImetro, Sprint is willing to explore different options with MCImetro including entering into an interim agreement until a new interconnection agreement is negotiated, or helping facilitate MCImetro's opt-in of XO Communication's Florida interconnection agreement.

Please feel free to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Cheek", written over a white background.

William E. Cheek
Vice President - Sales and Account Management

cc: Commercial Counsel - Law & Public Policy - MCImetro
John Clayton
Tom Grimaldi
John Chuang

**CERTIFICATE OF SERVICE
DOCKET NO. 011177-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Hand Delivery * or Facsimile ** this 11th day of September, 2001 to the following:

Hopping Law Firm**
Richard Melson
P.O. Box 6526
Tallahassee, FL 32314
Fax: 224-8551

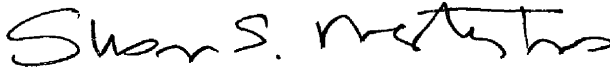
MCImetro Access Transmission **
Services LLC
Ms. Donna C. McNulty
325 John Knox Road, Suite 105
Tallahassee, Florida 32303-4131
Fax: 422-2586

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Susan S. Masterton