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March 22, 1996

IN REPLY REFER TO:

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

Re: Resolution of Petition to Establish Non
Discriminatory Rates, Terms, and Conditions
for Interconnection Involving Local Exchange
Companies and Alternative Local Exchange
Companies pursuant to Section 364.162,
Florida Statutes - Docket No. 950985-TP

Dear Ms. Bayo:

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

We are also submitting the Joint Brief on a 3.5" high-density diskette generated on a DOS computer in WordPerfect 5.1 format.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in this matter.

Sincerely,

Jeffery Wahlen
J. Jeffrey Wahlen

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Resolution of Petition to)
Establish Non Discriminatory Rates,))
Terms, and Conditions for Inter-)
connection Involving Local Exchange)
Companies and Alternative Local)
Exchange Companies pursuant to)
Section 364.162, Florida Statutes)
_____)

DOCKET NO. 950985-TP

Filed: March 22, 1996

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

Pursuant to Order No. PSC-96-0136-PCO-TP, Central Telephone Company of Florida ("Sprint/Centel") and United Telephone Company of Florida ("Sprint/United") (collectively "Sprint-United/Centel" or the "Companies") file this Joint Brief and Posthearing Statement of Issues and Positions.

I.

INTRODUCTION

The purpose of this proceeding is to set the rates, terms and conditions for local interconnection between Sprint-United/Centel and the alternative local exchange companies ("ALECs") that participated in the proceeding. This is the Florida Public Service Commission's ("FPSC" or "Commission") second opportunity to address the rates, terms and conditions for local interconnection. In its first opportunity, involving BellSouth, the Commission approved mutual traffic exchange ("bill and keep") and declined to set a rate or charge for local interconnection.

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The fact that the Commission approved mutual traffic exchange in the BellSouth case does not compel the same result in this case. As noted during the oral argument at the final hearing, Section 364.162, Florida Statutes (1995) did not order the Commission to hold a generic industry proceeding on local interconnection. Instead, it established a system of negotiation between the parties and litigation if negotiations fail. The statute does not require the same resolution of litigation involving different local exchange companies.

Moreover, even if the BellSouth decision represents the beginning of policy development in this area, Florida's Administrative Procedures Act provides that an agency may not apply nonrule policy in a final order affecting the substantial interests of a party unless the nonrule policy has a predicate in the record of the proceeding. The nonrule policy must be stated, supported by evidence, and explained, and will be subject to challenge and rebuttal by the parties to the proceeding. If the agency fails to explain adequately its nonrule policy or the nonrule policy is not supported by evidence in the record, the agency's action will be set aside and the cause will be remanded for further proceedings. McDonald v. Department of Banking & Finance, 346 So. 2d 569 (Fla. 1st DCA 1977), cert. denied, 368 So. 2d 1370 (Fla. 1979); see also Florida Cities Water Co. v. Florida Pub. Serv. Comm'n, 384 So. 2d 1280, 1281 (Fla. 1980) (FPSC's decision to disallow certain deductions consistent with its policy was not supported on the record and remanded).

Importantly, the record in this case is different than the record in the BellSouth case. Here are the major differences:

- ▶ Sprint-United/Centel presented **empirical evidence** that traffic will be out of balance. This evidence, combined with the evidence on MFS's experience in New York, shows that traffic will be out of balance.
- ▶ Sprint-United/Centel showed that the costs of measurement and auditing under an MOU or port charge arrangement are the same as would be incurred under mutual traffic exchange. Thus, these costs cannot be used to justify mutual traffic exchange.
- ▶ Sprint-United/Centel proposed a **port charge**, and BellSouth did not. The port charge may be preferable to an MOU rate in some circumstances, and was an option not available in the BellSouth case.
- ▶ Sprint-United/Centel showed that two of the petitioners in this case (Continental and Time Warner) voluntarily agreed to MOU rates in Florida that are **within a tenth of a cent** of the rates they would pay under the Companies' proposal. In the BellSouth case, the remaining litigants did not agree to BellSouth's proposed rates.
- Sprint-United/Centel showed that the third petitioner (MFS) agreed to an MOU rate in Massachusetts that is **4/10ths of a cent higher** than the MOU rate MFS would pay under the Companies' proposal. This evidence was not developed in the BellSouth case.
- ▶ Sprint-United/Centel showed that its proposed MOU rates are less than the MOU rates set by the Michigan commission. In the BellSouth case, it was alleged that approving BellSouth's proposed rates would cause Florida to have the highest MOU rate in the United States. That is not true in this case.
- ▶ Sprint-United/Centel showed that its confidential costs are consistent with MOU rates and charges set by the commissions in the states of New York, Illinois and California.
- ▶ Sprint-United/Centel and GTFL agreed on the record that the existing EAS arrangements between LECs need to be revised to include a rate or charge.

Each of these points is supported by competent substantial evidence on the record, and compels the Commission to approve Sprint-United/Centel's proposal, even though the Commission reached a different result on the record in the BellSouth litigation.

The areas of greatest disagreement in this case are Issues One (rate/charge v. mutual traffic exchange), Three (intermediary function), Eight (directories) and twelve (RIC for ported calls). The Companies' positions on each of the issues, and supporting argument and citations to the record, are set forth below in section V. Because it is the most important, Section IV includes a complete discussion and argument on Issue One.

The Commission should adopt the Companies' positions on the issues remaining for decision for the reasons set forth below in sections IV and V.

II.

PROCEDURAL BACKGROUND

This proceeding began on October 20, 1995, when Continental Cablevision, Inc. ("Continental") filed its amended petition seeking the establishment of interconnection arrangements that apply between Continental and Sprint-United/Centel. Continental's petition was followed by a petition from Time Warner AxS of Florida, L.P. ("Time Warner") seeking the same thing. Metropolitan Fiber Systems of Florida, Inc. ("MFS") filed its interconnection petition against Sprint-United/Centel on January 22, 1996. Continental, Time Warner and MFS (collectively, the "petitioners")

are the only parties that filed petitions¹ directed to Sprint-United/Centel.

MCI Metro Access Services, Inc. ("MCImetro"), AT&T Communications of the Southern States, Inc. ("AT&T"), McCaw Communications of Florida, Inc. ("McCaw") and the Florida Cable Television Association, Inc. ("FCTA") did not file petitions directed to Sprint-United/Centel, but participated in the proceedings by, among other things, taking positions on the issues, presenting witnesses, cross-examining witnesses and filing briefs. Consistent with the Commission's ruling at the beginning of the hearing, these non-petitioning entities will be bound by the decisions made on the rates, terms and conditions for local interconnection with Sprint-United/Centel.

The final hearing was held in this proceeding on March 11-13, 1996. The Companies presented the prepared direct and rebuttal testimony of Mr. F. Ben Poag, which was inserted into the record at Tr. 1179, 1214, 1220 and 1246, and the prepared rebuttal testimony of Mr. Gene Michaelson, which was inserted into the record at Tr. 1111. While Mr. Poag did not include any exhibits with his prefiled testimony, other parties and Staff presented exhibits during his cross-examination, which exhibits (Nos. 38 through 44) were admitted into the record. [Tr. 1434] Late filed exhibit No. 37 (Tr. 1171) is a state-by-state look at local interconnection decisions, and is attached to this brief as Attachment One. The

¹All of the petitions in this proceeding were filed under Section 364.162, Florida Statutes (1995).

composite exhibit attached to Mr. Michaelson's prefiled testimony (GEM-1) and his deposition transcript were admitted into the record as exhibits 35 and 36. [Tr. 1166]

III.

BASIC POSITION

* There are two appropriate compensation arrangements for local interconnection: a flat rate port charge and a per minute of use ("MOU") charge. Both should maintain the existing relationship to access charges. Mutual traffic exchange is inconsistent with the statute and not supported by the record.

IV.

THE COMMISSION SHOULD SET A MINUTE OF USE RATE OR A PER PORT CHARGE, BUT SHOULD NOT ORDER MUTUAL TRAFFIC EXCHANGE ("BILL AND KEEP"). THE COMMISSION SHOULD APPROVE THE COMPANIES' PROPOSED MOU RATES AND PORT CHARGES, WHICH ARE BASED ON THE COMPANIES' SWITCHED ACCESS RATES.

A. Introduction

Section 364.162, Florida Statutes (1995), addresses local interconnection, and states that if a negotiated price is not established "either party may petition the Commission to establish nondiscriminatory rates, terms and conditions for interconnection." Fla. Stat. § 364.162(2). The statute further provides that the "rate" or "charge" for local interconnection be set above cost. Fla. Stat. § 364.162(4).

This statute contains two basic commandments. First, if negotiations are unsuccessful, the Commission must set the "rates, terms and conditions for local interconnection." Second, the rates set by the Commission for local interconnection must not be below cost. The second commandment is expressed both positively and negatively in the statute. Section 364.162(3) twice states that the "rates shall not be below cost...." Section 364.162(4) states: "In setting the local interconnection charge, the Commission **shall determine** that the charge is sufficient to cover the cost of furnishing interconnection." (emphasis added) If the Commission does not set a "rate" or "charge" for local interconnection, and if that "rate" or "charge" is not determined to be above cost, the Commission order will not fulfill the explicit requirements of Section 364.162.

B. Sprint-United/Centel's Proposal

Sprint-United/Centel propose two compensation arrangements for local interconnection: a flat-rated port charge or a per minute of use rate. [Tr. 1182] For each, the charges should be reciprocal between the ALECs and the Companies and should cover cost. [Tr. 1182] The Companies propose that their existing network access charges, exclusive of the Carrier Common Line ("CCL") and Residual Interconnection Charge ("RIC"), serve as the basis for local interconnection rate development.² [Tr. 1183] **The specific rates**

²The CCL and RIC are excluded because they are primarily contribution rate elements established in the interexchange access environment. [Tr. 1183] The Companies believe that these rate elements are inappropriate in a competitive environment and should

and charges proposed by the Companies are included as Attachment Two to this Brief.³

Both the proposed port charges and the proposed MOU rates will meet the statutory requirement that the interconnection rate or charge cover cost. [Tr. 1183] Each alternative has advantages and disadvantages, but either can be developed to fairly compensate the parties and not impair the development of competition. [Tr. 1183-84] However, only one interconnection arrangement should be tariffed. [Tr. 1184] ALECs should not be allowed to alternatively choose and switch between the port and minute of use arrangements to the detriment of Sprint-United/Centel. [Tr. 1184]

Under the Companies' port charge proposal, the ALEC purchases the capacity of a DS1 for terminating traffic to Sprint-United/Centel. [Tr. 1184] Similarly, Sprint-United/Centel would purchase the capacity of a DS1 from the ALEC. [Tr. 1184] Depending on the ALEC's network requirements and traffic patterns, the ALEC could purchase the DS1 capacity at Sprint-United/Centel

be phased down and eliminated in the interexchange access market and thus should not be included in local interconnection charges. [Tr. 1183]

³As noted by Mr. Poag, the Companies are essentially proposing the rates included in the their agreement with ICI, which was included in the record as part of Mr. Schleiden's deposition exhibit number 7. See Poag Deposition, Exhibit 38, pages 48 and 49. Attachment Two to this brief shows those rates and how the port charges were developed. The development of the port charges is explained on the record in Poag's deposition, Exhibit 38, pages 49 - 50. The switched common transport element of the MOU rate used to compute the port charge is the rate shown under Option B multiplied by an assumed 10 miles. The MOU and port rates in the ICI agreement and Attachment Two differ slightly in that the rates and charges in Attachment Two do not include the entrance facility, which, as noted in the attachment, is optional.

access tandem, local tandem or at an end office. [Tr. 1184] The port charges proposed by the Companies are based on the Companies' proposed MOU rate times an estimated 216,000 MOU per port. [Tr. 161] The Companies have proposed port charge discounts for the first three ports purchased to reflect the fact that multiple ports may result in trunking efficiencies. [Tr. 162-163]

With a minute of use charge, billing, measurement and auditing based on actual usage is required. [Tr. 1196] The ALECs already have the necessary measurement capability. [Tr. 235, 702-703]

Because an access tandem interconnection arrangement requires more switching and transport facilities, the Companies propose a higher MOU rate and port charge for connection at a tandem than an end office. [Tr. 1185] This is consistent with the Commission's decisions in the mobile interconnection docket (Dkt. No. 940235-TL, Order No. PSC-95-1247-FOF-TL) and in the Local Transport Restructure docket (Order No. PSC-95-0034-FOF-TP). [Tr. 1186] In the mobile interconnection docket, the Commission determined that the rate for mobile-to-land traffic at the end office should be priced lower than interconnection at the tandem. [Tr. 1186] Similarly, with Local Transport Restructure, toll access charges are lower when they direct trunk to an end office. [Tr. 1186]

As shown below, the Sprint-United/Centel proposal is consistent with Section 364.162, and should be approved.

C. Section 364.162, unambiguously requires the Commission to set a rate or charge for local interconnection.

The purpose of statutory construction is to further the intent of the legislature. St. Petersburg Bank & Trust Co. v. Hamm, 414 So. 2d 1071, 1073 (Fla. 1982). The intent of the legislature is determined primarily from the language of the statute. Id. Where the statute has a plain meaning, the plain meaning of the statute must control. Id. Like a court, the Commission cannot ignore the plain meaning of a statute. Id.

Here, Section 364.162 uses plain words with plain meanings. The first commandment of the statute requires that the Commission set a "rate" or "charge" for local interconnection. Webster's⁴ defines "rate" to be "a charge, payment or price fixed according to a ratio, scale or standard." Webster's New Collegiate Dictionary, 957 (1st Ed. 1973). Black's defines "rate" to mean the "price stated or fixed for some commodity or service of general need or utility supplied to the public measured by specific unit or standard." Black's Law Dictionary, 1134 (5th Ed. 1979). The word "charge" means "the price demanded for something." Webster's at 187. These definitions do not mention "in-kind exchange" or any other form of bartering. Thus, the conclusion is clear: the plain language of the statute requires that the Commission set a price for interconnection, i.e., a per MOU rate or a per port charge like the ones proposed by the Companies.

⁴Under Florida law, plain and ordinary meaning of words in a statute can be ascertained by reference to a dictionary. Green v. State, 604 So. 2d 471, 473 (Fla. 1992); Newberger v. State, 641 So. 2d 419, 420 (Fla. 2d DCA 1994).

D. Mutual traffic exchange is inconsistent with Section 364.162.

While the petitioners would like "mutual traffic exchange," "bill and keep" or some other form of "in-kind exchange" arrangement, and have attempted to justify their position with inventive interpretations of Section 364.162, the law should not be twisted to accommodate their arguments. The statute clearly and unambiguously requires the Commission to set a local interconnection "rate" or "charge." Where the words of a statute are clear and unambiguous, judicial interpretation is not appropriate to displace the expressed intent. Zuckerman v. Alter, 615 So. 2d 661, 663 (Fla. 1993); Citizens v. Public Service Comm'n, 435 So. 2d 784, 786 (Fla. 1983); Steinbrecher v. Better Constr. Co., 587 So. 2d 492, 493 (Fla. 1st DCA 1991) Heredia v. Allstate Ins. Co., 358 So. 2d 1353, 1354-55 (Fla. 1978). The Commission, like a court, is bound to follow the plain language of the statute. See Holmes v. Blazer Fin. Serv., Inc., 369 So. 2d 987, 990 (Fla. 4th DCA 1979).

There is nothing in Section 364.162 suggesting that mutual traffic exchange can be ordered by the Commission.⁵ The statute

⁵In this regard, Section 364.162 is similar to the federal laws. As noted by Mr. Schleiden during his discussion with Commissioner Johnson, [Tr. 144-145] the new federal law specifically allows a state commission to approve an agreement "that affords mutual recovery of costs through the affecting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill and keep arrangements.)" Telecommunications Act of 1996, Pub. L. No. 104-104, § 252(d)(2)(B)(i), 110 Stat 56, 11 (1996); Conference Report, 104th Congress 2d Session 13 (1996). However, as Commissioner Johnson correctly suggested [Tr. 146, Lns. 2-5], this provision addresses negotiated agreements, not proceedings in which the state commission sets the rates or charges.

specifically requires a "rate" or "charge," but does not mention "mutual traffic exchange" or any other "in-kind" compensation arrangement. To argue that Section 364.162 implicitly allows "in-kind" compensation would violate the prohibition against reading words into a statute. James Talcott, Inc. v. Bank of Miami Beach, 143 So. 2d 657 (Fla. 3d DCA 1962) (where a statute is clear and unambiguous, the court may not steer it to a meaning which its plain wording does not supply); Armstrong v. Edgewater, 157 So. 2d 422 (Fla. 1963) (where there is doubt as to the legislative intent, or when speculation is necessary, the doubt should be resolved against the power of the court to supply missing words). To argue that the Legislature really intended to allow "in-kind" compensation ignores the fact that the Legislature could have specifically so allowed by drafting legislation specifically making that option available to the Commission.⁶ Expressio Unius Est Exclusio Alterius. Devin v. City of Hollywood, 351 So. 2d 1022 (Fla. 4th DCA 1976) ("The mention of one thing implies the exclusion of another.")

While the ALECs may argue that mutual traffic exchange is the least cost alternative, will promote competition, and is more reasonable than an MOU rate or port charge, those arguments cannot prevail. The Commission may not disregard the plain language of a statute in favor of what it deems to be a more reasonable

⁶The federal law shows that the Florida Legislature could have made specific mention of "mutual traffic exchange" or "bill and keep," but did not. This is further proof that the Commission should not order it here.

construction. Horizon Hospital v. Williams, 610 So. 2d 692, 693 (Fla. 2d DCA 1992). Moreover, the rules of statutory construction cannot be used to eviscerate clear legislative intent. United States v. Insko, 496 F.2d 204, 207 (5th Cir. 1974). The Commission must set a "rate" or "charge" for local interconnection, because mutual traffic exchange is not a "rate" or "charge" and, therefore, is not allowed under the statute.

The fact that ILECs exchange EAS traffic without compensating each other should not be the basis to order mutual traffic exchange or stray from rates based on switched access charges. Both of the ILECs in this case have indicated their intent to renegotiate their interconnection agreements as they relate to EAS. [Menard Depo., Ex. 31, p. 17; Poag Depo., Ex. 38, pp. 27-28] The correct approach is to order the ILECs to change their EAS arrangements, not to use the existing EAS arrangements, which Sprint-United/Centel and GTFL agree need to be changed, to justify mutual traffic exchange for local interconnection including ALECs.

E. Even if mutual traffic exchange is allowed by the statute, the ALECs have not met their burden to prove that traffic will be in balance and that the Companies will cover their costs.

The party asserting the affirmative of an issue has the burden to prove facts supporting that issue. Young v. Dep't of Comm. Affairs, 625 So. 2d 831, 833 (Fla. 1993); Northeast Community Hospital v. Dep't of Management Services, 651 So. 2d 170, 172 (Fla. 1st DCA 1995) citing Balino v. Dep't of Health and Rehab. Services, 348 So. 2d 349, 350 (Fla. 1st DCA 1977). Assuming, arguendo, that

mutual traffic exchange is an option under Section 364.162, the ALECs have not met their burden to prove, as a matter of fact that traffic will be in balance and that Sprint-United/Centel will cover its costs under mutual traffic exchange. Accordingly, the Commission should not authorize mutual traffic exchange, even on an interim basis.

The premise behind mutual traffic exchange is that the amount of local traffic terminating on the network of the LEC and the network of the ALEC will be equal, or "in balance." According to the ALECs, if the traffic is "in balance," each party will bear its own termination costs and the costs of interconnection will be recovered via the "in-kind" exchange of traffic. [Cornell, Tr. 837-840] There are two problems with this argument. First, the ALECs have not proved, with competent substantial evidence on the record, that traffic will be "in balance." Second, even if traffic is "in balance," either the LEC or the ALEC⁷ may not be covering its costs. [Tr. 1282-83] The ALECs have ignored the fact that the termination costs of Time Warner, Continental, MFS and the other ALECs are likely different than the termination costs of Sprint-United/Centel. [Poag discussion with Chairman Clark, Tr. 1282-83]

On the "balance" issue, the petitioners and the other ALECs have speculated that traffic will be in balance, but did not prove

⁷While the ALECs have been critical of the cost data filed by the Companies in this case, it is worth noting that the ALECs have not performed any cost studies showing the cost of call termination, or if they did, they did not include them in the record. That being the case, the Commission has no evidentiary basis on which it can determine that mutual traffic exchange allows the ALECs to cover their interconnection costs.

it. With the exception of Mr. Devine, each of the ALEC witnesses addressing the traffic balance issue simply **assumes** that traffic will be in balance. Dr. Cornell did not present any empirical studies showing that traffic will be in balance, but thinks over the long run that it will be. [Tr. 837] Mr. Schleiden admits that he has not done any empirical studies on the subject, and admitted that it might be out of balance. [Tr. 156] Mr. Wood admits that he has not done any empirical studies on the subject, and has admitted that traffic might be out of balance. [Tr. 407, 411] Indeed, in the short term, he concedes that traffic will likely be out of balance. [Tr. 408]

None of the ALECs have put on any empirical evidence showing that traffic will be in balance in the short term. Rather, they simply **assume** that it will be, or want the LECs to wait until they have actual experience to disprove their assumption before an MOU or port charge is ordered. [Wood, Tr, 413-414] Since they did not prove facts supporting the fundamental premise behind their proposed compensation arrangement, the Commission should not order mutual traffic exchange.

The only real evidence presented on this issue clearly shows that traffic will likely be out of balance. Based on a study done by Sprint/United, the traffic flows between Sprint/United and four other ILECs was out of balance by an average of 12.6%. [Tr. 1224] The range of the out of balance traffic was between 1.5% for ALLTEL and 80.1% for Vista-United. [Tr. 1224] The fact that the study involves EAS traffic and did not cover an entire year does not

diminish the probative value of this evidence. Despite the **assumptions** of the ALECs to the contrary, Sprint/United's study clearly shows that traffic can be expected to be out of balance.

Even if some believe that this empirical evidence should be discounted because it involved EAS traffic or a short period of time, it should not be discounted much. In the first place, the kind of business ALECs will pursue will likely be niche business similar to EAS traffic. [Poag, Tr. 1224] Second, as noted by Mr. Poag in his deposition [Ex. 38, pages 78-80], the results of the study presented in this case is consistent with the historical traffic studies done over different periods and lengths of time, all of which consistently produce similar results. Third, Sprint-United's empirical evidence is consistent with and supported by the empirical evidence presented on behalf of MFS by Mr. Devine on this subject.

Indeed, based on MFS's real world experience involving local exchange competition, it is clear that traffic will be out of balance at least in the beginning. [Tr. 662, Lns. 9-12; Tr. 700-701; Ex. 17] MFS's experience in New York has been that MFS terminated more calls from NYNEX customers than NYNEX terminated from MFS customers. [Tr. 499] Contrary to Dr. Cornell's unsupported assumption [Tr. 834, Lns. 10-11], this MFS exhibit shows a trend that the traffic imbalance is growing, not shrinking. [Ex. 17; Tr. 701-702] MFS's actual experience and Sprint/United's empirical study compel the conclusion that traffic cannot be expected to be in balance in the short term. Aside from the

speculation of the ALEC witnesses, the only evidence presented to the Commission shows that traffic will be out of balance. That being the case, the Commission cannot **assume** that traffic will be in balance and cannot base its selection of a compensation arrangement on that assumption.

Furthermore, the Commission cannot simply **assume** that the Companies will cover their interconnection costs under mutual traffic exchange. The statute requires that the Commission **determine** that the interconnection charge covers cost, but does not allow that as an assumption. If the Commission adopts a minute of use rate or a per port charge compensation arrangement, the Commission will have the ability to review a cost study and **determine** that the rate or charge set by the Commission covers cost. [Tr. 433-434] Under a mutual traffic exchange arrangement, no rate or charge is set and the Commission cannot compare any "rate" or "charge" with the results of a cost study to **determine** that the "rate" or "charge" covers cost. [Id.] Rather, as noted by Mr. Wood, it must **assume** that traffic will be in balance and **assume** that each party recovers its costs. [Tr. 434] In fact, even if traffic is in balance, differences between the call termination costs of the LEC and ALEC will likely be different, resulting in the potential under recovery of costs by one party or the other. [Tr. 1282-83]

In summary, because the statute requires that the Commission set a rate or charge that covers "cost," the Commission must **determine** that the charge covers cost. The Commission may not

approve a compensation arrangement that it **assumes** will cover cost. While the ALEC and ILEC may well recover their costs if traffic is in balance, there is no competent substantial evidence proving that traffic will be in balance. The empirical evidence of Sprint-United and the real world experience of MFS shows that it will be out of balance. Since costs are not measured under mutual traffic exchange, and no "rates" or "charges" are set, that type of compensation arrangement will not enable the Commission to **determine** that the "rate" or "charge" it sets covers cost. Accordingly, the Commission should not adopt mutual traffic exchange in this case.

F. Measurement and auditing costs should not be used to justify mutual traffic exchange.

Even though the ALECs did not prove that traffic will be in balance or that mutual traffic exchange will allow the parties to recover their costs, they nevertheless argue that mutual traffic exchange should be allowed because it is the least cost compensation arrangement. Here, even though the Legislature intended for the Commission to set a "rate" or "charge," the ALECs argue for something "more reasonable" that avoids the need to measure, bill and audit. Aside from the fact that the Commission cannot ignore the plain language of the statute by adopting a construction of the statute some parties believe to be "more reasonable," the premise behind this argument is incorrect and is not supported by competent substantial evidence in the record.

The record is clear on measurement costs. As noted by Time Warner's witness, Mr. Engleman, the switches used by the ALECs have the capability to measure the amount of local traffic terminated on the ALEC's network. [Tr. 235] That capability is inherent in the switch. [Tr. 235] Whether the Commission orders mutual traffic exchange, or a rate or charge as proposed by the Companies, the ALECs and ILECs will need to measure the amount of local traffic terminated. [Tr. 236] Accordingly, the measurement costs should not be used to justify a mutual traffic exchange arrangement, because those costs will be incurred anyway.

Mr. Wood's testimony, on behalf of Time Warner, demonstrates the correctness of this position. On cross examination, Mr. Wood agreed that if mutual traffic exchange is allowed, an ILEC or ALEC should be allowed to come in after a period of time (i.e., 18 months or two years) and prove that traffic in fact was out of balance. [Tr. 435] In that situation, Mr. Wood would support an MOU based true-up to allow an ILEC to recover its costs if traffic is out of balance. [Tr. 435-436] Mr. Wood's proposal would be to allow cost recovery "for the traffic in excess of the cap at TSLRIC." [Tr. 437]

Under this scenario, the LEC will need to measure the amount of terminating traffic along the way so that it can prove that traffic was in fact out of balance. [Wood Tr. 440-442] MFS has the measurement capability, has used it in New York, and can use it in Florida. [Devine, Tr. 702] If this sort of measurement must occur to enable the LEC to make the necessary showing in the future

that traffic has been out of balance in the present, the cost of measurement cannot be used to justify mutual traffic exchange. Indeed, since measurement must occur anyway, the most rational approach, consistent with the statute, would be to order an MOU or port charge as proposed by the Companies.

The same thing is true of auditing costs. Mr. Wood has conceded that the cost of auditing is basically the same under either scenario. Indeed, in his deposition, which was identified and admitted as Exhibit 15, Mr. Wood indicated that auditing costs would occur under either scenario and that the costs of auditing should not be used to justify mutual traffic exchange. [Tr. 459-460; Ex. 15, pp. 44-45] Mr. Devine's testimony on this point is essentially the same. [Tr. 702-703]

In light of this evidence, the Commission should not use measurement and auditing costs to justify mutual traffic exchange.

G. Decisions from other states should not be used to justify mutual traffic exchange in Florida.

While other states may have approved or ordered mutual traffic exchange or bill and keep, even on an interim basis, that does not mean the Commission should follow suit in Florida. This is true for several reasons.

First, the Commission should not conclude that the approval of bill and keep in other states makes bill and keep legal in Florida. Each state has a unique regulatory system and each state commission is governed by a different statute. Unless the Commission concludes that the requirements of another state's statute are

identical to the commandments in Section 364.162, the Commission should not look at other states for guidance.

Second, and more importantly, most of the states that have approved mutual traffic exchange or bill and keep have done so on an interim basis only. [See Ex. 37, Attachment One] For example, of the list included in Mr. Wood's testimony [Tr. 356-58], only one state (Michigan) has adopted bill and keep as a permanent mechanism. The Michigan decision only allows bill and keep if the traffic is in balance within 5%. [Tr. 357] All of the other decisions discussed in his testimony (California, Connecticut, Washington, and Texas) approve bill and keep on an interim basis only.⁸ [Tr. 357-358] The Washington Utilities and Transportation Commission has cogently noted: "[O]ver the long-term the bill and keep mechanism neither reflects sound economic principles nor provides the flexibility to accommodate the diversity likely to result from competition among local exchange companies...." Washington Utilities and Transportation Commission v. U S West Communications, Inc., Sixth Supplemental Order on Clarification and Reconsideration (Docket No. UT-941464, December 27, 1995) at 15. These decisions strongly suggest that MOU or port charge is the correct approach.

H. An MOU or port charge compensation argument based on switched access rates is appropriate.

⁸Exhibit 37 (Attachment One) contains a list of the decisions in other states on local interconnection.

Aside from the fact that an MOU rate or port charge are the only legal options available, adopting the Sprint-United/Centel proposal is consistent with sound regulatory policy and will promote emerging competition. The Commission should adopt Sprint-United/Centel's proposal for the following reasons.

First, the port charge has several advantages. It is administratively simple and ensures that the interconnectors are compensated relative to the level of services provided. [Tr. 1186] The port arrangement is a standard industry method for interconnection (Bellcore Standard No. TR-NWT-00499), and provides an efficiency incentive in that the interconnectors can maximize the utilization of the facility by encouraging off peak usage. [Tr. 1186]

Second, the advantages of the MOU charge are that there is no minimum purchase of capacity required and that billing tracks actual usage. [Tr. 1196] The MOU rates proposed by the Companies have been agreed to by Intermedia Communications, Inc., one of Florida's oldest and most successful competitive communications provider. [Ex. 7, p. 113, 126] More importantly, they are similar to the MOU rates agreed to between MFS, Time Warner, Continental and other LECs, both in and out of Florida.

For example, the Companies have proposed an MOU charge for local interconnection at the tandem and end office respectively of approximately \$.010920 and \$.00980, or about 1.1 cents per minute.⁹

⁹These rates project that the Company's proposal to eliminate the application of the line termination element for local interconnection effective October 1, 1996 will be accepted. [Tr. 159-160]

[Tr. 159; Attachment Two] This tandem rate of 1.1 cents a minute is **within 1/10th** of a cent of the 1.0 cent per minute rate Continental and Time Warner agreed to in their contract with BellSouth. [Tr. 159] The 1.1 cents per minute tandem rate proposed by the Companies is **less** than the 1.5 cents per minute rate agreed to by MFS in Massachusetts [Tr. 690], and is **less** than the 1.5 cent MOU rate set by the Michigan Commission. [Ex. 37] Clearly, approving Sprint-United/Centel's proposal would not make Florida the highest in the United States.

Moreover, having agreed to an MOU rate similar to the 1.1 cents MOU tandem rate proposed by the Companies, Time Warner and Continental cannot now complain that Sprint-United/Centel's rate is unreasonable. Likewise, having agreed to a rate in Massachusetts that is **four tenths of a cent higher** than the rate proposed by the Companies, MFS cannot now complain that the 1.1 cents per minute rate proposed by Sprint-United/Centel is unreasonable. Rather, the 1.1 cents rate proposed by the Companies is reasonable relative to what the ALECs themselves have agreed to and should be approved by the Commission.

Third, the MOU rates and port charges proposed by the Companies are sufficient to cover their TSLRIC cost. While the specific numbers in Mr. Poag's confidential exhibit have not been disclosed [Ex. 44], it is safe to say that the TSLRIC of call termination for the Companies is between a half and three-quarters of a cent. [Tr. 1347] While some have criticized these costs as being too high, these costs are consistent with MOU interconnection

prices of \$.0074 (end office) and \$.0098 (access tandem) set in New York [Tr. 684]; half a penny (end office) and three-quarters of a penny (access tandem) set in Illinois; [Tr. 686] and \$.0745 per minute set in California. [Tr. 698] While the rates and charges proposed by the Companies include a modest contribution to joint and common costs, the rates proposed by the Companies are reasonable relative to rates approved in other states. Therefore, the Commission should not hesitate to approve them.

Fourth, the MOU and port charges proposed by the Companies, which are based on switched access charges, avoid the possibility of price discrimination and maintain the integrity of the Company's switched access charges. Almost without exception, the witnesses questioned on the point agreed that termination of traffic on an LEC's network is technically provided in the same manner whether it is for the termination of toll or local traffic. [Schleiden, Tr. 180; Wood, Tr. 450; Devine, Tr. 713] That being the case, ordering MOU rates that are substantially below the Companies' switched access rates could be considered to be discrimination and would be inconsistent with Chapter 364, Florida Statutes.

I. **The Commission should not set local interconnection rates or charges at TSLRIC.**

Contrary to the arguments of the ALECs, the Commission should not set local interconnection rates or charges at TSLRIC for several reasons. Mr. Poag's developer analogy [Tr. 1288-1291] explains why using a simple example.

In addition, it is generally accepted that incremental costing methods are not used for price setting but are rather a price floor which is used to test for cross-subsidization. [Tr. 1226]

Second, Sprint-United/Centel has other costs in addition to the incremental cost of products and services which must be recovered if the firm is to maintain profitability. [Tr. 1226-27] These other costs can generally be categorized as shared or joint costs and overhead costs. An example of shared cost would be a software program which provides two features, for example, call waiting and three-way calling. [Tr. 1227] The shared software cost would not be included in the TSLRIC cost of either of the individual features. [Tr. 1227] However, unless the ILEC has that software in place, it could not provide the service. Likewise, unless it could recover the software cost with revenues from one or both features, it would not be a financially prudent decision to offer the services. [Tr. 1227]

Third, as noted by Mr. Poag, incremental cost estimates are developed using theoretical assumptions that assume optimal, best case conditions. However, a firm's actual costs, which it needs to recover to stay in business, will be higher because no one can ubiquitously deploy and maintain an optimal network. [Tr. 1285-88]

In addition to shared costs, there are also overhead costs. [Tr. 1227] From a facilities perspective, air conditioning is a good example. [Tr. 1227] These, and many more real costs, do not get included in a TSLRIC cost study. [Tr. 1227] However, they are necessary to efficiently and effectively provide the capability

being considered, and they do need to be recovered for the firm to be viable. [Tr. 1227] Interconnection prices should be set above incremental cost to cover the above-mentioned shared and overhead costs that are not included in a TSLRIC analysis. [Tr. 1227]

Contrary to the arguments of the ALECs, setting prices above TSLRIC does not create an incentive to be inefficient and to pass higher costs on to competitors. [Tr. 1229] To the extent that an ILEC's costs may be relatively higher, it is not a result of inefficiencies. Rather, it is a result of the facts that the ILEC is providing more service, in terms of geographic area, and associated facilities than the ALEC, and must serve all customers regardless of the costs they impose on the ILEC. [Tr. 1229] In addition, there is no benefit to Sprint-United/Centel from a price increase because with mutual compensation there is a corresponding increase in the rates charged to Sprint-United/Centel for terminating its traffic to the ALEC. [Tr. 1229]

Moreover, while the ALECs have promoted the idea, it is not logical to attempt to recover all shared and overhead costs only from end users. [Tr. 1230] Many large end users will demand that prices be set as low as possible. [Tr. 1230] They are sophisticated customers and are very knowledgeable of tariffs and pricing alternatives. They will demand pricing on the same basis as interconnectors. [Tr. 1230] If the ILEC has a separate rate for end users, which includes recovery of shared and overhead costs, the ALEC purchasing interconnection at only incremental cost would have a tremendous advantage over the ILEC. [Tr. 1230] The

ALEC could undercut the ILEC's price, especially to the large users, and still pocket extra profits. [Tr. 1230-31]

Importantly, having some of its shared and overhead costs included in interconnection charges does not shield these costs from market pressure. [Tr. 1231] ILECs have significant pressures to reduce costs and increase productivity to compete effectively in the marketplace. The idea that these cost-cutting activities will be divided between competitive and non-competitive services is totally illogical. [Tr. 1232]

J. The rates proposed by the Companies do not create a price squeeze and pass a properly designed imputation test.

The rates proposed by the Companies do not create a price squeeze and do not fail a reasonable imputation test. The best evidence of this conclusion is that numerous ALECs (including Time Warner and Continental) have already signed local interconnection agreements based on the use of similarly priced switched access rates for local interconnection. [Tr. 1268] If those rates are such that a price squeeze is likely to occur, then the ALECs surely would not have agreed to those rates. [Tr. 1268]

Second, if Dr. Cornell's assumption of traffic being in balance is true, as long as each party is compensating the other, the only issue is the differential between what the interconnectors pay each other. [Tr. 1269] If Dr. Cornell is correct and traffic will be in balance, the ALECs should not be concerned about a price squeeze under an MOU or port charge arrangement. [Tr. 1269]

Third, to the extent that the differential in price is based on additional facilities that one party, i.e., the ILEC, must use to terminate the ALEC's usage, the price differential used in the price squeeze calculation would need to be reduced by the ILEC's internal cost and adjusted further to reflect the ratio of traffic originated and terminated on the ALEC's network. [Tr. 1269] For example, using the rates from the BellSouth Stipulation and Agreement, [Schleiden Depo.; Ex. 7, pp. 68-113] the differential between tandem and end office switching is \$.00114. Assuming that the ILEC's incremental cost is one-half of the \$.00114, the net differential to the ALEC is \$.00057. [Tr. 1269] Assuming that each ALEC residential customer terminates 500 MOU on the ILEC's network each month, the net impact is \$.285 per month per ALEC residential customer. [Tr. 1269] Given that the areas where ALECs have requested interconnection, revenues are higher and costs are lower per customer than in the rural exchanges, where not one ALEC has requested interconnection, the \$.285 per customer does not even come close to a price squeeze. [Tr. 1269] Further, the \$.285 is overstated to the extent that as ALECs increase market share, they will interconnect at ILEC's end office switches, reducing the per customer differential. [Tr. 1270] The differential is also reduced by the fact that some of the traffic terminates on the ALEC's own network. [Tr. 1270]

Fourth, because of the legislative constraints on LECs' pricing of basic services and the current revenue/cost relationships of LECs' services resulting from years of social

pricing, any price squeeze analysis must include total revenues to total costs and imputed costs. [Tr. 1270] The biggest driver creating the competitive entry opportunity is the mismatch of revenues and costs for LECs' existing services. [Tr. 1271] Because of this mismatch, which can be linked to LECs' universal service and carrier of last resort requirements, new entrants that do not have the US/COLR responsibilities, have an incredible market advantage. [Tr. 1271] ALECs should not be heard to complain of a price squeeze.

Fifth, in the long run, competition will force local exchange carriers to revise their local exchange rate structures so as to pass an imputation test¹⁰ for each and every service. [Tr. 1125] Dr. Edward C. Beauvais presented a cogent description of these trends in his testimony in this proceeding. [Tr. 1125] As the Commission reconsiders the mechanisms for achieving its universal service and carrier of last resort goals, there is a strong potential to reduce the conflict between these goals and those of the competitive entrants. [Tr. 1125] Universal service funding, derived in a competitively neutral manner, could be used to reduce the price and price floor of basic service for specific customer classes. [Tr. 1125] This environment would make it possible to

¹⁰As noted by Mr. Michaelson, imputation means that a local exchange carrier would "impute" the price it charges competitors for performing bottleneck functions into the price floor for the prices it charges for its own competing retail services that use these same bottleneck functions. [Tr. 1121] Imputation results in competitive equity because the owner of the bottleneck and its competitors both effectively pay the same price for using the bottleneck. [Tr. 1120-21]

restructure local exchange rates without fear of jeopardizing important social policy goals. [Tr. 1125]

Sixth, a simplified form of imputation can serve to protect the interests of new entrants, even though it will leave incumbent local exchange carriers vulnerable to inefficient opportunistic niche entry. [Tr. 1125] The Companies' proposal is as follows: Prior to the time at which local exchange carriers are given the opportunity to restructure their local exchange rates, the imputation test should be applied to the revenues, service incremental costs, and imputed local termination charges associated with serving a particular customer class in a particular exchange, and to all customer classes in the aggregate in a particular exchange. [Tr. 1126] As a practical matter, this would mean applying the imputation test for business customers in the exchange, for residential customers in the exchange, and for all customers in the exchange. [Tr. 1126]

Dr. Cornell is not correct when she states that imputing the interexchange access rates which Sprint-United/Centel propose to charge into the Companies' local exchange service rates would cause an upward spiral in rates for the Companies' services. [Tr. 1121] Imputation would not increase the Companies' costs and so it would not increase the revenues which the Companies need to generate in the marketplace. [Tr. 1121] Imputation might cause some rates to increase, but, at the same time, would allow other rates to be decreased. [Tr. 1121] Thus, the "worst case" is not that local exchange rates in the aggregate rise, but that a revenue neutral

rate restructuring of local exchange rates is necessary. [Tr. 1121]

Mr. Michaelson's exhibit (GEM-1) [Ex. 35], shows how this would work. His example demonstrates the shift from a regulated rate structure designed to promote universal service to a competitive market rate structure. [Tr. 1124] Note that the regulated rate structure creates a tremendous opportunity for competitive entry. [Tr. 1124] The entrant can choose to only serve the portion of the market that subscribes to basic local exchange service and custom calling features, leaving those who only subscribe to subsidized basic service to be served by the local telephone company. [Tr. 1124] The entrant might very well be able to offer a lower price and earn excess profits even if it were less efficient than the incumbent local exchange carrier, because it would be free of the regulatory obligation to subsidize basic ratepayers. [Tr. 1124] This follows from a well established theorem in contemporary economics which holds that, if a company is earning normal profits and serving some customers at less than incremental cost, it must necessarily be serving other customers at more than the stand-alone cost of serving the latter alone. [Tr. 1124] By avoiding service to the subsidized customers, new entrants can compete for the other customers who are being served at more than stand-alone cost. [Tr. 1124]

Finally, while Dr. Cornell criticized Mr. Michaelson's imputation test, she ironically points out the reason why Mr. Michaelson's imputation test is appropriate. [See Tr. 898,

Lns. 6-14] Dr. Cornell claims that new entrants will need to selectively market since they will lose money on a customer that only takes local exchange service. [Id.] This is totally without logic or mathematical support. Dr. Cornell's statement of the new entrant losing money on some customers overlooks the fact that compensation is two-way. She also did not consider that the new entrants would make excess profits on the other customers. Mr. Poag clearly demonstrates mathematically the error of Dr. Cornell's logic in his rebuttal testimony. [Tr. 1269, Ln. 4 through Tr. 1270, Ln. 5)

Under her assumption of traffic being in balance, new entrants would receive the same compensation as they would pay out. Their net pay out for interconnection compensation does not change because a customer takes only local exchange service. Their decision to serve a customer will and properly should be based only on their incremental cost to serve the customer; if traffic is not in balance, the net compensation paid will go up or down (Tr. 1270, Lns. 9-11). To the extent that the new entrants have targeted high revenue/lower customer cost areas, this will not be a difficult decision. (Tr. 1269, Lns. 20-25).

K. Conclusion

As noted above, Section 364.162, requires that the Commission set a "rate" or "charge" for local interconnection. It also requires that the Commission hold and determine that the charge covers cost. The mutual traffic exchange arrangement promoted by the ALECs is not a "rate" or a "charge" as those terms are commonly

used, and under mutual traffic exchange, the Commission can only **assume** (not determine) that cost will be covered. The MOU rates and port charges proposed by the Companies meet the statutory requirements, will promote local competition, and should be approved.

Indeed, the rates proposed by Sprint-United/Centel are reasonable relative to the rates agreed to in local interconnection agreements signed by MFS, Time Warner and Continental. They are also reasonable relative to the rates established in other states. While some may question the Companies' cost data, the Companies' costs are less than the prices charged for interconnection in New York, California and Illinois. Approving the proposed rates will maintain consistency with the Companies' switched access charges and will eliminate the possibility of claims that the Commission or the Companies have engaged in price discrimination by charging IXCs one price for interconnection and ALECs another.

For these reasons, the Commission should reject mutual traffic exchange and approve the MOU and port charges proposed by the Companies.

V.

ISSUES AND POSITIONS

ISSUE 1: What are the appropriate rate structures, interconnection rates, or other compensation arrangements for the exchange of local and toll traffic between the ALECs and Sprint United/Centel?

POSITION:* There are two appropriate compensation arrangements for local interconnection: a flat rate port charge and a per minute

of use charge. Both should maintain the existing relationship to access charges. Mutual traffic exchange is inconsistent with the statute and not supported by the record.

DISCUSSION: The Commission should adopt this position for the reasons discussed in section IV, above.

ISSUE 2: If the Commission sets rates, terms, and conditions for interconnection between the ALECs and Sprint United/Centel, should Sprint United/Centel tariff the interconnection rate(s) or other arrangements?

POSITION:* Yes. Sprint-United/Centel would tariff its interconnection arrangements.

DISCUSSION: There appears to be general agreement on this issue. The Companies' position is supported on the record at TR. 1202 and 1236.

ISSUE 3: What are the appropriate technical and financial arrangements which should govern interconnection between the ALECs and Sprint United/Centel for the delivery of calls originated and/or terminated from carriers not directly connected to the ALECs' networks?

POSITION:* The intermediary function should be provided based on tandem switching and transport rate elements similar to the Companies' approved local transport rate elements. The tandem switching rate element should include full recovery of the access tandem, not the 20% recovery used for the interLATA access tariff.

DISCUSSION: This issue involves the financial arrangements for intermediary connections. The Companies' basic position on this issue is supported in the record at Tr. 1237 and in Exhibit 39 at page 8. As with the other local interconnection rates proposed by

the Companies, compensation should be on a mutual and reciprocal basis. [Tr. 1202] Likewise, the rates should cover the related costs. [Tr. 1202]

Intermediary switching and transport occurs where, for example, the Companies serve as the middleman for connecting one ALEC's traffic to another ALEC, AAV or another LEC. [Tr. 1202] In this situation the intermediary or middleman should be compensated for the tandem switching function and the transport function. [Tr. 1202] In addition, since the intermediate LEC pays the terminating ALEC terminating local interconnection charges, the originating ALEC should also pay the LEC the terminating local interconnection charges as a pass-through. [Tr. 1202-09] If the call termination functions are provided by more than one interconnector, the terminating charges should be prorated and paid to each interconnector on a meet point basis. [Tr. 1203]

The ALECs have attempted to make an issue out of the fact that they should be allowed to directly interconnect at adjacent interconnection points in a central office. If this is true, it is a result of the decisions made in the expanded interconnection docket, wherein ILECs were ordered by the Commission to checkerboard the interconnectors so that they would not be located next to each other. [Tr. 1277] Doing so was designed to provide additional available space if an interconnector wanted to add additional facilities. [Tr. 1277] That being the case, the ALECs should not now complain about this situation.

Likewise, the ALECs should not complain about the intermediary function rates proposed by the Companies. The proposed minimum cross-connect rate element is \$1.30 a month for a voice grade (DSO type) circuit. [Tr. 1278] If it is a high capacity facility which includes the capability to interconnect equivalent voice grade circuits, the rate is \$4.40. [Tr. 1278] If the ALECs are not located right next to each other, there may be more than one cross connect required and there may be some internal cabling and conduit required. [Tr. 1279] This is particularly true if the interconnection points are not located on the same floor of a central office.

When the ALECs are not physically collocated, but want to use the Companies' tandem switch to interconnect to another ALEC or to an interexchange carrier, the Companies propose that the ALEC pay the tariffed tandem switching rate plus transport, plus two-tenths of one cent. [Tr. 1279] The two-tenths of one cent goes to help the Companies recover the cost of that function. [Tr. 1279] This is appropriate because when that rate element was set, 80% of that rate was put in the RIC. [Tr. 1279] It is appropriate to include the two tenths of one cent amount at the access tandem to help the Companies recover some of those joint and common costs that were previously recovered there. [Tr. 1279]

ISSUE 4: What are the appropriate technical and financial requirements for the exchange of intraLATA 800 traffic which originates from the ALECs' customer and terminates to an 800 number served by or through Sprint United/Centel?

POSITION:* The ALEC would route the calls to the LEC via interconnection facilities. The ALEC would record the call and forward the record to a clearinghouse which forwards the record to the LEC for billing, and the LEC would compensate the ALEC for originating access charges. A reciprocal arrangement should apply.

DISCUSSION: The Companies' position on this issue is supported in the record at Exhibit 39, page 9, and is explained below.

As noted in the testimony of Mr. Poag, the Companies propose that the ALEC, after completing an 800 query function, would route the call to the Companies via the interconnection facilities. [Tr. 1238] The ALEC would record the call and forward the record to the Companies for billing. [Tr. 1238] The Companies would compensate the ALEC for the recording function and the access charges. [Tr. 1238] A reciprocal arrangement should also be applicable for a Sprint-United/Centel originated call terminating to the ALEC. [Tr. 1238]

The Companies also propose that they will compensate ALECs for the origination of 800 traffic terminated to Sprint-United/Centel pursuant to tariffed originating switched access charges, excluding the data-base query. [Tr. 1238] The ALECs will need to provide the appropriate records necessary for the Companies to bill the ALECs' customers and compensate the ALECs. [Tr. 1238] The records should be provided in the standard industry format. [Tr. 1238] Under this scenario, Sprint-United/Centel will compensate the ALECs

based on the tariffed rates for this function. [Tr. 1238] At such time as an ALEC elects to provide 800 services, the ALEC should reciprocate this arrangement. [Tr. 1238]

ISSUE 5a: What are the appropriate technical arrangements for the interconnection of the ALECs' networks to Sprint United/Centel's 911 provisioning networks such that the ALECs' customers are ensured the same level of 911 service as they would receive as a customer of Sprint United/Centel?

POSITION:* For basic 911 service, Sprint-United/Centel will share emergency number data with the ALECs for those municipalities that subscribe to basic 911 services. For Enhanced 911 (E911) service, Sprint United/Centel will offer a daily update to the Companies' data bases of ALECs' emergency information when provided to Sprint United/Centel.

DISCUSSION: See Exhibit 39, page 10. This is a high priority area for Sprint-United/Centel. For basic 911 service, the Companies will share emergency number data with the ALECs for those municipalities that subscribe to basic 911 services. [Tr. 1239] For enhanced 911 (E911) service, the Companies will offer a daily update to Sprint-United/Centel's E911 data bases of the ALECs' emergency information when provided to Sprint-United/Centel. [Tr. 1239] The Companies will work with the ALECs to define record layouts, media requirements and procedures for the process. [Tr. 1239] The ALECs will be provided access to the Companies' E911 tandem switches, for routing their customer's E911 calls to the various emergency agencies. [Tr. 1239]

To the extent that administering and providing E911 access facilities; e.g., tandem ports, to ALECs increases Sprint-United/Centel's costs, such costs should be recovered from the ALECs. [Tr. 1239] However, those costs should only be recovered from ALECs to the same extent that they are recovered from other LECs for the same service. [Tr. 1239]

Where Sprint-United/Centel provide the selective router, the Companies will need to provide the ALECs with trunk connections to their 911/E911 selective routers/911 tandems for the provision of 911/E911 services and for access to all sub-tending Public Safety Answering Points (PSAPs); however, this will not always be the case. [Tr. 1250] There are situations that exist today where there is no selective routing involving Sprint-United/Centel. [Tr. 1250] In addition, there are situations where a selective router may serve one or more counties, as well as situations where the selective router utilized by Sprint-United/Centel may be provided by either another LEC or someone other than another LEC. [Tr. 1250] In these situations, the Companies cannot be responsible for the ALEC selective routing functions since they are not the service provider. [Tr. 1250]

MFS's proposal for Sprint-United/Centel to be responsible for providing ALECs with the Master Street Index Guide ("MSAG") is without merit. The MSAG is the property of the county and only the county can provide the information. [Tr. 1251; Ex. 41, p. 67] The provision of the MSAG to the ALECs would be dependent on the county and the operation of the county 911/E911 system. [Tr. 1251] If

the ALECs make arrangements for this to happen, the Companies will cooperate as needed to assist with this process.

Similarly, there is no need for Sprint-United/Centel to provide the ten-digit POTS number of each PSAP to the ALECs. [Tr. 1251] In most cases, calls to the PSAP must route via 911/E911 trunks. [Tr. 1251] Depending on the switch, access to the PSAP obtained by dialing the ten-digit number will be blocked to eliminate erroneous calls. [Tr. 1251] These numbers are not currently provided today, but are programmed in the switch to handle call routing. [Tr. 1251] Any contact numbers required by an ALEC should be obtained from the appropriate 911/E911 coordinators or the agencies themselves. [Tr. 1251] Due to differences or potential differences in local service areas, the ALECs are in the best position to identify their customers' geographic locations and the appropriate 911/E911 requirements. [Tr. 1251-52]

ISSUE 5b: What procedures should be in place for the timely exchange and updating of the ALECs' customer information for inclusion in appropriate E911 databases?

POSITION:* Daily updates would be required from ALECs in order to maintain the accuracy of the 911 data-base information. Sprint United/Centel will work with the ALECs to define the requirements for records and other data base related procedures.

DISCUSSION: The Companies' position on this issue is supported in the record at Tr. 1250 and in Exhibit 39 at page 11.

ISSUE 6: What are the appropriate technical and financial requirements for operator handled traffic flowing between the ALECs and Sprint United/Centel, including busy line verification and emergency interrupt services?

POSITION:* Sprint United/Centel and the ALECs shall mutually provide each other busy line verification and emergency interrupt services pursuant to tariff. It will be necessary to establish dedicated trunk groups between each company's operator services system.

DISCUSSION: The Companies' position on this issue is supported on the record at Tr. 1240, in Exhibit 39 at page 12, and in Exhibit 41, pages 68-69.

ISSUE 7: What are the appropriate arrangements for the provision of directory assistance services and data between the ALECs and Sprint United/Centel?

POSITION:* The Companies will include ALECs' customer information in its directory assistance (DA) data base and provide DA operator services on the same terms and conditions as those services are provided to other LECs and IXC's. Sprint-United/Centel will work cooperatively with the ALECs on other issues.

DISCUSSION: The Companies' position on this issue is supported on the record at Tr. 1240-41 and in Exhibit 39 at page 13.

ISSUE 8: Under what terms and conditions should Sprint United/Centel be required to list the ALECs' customers in its white and yellow pages directories and to publish and distribute these directories to the ALECs' customers?

POSITION:* The cost for directories should be shared on a prorata basis by Sprint-United/Centel and the ALECs for the basic

directory printing and distribution services. Sprint-United/Centel should not be required to incur additional costs on behalf of ALECs and be expected to absorb those costs.

DISCUSSION: See Exhibit 39, page 14. This issue addresses the printing and distribution of directories. While it is in Sprint-United/Centel's best interest to offer the best directory products possible, it is equally important and valuable to ALECs. [Tr. 1204, 1241 and 1276] That being the case, the cost should be shared on a prorata basis for the basic directory printing and distribution services. [Tr. 1206, 1241] In addition, since the Companies pay their directory provider for any informational pages Sprint requires over a base number of pages, ALECs wishing to provide customer information pages, e.g., dialing instructions, for inclusion in the directory, should pay whatever it would cost to have such pages included. [Tr. 1206, 1241] The Companies should not be required to incur additional costs on behalf of ALECs and be expected to absorb those costs. [Tr. 1206, 1241]

While ALEC business customers will likely purchase yellow pages advertising, this fact does not justify providing directory printing and distribution services at no cost. Yellow pages advertising is not provided by Sprint-United/Centel, but rather by its affiliated directory company,¹¹ and the revenues associated with that advertising belong to the directory company. [Tr. 1205] Since Sprint-United/Centel's basic service rates to its customers include a white pages listing and a yellow pages listing for

¹¹See Exhibit 41, page 12 (MFS Interrogatory No. 8).

businesses, an ALEC can either cut its price or pocket the cost of providing a directory listing from its customers by having the Companies do it for free. [Tr. 1205-06] This clearly is not fair.

Sprint-United/Centel is willing to work very cooperatively with the ALECs in this area. [Tr. 1270] A high quality telephone directory with all of the relevant telephone numbers is in the mutual interests of the LECs, the ALECs and their customers. [Tr. 1276] However, under the theory that there are no free lunches, ALECs should be required to pay for the amount of books that are distributed to their customers. [Tr. 1276] Likewise, if they want additional informational pages put into the books, they should pay, not the LEC. [Tr. 1276] The ALECs should merely be required to pay their fair share. [Tr. 1276]

ISSUE 9: What are the appropriate arrangements for the provision of billing and collection services between the ALECs and Sprint United/Centel, including billing and clearing credit card, collect, third party and audiotext calls?

POSITION:* Appropriate interconnection facilities to the Access Tandem TOPS Center will be required. Sprint-United/Centel will work with the ALECs to define the interconnection activities required. Billing would be handled via tariff or contract rates on a mutual compensation basis.

DISCUSSION: The Companies' position on this issue is supported on the record at Tr. 1242 and in Exhibit 39 at page 15.

ISSUE 10: What arrangements are necessary to ensure the provision of CLASS/LASS services between the ALECs and Sprint United/Centel's networks?

POSITION:* Sprint-United/Centel will provide Common Channel Signaling (CCS) on a reciprocal basis, where available in conjunction with all traffic in order to enable full interoperability of CLASS features and functions.

DISCUSSION: See Exhibit 39 at page 16. As noted in the testimony of Mr. Poag, Sprint-United/Centel proposes to provide Common Channel Signaling (CCS) on a reciprocal basis, where available, in conjunction with all traffic in order to enable full interoperability of CLASS features and functions. [Tr. 1242] All CCS signaling parameters will be provided including automatic number identification (ANI), originating line information (OLI) calling party category, charge number, etc. [Tr. 1209] All privacy indicators will be honored, and the Companies will cooperate on the exchange of Transactional Capabilities Application Part (TCAP) messages to facilitate full interoperability of CCS-based features between their respective networks. [Tr. 1209]

ISSUE 11: What are the appropriate arrangements for physical interconnection between the ALECs and Sprint United/Centel, including trunking and signalling arrangements?

POSITION:* Sprint-United/Centel is willing to review engineering requirements on a quarterly basis and establish forecasts for trunk utilization. New trunk groups will be implemented as dictated by engineering requirements for both Sprint United/Centel and the ALEC.

DISCUSSION: The Companies' position on this issue is supported on the record at Tr. 1243 and in Exhibit 39 at page 17. As noted in the testimony of Mr. Poag, it is in the best interest of all service providers to ensure jointly provided high quality services to customers. [Tr. 1208] The Companies will work cooperatively with ALECs to install and maintain reliable interconnected telecommunications networks. [Tr. 1208] A cooperative effort will include, but not be limited to, the exchange of appropriate information concerning network changes that impact services to the local service provider, maintenance contact numbers and escalation procedures. [Tr. 1208]

The Companies propose that interconnection of all networks be based upon accepted industry/national guidelines for transmission standards and traffic blocking criteria. [Tr. 1208] The Companies will work cooperatively with the ALECs to apply sound network management principles by invoking appropriate network management controls, i.e., call gapping, to alleviate or prevent network congestion. [Tr. 1208] The Companies do not intend to charge rearrangement, reconfiguration, disconnect, or other non-recurring fees associated with the initial reconfiguration of each carrier's interconnection arrangements. [Tr. 1208] However, each ALEC's interconnection reconfigurations will have to be considered individually as to the application of a charge. [Tr. 1209]

ISSUE 12: To the extent not addressed in the number portability docket, Docket No. 950737-TP, what are the appropriate financial and operational arrangements for interexchange calls terminated to a number that has been "ported" to the ALECs?

POSITION:* For terminating toll traffic ported to the ALEC, Sprint-United/Centel will bill the IXC tandem switching, the RIC and a portion of the transport, and the ALEC should bill the IXC local switching, the carrier common line and a portion of the transport.

DISCUSSION: The Companies' position on this issue is supported on the record at Tr. 1243-44 and in Exhibit 39 at page 18. This issue generally addresses the financial and operational arrangements for interexchange calls terminated to an ALEC. [Tr. 1273] The real issue is which entity, the ILEC or the ALEC, should get the residual interconnection charge ("RIC"). [Tr. 1273] The Companies believe that it should go to the ILEC for the following reasons.

The RIC was developed in proceedings before this Commission in which local exchange companies restructured their local transport portion of the interexchange access charges. [Tr. 1273] The RIC rate element represents 80% of the access tandem revenue requirement that the local exchange companies were collecting in their local transport before the restructure. [Tr. 1273] So to the extent that the ILEC continues to provide the access tandem switching function, then the ILEC should continue to receive the RIC revenue. [Tr. 1274] Indeed, the ILEC will still be providing the switching functionality. [Tr. 1274]

When the ILEC provides that functionality on a ported number using the interim number portability arrangement, the ILEC will actually use the access tandem and transport twice. [Tr. 1274] The ILEC will first use the access tandem with a call coming into the access tandem from the interexchange carrier. [Tr. 1274] The call then goes to the local exchange companies' subtending end office. [Tr. 1274] At the subtending end office where the number is ported or forwarded via the interim number portability mechanism to the ALEC, the call will go back up to the access tandem and then be ported across the interconnection facilities to the ALEC. [Tr. 1274] Thus, the ILEC actually uses the access tandem functionality twice. [Tr. 1274]

The ALECs' position on this issue has no merit. The ALECs simply want to use the ILEC's access tandem for free. [Tr. 1274] The ALECs do not want to pay anything for that functionality and especially do not want to pay a differential. [Tr. 1274] The ALECs did not go through local transport restructure and do not have a revenue requirement cost recovery shortfall associated with the RIC. There is no justification for the RIC to go to the ALEC. [Tr. 1274-75] The RIC should go to the ILEC.

Giving the RIC to the ILEC does not create an undeserved windfall when terminating toll calls are terminated to an ALEC via a ported or remote call forwarded number. [Tr. 1212] When a toll call is terminated via a ported number, both the ILEC and ALEC incur costs to complete the call. [Tr. 1212] Sprint-United/Centel would incur cost for switching, transport to get the call to the

ALEC, and the cost delivering the call over the local interconnection arrangement to the ALEC. [Tr. 1212] The ALEC would incur its network cost, and the Companies are willing to compensate them at their inter or intrastate access charge rates, whichever is appropriate to the jurisdiction of the call, on a meet-point basis. [Tr. 1212]

In summary, Sprint-United/Centel proposes to retain the tandem switching, the RIC, and transport (up to the meet-point) revenues and to remit the local switching, CCL, and the balance of the local transport revenues to ALECs. [Tr. 1213] Thus, there will not be a windfall to the Companies and the Companies will not be compensated for the local switching and intracompany interoffice transport associated with ported toll traffic. [Tr. 1213]

ISSUE 13: What arrangements, if any, are necessary to address other operational issues?

POSITION:* Operational issues, such as repair service arrangements, are most appropriately resolved through the negotiation process. Should issues arise between the parties that cannot be resolved, the existing complaint procedures are the appropriate means for resolution.

DISCUSSION: The Companies' position on this issue is supported on the record at Tr. 1244 and in Exhibit 39 at page 19.

ISSUE 14: What arrangements, if any, are appropriate for the assignment of NXX codes to the ALECs?

POSITION:* Numbering policy must be broadly developed and administered in a competitively neutral manner. NXX assignments must be handled in a neutral and nondiscriminatory manner.

DISCUSSION: To the extent Sprint-United/Centel has any influence over assignment of numbering resources, Sprint-United/Centel will support and cooperatively work with ALECs to meet their numbering resource requirements. However, Sprint-United/Centel does not directly control numbering resources in any of the Florida NPAs. The Companies' position on this issue is supported on the record at Tr. 1244 and in Exhibit 39 at page 12.


Issue 15 (legal): To what extent are the non-petitioning parties that actively participate in this proceeding bound by the Commission's decision in this docket as it relates to Sprint-United/Centel?

POSITION:* This issue was resolved by the Commission as follows:

Any interconnector ALEC who fully participates in this proceeding is bound by the resolution of the issues. Such ALEC is still free to negotiate its own interconnection rate. And to the extent negotiations fail, affected ALECs may petition the Commission to set interconnection rates.

[Tr. 90]

DATED this 22nd day of March, 1996.



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FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 950985-TP
LATE FILED EXHIBIT 37

STATE DECISIONS
LOCAL INTERCONNECTION COMPENSATION

STATE

FORM OF COMPENSATION ORDERED

California

Bill and Keep. The Public Utilities Commission has required the use of bill and keep on an interim basis for one year.

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, Decision No. 95-12-056 (Dec. 20, 1995).

Connecticut

Bill and Keep. The Department of Public Utility Control has required the use of bill and keep for 18 months. If the traffic is found to be out of balance during first nine months, retroactive usage-based charge to be imposed and at the end of twelve months if traffic is still out of balance, a usage-based compensation arrangement (e.g., minutes of use or flat rate) must be selected.

DPUC Investigation into the Unbundling of the Southern New England Telephone Company's Local Telecommunications Network, Docket No. 94-10-02, Decision, (Sept. 22, 1995); Decision (Jan. 17, 1996).

Illinois

Usage-Based. The Commerce Commission has required a usage-based charge of \$.005 per minute for end office and \$.0075 per minute for tandem interconnection.

Illinois Bell Telephone Company Proposed Introduction of a Trial of Ameritech's Customers First Plan in Illinois, Docket No. 94-0096, Order (April 7, 1995).

Iowa

Bill and Keep. The Utilities Board has required the use of bill and keep on an interim basis pending approval of cost-based tariffs.

In re: McLeod Telemanagement, Inc., Docket No. TCU 94-4, Final Decision and Order (March 31, 1995).

- Maryland Usage-Based. The Public Service Commission has required a usage-based charge of \$.003 per minute for end office and \$.005 per minute for tandem interconnection.
- In re: Application of MFS Intelenet of Maryland, Inc.*, Case No. 8584, Order No. 71155 (April 25, 1994); Case No. 8584, Phase II, Order No. 72348 (Dec. 28, 1995).
- Michigan Bill and Keep. The Public Service Commission has required bill and keep on an interim basis with a usage-based charge of \$.015 per minute if the traffic volume of the two carriers is out of balance in excess of 5 percent.
- In the matter of application of City Signal, Inc., for an order establishing and approving interconnection arrangements with Ameritech Michigan*, Case No. U-10647, Opinion and Order (Feb. 23, 1995).
- New York Usage-Based. The Public Service Commission has established a framework in which ALECs pay an access charge that is less than the charge paid by IXC's; flat rate and usage-based options must be made available.
- Proceeding on Motion of the Commission to examine Issues Related to the Continued Provision of Universal Service and to Develop a Framework for the Transition to Competition in the Local Exchange Market*, Case 94-C-0095 (March 8, 1995); (September 27, 1995).
- Oregon Bill and Keep. The Public Utility Commission has required the use of bill and keep on an interim basis for up to two years.
- In re: Application of MFS Intelenet of Oregon, Inc.*, CP 1, CP 14, CP 15, Order No. 96-021 (Jan. 12, 1996).
- Pennsylvania Usage-Based. The Public Utilities Commission has required all carriers pay into an escrow account pending adoption of cost-based rates.
- In re: Application of MFS Intelenet of Pennsylvania, Inc.*, Docket No. A-310203F0002, Opinion and Order (October 4, 1995); Opinion and Order (December 13, 1995).

Washington

Bill and Keep. The Utilities and Transportation Commission has required the use of bill and keep until number portability is implemented and other barriers are removed, followed by negotiated rates that reflect the manner in which costs are caused (i.e. primarily non-traffic sensitive).

Washington Utilities and Transportation Commission v. U S West Communications, Inc., Docket No. UT-941464, Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling, Granting Complaints, In Part (Oct. 31, 1995); Sixth Supplemental Order on Clarification and Reconsideration; Modifying Order; Lifting Stay (Dec. 27, 1995).

OPTION A

SPRINT-UNITED/CENDEL

LOCAL INTERCONNECTION PORT CHARGES

RATE ELEMENTS AND RATE LEVELS

<u>Port</u>	<u>Tandem</u>	<u>End Office</u>	<u>Discount</u>
1	\$2072	\$1912	50%
2	\$2900	\$2676	30%
3	\$3729	\$3441	10%
4	\$4143	\$3823	0%

Example:

1. If S-UTF/CF purchases one port at an ALEC end office and the ALEC purchases one port at a S-UTF/CF end office, each company would pay the other \$1912. A net difference of \$0.00.
2. If S-UTF/CF purchases one port at an ALEC end office and the ALEC purchases one port at a S-UTF/CF tandem, then S-UTF/CF would pay the ALEC \$1912 and the ALEC would pay S-UTF/CF \$2072. A net difference of \$160.
3. Tandem port rates assume 10 miles of transport. (10 miles is the average distance between end offices and the tandem.)
4. Tandem Port Development

switched common transport (10 miles)	.00040
facilities termination per MOU	.00020
tandem switching	.00088
local switching	.00980
line termination	<u>.00790</u>
	.01918
5. S-UTF/CF will purchase a port to the ALEC for each local interconnection port purchased by the ALEC.

ATTACHMENT TWO

Page 1 of 3

OPTION A

SPRINT-UNITED/CENDEL

LOCAL INTERCONNECTION PORT CHARGES (No Line Termination)

RATE ELEMENTS AND RATE LEVELS

<u>Port</u>	<u>Tandem</u>	<u>End Office</u>	<u>Discount</u>
1	\$1218	\$1058	50%
2	\$1705	\$1482	30%
3	\$2192	\$1905	10%
4	\$2436	\$2117	0%

Example:

4. If S-UTF/CF purchases one port at an ALEC end office and the ALEC purchases one port at a S-UTF/CF end office, each company would pay the other \$1058. A net difference of \$0.00.
5. If S-UTF/CF purchases one port at an ALEC end office and the ALEC purchases one port at a S-UTF/CF tandem, then S-UTF/CF would pay the ALEC \$1058 and the ALEC would pay S-UTF/CF \$1218. A net difference of \$160.
6. Tandem port rates above assume 10 miles of transport. (10 miles is the average distance between end offices and the tandem.)
4. Tandem Port Development (no line termination)

switched common transport (10 miles)	.00040
facilities termination per MOU	.00020
tandem switching	.00088
local switching	.00980
	.01128
5. S-UTF/CF will purchase a port to the ALEC for each local interconnection port purchased by the ALEC.

ATTACHMENT TWO

Page 2 of 3

OPTION B

SPRINT-UNITED/CENDEL

LOCAL INTERCONNECTION MOU RATE

RATE ELEMENTS AND RATE LEVELS

Rate Elements	Rate Levels as of ² February 6, 1996	
Transport ¹	Tandem	End Office
Switched Common Transport ³ per minute of use per mile	0.00004	
Facilities Termination per MOU	0.00020	
Tandem Switching	0.00088	
Local Switching	0.00980	0.00980
Line Termination ⁴	0.00790	0.00790
Total	0.01882	0.0177

- ¹ Assumptions:
- Tandem Connection with Common Transport
 - No Collocation
 - DS1 local channel @ 9000 minutes per month and 24 voice grade equivalents
- ² S-UTF/CF's switched access rates, reflecting local transport restructure, have been approved with a February 6, 1996 effective date.
- ³ Assumes one mile of transport. Interconnection may be ordered via meet-point, virtual collocation or an entrance facility basis.
- ⁴ The Companies have proposed to eliminate this element effective October 1, 1996, before most ALECs in Florida will begin significant operations. The tandem and end office rates without the line termination element are .010920 and .00980, respectively. Page two of this attachment recomputes the port charge without the line termination element so that the Commission can see what it will look like.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail or hand delivery (*) or overnight express (**) this 22nd day of March, 1996, to the following:

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