



Florida Cable Telecommunications Association

Steve Wilkerson, President

June 17, 1996

VIA HAND DELIVERY

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

ORIGINAL FILE COPY

RE: DOCKET NO. 950985-TP

Dear Ms. Bayo:

Enclosed for filing in the above-captioned docket are an original and fifteen copies of the Response of Florida Cable Telecommunications Association, Inc. ("FCTA") to Motion for Reconsideration. Copies have been served on the parties of record pursuant to the attached certificate of service.

Also enclosed is a copy on a 3-1/2" diskette in WordPerfect format, version 5.1

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

Thank you for your assistance in processing this filing.

ACK [checked] Yours very truly,

AFA _____

APP _____

CAF _____

CMU _____

CTR _____

EAG _____

LEG _____

LIN _____

OPC _____

RCH _____

SEC _____

WAS _____

OTH _____

[Handwritten signature of Laura L. Wilson]

Laura L. Wilson
Vice President, Regulatory Affairs &
Regulatory Counsel

Enclosures

cc: Mr. Steven E. Wilkerson
All Parties of Record

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[Stamp: 14 JUN 1996 FPSC-BUREAU OF RECORDS]

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310 North Monroe Street • Tallahassee, Florida 32301 • (904) 681-1990 FAX (904) 681-9676

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution of Petition(s) 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
GTEFL/Sprint Subdocket

FILED: June 17, 1996

**ORIGINAL
FILE COPY**

**RESPONSE OF FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC. TO
MOTION FOR RECONSIDERATION**

Pursuant to Rule 25-22.060(1)(b), Florida Administrative Code, and Rule 1.090(c), Florida Rules of Civil Procedure, the Florida Cable Telecommunications Association, Inc. ("FCTA") responds to the Motion for Reconsideration filed by United Telephone Company of Florida and Central Telephone Company of Florida (together "Sprint-United/Centel") on June 4, 1996 and states as follows:

1. The purpose of a motion for reconsideration is to bring to the Commission's attention some material point of law or fact that it failed to consider or overlooked when rendering its decision. Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962). The burden is upon the movant to demonstrate that the Commission has committed error that requires reconsideration. In Re: Investigation into Florida Public Service Commission Jurisdiction Over Southern States Utilities, Inc. In Florida, Order No. PSC-94-1040-FOF-WS issued August 24, 1995. Sprint-United/Centel has failed to meet this standard. Therefore, its motion for reconsideration should be denied.

2. FCTA's Response is directed to Sprint-United/Centel's assertion that Order No. PSC-96-0668-FOF-TP (the "Order") should be reconsidered because the Order is allegedly inconsistent with certain requirements of the Telecommunications Act of 1996. Motion for Reconsideration at par. 7. Sprint-United/Centel interprets the federal law to restrain the Commission from imposing mutual traffic exchange for a period any longer than is required for

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a reasonable approximation of the additional costs of terminating calls. Motion for Reconsideration at par. 5.

3. Sprint-United/Centel improperly raises this question of federal law for the first time in its Motion for Reconsideration. It is improper for a party to present arguments in a motion for reconsideration that have not previously been presented to the Commission. Issues that have not been raised until reconsideration cannot have been overlooked and cannot be raised for the first time on reconsideration. Fiesta Fashions, Inc. v. Capin, 450 So.2d 1128 (Fla. 1st Dist. Ct. App. 1984). It would have been more appropriate for Sprint-United/Centel to have raised the issue of whether there are inconsistencies between federal and state law at the prehearing conference (or even at the hearing given the Commissioners' request that the parties inform them of any such inconsistencies. Tr. 96).

4. Moreover, Sprint-United/Centel's reliance upon the federal law is misplaced. This proceeding was instituted under Chapter 364, Florida Statutes (1995). Tr. 97. Even assuming arguendo that the Commission must apply the federal law to this proceeding Sprint-United/Centel cannot prove that the Commission has acted in a manner that is inconsistent with the federal law for the following reasons.

5. First, the plain language of the Telecommunications Act of 1996 authorizes a state to adopt mutual traffic exchange without qualification concerning its duration. Section 252(c) states:

In resolving by arbitration... any open issues and imposing conditions upon the parties to the agreement, a state commission shall -

(1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251.

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. [Emphasis added.]

Section 252(d)(2) then states that the language setting the standards for charges for transport and termination of traffic:

shall not be construed (l) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill and keep arrangements).

The Act expressly recognizes that the offsetting of reciprocal obligations is a permissible method of call compensation for the Commission to order. There is nothing in the above language suggesting that the Commission may do so only as an interim measure. Therefore, Sprint-United/Centel cannot prove that the language of the federal law, on its face, is inconsistent with the Order.

6. Sprint-United/Centel also cannot demonstrate any inconsistency between the application of the federal law and the Commission's order. The FCC has not yet completed its local interconnection proceeding In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98. The requirements under the federal law are uncertain at this point. Indeed, if the FCC follows Sprint Corporation's recommendations, it would be some time before any inconsistencies between state and federal law become apparent. Sprint Corporation has in fact urged the FCC, as a matter of comity and of fostering good working relationships with the states, to rely on the good faith of state regulatory authorities in executing their responsibilities and to only step in if the need to do so arises. Sprint Corporation comments, CC Docket 96-68, May 16, 1996 at 66. Moreover, Sprint Corporation has stated its belief that:

Effective competition may well take some time to develop, and it would be unrealistic to expect that rules adopted within the first six months after the passage of the 1996 Act will be the final and best word on how to implement these key provisions of the statute. As the states implement (the FCC's) national policy directives, the (FCC) should encourage continual feedback from the states so that it can modify and refine its rules in light of the states' experience on a going-forward basis.

Id. at 7. Based upon the FCC's continuing efforts and the admitted likelihood that interconnection terms will "take some time to develop," it is disingenuous of Sprint-United/Centel to argue at the state level that the exact meaning of the federal law is clear on its face or well-settled. Because Sprint-United/Centel cannot demonstrate any inconsistency between the federal law and the order, the motion for reconsideration must fail.

7. Finally, there is ample record evidence that the Commission "in good faith" has not acted in a manner that is inconsistent with the federal law. See i.e., Tr. 142-147, 149, 179, 498, 523, 526, 596, 599-600, 603, 1321-1323. By contrast, before now, Sprint-United/Centel presented no evidence or arguments concerning the meaning of the federal law or its applicability to this proceeding. See i.e., Tr. 1323. Sprint-United/Centel is simply disappointed with the outcome of this proceeding. That is insufficient grounds for reconsideration.

8. FCTA submits that Sprint-United/Centel's Motion for Reconsideration is a thinly veiled attempt to gut the legislative intent of Section 364.162, Florida Statutes. The plain language of Section 364.162(7), Florida Statutes, clearly articulates the standard that a petitioning party must meet before mutual traffic exchange can be substituted with a usage sensitive charge such as the one Sprint-United/Centel advocates:


In the event that any party, prior to July 1, 1999, believes that circumstances have changed substantially to warrant a different price for local interconnection, that party may petition the commission for a price change, but the commission shall grant such petition only after an opportunity for hearing and a compelling showing of changed circumstances, including that the provider's

customer population includes as many residential as business customers. [Emphasis added.]

A petitioning party must make a "compelling showing of changed circumstances." Rather than meet this statutory showing, Sprint-United/Centel obviously prefers for the Commission to limit the duration of mutual traffic exchange to an interim period while the Commission examines further cost data. Sprint-United/Centel hopes to minimize its exposure to mutual traffic exchange and relieve itself of the statutory requirements placed upon a petitioning party. The Commission should not accept Sprint-United/Centel's invitation to displace the express legislative intent.

WHEREFORE, for the foregoing reasons, no inconsistency has been proven between the federal law and the Order, and as a result, Sprint-United/Centel's Motion for Reconsideration should be denied.

RESPECTFULLY SUBMITTED this 17th day of June, 1996.



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CERTIFICATE OF SERVICE
DOCKET NO 950985-TP

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by

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