

**AUSLEY & McMULLEN**

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET  
P.O. BOX 391 (ZIP 32302)  
TALLAHASSEE, FLORIDA 32301  
(904) 224-9115 FAX (904) 222-7560

RECEIVED  
JUL 22 1996

July 22, 1996

**BY HAND DELIVERY**

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

Re: Resolution of Petition to Establish Non  
Discriminatory Rates, Terms, and Conditions  
for Resale Involving Local Exchange  
Companies and Alternative Local Exchange  
Companies pursuant to Section 364.161,  
Florida Statutes - Docket No. 950984-TP

- ACK
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1
- LIN 5
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- QTH \_\_\_\_\_

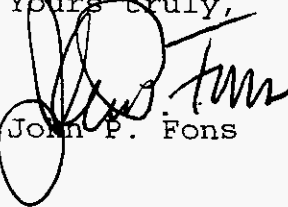
Dear Ms. Bayo:

Enclosed for filing in the above-styled docket are the original and fifteen (15) copies of Sprint-United/Centel's Response to Motion for Reconsideration by Metropolitan Fiber Systems of Florida, Inc.

We are also submitting the Response 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.

Yours truly,  
  
John P. Fons

Enclosures

cc: All parties of record (w/encl.)

utd\950984.byo

RECEIVED & FILED  
  
EPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
07676 JUL 22 96  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution of Petition to ) DOCKET NO. 950984-TP  
Establish Non Discriminatory Rates,) )  
Terms, and Conditions for resale ) DATED: July 22, 1996  
Involving Local Exchange ) )  
Companies and Alternative Local ) )  
Exchange Companies pursuant to ) )  
Section 364.161, Florida Statutes ) )  
\_\_\_\_\_ )

**SPRINT UNITED/CENDEL'S RESPONSE TO  
MOTION FOR RECONSIDERATION BY METROPOLITAN  
FIBER SYSTEMS OF FLORIDA, INC.**

Pursuant to Rule 25-22.060(1)(b), Florida Administrative Code, United Telephone Company of Florida and Central Telephone Company of Florida (together "Sprint United/Centel") respond to the Motion for Reconsideration ("Motion") filed by Metropolitan Fiber Systems of Florida, Inc. ("MFS"), stating as follows:

1. In its Motion, MFS provides a litany of items it claims the Commission should reconsider.<sup>1</sup> Although acknowledging the standard for reconsideration set forth in Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962), MFS' Motion completely fails to meet that standard. Contrary to MFS' assertions, there is nothing in MFS' Motion which demonstrates that the Commission's decision in this proceeding "overlooked or failed to consider the significance

---

<sup>1</sup> It is of interest to note that on July 17, 1996, Sprint United/Centel received a copy of MFS' Petition for Arbitration Pursuant to 47 U.S.C. Section 252(b) of Interconnection Rates, Terms and Conditions with Sprint United-Centel of Florida, Inc., apparently filed with the Florida Public Service Commission, which addresses the same issues as are raised in MFS' Motion. Thus, it appears that MFS' second bite of the apple is about to be followed by a third bite.

DOCUMENT NUMBER-DATE

07676 JUL 22 2083

FPSC-RECORDS/REPORTING

of certain evidence presented" or "ignored, misinterpreted or misapplied the law." Not only does MFS fail to provide any record support for matters which it claims the Commission overlooked or failed to consider, MFS has the chutzpah to introduce matters which were never raised in its Petition, Prehearing Statement, Testimony or Posthearing Statement. And to compound matters, MFS, when it does cite to the transcript of the hearing in support of its position, conveniently excludes portions of the transcript which leads to a different result. Finally, as to matters which were addressed in the proceeding for which MFS is unhappy with the result, MFS has failed to show how the Commission's decision is defective from a factual or a legal standpoint. For all of these reasons, MFS' Motion should be denied.

2. As to matters not previously raised in the proceeding, MFS challenges the Commission's decision to use a TSLRIC standard for setting the prices for the unbundled facilities because MFS now wants a different TSLRIC standard which reflects "the incremental costs of an efficient new entrant using forward looking technologies." Motion, p. 2. There is nothing in the record which supports such a new standard. Indeed, this standard was never raised in this proceeding. Likewise, MFS' contentions that the charges for unbundled local loops should be consistent between LECs and this can be achieved by ignoring the individual LEC's cost studied and using the incremental costs of an efficient market entrant is a brand new concept for this proceeding. MFS does not

provide any record evidence for such a concept or demonstrate how the Commission could have divined what MFS had in mind.

3. MFS also states that the Commission ought to reconsider its order declining to require that unbundled local loop prices be geographically deaveraged. Motion, p. 15-17. The Commission properly declined to require geographically deaveraged local loop prices for Sprint United/Centel because this matter was not raised in negotiations between MFS and Sprint United/Centel. Order, p. 13. MFS tries to escape this fundamental procedural flaw by contending that in cross-examination by Sprint United/Centel MFS' witness Devine claimed that MFS asked for geographic deaveraging of the unbundled local loop in his rebuttal testimony. MFS attempts to support this position by quoting verbatim from the transcript. Motion, p. 17.

But MFS quotes only a part of the transcript at page 192. The remaining questions and answers, which MFS conveniently ignores, rebuts MFS' contention:

Q. Whereabouts in your rebuttal testimony?

(Pause)

A. I'm fumbling through here, but I reference -- because Ben Poag talked about high density and low density in his testimony, and we referenced it in here, I'm pretty sure.

CHAIRMAN CLARK: Have you found it, Mr. Devine?

WITNESS DEVINE: No, but I know I have it with GTE, and I swear -- I'm just looking.

I'm still looking. But to the extent that we talked about costs, that based on costs -- and the costs are different in different zones -- and Ben Poag talked about it in his testimony,

so we are talking about loops being priced at cost. And if a high density area has lower costs, if the loop price were the same for a statewide average, the price would exceed it. So in that context -- (long pause)

I'm trying to find the exact reference. I know I talked about it in the GTE. I just don't know why I can't find it in here.

Q. (By Mr. Fons) Well, let's move on. Let me ask you about the TSLRIC studies.

Tr. 192-93.

As a practical matter, whether Mr. Devine addressed geographic deaveraging of unbundled local loop in his rebuttal testimony in the GTE proceeding, that would have no impact on Sprint United/Centel. MFS would have had to raise this issue as a negotiation matter with Sprint United/Centel in order for it to be properly before the Commission with respect to Sprint United/Centel. See Section 364.161(1), Florida Statutes.

4. MFS also contends that the Commission needs to reconsider its decision because it "failed to authorize a 'fresh look' with regards to customer conversion in contrast with the Florida Commission's prior order for BellSouth." Motion, p. 3. MFS alleges its witness Devine testified that MFS requires a "fresh look" policy in order to compete effectively. The record transcript cited by MFS in an attempt to support this allegation does not, however, mention "fresh look." Instead, Mr. Devine's testimony speaks in terms of a customer converting its bundled service to an unbundled service and "assign such service to MFS-FL, with no penalties, rollover, termination or conversion charges to

MFS-FL or the customer." Tr., 40.<sup>2</sup> Based upon record testimony, the Commission rejected this request. Order, p. 29. In recognition of this fact, MFS goes on to argue that this Commission granted a "fresh look" in other proceedings and other commissions in other states have granted a "fresh look." Even if these other situations were comparable to the current proceeding, MFS fails to show that the Commission's decision here is unsupported by the record or erroneously applies the law.

5. MFS also requests reconsideration of the Commission's decision that, on an interim basis, Sprint United/Centel is to use currently tariffed nonrecurring charges associated with residence and business service as the basis for conversion costs. Motion, p. 18. Instead, MFS wants the Commission to require that Sprint United/Centel "use actual costs (if any)." Motion, p. 18. MFS' Motion ignores the fact that the Commission's decision goes on to require Sprint United/Centel to submit cost studies reflecting the nonrecurring costs of converting its bundled service to the unbundled service for MFS, and to do so within 60 days of the Order issuance date. Order, p. 30. Thus, MFS' Motion misconstrues and misapprehends the Commission's decision and fails to provide any valid basis for reconsideration.

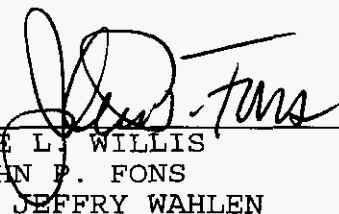
WHEREFORE, having fully demonstrated that MFS' Motion does not meet the standards for reconsideration of a Commission decision in

---

<sup>2</sup> This transcript page relates to Mr. Devine's testimony regarding GTE Florida. The comparable transcript page regarding Sprint United/Centel is Tr., 87.

any respect, Sprint United/Centel urge the 'Commission to deny MFS'  
Motion for Reconsideration.

DATED this 22nd day of July, 1996.



---

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

ATTORNEYS FOR UNITED TELEPHONE  
COMPANY OF FLORIDA AND CENTRAL  
TELEPHONE COMPANY OF FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing (without Exhibit "B") has been furnished by U. S. Mail or hand delivery (\*) this 22nd day of July, 1996, to the following:

Donna Canzano \*  
Division of Legal Services  
Florida Public Service Comm.  
2540 Shumard Oak Blvd., Rm 370  
Tallahassee, FL 32399-0850

Donald L. Crosby  
Continental Cablevision, Inc.  
Southeastern Region  
7800 Belfort Parkway, Suite 270  
Jacksonville, FL 32256-6925

Anthony P. Gillman  
Kimberly Caswell  
GTE Florida Incorporated  
Post Office Box 110, FLTC0007  
Tampa, FL 31601-0110

Steven D. Shannon  
MCI Metro Access Transmission  
Svcs., Inc.  
2250 Lakeside Blvd.  
Richardson, TX 75082

Leslie Carter  
Digital Media Partners  
1 Prestige Place, Suite 255  
2600 McCormack Drive  
Clearwater, FL 34619-1098

Rich Rindler  
Swidler & Berlin, Chartered  
3000 K Street, N.W., Suite 300  
Washington, DC 20007

David Erwin  
Young Van Assenderp et al.  
Post Office Box 1833  
Tallahassee, FL 32302-1833

Richard A. Gerstemeier  
Time Warner AxS of FL, L.P.  
2251 Lucien Way, Suite 320  
Maitland, FL 32751-7023

Leo I. George  
Lonestar Wireless of FL, Inc.  
1146 19th Street, NW, Suite 200  
Washington, DC 20036

Robert S. Cohen  
Pennington Law Firm  
Post Office Box 10095  
Tallahassee, FL 32302

Patrick K. Wiggins  
Wiggins & Villacorta, P.A.  
Post Office Drawer 1657  
Tallahassee, FL 32302

Andrew D. Lipman  
Metropolitan Fiber Systems of  
FL, Inc.  
One Tower Lane, Suite 1600  
Oakbrook Terrace, IL 60181-  
4630

Richard D. Melson  
Hopping Boyd Green et al.  
Post Office Box 6526  
Tallahassee, FL 32314

J. Phillip Carver  
c/o Nancy H. Sims  
BellSouth Telecommunications  
150 S. Monroe Street, Suite 400  
Tallahassee, FL 32301

John Murray  
Payphone Consultants, Inc.  
3431 NW 55th Street  
Ft. Lauderdale, FL 33309-6308

Patricia Kurlin  
Intermedia Communications of FL  
3625 Queen Palm Drive  
Tampa, FL 33619



Gary T. Lawrence  
City of Lakeland  
501 East Lemon Street  
Lakeland, FL 33801-5079

Jill Butler  
Digital Media Partners/  
Time Warner Communications  
2773 Red Maple Ridge  
Tallahassee, FL 32301

Graham A. Taylor  
TCG South Florida  
1001 W. Cypress Creek Rd.,  
Suite 209  
Ft. Lauderdale, FL 33309-1949

Clay Phillips  
Utilities & Telecommunications  
Room 410  
House Office Building  
Tallahassee, FL 32399

Greg Krasovsky  
Commerce & Economic  
Opportunities  
Room 4265  
Senate Office Building  
Tallahassee, FL 32399

Charles Beck  
Office of Public Counsel  
111 West Madison Street  
Room 812  
Tallahassee, FL 32399-1400

Nels Roseland  
Executive Office of the  
Governor  
Office of Planning & Budget  
The Capitol, Room 1502  
Tallahassee, FL 32399

Paul Kouroupas  
Director, Regulatory Affairs  
Teleport Communications Group  
Two Teleport Drive, Suite 300  
Staten Island, NY 10311

Floyd R. Self  
Messer, Caparello, et al.  
Post Office Box 1876  
Tallahassee, FL 32302

Michael W. Tye  
AT&T  
101 N. Monroe Street  
Suite 700  
Tallahassee, FL 32301

Robin D. Dunson  
1200 Peachtree Street, NE  
Promenade I, Room 4038  
Atlanta, GA 30309

Sue E. Weiske  
Time Warner Communications  
160 Inverness Drive West  
Englewood, CO 80112

Laura L. Wilson  
FCTA  
310 North Monroe Street  
Tallahassee, FL 32301

Ken Hoffman  
Rutledge, Ecenia, et. al  
215 S. Monroe Street, Suite 420  
Tallahassee, FL 32301-1841

Jodie Donovan-May  
Eastern Region Counsel  
Teleport Communications Group  
1133 21st Street, NW, Suite 400  
Washington, DC 20036

Mark K. Logan  
Bryant, Miller and Olive  
201 S. Monroe Street, Suite 500  
Tallahassee, FL 32301

Timothy Devine  
Metropolitan Fiber Systems  
6 Concourse Pkwy., Suite 2100  
Atlanta, GA 30328

  
\_\_\_\_\_  
ATTORNEY