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Benjamin W. Fincher  
Attorney, State Regulatory

September 11, 1996

961088 TP

VIA AIRBORNE

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

Re: Petition to Initiate a Generic Proceeding on Rates of BellSouth for  
Interconnection, Unbundled Elements, Transport and Termination, and Resale,  
or, in the Alternative, Grant Intervention

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen copies of Petition of Sprint  
Communications Company Limited Partnership to Initiate a Generic Proceeding on Rates of  
BellSouth Telecommunications, Inc. For Interconnection, Unbundled Elements, Transport and  
Termination, and Resale, or, in the Alternative, Grant Intervention.

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

Sincerely,

*Benjamin W. Fincher*  
Benjamin W. Fincher

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_ BWF/lk
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_ cc: Parties of record
- LEG \_\_\_\_\_ Everett Boyd
- LIN \_\_\_\_\_
- OPC \_\_\_\_\_
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- SEC \_\_\_\_\_
- WAS \_\_\_\_\_
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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In Re:

Petition of Sprint Communications Company	)	
Limited Partnership to Initiate a Generic	)	Docket No. _____
Proceeding on Rates of BellSouth	)	
Telecommunications, Inc. for	)	
Interconnection, Unbundled Elements,	)	Date Filed: September 12, 1996
Transport and Termination, and Resale	)	

**PETITION TO INITIATE A GENERIC PROCEEDING ON  
RATES OF BELL SOUTH TELECOMMUNICATIONS, INC. FOR  
INTERCONNECTION, UNBUNDLED ELEMENTS,  
TRANSPORT AND TERMINATION, AND RESALE  
OR, IN THE ALTERNATIVE, GRANT INTERVENTION**

Comes now Sprint Communications Company Limited Partnership ("Sprint") and hereby petitions the Florida Public Service Commission ("Commission") to open a generic proceeding<sup>1</sup> to examine costs of BellSouth Telecommunications, Inc. ("BellSouth") and determine the rates that BellSouth may permissibly charge under (1) the Telecommunications Act of 1996 ("Act")<sup>2</sup> and (2) Rules of the Federal Communications Commission ("FCC") for interconnection, unbundled elements, transport and termination of traffic, and resale.<sup>3</sup> In support of this Petition, Sprint respectfully shows as follows:

<sup>1</sup> As used in this pleading, "generic docket" or "generic proceeding" means a proceeding in which the Commission would examine BellSouth's cost studies and establish rates, and in which all interested parties (not just those involved in pending arbitrations with BellSouth) would be allowed full intervention rights, including the right to present testimony, to cross-examine witnesses, and to submit briefs.

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. Section 151 et. seq.

<sup>3</sup> In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98: First Report and Order, \_\_ FCC Rcd \_\_, 61 FR 45476 (1996)

DOCUMENT NUMBER-DATE

09704 SEP 12 1996

FPSC-RECORDS/REPORTING

## I. INTRODUCTION

On June 28, 1996, MFS Communications Company, Inc. (MFS) filed with the Commission its Petition for Arbitration of Interconnection Rates, Terms and Conditions pursuant to Section 252(b) of the Telecommunications Act of 1996. Pursuant to Order No. PSC-96-0918-PCO-TP, Docket No. 960757-TP, issued July 16, 1996, the Commission's Prehearing Officer held that intervention was not appropriate in that docket.

On July 17, 1996, AT&T Communications of the Southern States ("AT&T") filed with the Commission its Petition for Arbitration of Interconnection Rates, Terms and Conditions pursuant to Section 252(b) of the Telecommunications Act of 1996. Pursuant to Order No. PSC-96-0933-PCO-TP, Docket No. 960833-TP, issued July 17, 1996, the Commission's Prehearing Officer held that intervention was not appropriate in that docket.

Subsequent to the filing of these petitions, several other parties, including MCI Telecommunications Corporation ("MCI") and American Communications Services, Inc ("ACSI") have also submitted requests for arbitration under the federal Telecommunications Act.

Section 252(c) of the Act requires a state commission, in resolving an open issue by arbitration and imposing conditions upon the parties, to:

- (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 of the parties to the agreement.

Under subsection (d) of section 252, charges for interconnection, network elements, and transport and termination of traffic must be set at cost-based rates.<sup>4</sup> Wholesale prices for the

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<sup>4</sup> Under Section 252(d)(1), charges for interconnection and network elements shall be based on the cost of providing the interconnection or network element and be nondiscriminatory, and may include a reasonable profit. Section 252(d)(2) prescribes that charges for transport and termination of traffic must "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination of traffic on each carrier's network facilities of calls that originate on the network facilities of the other carrier," and be based on

resale of telecommunications services must be determined on the basis of retail rates less avoided costs.<sup>5</sup>

In CC Docket No. 96-98, the FCC promulgated rules for the application of these pricing standards. Under 47 C.F.R. Sections 51.503 and 51.505, the incumbent local exchange carrier's ("ILEC") rates for interconnection and unbundled elements must be based on the total element long-run incremental cost ("TELRIC") of the element, plus a reasonable allocation of forward-looking common costs. Significantly, the rules require that: "An ILEC must prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study." 47 C.F.R. Section 51.505(e).

State commissions must use this same methodology, including review of ILECs' cost studies, in setting rates for transport and termination of traffic. The rules establish default proxies or, in the case of transport and termination of traffic, allow bill-and-keep arrangements, to be used as interim rates until the state commission can review the incumbents' cost studies and establish permanent rates pursuant to the methodology prescribed in the rules.

Regarding resale, 47 C.F.R. Section 51.609 lists specific categories of costs that are considered "avoided" in setting wholesale rates, and the amount of avoided retail costs shall be determined based on a cost study submitted by the ILEC. Under 47 C.F.R. Section 51.611, state commissions may establish interim wholesale rates reflecting discounts of 17-25% of the ILECs' retail rates if information is not available to develop rates using the methodology prescribed in 47 C.F.R. Section 51.609. Thus, in deciding through arbitration the rates that BellSouth may charge for interconnection, unbundled network elements, and transport and termination of traffic, the Commission will necessarily have to review BellSouth's cost studies in order to ensure that rates are cost-based.

In accordance with the Act and the FCC's newly proscribed rules, the very first arbitrated agreements submitted for approval will require this Commission to articulate its interpretation of

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a reasonable approximation of the additional costs of terminating such calls. Bill-and-keep arrangements are not precluded, pursuant to Section 252(d)(2)(B).

<sup>5</sup> Section 252(d)(3).

the aforementioned pricing and other standards in Sections 251 and 252. How the Commission interprets these standards will constitute the essential prerequisites to the development of effective competition in the local telecommunications market in Florida. After the first arbitrated agreements have been approved, therefore, it seems unlikely that the Commission would approve any subsequently arbitrated agreements whose terms are materially different from those previously adopted.

Bearing in mind the crucial importance of the first arbitration petitions, and the fact that the Commission has already determined that interventions shall not be permitted in connection with these proceedings, Sprint now urges the Commission to immediately establish a generic docket regarding BellSouth's rates for interconnection, unbundled elements, transport and termination, and resale. The existence of a generic proceeding on BellSouth's supporting cost studies in connection with its proposed rates for the above mentioned services, functions and unbundled elements would enable all interested parties to intervene and fully participate in the Commission's examination of these vital issues. In addition, by considering BellSouth's cost studies in the context of a single, generic docket, the Commission should streamline considerably the arbitration proceedings now pending before the PSC.

## **II. THE COMMISSION SHOULD OPEN A GENERIC PROCEEDING TO SET RATES, AND SHOULD APPLY THE FCC'S PROXY RATES IN THE INTERIM.**

**A. Given the importance of these issues to the development of local competition in Florida, it is imperative that the Commission allow for full participation by all parties.**

Sprint respectfully requests that the Commission open a generic proceeding to set the rates that BellSouth may charge for interconnection, unbundled network elements, transport and termination of traffic, and resale. In the interim, the Commission should impose the proxy or default rates prescribed in the FCC's interconnection rules.

Opening a generic proceeding would allow all interested parties to review BellSouth's cost studies and provide meaningful input to the Commission in setting the rates for interconnection, unbundled network elements, and transport and termination of traffic. These rates will likely apply to numerous competitive local exchange carriers ("CLECs"), and will have

a direct and significant impact on the development of local competition in Florida. Accordingly, all interested parties should have the opportunity to present their positions to the Commission.

In developing its interconnection rules, the FCC contemplated that state commissions may use generic proceedings (rather than arbitrations) to establish rates for interconnection, unbundled network elements, and transport and termination of traffic, and may use default rates in the interim:

States may review a TELRIC economic cost study in the context of a particular arbitration proceeding, or they may conduct such studies in a rulemaking and apply the results in various arbitrations involving incumbent LECs. In the latter case, state must replace any interim rates set in arbitration proceedings with the permanent rate resulting from the separate rulemaking. This permanent rate will take effect at or about the time of the conclusion of the separate rulemaking and will apply from that time forward.<sup>6</sup>

Opening a generic proceeding is a desirable approach to determining rates, given the importance of the issues to be decided, the volume and complexity of the cost studies that the Commission must review and apply using the FCC prescribed methodology, and the relatively short time frame under the Act within which the Commission must decide an arbitration proceeding. Moreover, in a generic proceeding all interested parties would have the opportunity to review BellSouth's cost studies and provide input to the Commission's process of establishing rates. No party would be prejudiced by proceeding in this manner, because proxy rates could be utilized until such time as the Commission establishes permanent rates.

**B. It is in the public interest for the Commission to have access to the entire body of information on which to base its decisions regarding these crucial issues.**

The Commission will be addressing a number of complex and difficult issues, such as the avoided costs of resale of local service and the costs of unbundled network elements, which are

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<sup>6</sup> CC Docket No. 96-98, First Report and Order, Par. 693. See also *id.*, par. 925 (default wholesale discount rates can be used where a state has not completed its review of an avoided cost study); *id.*, par. 1055 (state can adopt a default price pursuant to default proxies outlined in the Order for transport and termination of traffic, pending a review of TELRIC cost studies).

critical to the development of effective local exchange competition. Rather than rushing to decide these issues in an arbitration under the tight time frame imposed by the Act, the Commission should open a generic proceeding so that it can gather all relevant information and make a reasoned decision. Allowing Sprint and other interested parties to participate in this process will facilitate the development of a complete and sufficient record on which to reach a decision.

The participation of Sprint and other interested parties in the process of setting BellSouth's rates for various elements and services will help ensure the development of a comprehensive record, while affording all affected parties the opportunity to present its positions. Giving the Commission access to the entire body of information from all sources on which to base these important decisions is not only in Sprint's interest, but also serves the public interest by allowing all interested parties the opportunity to have input as the Commission decides the terms and conditions under which local competition will develop in Florida.

**C. By examining BellSouth's cost studies in the context of a single, generic proceeding, the Commission will, in all likelihood, streamline the arbitration process.**

Finally, it seems likely that the establishment of a generic cost studies docket would shorten the duration of the arbitration proceedings now pending before the Commission. Presumably, BellSouth will present the same supporting cost data for interconnection, unbundling and resale in connection with each of the pending petitions of arbitration. By dealing with these cost studies once, in the context of a generic docket, and then by incorporating by reference the evidentiary record into each of the arbitration proceedings, the Commission and all parties should reap the benefits of an efficient arbitration process, namely, shorter evidentiary hearings, and the corresponding likelihood of a quicker resolution to the disputed issues.

**III. IN THE ALTERNATIVE, THE COMMISSION SHOULD RECONSIDER ITS PREVIOUS DECISION AND GRANT SPRINT AND OTHER INTERESTED PARTIES FULL INTERVENTION IN ARBITRATION PROCEEDINGS.**

Should the Commission decide not to open a generic docket to establish BellSouth's rates

for various services, Sprint requests that the Commission reconsider its previous determination, and permit interested third parties to intervene in arbitration proceedings. The Act does not prohibit the Commission from allowing Sprint and other interested parties to participate in the arbitration process, and, in lieu of a generic cost study docket, such participation would most efficiently utilize the resources of the Commission.

Sprint is an authorized interexchange carrier in Florida operating pursuant to a certificate of public conveniences and necessity, and Sprint intends to offer local exchange services to customers in Florida in the near future as a CLEC. In connection with providing local service, Sprint is currently negotiating an agreement with BellSouth that will cover interconnection, unbundled network elements, transport and termination of traffic, and resale, which are the very issues that the Commission is considering in the arbitrations. Since the Commission's consideration of the pending petitions for arbitration will likely involve issues which will remain outstanding between Sprint and BellSouth and create precedents which could impact on both the provision of similar services by Sprint and the implementation of the federal Act, it is clear that Sprint's legal rights, duties, privileges, immunities, and other legal interest, may be affected in these arbitration proceedings. Further, these rights and interests cannot be adequately represented by any other party in the pending arbitration dockets.

As a practical matter, arbitration proceedings are essentially policy-making dockets that will affect the ability of Sprint and all carriers to compete in the local market. The Commission's decision on these issues will set the standard for future decisions on the same issues. For example, in deciding the rates for interconnection, unbundled network elements, transport and termination of traffic, and avoided costs of resale, the Commission must apply the methodology set forth in the FCC rules and determine the proper rates. It is unlikely that the Commission will undertake this process anew each time a CLEC requests arbitration on these issues, particularly because BellSouth would presumably submit the same cost information in each case. Consequently, the Commission's decisions in this regard will essentially establish the rates and terms available to all other CLECs in subsequent negotiations or arbitrations with BellSouth. Accordingly, it is critical that Sprint be permitted to present its positions, either in a generic cost study docket, or in the arbitration proceedings themselves.



Commissions in Virginia, Maryland, Massachusetts and Colorado have allowed interested parties to participate in arbitrations. In its decision to allow interventions in arbitrations, the Colorado Public Utilities Commission ("CPUC") voiced the same concerns expressed by Sprint:

The Act, in our view, does not require that interconnection agreements be treated simply as private commercial arrangements between two parties. To the contrary, other parties may have an interest and may be affected by the agreement made between two negotiating or arbitrating carriers. Specifically, an agreement will establish interconnection rates, terms, and conditions available to other carriers. Furthermore, the Commission, in establishing rates, terms, and conditions for interconnection with US West in one proceeding (e.g., in arbitrating MFS' petition) will undoubtedly consider information relevant to establishing such rates, terms, and conditions for other carriers. It is likely, assuming the Commission acts consistently, that decisions made in one proceeding concerning US West will affect determinations made in subsequent proceedings. As such, it is appropriate that other interested parties have an opportunity to comment upon such information in the first proceeding.<sup>7</sup>

Sprint does not believe that its concerns are adequately addressed by permitting interested parties to comment in the approval process for an arbitrated agreement. In view of the relatively short time frame under the Act within which the Commission must approve or reject an agreement through arbitration, Sprint should have the right to participate prior to that time, either in a generic proceeding or by intervening in the arbitration, rather than simply being allowed to participate in a post-approval process.

Once an agreement is finalized through arbitration and presented to the Commission for approval, the Commission must act within 30 days to approve or reject it.<sup>8</sup> Such a limited time frame allows time for only a cursory review of the agreement by the Commission or other

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<sup>7</sup> CPUC Docket Nos. 96A287T, 96A-329T and 96A-345T, Order of Consolidation and Setting Procedural Schedule, pp.6-7.

<sup>8</sup> Section 252(e)(4) of the Telecommunications Act of 1996.

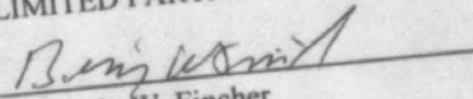
parties. Thus, in order for Sprint to have a sufficient opportunity to provide meaningful input on the issues presented, the Commission should either open a generic cost studies docket or grant Sprint intervention in the pending arbitration proceedings.

#### IV. CONCLUSION

WHEREFORE, Sprint respectfully requests that the Commission initiate a generic docket to set the rates that BellSouth may charge for interconnection, unbundled network elements, transport and termination of traffic and to apply the FCC's default proxy rates until permanent rates are established. In the alternative, Sprint requests that the Commission reconsider its previous decision, and allow it to intervene in all pending arbitration proceedings.

Respectfully submitted this 11<sup>th</sup> day of September, 1996.

SPRINT COMMUNICATIONS COMPANY  
LIMITED PARTNERSHIP

  
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and exact copy of the within and foregoing Petition to Initiate a Generic Proceeding on Rates of BellSouth Telecommunications, Inc. For Interconnection, Unbundled Elements, Transport and Termination, and Resale, or in the Alternative, Grant Intervention on behalf of Sprint Communications Company L.P., via United States mail, postage paid and properly addressed to the following:

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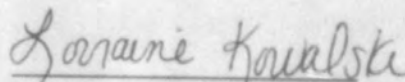
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This 11 day of September, 1996

  
Lorraine Kowalski