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SEARCHED  
SERIALIZED

November 15, 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: Docket No. 960830-TP

961333-TP

Dear Ms. Bayo:

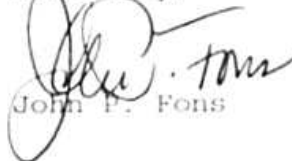
Enclosed for filing in the above docket are the original and fifteen (15) copies of Sprint's Motion to Reject Portion of MFS/Sprint Negotiated Partial Agreement.

We are also submitting the Motion 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,

  
John P. Fons

Enclosures  
cc: Parties of Record

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FPSC-RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the matter of )  
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MFS COMMUNICATIONS COMPANY, )  
INC. )  
 )  
Petition for Arbitration )  
Pursuant to 47 U.S.C. § 252(b) )  
of Interconnection Rates, )  
Terms, and Conditions with )  
 )  
SPRINT UNITED-CENTEL OF )  
FLORIDA, INC. (also known as )  
CENTRAL TELEPHONE COMPANY OF )  
FLORIDA AND UNITED TELEPHONE )  
COMPANY OF FLORIDA) )  
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DOCKET NO. 960838-TP  
Filed: November 15, 1996

**SPRINT'S MOTION TO REJECT PORTION OF  
MFS/SPRINT NEGOTIATED PARTIAL AGREEMENT**

United Telephone Company of Florida ("Sprint"), pursuant to Rule 25-22.037(2), Florida Administrative Code, respectfully requests that the Commission, pursuant to 47 U.S.C. § 252(2)(A), reject a portion of the negotiated Partial Interconnection Agreement between MFS Communications Company, Inc. ("MFS") and United Telephone Company of Florida, dated September 19, 1996, which MFS filed with the Commission on November 6, 1996, for review and approval pursuant to 47 U.S.C. § 252(e)(1), stating as follows:

**Background**

1. On August 8, 1996, the Federal Communications Commission ("FCC") issued its First Report and Order and Rules in CC Docket No. 96-98, In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 ("First Report and Order"). Appeals of the First Report and Order were filed by

DOCUMENT NO.  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the matter of )  
 )  
MFS COMMUNICATIONS COMPANY, )  
INC. )  
 )  
Petition for Arbitration )  
Pursuant to 47 U.S.C. § 252(b) )  
of Interconnection Rates, )  
Terms, and Conditions with )  
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SPRINT UNITED-CENDEL OF )  
FLORIDA, INC. (also known as )  
CENTRAL TELEPHONE COMPANY OF )  
FLORIDA AND UNITED TELEPHONE )  
COMPANY OF FLORIDA) )  
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DOCKET NO. ~~960830-TP~~ 961333-7P  
Filed: November 15, 1996

**SPRINT'S MOTION TO REJECT PORTION OF  
MFS/SPRINT NEGOTIATED PARTIAL AGREEMENT**

United Telephone Company of Florida ("Sprint"), pursuant to Rule 25-22.037(2), Florida Administrative Code, respectfully requests that the Commission, pursuant to 47 U.S.C. § 252(2)(A), reject a portion of the negotiated Partial Interconnection Agreement between MFS Communications Company, Inc. ("MFS") and United Telephone Company of Florida, dated September 19, 1996, which MFS filed with the Commission on November 6, 1996, for review and approval pursuant to 47 U.S.C. § 252(e)(1), stating as follows:

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FPSC-RECORDS/REPORTING

numerous parties, including this Commission, to the United States Court of Appeals for the Eighth Circuit ("the Court"). Additionally, several parties, including this Commission, requested a stay of the First Report and Order pending outcome of the appeals. On September 27, 1996, the Court granted a temporary stay of the entire First Report and Order and, following oral argument on October 3, 1996, granted a stay of the operation and effect of the pricing provisions<sup>1</sup> and the "pick and choose" rules<sup>2</sup> contained in the First Report and Order pending the Court's final determination of the appeals. On October 31, 1996, United States Supreme Court Justice Clarence Thomas rejected the FCC's request to lift the stay.<sup>3</sup> The full Supreme Court also refused to lift the stay on November 12, 1996.

#### Changed Circumstances

2. The negotiations between Sprint and MFS were conducted during the time the FCC's First Report and Order and Rules were in effect and not stayed by the Court. It was unquestioned by the parties that the FCC had preempted the states, including this

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<sup>1</sup> The pricing provisions refer to First Report and Order, Appendix B - Final Rules §§51.501-51.515 (inclusive), §§51.601-51.611 (inclusive), §§51.701-51.717 (inclusive) and to the default proxy range for line ports used in the delivery of basic residential and business exchange services established in the FCC's Order on Reconsideration, dated September 27, 1996.

<sup>2</sup> The "pick and choose" rule refers to First Report and Order, Appendix B - Final Rules §§51.809.

<sup>3</sup> On November 1, 1996, in response to AirTouch Communications, Inc.'s emergency motion to modify the stay, the Court lifted the stay as to those rules which impact CMRS providers only, i.e., Rules §§ 51.701, 51.703, and 51.717.

Commission, from imposing requirements (including rates and rate structures) different from those included in the FCC's First Report and Order and Rules. In particular, § 51.711 (a)(3) of the FCC Rules imposed symmetrical reciprocal compensation which required Sprint to compensate MFS for tandem switching at the rate of \$0.0015 per minute for tandem switching because MFS serves the same geographic area as Sprint's tandem even though MFS does not, in fact, provide any tandem switching. Thus, during negotiations with MFS, Sprint agreed to compensate MFS in accordance with the FCC Rules then in effect, rather than submit the issue to arbitration, believing that it would be pointless to arbitrate the issue.

3. Now that the FCC's rules have been stayed, Sprint believes that circumstances have changed sufficiently to warrant the Commission's rejection of that provision of the agreement requiring MFS compensation for tandem switching. Fairness requires that Sprint not be bound to a provision that it would have had arbitrated had the FCC Rules not created a preemption at the time arbitration would otherwise have been available. During negotiations, and even during the discovery and hearing phases of the arbitration proceeding, Sprint maintained its position that MFS should not be compensated for tandem switching it did not provide. This position is consistent with Sprint's opposition to MFS' request for compensation for transport even when MFS does not provide any transport facilities or functions.

4. Unlike the tandem switching issue, the "phantom" transport issue was submitted to arbitration and, based upon the

Commission's vote on November 1, 1996, to adopt Staff's recommendation, this issue was ruled on in Sprint's favor. See Attachment No. 1, which is a copy of the Commission's Vote Sheet, dated November 1, 1996. Sprint believes that had it also been able to submit the tandem switching issue to arbitration, the Commission would also have found in Sprint's favor. Prior to MFS filing the negotiated partial agreement, Sprint approached MFS with a proposal to revise the negotiated agreement to reflect the changed circumstances and the Commission's support for the proposition that MFS should not be compensated for a function/facility it does not provide. MFS has refused Sprint's proposal.

5. The Commission should reject this portion of the negotiated agreement because its implementation is not consistent with the public interest, convenience and necessity. See Section 252(e) (2) (A) of the Act. At the very least, the Commission should allow Sprint to present its case as to why the public interest, convenience and necessity is not served by a requirement that Sprint pay for a function MFS does not provide or for a cost it does not incur. See Section 252(d) (2) (A) (1) of the Act. However, a grant of MFS' request for approval will effectively preempt Sprint's right to have this issue fully adjudicated now that the Commission is no longer preempted by the stayed FCC Rules.

6. MFS will not be harmed by the Commission's rejection of this single element of the negotiated partial agreement, because Sprint proposes that the Commission now arbitrate this issue. In view of the fact that arbitration has been completed on all other

non-negotiated issues, Sprint proposes that this tandem switching compensation issue be submitted to Commission arbitration on an expedited basis. Because there are no disputed material facts, this issue can be decided by the Commission pursuant to Section 120.57(2), Florida Statutes, 1996, by the parties simply briefing the issue, relying upon the record facts already developed. Even if this arbitration cannot be accomplished within the 9-month statutory time frame, MFS will not be harmed. Should the Commission rule in MFS' favor on this issue, Sprint agrees to true-up any payments to MFS for the transport and termination of Sprint's local traffic.

#### Alternative Grounds for Rejection

7. Although Sprint reaffirms all other aspects of the negotiated partial agreement and supports Commission approval, MFS' request for approval of the negotiated partial agreement at this time is an unnecessary imposition upon the Commission's limited resources. In Staff's recommendation on the arbitrated issues, which was adopted by the Commission on November 1, 1996, the procedure for approval of arbitrated agreements under Section 252 of the Federal Act is that within 30 days after issuance of the Commission's Order the parties are to prepare an agreement that includes the arbitrated issues and submit this final agreement to the Commission for approval. See Attachment No. 1. It would be pointless for the Commission to undertake to approve the negotiated and arbitrated agreements on a piecemeal basis. Now that the arbitration has been completed and a final order is in the offing,

it makes more sense to submit the entire negotiated and arbitrated agreements for approval at one time.

WHEREFORE, Sprint respectfully requests that the Commission reject MFS' request for approval of the negotiated partial agreement.

Dated this 15th day of November, 1996.

Respectfully submitted,

---

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail, hand delivery (\*) or overnight express (\*\*) this 15th day of November, 1996, to the following:

Michael Billmeier \*  
Division of Legal Services  
Florida Public Service Comm.  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Andrew D. Lipman \*  
Russell M. Blau  
Lawrence R. Freedman  
Swidler & Berlin, Chartered  
3000 K Street, N.W., Suite 300  
Washington, DC 20007-5116

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Attorney

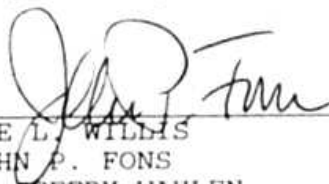


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WHEREFORE, Sprint respectfully requests that the Commission reject MFS' request for approval of the negotiated partial agreement.

Dated this 15th day of November, 1996.

Respectfully submitted,



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3000 K Street, N.W., Suite 300  
Washington, DC 20007-5116



Attorney

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