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GTE Telephone Operations

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January 17, 1997

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

Re: Docket No. 960979-TP
Petition by WinStar Wireless of Florida, Inc. for arbitration of certain terms and conditions of a proposed agreement with GTE Florida Incorporated concerning resale and interconnection pursuant to 47 USC Section 252(b) of the Telecommunications Act of 1996

Dear Ms. Bayo:

ACK

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APP

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EMG

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SEC

WAS

OTH

Please find enclosed an original and fifteen copies of GTE Florida Incorporated's Motion to Dismiss Issue No. 1 for filing in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at (813) 483-2615.

Very truly yours,

Anthony P. Gillman
Anthony P. Gillman

APG:tas
Enclosures

A part of GTE Corporation

RECEIVED
[Signature]

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by WinStar Wireless of Florida, Inc.)
for arbitration of certain terms and conditions of a)
proposed agreement with GTE Florida Incorporated)
concerning resale and interconnection pursuant to)
47 USC Section 252(b) of the Telecommunications)
Act of 1996)
_____)

Docket No. 960979-TP
Filed: January 17, 1997

**GTE FLORIDA INCORPORATED'S
MOTION TO DISMISS ISSUE 1**

GTE Florida Incorporated (GTE) moves to dismiss Issue No. 1 in this proceeding, and in support of this motion states:

1. Issue No. 1 in this proceeding pertains to whether a most-favored-nations (MFN) clause should be arbitrated by the Commission, and if so, whether it should give WinStar a unilateral right to "pick and choose" any provision from any other agreement.

Issue No. 1 is as follows:

Issue 1: Should the Commission require GTE to include a "most favored nations" clause in its interconnection and resale agreement with WinStar where such a clause would permit WinStar to unilaterally adopt specific provisions of arbitrated and negotiated agreements with other parties without adopting the remaining provisions of such agreements?

2. The Commission refused to address the same type of MFN issue in an arbitration involving Sprint and GTE. See *Petition by Sprint Communications Company Limited Partnership d/b/a Sprint For Arbitration with GTE Florida Incorporated Concerning Interconnection Rates, Terms, and Conditions Pursuant to the Federal Telecommunications Act of 1996*, Docket No. 961173-TP. The issue in that case was:

Issue 23: Should GTEFL make available any price, term and/or condition offered to any carrier by GTEFL to Sprint on a Most-Favored Nation's (MFN) basis? If so, what restrictions, if any would apply?

3. The Commission Staff recommended that the Commission not address this issue stating:

It is not necessary for the Commission to vote on this issue. The Commission is not required to interpret 47 U.S.C. § 252(i) to fulfill its arbitration responsibilities. Further, since the Commission is not required to interpret Section 252(i) at this time, the Commission should likewise not impose restrictions on the application of Section 252(i).

Staff Recommendation at 77. The Staff noted that the Commission's arbitration responsibilities are set forth in Section 252(c) of the Act. Because those responsibilities do not include interpreting subsection 252(i), the Staff concluded that the issue should not be addressed.

4. The Commission approved the Staff recommendation today, on January 17, 1997. It is GTE's understanding that the Commission made a similar finding in an arbitration case between Sprint and BellSouth.

5. In light of the Commission's decision today, GTE seeks dismissal of Issue 1 in this arbitration. The reasons behind the Commission's decision in the Sprint/GTE case are equally applicable here. In order to address Issue 1 in the present arbitration, the Commission must interpret subsection 252(i). As the Commission held in the Sprint/GTE arbitration, interpreting that federal statute is not one of the Commission's responsibilities to decide under the Act.

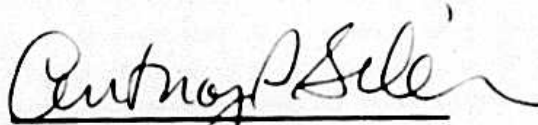
6. The Commission's decision in the Sprint/GTE arbitration was one of law and not fact. As such, this motion can be addressed without the introduction of any evidence.

Granting this motion will conserve the resources of the Commission because if the Commission follows its legal decision made in the Sprint/GTE case, there would be no need to hear evidence and cross-examination on this issue.

WHEREFORE, GTE respectfully requests the Commission to grant this motion and dismiss Issue 1 from this proceeding.

Respectfully submitted on January 17, 1997.

By:



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Attorneys for GTE Florida Incorporated

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Motion to Dismiss Issue No. 1 in Docket No. 960979-TP were hand-delivered(*) or sent via overnight delivery(**) on January 17, 1997, to the parties listed below.

Martha Brown(*)
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