

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

ORIGINAL
FILE COPY

May 5, 1997

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. 970496-TP

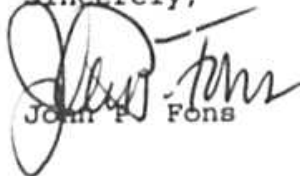
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Sprint-Florida, Inc.'s Answer and Response to MCI's Petition to Opt into an Approved Interconnection Agreement.

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

ACK

AEA _____

APP _____

CAF _____

Enclosures

CFD _____

cc: Parties of Record

CTD _____

utd\970496 byo

EAC _____

LET 1 _____

LIN _____

OPC _____

RCR _____

RECEIVED & FILED

SEC _____

WAS _____

OTH _____

EPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

04443 MAY-56

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

In the matter of)
KMC TELECOM, INC.) DOCKET NO. 970496-TP
Petition For Relief To Opt Into An) Filed: May 5, 1997
Approved Interconnection Agreement)
SPRINT-FLORIDA, INC.)

**SPRINT-FLORIDA, INC.'S ANSWER AND RESPONSE
TO MCI'S PETITION TO OPT INTO AN
APPROVED INTERCONNECTION AGREEMENT**

Sprint-Florida, Inc. ("Sprint" or the "Company"), pursuant to Section 25-22.037, Florida Administrative Code, and Section 252(i) of the Telecommunications Act of 1996, Pub.L.No. 104-106 § 101(a), 110 Stat. 70 ("the Act"), answers and responds to the Petition to Opt into an Approved Interconnection Agreement ("Petition") filed by KMC Telecom, Inc. ("KMC") stating as follows:

Answer

1. Sprint is without sufficient information to admit or deny paragraph 1 of KMC's Petition.
2. Sprint is without sufficient information to admit or deny paragraph 2 of KMC's Petition.
3. Paragraph 3 of KMC's Petition is admitted.
4. Paragraph 4 of KMC's Petition is admitted.
5. Paragraph 5 of KMC's Petition is admitted.
6. Paragraph 6 of KMC's Petition is admitted.
7. Paragraph 7 of KMC's Petition is admitted.
8. Paragraph 8 of KMC's Petition is admitted.

DOCUMENT NUMBER-DATE

04443 MAY-55

FPSC-RECORDS/REPORTING

9. Paragraph 9 of KMC's Petition is admitted.

10. Paragraph 10 of KMC's Petition is admitted.

11. Sprint denies KMC's Request for Relief on the grounds that Sprint is not required by Section 252(i) of the Act to allow KMC to opt into the MFS/United Telephone Company Partial Interconnection Agreement ("MFS Agreement") in its entirety, including Section 5.4.2 of the MFS Agreement.

12. Sprint acknowledges that if there are no material facts in dispute this matter may proceed under the provisions of Section 120.57(2), Florida Statutes, 1996, and Section 25-22.036, Florida Administrative Code. However, until such time as all facts have been stipulated, Sprint cannot agree that there are no material facts in dispute. Sprint is ready and willing to meet with KMC to agree upon a set of stipulated facts.

Response

13. KMC is not entitled to the relief requested in its Petition. Sprint is not required by Section 252(i) of the Act to allow KMC to opt into Section 5.4.2 of the MFS Agreement - which requires Sprint to reciprocally compensate MFS for tandem switching - because: (1) KMC will not perform these functions for Sprint; and (2) the provision in the MFS agreement which KMC wants to opt into is no longer operative because of another provision in the MFS Agreement, Section 26.2, which has been activated by this Commission's decision in the MCI/Sprint Arbitration proceeding (Docket No. 961230-TP, Order No. PSC-97-0294-FOF-TP) which holds that "the Act does not intend for carriers such as MCI to be

compensated for a function they do not perform." Order, p. 10. A copy of Section 26.2 of the MFS Agreement is attached hereto as Attachment 1 and is incorporated herein by this reference.

14. Section 26.2 of the MFS Agreement provides in pertinent part that:

This Agreement shall at all times be subject to change or modification with respect to the rates, terms, or conditions contained herein as may be ordered by the Commission or the FCC in the exercise of their respective jurisdiction, whether said changes or modifications result from a rulemaking proceeding, a generic investigation or an arbitration proceeding which applies to Sprint or in which the Commission makes a generic determination.

It is clear that in the MCI/Sprint Arbitration proceeding this Commission concluded that Sprint is not required to compensate MCI for a tandem switching function MCI does not provide. That determination, therefore, makes Section 5.4.2 of the MFS Agreement inoperable and of no further effect. Moreover, because KMC is opting into the entire MFS Agreement, Section 26.2 is applicable in all respects to KMC, and the effect of the MCI/Sprint arbitration proceeding decision on tandem switching will be equally applicable. As provided for in Section 26.2:

Any rates, terms, and conditions thus developed shall be substituted in place of those previously in effect and shall be deemed to have been effective under this Agreement as of the effective date of the order by the Commission or the FCC, regardless of whether such action was commenced before or after the effective date of the Agreement.

WHEREFORE, having fully answered and responded, Sprint respectfully requests that the Commission deny KMC's request for relief in all respects.

Dated this 5th day of May, 1997.

Respectfully submitted,



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

ATTORNEYS FOR SPRINT-FLORIDA, INC.

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 5th day of May, 1997, to the following:

Martha Carter Brown, Esq. *
Charles J. Pellegrini, Esq.
Division of Legal Services
Florida Public Service Comm.
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Richard M. Rindler, Esq. **
Laurence R. Freedman, Esq.
Swidler & Berlin, Chartered
3000 K Street, NW, Suite 300
Washington, 20007-5116



Attorney