BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: 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 ORDER NO. PSC-97-0550-FOF-TP ISSUED: May 13, 1997

The following Commissioners participated in the disposition of this matter:

JOE GARCIA
DIANE K. KIESLING

ORDER ON ARBITRATION AGREEMENT BETWEEN SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP D/B/A SPRINT AND GTE FLORIDA INCORPORATED

BY THE COMMISSION:

I. BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act), 47 USC 151 et. seq., provides for the development of competitive markets in the telecommunications industry. Section 251 of the Act concerns interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements established by compulsory arbitration. Section 252(b)(1) states:

> (1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(c) states that the State commission shall resolve each issue set forth in the petition and response by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

By letter dated April 19, 1996, Sprint Communications Company Limited Partnership d/b/a Sprint, requested that GTE Florida, Incorporated (GTEFL) begin good faith negotiations under Section 251 of the Act. On September 26th, Sprint filed its request for arbitration under the Act.

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order in CC Docket No. 96-98 (Order). The Order established the FCC's requirements for interconnection, unbundling and resale based on its interpretation of the 1996 Act. This Commission appealed certain portions of the FCC order, and requested a stay of the Order pending that appeal. On October 15, 1996, the Eighth Circuit Court of Appeals granted a stay of the FCC's rules implementing Section 251(i) and the pricing provisions of the Order.

On December 5-6, 1996, we conducted an evidentiary hearing to resolve seven issues raised by the parties. On February 26, 1997, we issued Order No. PSC-97-0230-FOF-TP (Order) which reflected our decisions on those issues. In the Order, we directed the parties to file an agreement memorializing and implementing our decision within 30 days. The parties, however, filed distinctly different agreements. GTEFL filed its proposed agreement with the Commission on March 27, 1997. Sprint filed a Motion for Approval of Agreement and Order Directing Execution of Agreement on March 28, 1997. GTEFL timely filed its response in opposition to Sprint's Motion on April 9, 1997. On April 9, 1997, Sprint filed its Amendment to Motion for Approval of Agreement and Order Directing Execution of Agreement of Sprint Communications Company Limited Partnership.

II. SPRINT'S AMENDMENT TO MOTION FOR APPROVAL OF AGREEMENT

As discussed above, Sprint filed a Motion for Approval of Agreement and Order Directing Execution of Agreement on March 28, 1997. GTEFL timely filed its response in opposition to Sprint's Motion on April 9, 1997. On April 9, 1997, Sprint filed its Amendment to Motion for Approval of Agreement and Order Directing Execution of Agreement of Sprint Communications Company Limited Partnership. Specifically, Sprint requested that it be allowed to amend its Motion by alternatively seeking a stay of this proceeding.

Sprint states that it has sought and continues to seek parity with AT&T. Sprint argues that it would be at a competitive disadvantage if Sprint were required to interconnect with GTEFL under terms and conditions less favorable than those being offered by GTEFL to AT&T in the AT&T/GTEFL Agreement. According to Sprint, use of the AT&T/GTEFL agreement as the basis for a separate agreement between Sprint and GTEFL has been an ongoing issue in the negotiations between Sprint and GTEFL and is within the scope of the issues in this proceeding.

Sprint argues that it is entitled to elect the AT&T/GTEFL agreement under Section 252(i) of the Telecommunications Act of 1996. Sprint argues that Congress included this provision to prevent discrimination among carriers and to provide a more level playing field for competition based on pricing, quality, and service. Sprint further argues that Section 252(i) contains no time or other limitation on GTEFL's obligation to make the terms and conditions of its agreement with AT&T, once approved by this Commission, available to Sprint or any other requesting carrier.

Sprint states that GTEFL has acknowledged in this proceeding and other state commission proceedings that it would allow Sprint to interconnect under the same terms and conditions as provided in the AT&T/GTEFL approved agreement. Sprint further states that despite these representations, GTEFL's present position is that it is unwilling to offer Sprint the same terms and conditions that it has offered AT&T. Sprint argues that the agreement submitted by GTEFL unilaterally in this proceeding is, in many respects, less favorable than the AT&T/GTEFL agreement. Sprint states that it would be competitively disadvantaged by GTEFL's proposed agreement here and does not intend to utilize it. Sprint, therefore, states that it will file an appropriate pleading with the Commission requesting that Sprint be permitted, pursuant to Section 252(i), to elect the AT&T/GTEFL agreement in its entirety as soon as it is approved by the Commission. Moreover, Sprint asserts that because Sprint proposes to elect the entire agreement, there are no substantive interpretive issues as to whether Sprint may "pick and choose" among the various terms and conditions of the agreement.

Sprint states that in order to accommodate Sprint's election under Section 252(i), it respectfully requests that the Commission stay this proceeding until such time as the AT&T/GTEFL agreement is approved. Sprint proffers several grounds in support of its request. First, no useful purpose would be served by the Commission approving any separate agreement between GTE and Sprint in the interim. Were the Commission to approve a separate Sprint/GTEFL agreement, Sprint would not utilize it for the reasons shown. Second, the accelerated time frame in the Act for

interconnection proceedings was imposed by Congress for the benefit of requesting carriers such as Sprint. Third, GTEFL will not be prejudiced or harmed by a stay. Fourth, the parties continue to disagree over their interpretations of the Commission's arbitration order in this proceeding. As a consequence there will be no joint submission of a proposed agreement as contemplated by section 252(e)(4), and the Commission will not be bound by the thirty (30) day time period set forth in that section in resolving the parties continuing disputes. Granting of a stay will protect the Commission and the parties from expending any further time and efforts on an inoperative agreement.

GTEFL argues that we should dismiss the Motion and Amendment Request on procedural grounds. GTEFL asserts that our rules do not contemplate Sprint's posthearing, postdecision Motion. GTEFL argues there are additional factors that warrant the strictest application of our procedural rules in this case. One is Sprint's undue delay in filing the Motion which came over two weeks past the deadline for even a Motion for Reconsideration; and two, the Motion seeks extraordinary action, in effect, a nullification of the entire arbitration proceeding. We should, according to GTEFL, resist setting a precedent here that will allow parties the same broad latitude to file posthearing, postdecision motions as they have to file prehearing motions.

With respect to the Amendment, GTEFL argues that all of its criticisms apply with even greater force to the associated amendment. GTEFL asserts that no Commission Rule permits amendments to motions, let alone amendments to posthearing, postdecision motions which are themselves not contemplated in the Rules. GTEFL argues that the Commission should avoid any expansive procedural interpretation allowing Sprint's amendment because: 1) Sprint has offered no reason why it failed to include the amending material in its original Motion; 2) the requested Amendment is intended to obtain relief that is so severe it will, in effect, render meaningless this entire proceeding; and 3) the requested Amendment compromises GTEFL's due process rights.

GTEFL further argues that if we permit the Amendment, we should not grant the Stay Sprint seeks. Specifically, GTEFL argues that a Stay will further Sprint's efforts to nullify this proceeding. GTEFL states that the contract Sprint submitted with its Motion has nothing to do with this arbitration. The contract, GTEFL states, is a hybrid of provisions the Commission deleted from AT&T's proposed contract in that arbitration. GTEFL asserts that, based on Sprint's requested Amendment, Sprint now ultimately wants to adopt the GTEFL/AT&T contract yet to be approved, rather than

the document Sprint filed originally, which was not approved in the GTEFL/AT&T arbitration.

In either case, GTEFL argues that the contract Sprint wants will not be a product of this arbitration between Sprint and GTEFL, or the months of negotiations Sprint and GTEFL have conducted. As such, GTEFL states that Sprint's request for stay, just like its Motion for approval of the GTEFL/AT&T contract submission, will further Sprint's efforts to negate the Commission's decisions in this case and squander all of the effort and expense GTEFL and the Commission have invested in this arbitration. GTEFL argues that granting the request for stay to accommodate Sprint's attempt to elect the GTEFL/AT&T agreement will likewise subvert the negotiations process envisioned by the Act; require the Commission to ignore its own rules for identification and resolution of issues; condone Sprint's failure to negotiate conforming language in accordance with the arbitration Order; and ignore Sprint's obligation, under the Act, to cooperate in good faith with both GTEFL and the Commission in the negotiation and arbitration.

GTEFL also argues that a stay will cause the Commission to violate the Act. GTEFL refers to Section 252(e)(4) which provides that if the Commission fails to approve or reject an arbitrated agreement within 30 days after its submission, the agreement shall be deemed approved. GTEFL asserts that Sprint's assessment of the Commission's responsibilities under the Act is wrong for several reasons.

First, GTEFL argues that the parties' interpretations of arbitration orders do not excuse the Commission from complying with the decision making window established in Section 252(e)(4). Second, GTEFL argues that Sprint refused to negotiate language to conform the GTEFL/Sprint form of agreement to the Order in this case. GTEFL states that although GTEFL presented its proposed language to Sprint, Sprint declined to comment upon it, and so GTEFL was compelled to unilaterally present this language. As such, GTEFL states, it cannot be said that the parties continue to disagree over their interpretations of the Commission's arbitration order in this proceeding. Third, GTEFL argues, that with respect to Sprint's argument that a stay will protect the Commission from expending any further time and efforts on an inoperative agreement, the agreement will be inoperative only because Sprint has vowed not to utilize any separate Sprint/GTEFL agreement the Commission approves in this arbitration.

GTEFL further argues that if the Commission grants the Stay, the Commission will not only be violating the timing requirements of Section 252(e)(4), but the more fundamental obligation to approve an agreement specific to this GTEFL/Sprint arbitration. GTEFL also argues that it will be harmed by a stay.

Finally, GTEFL argues that Sprint's planned election would likely fail. GTEFL states that because Sprint has not yet attempted any election, the issue of whether Sprint does, in fact, have a right to choose another contract is not before this Commission. This election controversy, GTEFL asserts, may well be resolved in the courts.

GTEFL goes on to enumerate several reasons why it believes Sprint's election will likely fail. First, Sprint's reliance on Section 252(i) to claim an unrestricted right to elect the GTEFL/AT&T agreement under the circumstances in this proceeding is misplaced because the scope of this Section and the time frame accorded to a carrier to adopt other Local Exchange Carrier agreements remain unsettled. Second, any right to election is exclusive of arbitration. Third, the Commission cannot be sure Sprint will even attempt the planned election that is the basis for the stay request. Fourth, the Commission's decision in the GTEFL/AT&T arbitration has been submitted for review in federal court. This review, GTEFL asserts, casts further doubt on the likelihood that the GTEFL/AT&T agreement will be implemented as approved by the Commission and thus, on Sprint's desire and ability to effectively elect the GTEFL/AT&T contract.

Upon consideration, we do not think it is appropriate to consider Sprint's Amendment. The Act has provided a very limited period of time in which to conduct arbitration proceedings. We have set out the specific procedures to be followed to accommodate the Act's requirements. We find Sprint's Amendment was so late in the process that it would effectively change the entire procedure contemplated by the Act and our Order.

Notwithstanding the above, we find that Sprint's Motion to Stay Proceedings, contained in the Amendment, should be denied. Section 252(e)(4), Schedule for Decision, provides:

> If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a), or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b),

> the agreement shall be deemed approved. No State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section.

This Section does not contemplate that State commissions can extend the period for approving arbitrated agreements.

We note our decision:

> Upon consideration of the arguments presented, we find that the Act gives us the role under the provisions of Sections 252(b),(c),(d) and (e) both to arbitrate the unresolved issues and approve the agreement that results. Section 252(e)(1) states that any agreement adopted by negotiation or arbitration must be approved by the state commission. Section 252(e)(2)(B) sets out the grounds for rejection of an agreement adopted by arbitration. Finally, Section 252(e)(4) provides that the state commission must act to approve or reject the agreement adopted by arbitration within 30 days of its submission by the parties or it shall be deemed approved. The Act gives state commissions considerable flexibility to fashion arbitration procedures that will be compatible with the commissions' processes and accomplish the policy purposes of the Act.
>
> Accordingly, we find that the parties shall submit a written agreement memorializing and implementing our decisions herein within 30 days of issuance of our arbitration order. Further, we will review the agreement pursuant to the standards in Section 252(e)(2)(B) within 30 days after they are submitted. If the parties cannot agree to the language of the agreement, each party should submit its version of the agreement within 30 days after issuance of the arbitration order. We will choose the language that best incorporates the substance of our arbitration decision. See PSC-97-0230-FOF-TP, p. 64.

Sprint states that because the parties continue to disagree over their interpretations of the Commission's arbitration order, there will be no joint submission of a proposed agreement as contemplated by Section 252(e)(4). We believe that since the parties represented that they had resolved numerous issues that they, at a minimum, should have filed a joint agreement on those issues. Nonetheless, we recognize that the parties have not submitted a joint agreement. Our Order, however, contemplates this situation and orders the parties to submit their respective versions of the agreement. Once the parties submit their respective versions of the agreement, we choose the agreement or portions of the agreement(s) that best comports with our arbitration decision within 30 days.

We believe this process is consistent with the intent of the Act. If this were not so, the process of submitting an agreement could potentially never end, thus thwarting competition in the local exchange market. The parties could conceivably never submit a joint agreement. We do not believe this is the result Congress intended.

We note that the Commission voted on the GTEFL/AT&T arbitration agreement on December 2, 1996. We conducted an evidentiary hearing in the instant Docket on December 5 - 6, 1996, and did not vote on the issues until our January 17, 1997, Special Agenda Conference. Sprint, therefore, had ample opportunity prior to the Commission's final decision in this docket to withdraw its Petition for Arbitration and request the AT&T/GTEFL agreement. It chose not to do so. Rather, the arbitration continued. The issues were framed, litigation ensued and we made our determination on the evidence in the record. This, we believe, is the procedure contemplated by the Act. We do not believe Congress intended to permit parties to take parallel tracks in arbitration proceedings: one track to pursue the best deal possible in an arbitration, and the other track to keep all options open so that either party can abandon an arbitration order simply because it does not like what it gets.

It is unclear whether, after we approve an agreement, Sprint is foreclosed from obtaining relief under Section 252(i). Regardless, we do not believe that question is ripe for decision in this proceeding. Since we have two agreements before us, we must make our decision within 30 days. The Act does not appear to provide a mechanism by which we extend the period for approving arbitrated agreements.

Sprint asserts that no useful purpose would be served by the Commission approving any separate agreement. We disagree. The purpose is that we will fulfill our responsibilities under the Act.

III. THE AGREEMENT

a. In general

By Order PSC-97-0230-FOF-TP, we directed the parties to file an agreement memorializing and implementing our arbitration decision within 30 days. The parties, however, did not file a joint agreement with the Commission. Sprint filed a modified version of the AT&T/GTEFL agreement from Docket No. 960847-TP. Sprint's version included terms and conditions we established by Order PSC-97-0230-FOF-TP, issued in this proceeding. GTEFL filed a proposed agreement which also reflects our arbitration order and includes language for the resolved issues that were negotiated by the parties in this proceeding.

Sprint filed a Motion for Approval of Agreement and Order Directing Execution of Agreement. Sprint states in its Motion that since the issuance of the Commission's Order, the parties have been negotiating contract language. During the course of its negotiations with GTEFL, Sprint proposed that the parties use the AT&T/GTEFL agreement in one of two forms. Sprint suggested the AT&T/GTEFL agreement be modified to incorporate the Commission's Order in this proceeding or use the AT&T/GTEFL contract in its entirety. Sprint states that GTEFL refused to accept either alternative, even though GTEFL's witness Menard stated on cross examination at the hearing that Sprint could have an existing contract in its entirety or negotiate a new contract that includes those terms. Sprint, therefore, provided the AT&T/GTEFL agreement, modified to reflect the Commission's Order in this proceeding, as its proposed agreement between the parties.

GTEFL states in its letter accompanying the proposed agreement, that Sprint refused to negotiate language and submit an agreement memorializing and implementing the Commission's Order in this case. As a result, GTEFL felt compelled to file an agreement in an effort to comply with the post-hearing procedures outlined in the Commission's Order.

In addition, GTEFL filed a statement of opposition to Sprint's Motion for Approval of Agreement. GTEFL states that Sprint's proposed contract has nothing to do with this arbitration proceeding. GTEFL states further that the Sprint agreement is not the AT&T/GTEFL agreement, but a hybrid of the AT&T/GTEFL agreement

which incorporates the terms and conditions as set forth in the Commission's Order. See Order No. PSC-97-0230-FOF-TP. GTEFL contends that Sprint is not claiming a right to the AT&T/GTEFL agreement under the Act, Florida Law, or any other authority. GTEFL argues that we would be subverting the negotiation process contemplated by the Act, nullifying this entire arbitration proceeding, and ignoring our own Order and procedural rules, and the Act's requirement of good faith negotiations if we approved Sprint's proposed agreement.

Upon review, Section 252 of the Act sets forth four avenues for the development of an interconnection agreement. First, under Section 252(a), parties may voluntarily negotiate an agreement together. Second, 252(a) allows parties to seek the assistance of a state commission as a mediator in the negotiation process. Third, under Section 252(b), parties may petition a state commission to arbitrate unresolved issues. Finally, under Section 252(i), a telecommunications carrier may select any "interconnection, service, or network element provided under an agreement approved under this section...upon the same terms and conditions as those provided in the agreement." In this case, Sprint chose, pursuant to Section 252(b), to petition the Commission for arbitration with GTEFL.

Thus far, the arbitration process this Commission has followed has been to resolve disputed issues identified by the parties. Parties in all arbitrations addressed by the Commission have filed a list, or matrix, that outlines resolved and unresolved issues. Issues to be arbitrated have been identified by the parties prior to the evidentiary hearing. Once the Commission resolves the disputed issues, the parties are ordered to prepare an agreement and file it with the Commission for approval.

Typically, the Commission receives a jointly filed agreement from the parties to the arbitration. The agreements may contain disputed contract language, but the overall agreement is jointly filed by the parties. In this instance, Sprint and GTEFL have filed two different proposed agreements, and each party does not agree to the other party's entire proposed agreement. The process of approving a jointly filed agreement by the Commission consists of approving language that was agreed to by the parties, discarding the non-arbitrated language that was not agreed upon, and determining the appropriate contract language for those sections that were arbitrated, yet are still in dispute. Each party in this case refuses to support the proposed agreement filed by the other party.

Initially, since neither party agreed to the other party's proposed language, it appeared there was no agreement to use as a basis or foundation. Our staff conducted a conference call with the parties to determine why the parties were unable to negotiate a joint agreement. Although Sprint maintained that it wants the AT&T/GTEFL agreement, Sprint did admit that it had negotiated agreed upon contract language with GTEFL. Our staff requested that Sprint provide a list of all language in GTEFL's proposed agreement that it claims it did not at any time consent to during the course of negotiations with GTEFL. In addition, GTEFL requested that it be granted the opportunity to provide comments on Sprint's response to staff's request.

Upon review of the documents provided by the parties, it is clear that the parties had negotiated contract language at one point in this proceeding. In addition, it can be reasonably inferred by Sprint's list of non-negotiated language that all other sections in the agreement not listed, were agreed upon.

We believe that to preserve the credibility and viability of the arbitration process, it is crucial that an agreement that sets the basis for the parties to conduct business be produced from this arbitrated proceeding. To allow a party or parties to withdraw a petition for arbitration, or allow a party to simply refuse to sign an agreement, once the Commission has issued its Order, is unacceptable. It simply is inappropriate and unfair for a party to impose on another party the time, effort, and expense of an arbitration proceeding, only to back out in the end because it did not get what it wanted from the proceeding. To allow this action would set a precedent that would encourage parties to future arbitrations to do the same. We believe parties that act in this manner are in violation of Section 252(b)(5) of the Act, for their refusal to negotiate in good faith.

Upon consideration, therefore, we find that GTEFL's proposed agreement contains language that both parties negotiated and agreed upon at some point in this proceeding. As stated earlier, this is evidenced by the letters received by this Commission from each party. Accordingly, we find it appropriate to recognize the proposed agreement filed by GTEFL as the final agreement for this arbitrated proceeding. Our review of the agreement leads us to conclude that the parties to this proceeding appear to have agreed to most of the language in the agreement at some point. Section 252 (e)(2)(B) of The Act states that the Commission can only reject an arbitrated agreement if it finds that the agreement does not meet the requirements of Section 251, including the regulations prescribed by the FCC pursuant to Section 251, or the standards set forth in Section (d) of Section 252. We have reviewed the agreed

language for compliance with both our Order issued in this proceeding, the Act and the FCC's implementing Rules and Order, and believe the language is appropriate. Accordingly, we approve the language contained in the agreement, except for the sections identified in Table A below.

Table A

Agreement ID	Section	Title
Article I, p. I-1	2nd, 3rd, and 4th paragraphs*	Scope and Intent of Agreement
Article III, p. III-1	2.2*	Post Termination Arrangements
Article 111, p. III-2	3*	Amendments
Article III, p. III-3	6.2*	Late Payment Charge
Article III, p. III-5	11*	Cooperation and Fraud Minimization
Article III, p. III-7	16*	Good Faith Performance
Article III, p. III-10	21.3**	Limitation of Liability
Article III, p. III-13	32.2*	Service Standards
Article V, p. V-1	3.1*	Local Service Request
Article V, p. V-3	3.9*	Fraud
Article V, p. V-4	5.1**	Description of Local Exchange Services Available for Resale
Article VI, p. VI-1	1*	General

Agreement ID	Section	Title
Article VI, p. VI-1	2.1 Under line item (c), remove language in parenthesis: (provides access to switch-based services and functions); and under line item (I), remove: (V.5.9 as stipulated)	Categories.
Article VII, p. VII-4	5, 5.1, and 5.2**	5 Directory Assistance and Operator Services 5.1 Directory Assistance Calls 5.2 Operator Services Calls
Article VIII, p. VIII-3	4.1*	Escalation Procedures Termination/Disconnect
Appendix E, p. E-1	1**	General
Appendix G, p. G-4	1.2.4*	Operations Support Systems for Resold Services and Unbundled Elements
Appendix G, p. G-7	1.2.19*	Backbilling

* Sections to be removed
** Sections to be modified as discussed below

b. Disputed Language

1. Article III, Section 21.3, Limitation of Liability.

The parties have proposed differing language for Section 21.3, Limitation of Liability, in GTEFL's proposed agreement. The disputed language for this section is provided below, with GTEFL's proposed language in bold and Sprint's proposed language double underlined.

21.3 Limitation of Liability. **Provider's** GTE's liability for service outages, whether in contract, tort or otherwise, shall be limited to direct damages, which shall not exceed the pro rata portion of the monthly charges for the Services, Unbundled Network Elements or facilities for the time period during which the Services, Unbundled Network Elements or facilities provided pursuant to this agreement are inoperative, not to exceed in total **Provider's** GTE's monthly charge to **Customer** Sprint. Under no circumstance shall **Provider** either Party be responsible or liable to the other for indirect, incidental, or consequential damages arising out of any acts or omissions under this Agreement, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data, provided that the foregoing shall not limit a party's obligation under 21.1 above to indemnify, defend, and hold the other party harmless against amounts payable to third parties.

We note that in other arbitration proceedings where parties have presented language on issues we did not arbitrate and where the parties did not agree on the language, we have not approved any language to be included in the final agreement. GTEFL, however, has consented to Sprint's language for this section. Upon review, therefore, we find it appropriate to approve Sprint's proposed language for Section 21.3, Limitation of Liability.

2. Article V, Section 5.1, Description of Local Exchange Services Available for Resale.

This Section of the agreement provides a list, not all-inclusive, of the elements for local exchange service when offered for resale. Sprint opposes the language in this section which restricts the availability of operator services and directory assistance. Specifically, the language proposed by GTEFL provides only access to these services, not the services themselves. This is inconsistent with our Order. In the Order, we determined that since GTEFL includes operator services and directory assistance with local exchange service to its end users, then GTEFL must provide these services for resale to Sprint. It would be inconsistent with our Order for GTEFL not to provide operator services and directory assistance for purposes of resale of local

exchange service. Specifically, the line items in Section 5.1 are as follows with the disputed language in bold: (d) **Access to GTE** Operator Services, and (e) **Access to GTE** Directory Assistance.

Upon consideration, GTEFL shall remove the language in bold from the agreement. These services shall be provided to Sprint's end users in the same manner as GTEFL's end users receive them, when Sprint purchases local exchange service for resale from GTEFL.

3. Appendix E, Section 1, General.

GTEFL has provided Appendix E to the agreement which lists services available for resale and the associated wholesale discount. Upon review, we are concerned that this list not be construed as the all inclusive list of the services available to Sprint for resale. In our arbitration order, we found that GTEFL's retail services must be provided for resale at a wholesale discount. Accordingly, GTEFL shall modify Appendix E, and any reference to it in the agreement, to clearly state that Appendix E is not all inclusive of the services that GTEFL must provide for resale to Sprint at a wholesale discount.

4. Article VII, Section 5, Directory Assistance and Operator Services.

Sprint proposed clarifying language for Section 5 that references other sections in GTEFL's agreement. The proposed language is shown in a double underline:

> 5. Directory Assistance (DA) and Operator Services. Where Sprint is providing local service with its own switch, upon Sprint's request GTE will provide to Sprint rebranded or unbranded directory assistance services and /or operator services as an unbundled element in accordance with Sections V.5.9, VI.2.1 and VI.12 above. *[Reference IV.A.8; VII.A.1; VII.A.2-A.4]*

Upon review, we find that the proposed language is consistent with the intent of the sections referenced in the agreement. Accordingly, Sprint's proposed language is approved.

5. Article VII, Section 5.1, Directory Assistance Calls, and Section 5.2, Operator Services Calls.

The disputed language in Sections 5.1 and 5.2 is as follows. GTEFL's proposed language is in bold, and Sprint's proposed language is double-underlined.

5.1 Directory Assistance Calls. **GTE directory assistance centers shall provide number and addresses to Sprint end users in the same manner that number and addresses are provided to GTE end users.** Pursuant to Section V.5.9 above, GTE directory assistance centers shall provide rebranded or unbranded number and addresses to Sprint end users in the same manner that number and addresses are provided to GTE end users. If informant is provided by an automated response unit ("ARU"), such information shall be repeated twice in the same manner in which it is provided to GTE end users. Where available, GTE will provide call completion to Sprint end users in the same manner that call completion is provided to GTE end users. GTE will provide its existing services to Sprint end users consistent with the service provided to GTE end users.

5.2 Operator Service Calls. **GTE operator services provided to Sprint end users shall be provided in the same manner GTE operator services are provided to GTE end users.** Pursuant to Section 5.9 above, GTE shall provide rebranded or unbranded operator services to Sprint end users in the same manner that operator services are provided to GTE end users. GTE will offer to Sprint end users collect, person-to-person, station-to-station calling, third party billing, emergency call assistance, TLN calling card services, credit for calls, time and charges, notification of the length of call, and real time rating. GTE operators shall also have the ability to quote Sprint rates upon request **but only if there is appropriate cost recovery to GTE and to the extent it can be provided within the technical limitations of GTE's switches.** Any Operator Services GTE provides to Sprint end users shall be consistent with the service GTE provides to its own end users.

Upon consideration, we find Sprint's language is consistent with the intent of the sections referenced in the agreement. Sprint's proposed language is therefore approved and shall be adopted for section 5.1.

We also find that Sprint's proposed language for section 5.2 is appropriate and consistent with the intent of the sections referenced in the agreement. Sprint's language, with the exception noted herein, shall be included in the agreement. GTEFL's proposed language at the end of Section 5.2 concerning the availability of Sprint's rates through operator service only if technically feasible in the switch, and if GTEFL's cost is recovered, is acceptable. Accordingly, this portion of GTEFL's proposed language shall remain in Section 5.2.

IV. REQUIREMENT TO SIGN AGREEMENT

As we stated above, we believe that to preserve the credibility and viability of the arbitration process, it is crucial that an agreement that sets the basis for the parties to conduct business be produced from this arbitrated proceeding. To allow a party or parties to withdraw a petition for arbitration, or for a party to simply refuse to sign an agreement, once the Commission has issued its Order, is unacceptable. To allow this action would set a precedent that would encourage all parties to future arbitrations to do the same. We believe parties that act in this manner are in violation of Section 252(b)(5) of the Act, for their refusal to negotiate in good faith. We also believe that a party that refuses to sign an arbitrated agreement approved by Order of the Commission, should be fined $25,000 per day for willful violation of our Order until it signs the agreement. Accordingly, the parties shall sign the agreement within 14 days of the issuance of this Order or an Order to Show Cause will be issued against the non-signing party to show in writing within 20 days why it should not be fined $25,000 per day, pursuant to Section 364.285, Florida Statutes, for willful refusal to comply with the Commission's Order.

If the signed agreement is timely submitted and comports with our Orders in this docket, an administrative Order shall be issued acknowledging that a signed agreement has been filed. Further, if the signed agreement comports with our Orders, the agreement shall be deemed approved on the date the administrative Order is issued.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission each and all of the specific findings herein are approved in every respect. It is further

ORDERED that the Motion to Stay proceedings filed by Sprint Communications Company Limited Partnership d/b/a Sprint is denied as discussed in the body of this Order. It is further

ORDERED that GTE Florida, Incorporated's Agreement is approved to the extent outlined in the body of this Order. It is further

ORDERED that Sprint's language for Article III, Section 21.3 is approved and shall be included in the final agreement as discussed in the body of this Order. It is further

ORDERED that Article V, Section 5.1 is modified and shall be included in the final agreement as discussed in the body of this Order. It is further

ORDERED that Appendix E, Section 1 is modified and shall be included in the final agreement as discussed in the body of this Order. It is further

ORDERED that Article VII, Section 5 shall be modified and included in the final agreement as discussed in the body of this Order. It is further

ORDERED that Sprint and GTEFL shall sign the arbitrated agreement within 14 days of the issuance of this Order or an Order to Show Cause shall be issued against the Non-signing party as discussed in the body of this Order. It is further

ORDERED that this docket shall remain open.

By Order of the Florida Public Service Commission, this 13th day of May, 1997.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MMB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).