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July 11, 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 Reply Brief of Sprint-Florida, Inc.

We are also submitting the Reply Brief 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.

ACK  Thank you for your assistance in this matter.

AFA \_\_\_\_\_

APP \_\_\_\_\_

CAF \_\_\_\_\_

CMU Savanya

CTR \_\_\_\_\_

EAG \_\_\_\_\_

LEG 1 Enclosures

LIN 5 cc: Parties of Record

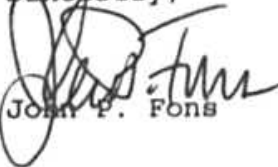
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Sincerely,  
  
John P. Fons

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FPC DIVISION OF RECORDS AND REPORTING

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the matter of	)	
	)	
KMC TELECOM, INC.	)	DOCKET NO. 970496-TP
	)	
Petition For Relief To Opt Into An	)	Filed: July 11, 1997
Approved Interconnection Agreement	)	
	)	
SPRINT-FLORIDA, INC.	)	

REPLY BRIEF OF SPRINT-FLORIDA, INC.

Sprint-Florida, Inc. ("Sprint"), pursuant to Order No. PSC-97-0722-PCO-TP, hereby submits its Reply Brief, stating as follows:

1. In its Initial Brief, Sprint addressed the sole issue in this proceeding; namely, "Under Section 252(i) of the Telecommunications Act of 1996, on what basis if any can Sprint refuse to allow KMC to opt into a provision in a previously approved interconnection agreement?" Sprint responded to that issue by pointing out that Sprint is required to provide KMC with a provision in a previously approved interconnection agreement only if KMC is requesting the same provision "upon the same terms and conditions." Because KMC insists on taking Section 5.4.2 of the MFS Agreement<sup>1</sup> in its pre-MCI/Sprint Arbitration decision<sup>2</sup> state, KMC is not requesting Section 5.4.2 of the MFS Agreement "upon the same terms and conditions" as it exists today.

<sup>1</sup> The Partial Interconnection Agreement for LATA 458 between United Telephone Company of Florida and MFS Communications Company, Inc. ("MFS Agreement") approved by this Commission in Order No. PSC-97-0240-FOF-TP, issued February 28, 1997.

<sup>2</sup> Order No. PSC-97 0294-FOF-TP, issued March 14, 1997.

2. In its Initial Brief, KMC essentially agrees with Sprint that under Section 252(i) of the Telecommunications Act of 1996 ("the Act") Sprint is only required to provide KMC with a provision of the previously approved MFS Agreement if KMC is taking the provision "upon the same terms and conditions." KMC Initial Brief, p. 7. KMC, however, argues that the Commission should ignore the impact of Section 26.2 of the MFS Agreement because "it is simply irrelevant to the matters before the Commission." KMC Initial Brief, p. 8. KMC then boldly states that: "KMC is willing to accept the terms of Section 5.4.2 of the MFS Agreement and whatever construction the Commission and the courts deem appropriate for that provision." KMC Initial Brief, p. 8. Additionally, KMC concludes that: "The Commission should incorporate Section 5.4.2 of the MFS Agreement into Sprint's Agreement with KMC and should leave to another time or to the courts the question of how that provision should be interpreted." KMC Initial Brief, p. 9.

3. KMC's arguments fail to address the very fundamental issue of whether the provision KMC is requesting is, in fact, "upon the same terms and conditions" as that provision currently exists in the MFS Agreement. Indeed, KMC's arguments concede that what it is requesting may not be "upon the same terms and conditions." But, in KMC's logic, the Commission or the courts can decide that fact later. Neither Sprint, this Commission, nor any of the other new entrants - like MCI - who would be discriminated against by allowing KMC to be compensated for a function not actually provided, have the luxury of waiting to another day to have the

Commission or the courts rule on this matter. Indeed, whether KMC can demonstrate that it is taking the provision in the previously approved MFS Agreement "upon the same terms and conditions" so as not to create a discrimination between and among new entrants is a matter of proof now, not later. KMC has failed in that proof.

4. Sprint, on the other hand, has offered a detailed analysis which demonstrates that what KMC is requesting is not "upon the same terms and conditions" as the current provision in the MFS Agreement, and, if granted, would result in the very discrimination that Section 252(i) of the Act was intended to prevent. It is interesting to note that nowhere in its Initial Brief does KMC contend or prove that it will be discriminated against if it is not provided with the MFS Agreement Section 5.4.2 provision. Because Sprint has offered substantial grounds for refusing KMC's request, KMC must do more than simply point to Section 252(i) of the Act and say that it is entitled to Section 5.4.2. In the circumstances of this case, it is incumbent on KMC to demonstrate that it is asking for Section 5.4.2 of the MFS Agreement "upon the same terms and conditions" and that if it does not receive that provision it will be discriminated against. Otherwise, the "upon the same terms and conditions" language of Section 252(i) of the Act would have no meaning and Congressional intent will be thwarted.<sup>3</sup>

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<sup>3</sup> See Federal Deposit Insurance Corp. v. Haddad, 778 F.Supp. 1559 (S.D. Fla. 1991) ("if a statute admits a reasonable construction which gives effect to all of its provisions, a court will not adopt a strained reading which renders one part a mere redundancy"); DeSisto College, Inc. v. Town of Howey-In-The-Hills,

5. If KMC were truly sincere that it "is willing to accept the terms of Section 5.4.2 of the MFS Agreement and whatever construction the Commission and the courts deem appropriate for that provision," then KMC would be willing to accept the post-MCI/Sprint Arbitration decision Section 5.4.2 which does not include reciprocal compensation for a tandem switching function not actually provided. In that case, and on those terms, Sprint would withdraw its objection to KMC's request, and KMC could take Section 5.4.2 subject to its right to request relief from this Commission or the courts. This approach is clearly the appropriate approach because it obviates the possibility that KMC will receive an interconnection provision that is fundamentally more favorable to KMC than to other similarly situated new entrants and, therefore, unlawfully discriminatory. However, if KMC is unwilling to accept this approach - which seems to be the position taken in its Initial Brief - Section 252(i) of the Act requires the Commission to find that Sprint's refusal to accede to KMC's request is consistent with the non-discrimination provisions of the Act.<sup>4</sup>

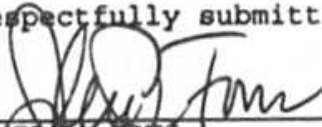
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706 F.Supp. 1479 (M.D. Fla. 1989) ("The final principle of statutory construction applicable to this case requires a court 1) to presume that the legislature puts every provision in a statute for a purpose and 2) to construe the statute to give each of the statute's provisions effect, *ut res magis valeat quam pereat*. See *Forehand v. Board of Public Instruction*, 166 So.2d 668, 672 (Fla. 1st DCA 1964). A construction that would leave any part of the language in a statute without effect should be rejected. See *Vocelle v. Knight Bros. Paper Co.*, 118 So.2d 664, 667 (Fla. 1st DCA 1960).")

<sup>4</sup> Sections 251(c) (2) (D) and 252(d) (1) (A) (ii) of the Act.

Dated this 11th day of July, 1997.

Respectfully submitted,



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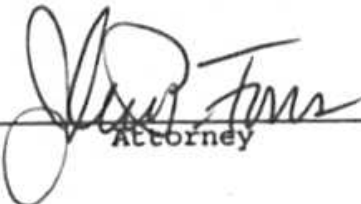
ATTORNEYS FOR SPRINT-FLORIDA, INC.

**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 11th day of July, 1997, to the following:

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