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December 24, 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. 971159-TP
Petition of Sprint Communications Company Limited Partnership for Approval of Section 252(i) Election of Interconnection Agreement with GTE Florida Concerning Interconnection Rates, Terms and Conditions, Pursuant to the Federal Telecommunications Act of 1996

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen copies of GTE Florida Incorporated's Response to Sprint's Brief and Legal Memorandum 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) 483-2617.

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Very truly yours,

Kimberly Caswell

KC:tas
Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Sprint Communications Company Limited Partnership for Approval of Section 252(i) Election of Interconnection Agreement with GTE Florida Concerning Interconnection Rates, Terms and Conditions, Pursuant to the Federal Telecommunications Act of 1996	)	Docket No. 971159-TP Filed: December 24, 1997

GTE FLORIDA INCORPORATED'S RESPONSE TO SPRINT'S BRIEF AND LEGAL MEMORANDUM

In accordance with the stipulated procedural schedule in this docket, GTE Florida Incorporated (GTEFL) responds to the two most recent filings Sprint Communications Company Limited Partnership (Sprint) has made in support of its attempted election of the interconnection and resale agreement executed between GTEFL and AT&T. These are Sprint's "Legal Memorandum," filed on November 20, 1997, and its Brief, filed on December 15, 1997. (Sprint's Petition for Election itself was filed on September 3, 1997.)

Including its Legal Memorandum and its Brief, Sprint has now made five post-arbitration filings with the objective of obtaining the GTEFL/AT&T agreement.[1] The two latest submissions, like all the others, advance the same argument--that section 252(i) of the Telecommunications Act of 1996 (Act) allows Sprint to disavow the results of its completed arbitration with GTEFL and to instead choose a contract other than the one that resulted from that arbitration.

[1] These are: the Legal Memorandum; the Brief; the Petition for Election; Sprint's Amendment to Motion for Approval of Agreement and Order Directing Execution of Agreement of Sprint Comm. Co. Limited Partnership, filed April 9, 1997 (Sprint's April 9 filing); and Sprint's Motion for Approval of Agreement and Order Directing Execution of Agreement, filed March 28, 1997 (Sprint's March 28 filing).

Sprint continues to press this interpretation, even though the Commission has already rejected it. After the arbitration concluded, Sprint ignored the Commission's directive to file an agreement implementing the Commission's decision, instead asking the Commission to order GTEFL to execute with Sprint a proposed agreement between GTEFL and AT&T. (Sprint's March 28 filing.) Shortly thereafter, Sprint asked the Commission, in the alternative, to stay the post-arbitration proceedings so that it could elect the GTEFL/AT&T agreement. (Sprint's April 9 filing.) The Commission denied Sprint's request for stay pending the planned election and rejected Sprint's GTEFL/AT&T contract submission. In doing so, the Commission indicated that the Act requires new entrants to make a choice among various avenues for development of an interconnection agreement, and that Sprint had chosen the section 252(b) arbitration option. (Order no. PSC-97-0550-FOF-TP at 10.) The arbitration and section 252(i) options are mutually exclusive. To this end, the Commission concluded that Congress did not intend "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." (Id. at 9.)

The Commission should reaffirm this sound logic and, once again, deny Sprint's efforts to negate the entire arbitration process and, worse, to render illusory the contract executed as a result of that process. The Commission's reasoning has even more force now that GTEFL and Sprint have executed e binding contract.

The fact that GTEFL did not voluntarily sign the GTEFL/Sprint contract does not make it any less binding on GTEFL or Sprint or weaken GTEFL's contention that Sprint's

election rights are not unqualified. Sprint is, indeed, correct that the contract does not represent a "meeting of the minds" under conventional contract principles. But arbitrated contracts are not conventional contracts, and GTEFL has not, contrary to Sprint's claims (Sprint Brief at 4), cited principles of private contract law in this proceeding. Indeed, the GTEFL/Sprint Agreement itself reflects that it is not freely entered, but subject to approval by the Commission. (See GTEFL/Sprint Agreement, Art. I.)

The GTEFL/Sprint contract is binding because it was signed under regulatory mandate (backed up by the stated threat of $25,000-a-day fines) (Order no. PSC-97-0550-FOF-TP at 17). Reversing that mandate now, as Sprint asks the Commission to do, would be arbitrary and capricious--in effect, an admission by the Commission that the contract was, in fact, never binding at all, despite its avowed efforts to ensure that it was. Allowing Sprint to now breach the contract, with no penalty, simply makes no sense.[2] Just as importantly, it is at odds with the Act.

As GTEFL pointed out in its Opposition to Sprint's Petition, the U.S. Court of Appeals for the Eighth Circuit has underscored the Act's requirement that parties be bound by an agreement. In striking down the FCC's "pick-and-choose" provisions, the Court observed that the FCC's interpretation undermined the Act's design to promote negotiated agreements and conflicted with "the Act's requirement that Agreements be 'binding,' 47 U.S.C.A. sec. 252(a)(a)." Iowa Util. Bd. v. Bell Atlantic Corp. et al., Nos. 96-3221, etc., 1997-2 Trade Cas. (CCH) P71,876, 1997 U.S. App. Lexis at 38 (8th Cir. July 18, 1997).

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[2] GTEFL suggests that an appropriate penalty for Sprint's breach of the contract would be GTEFL's arbitration and contract implementation expenses.

Under Sprint's thinking, no agreement would ever be binding--not the contract now in effect with GTEFL, nor the GTEFL/AT&T contract, nor any other contract Sprint might attempt to elect later. If the Commission accepts Sprint's argument that different contracts are "discriminatory," it will, in effect, sanction constant, successive elections.

Sprint has tried to buttress its arguments with assertions that are misleading, if not false. First, Sprint again claims that a GTEFL arbitration witness testified that "Sprint could adopt another contract." GTEFL has rebutted this point before (see, e.g., GTEFL Opposition to Sprint's Petition, filed Sept. 23, 1997, at 5), but it is compelled to do so again here. GTEFL does not dispute that section 252(i) of the Act allows a carrier to obtain interconnection terms by electing another carrier's agreement. GTEFL's witness in the arbitration did testify that Sprint could accept the whole contract executed with another carrier. But that discussion (which was focussed on the most-favored-nation issue) posited a negotiation scenario, rather than a post-arbitration election.[3] Sprint ignores the critical fact that it now has a binding agreement with GTEFL, entered after conclusion of the arbitration. GTEFL's position is and always has been that election would have been proper before arbitration or possibly if Sprint's arbitration proceeding had been dismissed--but GTEFL has never taken the view that the election option is "unqualified," as Sprint believes it is. (See GTEFL's Opposition to Sprint's Election.)

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[3] See Tr. 771-781. Indeed, Sprint's own questions prove this point. See, e.g., Sprint counsel's question to witness Menard at Tr. 772: " Q. And if, rather than in arbitration today we were in negotiation, vis-a-vis the MCI/AT&T result, Sprint would have to take the entire agreement between--with GTE with those two parties, under your position?" [emphasis addad].

A second misleading statement concerns GTEFL's actions associated with its appeal of the GTEFL/Sprint arbitration decision in the U.S. District Court for the Northern District of Florida. Sprint claims that GTEFL has asked the Court to enjoin implementation of the Sprint/GTEF' agreement, and that it has thus "demonstrated that it does not want Sprint to enter into competition with GTE, in Florida, under any terms." (Sprint Brief at 5.) In fact, GTEFL has not sought any type of immediate injunction of the existing contract. GTEFL has asked the Court to enjoin the contract as part of the relief sought in the appeal. That is, if and when the Court finds the contract to be unlawful, it will necessarily need to be enjoined and a new contract entered. But GTEFL stands ready, as it always has, to honor the terms of the arbitrated agreement during the appeal. GTEFL has not, as Sprint claims, changed its "positions with respect to whether or not there is a valid contract with Sprint." (Sprint Brief at 4.) It is simply untrue that GTEFL has kept Sprint from competing with GTEFL "under any terms"--Sprint's decision to compete or not to compete with GTEFL is entirely under Sprint's own control.

Furthermore, the GTEFL/AT&T contract that Sprint seeks to elect is itself the subject of a federal appeal, just like the Sprint contract. The fact that Sprint still wants that GTEFL/AT&T contract disproves Sprint's claims that GTEFL has somehow called into question the validity of the Sprint contract. The GTEFL/AT&T contract is subject to the same arguments on appeal, and Sprint would presumably not seek to elect the GTEFL/AT&T agreement if it were not valid and binding.

Third, GTEFL must set the record straight with regard to Sprint's assertion that "to date, no state commission has denied a request by Sprint, pursuant to Section 252(i), to

adopt an approved AT&T/GTE agreement in its entirety." (Sprint Legal Memo. at 3.) Sprint made similar claims in its Petition and GTEFL has already pointed out that none of the state decisions Sprint cited allowed Sprint to elect an interconnection agreement after another interconnection contract had already been executed between GTEFL and Sprint.--which is, of course, " 9 case here. (GTEFL's Opposition at 5.) Sprint, of course, continues to ignore this critical difference.

In its latest filing, Sprint makes much of a recent federal court decision in Texas that, Sprint claims, allowed "Sprint to terminate its separate, commission approved interconnection agreement with GTE and to adopt instead GTE's interconnection agreement with AT&T." But Sprint fails to supply important background information. In the arbitrated agreement between Sprint and GTE's operating company in Texas, the Commission directed the parties to include a provision specifically allowing Sprint to terminate its agreement upon 90 days' notice to GTE that Sprint intended to elect another agreement in its entirety. (GTE Southwest/Sprint Contract, Art. III, sec. 2.1.)

Thus, the Texas Commission apparently differed with this Commission in its interpretation of section 252(i) and this difference was reflected in the arbitration rulings and in the contract itself. This is not the situation in Florida, where the Commission rejected the same Sprint election arguments at the time of contract submission, such that no analogous Commission directive was issued, and no analogous provision was ever included in GTEFL's contract with Sprint. The Texas decision is instructive in this case only to emphasize GTEFL's point that arbitrated agreements must be binding. The Texas Commission understood this basic principle; it recognized that without a specific

termination provision in the contract at the time of execution, no later election could lawfully occur.

In the final analysis, the facts and procedural circumstances of each state arbitration proceeding will determine the resolution of any election issues. This Commission is obliged to consider–and, indeed, already has considered–the particular context of Sprint's election request here. The Commission's rejection of Sprint's initial attempt to use the GTEFL/AT&T contract was grounded in some key facts. The Commission, for instance, pointed out that Sprint knew the terms of the GTEFL/AT&T arbitration agreement at the time the Commission voted on it (on December 2, 1996) before the GTEFL/Sprint arbitration hearing even began (on December 5, 1996) and several weeks before the Commission voted on the GTEFL/Sprint agreement (on January 17, 1997). The Commission thus concluded that Sprint "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." (Order no. PSC-97-0550-FOF-TP, at 9). Because it chose not to do so before the arbitration concluded, Sprint had foregone its election option.

As GTEFL has observed before, if Sprint truly believed its own argument that absolute contractual "parity" with AT&T is essential (see, e.g., Sprint Brief at 2), it would simply have waited until the AT&T contract took effect and then elected it Or, as the Commission itself has pointed out, Sprint could have sought election before the arbitration hearings beceuse it knew then what the terms of the GTEFL/AT&T contract would be. Sprint's argument that denying election at this point would somehow "punish" it for seeking

early market entry through negotiations is thus implausible under the facts here. Sprint continued with its own arbitration, in which it sought resolution of only 10 issues (compared to AT&T's 31). Sprint pursued and achieved settlement with GTEFL on many issues that had not been settled with AT&T, several even after the arbitration began (and, of course, after it knew the arbitrated results AT&T had gotten in the same matters). (See Sprint Prehearing Statement at 9-10, 12; GTEFL's Opposition to Sprint's March 28 filing, filed April 9, 1997, at 4.)[4] Thus, it could not be clearer that Sprint engaged in exactly the kind of behavior this Commission has condemned--pursuing "parallel tracks" to get the best possible deal on both, only to abandon the arbitration order later. "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." (Order no. PSC-97-0550-FOF-TP at 11.) The Commission has already found a post-decision withdrawal of a petition for arbitration violates the Act's good faith negotiation standard reflected in section 252(b)(5). (Id. at 17). Sprint's attempted breach of an already-executed, arbitrated agreement is worse even than that.

Finally, the Florida federal District Court order staying the appeal of the Sprint arbitration order, by its own terms, provides no authority or other guidance for the

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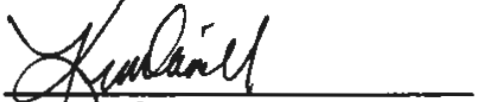
[4] Sprint's approach in Florida differed from its strategy in, for example, California, where Sprint's position from the start of its arbitration with GTE California was that it would accept whatever terms AT&T obtained in its then-pending arbitration with GTE California. See Petition of Sprint Comm. Co., L.P. for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with GTE California, Inc., Cal. P.U.C. Decision No. 97-03-048 (Sept. 25, 1996).

Commission in deciding the election question in this docket. Again, Sprint has neglected to supply important context. It draws attention to the Court's discussion of the parties' conflicting interpretations of section 252(i), but stops short of quoting the most critical part--the Court's conclusion that "what Congress meant is not an issue now before this court." (Court Order at 4.) Thus, the opinion itself makes clear that the election issue is now for the Commission--and only the Commission--to resolve. There is no indication that the Court has studied this matter or, more importantly, that it is aware of this Commission's rulings on Sprint's previous attempts to elect the GTEFL/AT&T agreement. In any case, the language at issue is only dicta.

Because Sprint's latest filings present the same arguments it raised in its Petition (and its earlier, post-arbitration filings), GTEFL invites the Commission to review GTEFL's Opposition to Sprint's Petition for Election. That Opposition contains more detailed argument on some of the points GTEFL has also made here.

For all the reasons in this filing (and in GTEFL's Opposition), GTEFL asks the Commission to deny Sprint's Petition for Election of the GTEFL/AT&T interconnection and resale agreement.

Respectfully submitted on December 24, 1997.

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Response to Sprint's Brief and Legal Memorandum in Docket No. 971159-TP were sent via overnight delivery on December 23, 1997, to the parties listed below.

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