



**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Determination of Cost of Basic Local  
Telecommunications Services )

Docket No. 980696-TP  
Filed: February 1, 1999

**JOINT RESPONSE OF AT&T, e.spire, FCCA, FCTA, MCI,  
AND WORLDCOM TO THE GTE AND SPRINT  
REQUESTS FOR RECONSIDERATION**

AT&T Communications of the Southern States, Inc. ("AT&T"), e.spire Communications, Inc. ("e.spire"), Florida Cable Telecommunications Association ("FCTA"), Florida Competitive Carriers Association ("FCCA"), MCI Telecommunications Corporation ("MCI"), and WorldCom Technologies, Inc. ("WorldCom") (hereinafter collectively "Joint Respondents"), pursuant to Rule 28-106.204(1), Florida Administrative Code, hereby submit this Joint Response to the separate requests for reconsideration of Order No. PSC-99-0068-FOF-TP, issued January 7, 1999 ("Order"), filed by GTE Florida Incorporated ("GTEFL") and Sprint-Florida, Inc. ("Sprint-FL"), and respectfully request that both requests for reconsideration be denied, and state as follows:

**I. INTRODUCTION AND BACKGROUND**

1. GTEFL filed its Petition for Reconsideration on January 22, 1999. According to the attached Certificate of Service, counsel for AT&T, FCTA, and MCI were served by overnight courier and counsel for e.spire, FCCA and WorldCom were served by U.S. mail

2. Sprint-FL filed its Motion for Reconsideration also on January 22, 1999. According to the Sprint-FL Certificate of Service, counsel for each of the Joint Respondents were served by U.S. Mail.

3. In view of the different modes of service and the different requirements of Rule 28-106.103, F.A.C., the Joint Respondents are filing this response on the earliest required due date for

DOCUMENT FILING DATE

01299 FEB-2 99

FILED

of the purpose of this proceeding – – here, the Commission is following a specific, one-time, 1998 objections to the depreciation lives decision appear predicated on a fundamental misunderstanding provide the “groundwork” for this Commission’s actions. Order, at 21-22. In short, GTEFL’s FCC’s Universal Service Order and how the FCC’s requirements, including depreciation expenses, looking. Tr. 87-91 (Majoros Rebutal at 9-13). In addition, the Order specifically discusses the depreciation lives would be inappropriate for modeling and why the FCC’s prescriptions are forward A&T/M&T witness Michael Majoros provided extensive testimony as to why financial reporting GTEFL uses for financial reporting or which the Commission had in the past approved. However, GTEFL’s first issue with the Order is that it does not utilize the depreciation lives

6. GTEFL’s Petition is mere reargument of the position it took in the hearing evidentiary support. GTEFL’s depreciation lives and cost of capital were arbitrary and without proper regarding GTEFL’s depreciation lives and cost of capital were arbitrary and without proper 5. GTEFL argues in its Petition for Reconsideration that the Commission’s decisions

**H. GTEFL’S PETITION**

Thus, both requests should be denied. that were decided differently by the Commission than were advocated by GTEFL and Sprint-FL to the Commission’s attention matters overlooked or not considered, both requests argue issues Quantum, 394 So.2d 161 (Fla. 1st DCA 1981). While both GTEFL and Sprint-FL claim to bring So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); Pintrix v. our Order” (Order No. PSC-98-0844-1-OF-TP, citing Stewart Bonded Warehouse, Inc. v. Bervis, 294 identifies a point of fact or law which was overlooked or which we failed to consider in rendering

4. The proper standard of review for a request for reconsideration “is whether the motion any of them.

To the extent there is a conflict between the 1995 statute and the 1998 statute, the later enactment will supersede the earlier law. McKendry v. State, 641 So.2d 45 (Fla. 1994).

7. GTEFL's second claim, that the cost of capital decision lacks evidentiary support, is repudiated by the Order and the supporting record. As the Commission specifically noted in this section of the Order, the universal service purpose of the Commission's inquiry in this proceeding is different from the distinctly different and far less risky businesses of the GTE holding company. Order, at 88. In rejecting witness VanderWeide's testimony, the Commission specifically relied upon the testimony of witness Hirschleifer, and he provided extensive evidence regarding an appropriate capital structure and the problems with GTEFL's proposals. Tr. 152-203, 209-250 (Hirschleifer Direct at 5-56, Rebutal at 2-42). In particular, on the question of business risk, GTEFL's own motion makes clear that its complaint with the Order is the weight and interpretation given to the GTEFL testimony. As Mr. Hirschleifer testified, the risk associated with the provision of universal service will be minimal. Tr. 155 (Hirschleifer Direct at 8). The Commission, in considering the testimony, evaluated and weighed the testimony of Mr. Hirschleifer which is clearly its prerogative. Gulf Power Co. v. FPSC, 453 So.2d 799 (Fla. 1984); United Telephonic Co. v. Maye, 345 So.2d 648 (Fla. 1977). GTEFL's arguments are merely "sour grapes" over the

reconsideration.

operations. GTEFL's argument is simply reargument that constitutes an inappropriate basis for This is neither a rate case nor is it supposed to be a snapshot of GTEFL's current business at page 6 of its Petition that the 1995 revisions to Chapter 364 bind the Commission in this matter. services. Section 364.025(4)(b), Florida Statutes; Order, at 9. As such, GTEFL is wrong to assert legislative directive to model, on a forward-looking basis, the cost of basic local telecommunications

Commission's decision to reject GTEFL's evidence and accept Mr. Hirshleifer's. In view of GTEFL's reargument, its reconsideration is improper and should be denied.

### III. SPRINT-FLORIDA'S MOTION

8. Sprint-FL request for reconsideration of the Commission's decision to cap loop cost investment at \$4,350 was both appropriate and with proper record support. Interestingly, Sprint-FL does not dispute the fact that BellSouth provided record evidence of a \$4,350 loop cost cap. Rather, Sprint-FL's twist is that the Commission "misapprehended the value of the evidence" in uniformly applying this cap to each of the big three LECs. This is clearly inappropriate reargument of matters already considered. Sherwood v. State, 111 So.2d 96 (Fla. 3d DCA 1959). It is Sprint-FL that misapprehended the evidence and the purpose of this proceeding.

9. Sprint-FL offers an extensive outside the record discussion about wireless service to contend that the \$4,350 per line cap is not an economically achievable alternative for Sprint. Such an argument, predicated entirely on information outside the record, certainly does not constitute matters overlooked or ignored in the record as is required for reconsideration, and cannot be considered. Fundamentally, Sprint-FL is questioning the Commission's evaluation of the evidence proffered as to a loop cost investment cap—i.e., the ultimate credibility and reliability of a national default value versus the results of a BellSouth study as testified to by Ms. Caldwell. In comparing the \$10,000 plug-in number, standing alone, and the testimony of Ms. Caldwell, it was entirely appropriate for the Commission to choose Ms. Caldwell. Gulf Power Co. v. Fla. Pub. Serv. Comm'n., 453 So.2d 799 (Fla. 1984); United Telephone Co. v. Mayo, 345 So.2d 648 (Fla. 1977).

---

Indeed, the "facts" represented to the Commission by Sprint-FL are highly questionable and suspect, and likely would be proven untrue if subjected to a vigorously litigated proceeding.

argument seems predicated on the assumption that any deviation from the default requires amount versus Ms. Caldwell's testimony on the \$4,350. In the final analysis, Sprint-FL's whole support takes his testimony out of context and ignores the Commission's evaluation of the default attempt to borrow Mr. Wells' testimony to substantiate an argument that there is insufficient record states may have accepted the \$10,000 cap does not make a stipulation in Florida. Moreover, the effect a stipulation on this question, let alone acceptance by the Commission. The fact that other examination of the pleadings, the prehearing order, the transcript, and the Order do not at any point. At no time did any party, including Sprint-FL, proffer or accept any stipulation on this subject. An that opposite sides of a cause engage in an agreement. Black's Law Dictionary 1269 (5th ed. 1979). stipulation of the parties cannot, in any way, be considered true. Inherent in a stipulation is the fact

11 Sprint-FL's third and final argument that the \$10,000 default cap constitutes a

each Commissioner weighed the evidence.

to there is a proper evidentiary basis for the Commission's decision, Sprint-FL cannot question how comments made or thoughts considered at agenda. See Section 120.52(7), Florida Statutes. So long deliberations at the time of the vote. The Commission speaks through its orders and not through of the \$4,350 cap seeks to call into question each Commissioner's individual thoughts and in together when they voted. Sprint-FL's attempt to manufacture confusion about the materiality in the January 12, 1999 compliance filing to suggest that the Commissioners may have been mistaken

10 Sprint's second argument relies on data submitted in its motion that corrects data filed

more precise and localized than the national default.

three again, the purpose of this proceeding is modeling not rate setting, and the BellSouth data is. This choice was appropriate even if the study was not Florida-specific or Sprint-territory specific.

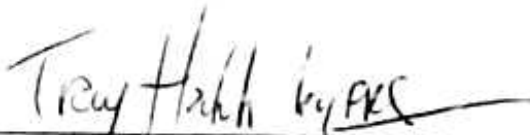
overcoming an extraordinary evidentiary burden, whereas it is Sprint-FL's job to prove to the Commission its case, defaults included. Sprint-FL did not do this.

12. Again, it is the Commission's job to weigh the credibility and reliability of the evidence and witnesses and to make its decision. In this case, the Commission found Ms. Caldwell's testimony more appropriate. Sprint-FL's arguments do not meet the requirements for reconsideration.

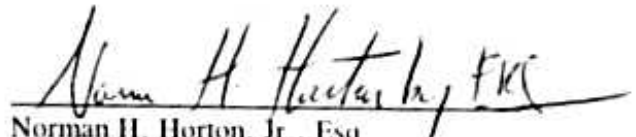
#### IV. CONCLUSION

For the foregoing reasons, the Commission should deny GTEFL's and Sprint-FL's requests for reconsideration.

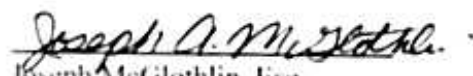
Respectfully submitted,



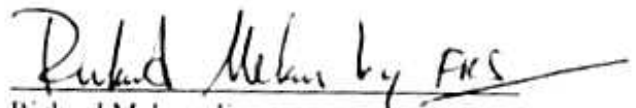
Tracy Hatch, Esq.  
AT&T Communications of the Southern  
States, Inc.  
101 N. Monroe Street, Suite 700  
Tallahassee, FL 32301  
(850)425-6364  
Attorney for AT&T Communications of the  
Southern States, Inc.



Norman H. Horton, Jr., Esq.  
Messer, Caparello & Sell, P.A.  
215 S. Monroe Street, Suite 701  
P.O. Box 1876  
Tallahassee, FL 32302-1876  
(850) 222-0720  
Attorney for e-spire<sup>TM</sup> Communications, Inc.



Joseph McGlothlin, Esq.  
McWhirter, Reeves, McGlothlin,  
Davidson, Rief & Bakas, P.A.  
117 S. Gadsden Street  
Tallahassee, FL 32301  
(850) 222-2525  
Attorney for Florida Competitive Carriers  
Association



Richard Melson, Esq.  
Hopping, Green Sams & Smith  
123 S. Calhoun St.  
P.O. Box 6526  
Tallahassee, FL 32302  
(850)222-7500  
Attorney for MCI Telecommunications  
Corporation



---

Floyd R. Sell, Esq.  
Messer, Caparello & Self, P.A.  
215 S. Monroe Street, Suite 701  
P.O. Box 1876  
Tallahassee, FL 32302-1876  
(850) 222-0720  
Attorney for WorldCom Technologies, Inc.



---

Michael Gross, Esq.  
Florida Cable Telecommunications Association  
310 N. Monroe St.  
Tallahassee, FL 32301  
(850)681-1990  
Attorney for Florida Cable Telecommunications  
Association



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Joint Response of AT&T, eSpire, FCCA, MCI and WorldCom to the GTE and Sprint Request for Reconsideration in Docket No 980696-TP has been furnished by Hand Delivery (\*) and/or U.S. Mail to the following parties of record this 1st day of February, 1999.

Robert G. Beatty  
Nancy B. White  
c/o Nancy H. Sims  
BellSouth Telecommunications, Inc  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301

Ms. Lynne G. Brewer  
Northeast Florida Telephone Company  
Post Office Box 485  
Macclenny, FL 32063

Mr. Steve Brown  
Intermedia Communications, Inc.  
3625 Queen Palm Drive  
Tampa, FL 33619-1309

Kimberly Caswell, Esq.  
GTE Florida Incorporated  
Post Office Box 110, FLTC0007  
Tampa, FL 33601

Will Cox, Esq.  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

David V. Dimlich, Esq.  
Supra Telecommunications & Information  
Systems, Inc.  
2620 SW 27th Avenue  
Miami, FL 33133

Peter M. Dunbar, Esq.  
Barbara D. Auger, Esq.  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
Post Office Box 10095  
Tallahassee, FL 32302

Mr. Mark Ellmer  
GTC, Inc.  
Post Office Box 220  
Port St. Joe, FL 32457

David B. Erwin, Esq.  
Attorney -at-Law  
127 Riversink Road  
Crawfordville, FL 32327

Ms. Harriet Eudy  
ALLTEL  
P.O. Box 550  
Live Oak, FL 32060

Michael Gross  
Florida Cable Telecommunications Association, Inc.  
310 N. Monroe Street  
Tallahassee, FL 32301

Kelly Goodnight  
Frontier Communications  
180 S. Clinton Avenue  
Rochester, NY 14646

Lynn B. Hall  
Vista-United  
Post Office Box 10180  
Lake Buena Vista, FL 32830

Kenneth A. Hoffman, Esq.  
John Ellis, Esq.  
Rutledge, Eckenrode, Underwood,  
Pennell & Hoffman, P.A.  
Post Office Box 551  
Tallahassee, FL 32302-0551

Paul Kouroupas  
Michael McRae, Esq.  
Teleport Communications Group, Inc.  
2 Lafayette Center  
1133 Twenty-First St., N.W., Suite 400  
Washington, DC 20036

Carolyn Marek  
Vice President of Regulatory Affairs  
Time Warner Telecom  
233 Bramerton Court  
Franklin, IN 37069

Mr. Tom McCabe  
 TDS Telecom  
 Post Office Box 189  
 Quincy, FL 32353-0189

Joseph McEllothlin, Esq.  
 McWhorter, Reeves, McEllothlin,  
 Davidson, Riel & Baker, P.A.  
 117 S. Gadsden Street  
 Tallahassee, FL 32301

Mr. Charlie Murphy  
 Mr. Rooper Imhoff  
 House Committee on Ethics & Communications  
 428 House Office Building  
 Tallahassee, FL 32399-1300

Robert N. Post, Jr.  
 Post Office Box 277  
 Indiantown, FL 34956

Charles Rehwinkel  
 Sprint-Lord  
 1713 Blair Stone Road, MC FL 3100107  
 Tallahassee, FL 32301

Jack Shreve, Esq.  
 Charles Beck, Esq.  
 Earl Poucher  
 Office of Public Counsel  
 c/o The Florida Legislature  
 111 W. Madison Street, Rm 812  
 Tallahassee, FL 32399-1400

Jeff Whalen, Esq.  
 Ausley & McMullen  
 227 S. Calhoun Street  
 Tallahassee, FL 32301

Patrick R. Wiggins, Esq.  
 Donna C. Amzaro, Esq.  
 Wiggins & Villacorta, P.A.  
 Post Office Drawer 1657  
 Tallahassee, FL 32302

Floyd R. Self