LAW OFFICES
MESSER, CAPARELLO & SELF
A PROFESSIONAL ASSOCIATION
215 SOUTH MONROE STREET, SUITE 701
POST OFFICE BOX 1876
TALLAHASSEE, FLORIDA 32302-1876
TELEPHONE (850) 222-0720
TELECOPIER (850) 224-4359

February 1, 1999

BY HAND DELIVERY
Ms. Blanca Bayo, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 980696-TP

Dear Ms. Bayo:

Enclosed for filing are an original and fifteen copies of the Joint Response of AT&T, e.spire, FCCA, MCI and WorldCom to the GTE and Sprint Requests for Reconsideration in the above-captioned docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

Floyd R. Self

NHH:amb
Enclosures
cc: Parties of Record

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

any of them.

4. The proper standard of review for a request for reconsideration "is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering our Order." Order No. PSC-98-0844-FOF-TP, citing Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). While both GTEFL and Sprint-FL claim to bring to the Commission's attention matters overlooked or not considered, both requests reargue issues that were decided differently by the Commission than were advocated by GTEFL and Sprint-FL. Thus, both requests should be denied.

II. GTEFL'S PETITION

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

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

legislative directive to model, on a forward-looking basis, the cost of basic local telecommunications services. Section 364.025(4)(b), Florida Statutes; Order, at 9. As such, GTEFL is wrong to assert at page 6 of its Petition that the 1995 revisions to Chapter 364 bind the Commission in this matter.[1] This is neither a rate case nor is it supposed to be a snapshot of GTEFL's current business operations. GTEFL's argument is simply reargument that constitutes an inappropriate basis for reconsideration.

7. GTEFL's second claim, that the cost of capital decision lacks evidentiary support, is repudiated by the 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 Hirshleifer, and he provided extensive evidence regarding an appropriate capital structure and the problems with GTEFL's proposals. Tr. 152-203, 209-250 (Hirshleifer Direct at 5-56, Rebuttal 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. Hirshleifer testified, the risk associated with the provision of universal service will be minimal. Tr. 155 (Hirshleifer Direct at 8). The Commission, in considering the testimony, evaluated and weighed the testimony of Mr. Hirshleifer which is clearly its prerogative. Gulf Power Co. v. FPSC, 453 So.2d 799 (Fla. 1984); United Telephone Co. v. Mayo, 345 So.2d 648 (Fla. 1977). GTEFL's arguments are merely "sour grapes" over the

[1] 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).

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.[1] 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).

[1] 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.

this choice was appropriate even if the study was not Florida-specific or Sprint-territory specific, since again, the purpose of this proceeding is modeling not rate setting, and the BellSouth data is more precise and localized than the national default.

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

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

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 & Self, P.A.
215 S. Monroe Street, Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876
(850) 222-0720
Attorney for e spire[SM] 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. Self, 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, e.spire, 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, Ecenia, Underwood,
Purnell & 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, TN 37069

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

Joseph McGlothlin, Esq
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 S. Gadsden Street
Tallahassee, FL 32301

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

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

Charles Rehwinkel
Sprint-Florida
1313 Blair Stone Road, MC FLTLH00107
Tallahassee, FL 23201

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 K. Wiggins, Esq
Donna Canzano, Esq
Wiggins & Villacorta, P.A.
Post Office Drawer 1657
Tallahassee, FL 32302

Floyd R. Self