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January 11, 2001

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. 000828-TP

Dear Ms. Bayó:

Enclosed for filing are the original and fifteen (15) copies of Sprint's Late-Filed Exhibit No. 3.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in this matter.

Sincerely,

J. Jeffry Wahlen

Enclosures

cc: All parties of record
Jane Faurot

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Exhibit No. 3 (LF)
Docket No. 000828-TP
Sprint
Witness: Felton
January 1, 2001

Petition for Reconsideration and Clarification

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of)

)

Implementation of the) CC Docket No. 96-98

Local Competition Provisions in the)

Telecommunications Act of 1996)

PETITION FOR RECONSIDERATION AND CLARIFICATION

Sprint Corporation, on behalf of its operating subsidiaries, hereby seeks reconsideration or clarification of certain aspects of the Commission's Third Report and Order in the above-captioned proceeding (FCC 99-238, released November 5, 1999, hereinafter referred to as "UNE Remand Order").

I. INTRODUCTION AND SUMMARY

In general, Sprint believes the UNE Remand Order is an exemplary work product of the Commission: It gives careful and thoughtful content to the "necessary" and "impair" clauses of §251(d)(2) that was found lacking in the Commission's First Report and Order, and for the most part, correctly applies those criteria in determining when elements must be provided by the ILECs. However, in a few respects, Sprint believes that clarification and/or reconsideration are necessary.

The Commission's discussion of ILEC recovery of the costs of conditioning loops needs elaboration in two respects. First, in order to avoid conflict with the TELRIC methodology used to develop prices for the UNE loops, ILECs should not be allowed to recover loop conditioning costs when the network design on which the loop rates are based excludes bridged tap, load coils and repeaters. Second, in circumstances where loop conditioning cost recovery is permitted, such cost recovery should be predicated on TELRIC principles, including an efficient approach to loop conditioning. For example, rather than assuming the ILECs will dispatch technicians to remove load coils from just one loop at a time, the Commission should assume that load coils will be removed from a minimum of 25 loops at a time.

For purposes of determining when ILECs do not need to make the local switching element available in high density offices in the top fifty MSAs, the Commission needs to redraw the line separating "medium and large business customers" from the rest of the market. Sprint offers two alternative definitions of "medium and large business": (1) any business that utilizes more than 39 local business lines; or (2) any business that uses more than 15 key trunks or more than 50 Centrex lines.

The Commission's packet switching determinations need to be modified in two respects. First, packet switching should be available as a UNE in any ILEC end office (where the ILEC itself has deployed packet switching capability) that serves fewer than 5,000 access lines. In such offices, the high cost of collocation precludes requesting carriers from a realistic opportunity to recover their costs. Second, the "remote terminal" exception to the general rule that packet switching does not need to be made available as a UNE needs to be modified by eliminating the "spare copper" condition. Otherwise, ILECs could defeat the purpose of the exception simply by having an uneconomically small number of copper loops available at each remote terminal.

Assuming such action would be consistent with the forthcoming decision of the Eighth Circuit, the Commission should promptly rule that combinations of elements must be made available when such elements are ordinarily combined in the ILEC's network, even if those elements are not already combined for a specific end user.

Finally, the calling name database should be removed from the list of mandatory UNEs. ILECs are not the sole source of such information and thus, as in the case of operator services and directory assistance, ILECs should not be required to provide such access as a UNE.

II. LOOP CONDITIONING COSTS

Among the types of loops the Commission required to be provided by ILECs are loops "conditioned" to permit their use for high-speed data services (¶190). In the embedded network that exists today, such conditioning may include the removal of bridged tap, load coils, and repeaters. Such devices, however, are not reflective of forward-looking network designs. Rather, forward-looking networks use Carrier Serving Area design concepts that involve the use of feeder cable terminating to a feeder distribution interface and/or fiber-fed digital loop carrier (DLC), with extra capacity built into the distribution plant to accommodate new customers and multiple lines per customer. The Commission acknowledged in ¶193 (footnote omitted) that "networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter."[1] However, the Commission went on to observe (*id.*, footnote omitted):

Nevertheless, the devices are sometimes present on such loops, and the incumbent LEC may incur costs in removing them. Thus, under our rules, the incumbent should be able to charge for conditioning such loops.

As discussed below, Sprint is concerned that this language may be used by ILECs in an attempt to recover loop conditioning costs in a fashion that is inconsistent with the

TELRIC approach to unbundled network element pricing adopted both by this Commission in its First Report and Order herein and the overwhelming majority of state regulatory commissions.

First, as the Commission itself acknowledged in ¶193, forward-looking networks – *i.e.*, "networks built today" – are free of the devices that require line conditioning. By paying TELRIC prices for the loop, requesting carriers are already reimbursing ILECs for the full costs of a network built free of such devices and using the Carrier Serving Area concept discussed above. Thus, requesting carriers – whether they need loops for high-speed data services or not – are paying extra for a network designed, from the ground up, to accommodate high-speed data needs. To the extent that the TELRIC price of loops is based on such a network design, it is wholly inconsistent with TELRIC also to require

requesting carriers to pay costs related to removal of embedded devices from the embedded network in place and creates a disconnect between the methodology for computing monthly recurring charges and the methodology for computing non-recurring charges. Furthermore, the very purpose of TELRIC pricing is defeated if ILECs can

charge extra for cost functions simply because those cost functions exist in the embedded network. Thus, the Commission should make clear that such loop conditioning costs may be recovered only to the extent that such recovery is consistent with the plant design on which the UNE prices for loops are based.

Moreover, to the extent that ILECs are allowed *any* recovery of loop conditioning costs, the Commission must re-emphasize that the charges for such loop conditioning costs must be based on TELRIC principles. That TELRIC governs should already be clear: §51.319(a)(3)(iii) cross-references §51.507(e), which requires that "forward-looking economic cost" be used to establish nonrecurring charges. However, in view of the conduct of some ILECs, the Commission would do state commissions and the competitive industry a favor by reiterating that TELRIC principles, including the recognition of logical economies of scale and least-cost methodologies, apply to any permissible recovery of loop conditioning costs. Some ILECs have proposed non-recurring charges for loop conditioning that are simply astronomical – for example, SBC has proposed an NRC of more than $900 for the removal of a single load coil. These proposed charges are based on the wholly unrealistic assumption that an ILEC would dispatch technicians to condition only one loop at a time. In the real world, an ILEC would behave this way only if its primary goal were to artificially increase the costs of its potential competitors. In fact, it is far more efficient to remove load coils from entire bundles of loops at a single time. Based on the practices of Sprint's ILEC operations, it is reasonable and efficient to assume that ILECs can remove load coils from at least 25 loops at a time.

The one-at-a-time cost basis some ILECs seek to impose is not only an inefficient and anti-competitive approach to loop conditioning, it also flies in the face of the substantial, ongoing efforts the ILECs themselves are undertaking to prepare their plant for their own offerings of DSL services. SBC, for example, reports that it is embarking on a $6-billion initiative to equip 77 million customers in 35 million locations – 80% of its total customer base – with DSL services, and that this project will "decrease future capital requirements" and "reduce network operating expenses" as well "generate $3.5 billion in new revenues by 2004."[2] It may be noted that this initiative includes far more than merely conditioning its loop plant. However, even the $6 billion total cost, divided by 35 million locations, equates to $171 per location, less than a fifth of the non-recurring charge SBC has sought to impose for loop conditioning costs alone. Similarly, in a November 11, 1999 press release,[3] Bell South claimed that 7 million of its access lines were DSL-ready by the end of 1999 and that this total would increase to 11.5 million lines by the end of this year. Bell Atlantic also announced last fall that 17 million of its lines would be DSL-capable by the end of 1999.[4] And last July, GTE announced that, by year-end, 6.1 million of its access lines would be DSL-capable.[5] Any recovery of loop conditioning costs must give full recognition to the efforts the ILECs are already undertaking, on their own initiative, to groom their loop plant to make it DSL-capable. CLECs should not be artificially forced to bear in costs that ILECs are, in fact, already

incurring (or have already incurred) for themselves. By the same token, CLECs are entitled to fully share the economies of scale and scope realized by the ILECs' own mass network rehabilitation efforts.

In short, the Commission should clarify ¶193 to make clear that there should be no recovery of loop conditioning costs in circumstances where the TELRIC costs for the loops themselves have been based on a network free of bridged taps, load coils and repeaters and reiterate that, in any event, the charges for loop conditioning should be based on TELRIC principles recognizing logical economies of scale and least-cost methodologies, including an assumption that the ILEC will remove load coils from loops in groups of at

least 25 at a time. Such specific guidance will relieve state commissions of the necessity of dealing with clearly spurious arguments of ILECs.

III. LOCAL SWITCHING IN ZONE ONE OFFICES

In the UNE Remand Order, the Commission determined that local switching did not need to be made available as a UNE in high-density end offices within the top 50 MSAs to enable requesting carriers to serve customers with four or more lines, so long as the ILEC provides an extended link ("EEL") that would connect the customer's loop from the end office serving that customer to a different end office where the competitor is already collocated. The four-line distinction was intended to differentiate between the mass market (including both residential and small business customers) on the one hand, and medium and large business customers on the other. See ¶¶291-294. The Commission found that in such offices, competing local carriers have deployed switches to serve "medium and large business customers" (¶291), and that as a result, requesting carriers are not impaired by the inability to obtain the switching element for such customers so long as the EEL is available. There is very little support given in the order for drawing the differentiating line at between three lines or less and four lines or more; the Commission simply found (¶294), without citing any record evidence, that this demarcation "reasonably captures the division between the mass market ... and the medium and large business market ...."

The Commission's determination to exempt ILECs from having to provide the local switching UNE under the limited circumstances described above is predicated on the assumption that local switching by CLECs is self-provisioned for serving the "medium and large business" market. Sprint believes that the Commission clearly set the line too low. By doing so, it is precluding CLECs from using the switching element to market their services to customers who they are not serving today through their own switches, and thus giving the ILECs a clear competitive edge in this segment of the market. What the Commission must do on reconsideration is adopt a more realistic, fact-based dividing line between the medium and large business market and the rest of the customer base.

Although "small business" may often be defined to include businesses that employ as many as 500 people,[6] an often-used and conservative definition of "small business" is one that employs fewer than 100 persons. It strains credulity to believe that a typical business with as many as 99 employees would attempt to get by in today's world with just 3 phone lines. Rather, the Yankee Group reports that the larger segment of small businesses (those with 50-99 employees) uses an average of 22 phone lines, whereas the smaller segment of medium businesses (those with 100-249 employees) uses an average of 56 lines.[7] The Yankee Group results are consistent with the way that Sprint's incumbent LEC marketing organization differentiates between the small business market and the medium and large business markets: Businesses that have up to 15 key trunks or up to 50 Centrex lines are considered small business or "mass market." Either the Yankee Group data or Sprint's internal practice is far more reliable than the sheer guesswork that underlies the "up to three-line" criterion employed in the UNE Remand Order. Should the Commission choose to rely on the Yankee Group's study, it should use the midpoint between the 22-line average for the larger small businesses and the 56-line average of the smaller medium businesses as reported by the Yankee Group, or 39 lines.

IV. PACKET SWITCHING

In ¶¶306-308 of the UNE Remand Order, the Commission declined to require ILECs to make packet switching available as a UNE as a general rule. The findings supporting this determination were contradictory. On the one hand, the Commission found that competitors are actively deploying facilities necessary to provide advanced services to medium and large businesses and thus cannot be said to be impaired because of the lack of access to the packet switching UNE (¶306). The Commission also found that CLECs and cable companies appear to be ahead of ILECs in their deployment of advanced services

(¶307) and that the equipment involved in packet switching (DSLAMs

and the packet switches themselves) are available at "comparable" prices to incumbents and requesting carriers (¶308). Finally, the Commission found (*id* .) that packet switch utilization rates are more comparable as between requesting carriers and incumbent LECs than circuit switch utilization and that it does not appear that ILECs possess significant economies of scale in packet switching. On the other hand, the Commission found (¶306) that in the residential and small business segments of the market, competitors may be impaired, absent access to ILEC facilities, because of the cost and delay of obtaining collocation in every central office. The Commission reiterated this point in ¶309, finding that because of these costs and delays, competitors "are impaired in their ability to offer advanced services without access to incumbent LEC facilities."

The UNE Remand Order made a limited exception to the general rule that packet switching does not need to be made available. Specifically, in ¶313, the Commission found that in circumstances where an incumbent has employed digital loop carrier (DLC) systems, if a requesting carrier is unable to install its DSLAM in the remote terminal and cannot obtain spare copper loops between the central office and the end user premises, ILECs must provide access to unbundled packet switching in situations where the incumbent has placed its own DSLAM in a remote terminal. This determination was codified in §51.319(c)(5).

Sprint seeks reconsideration of these determinations in two respects. First, the Commission failed to consider adequately the effect of the collocation costs – costs which the Commission conceded resulted in an impairment to requesting carriers – in the requesting carriers' ability to compete with the ILECs for packet switching services. As discussed below, this impairment is particularly significant in smaller central offices. Thus, Sprint requests that packet switching be available as a UNE in any end office serving fewer than 5,000 lines if the ILEC has deployed packet switched services in that end office. Second, the exception created by the Commission needs to be clarified so that it can be used in a commercially practicable fashion, by eliminating the "spare copper" condition in §51.319(c)(5)(ii).

Turning first to the broader issue, the fixed costs of collocation are so substantial that requesting carriers cannot realistically be expected to incur those costs in smaller end offices. Attached as Appendix A is an analysis of the local network costs involved in offering xDSL packet switched services to end users. (As made clear therein, this analysis does **not** include any sales, marketing, or ongoing operations costs.) These network costs increase dramatically as the number of subscribers per end office declines, due in large part to the high fixed costs of collocation itself, as well as the costs of the requesting carrier's DSLAM. If the requesting carrier serves only 10 customers in an end office, Sprint estimates that the monthly unit costs exceed $840, dropping to the neighborhood of $125 when a market penetration of 80 customers per end office has been achieved. Only when the requesting carrier's customer density per end office increases to 250 does the local network cost per customer fall to $50 per month – roughly comparable to the ILECs' own prices for retail xDSL services. (Again, it must be borne in mind that this cost does not include any of the substantial sales, marketing and ongoing operations costs that the requesting carrier also must recover if it is to make a profit.) Thus, it is only when the requesting carrier can realistically expect to serve at least 250 end users in an ILEC central office that the cost of collocating in that central office and installing DSLAM equipment can even begin to be economically justified.

Sprint believes that in order to achieve this subscriber density, the end office must serve at least 5,000 access lines. To begin with, collocation of DSLAMs in an ILEC central office can only work for those ILEC customers who are served without the use of intermediate DLCs or other remote terminal devices, and whose loop length is less than 18,000 feet. Sprint estimates that, on average, only 50% of ILEC customers from the typical end office can be addressable by requesting carriers through end office collocation. Under the most optimistic assumptions, it is also unreasonable to assume that any individual

requesting carrier would be able to capture more than 10% of end users for broadband services. In more than 20 years of vigorous competition in the long-distance business, Sprint has been able to attain only that level of market share. Moreover, many consumers simply lack the interest or the necessary home equipment (*e.g.*, a PC) to want to avail themselves of broadband communications services. Thus, it is difficult to envision a consistent market share penetration by the average requesting carrier of more than 10%. Under these optimistic assumptions – namely, that each requesting carrier will capture 10% of addressable end users in a central office for a broadband services and that 50% of the end users served by an end office are addressable for broadband services (*i.e.*, are within 18,000 feet of the end office and are not served through remote terminals) – 5,000 lines is the minimum size for an end office to make collocation even worth considering for a requesting carrier.[8] For consumers served by any end office with fewer than 5,000 lines, the cost of central office collocation would simply be cost-prohibitive for requesting carriers.

To be sure, there may be many end offices where the ILECs themselves cannot cost-justify the offering of packet switched services because of their own fixed costs and a low projected take rate from consumers. However, the ILECs have substantially lower fixed costs in this regard than do other requesting carriers. They do not face the substantial fixed costs of collocation – $100,000 in a typical case – that requesting carriers face. Rather, their incremental costs of installing DSLAM equipment are virtually nil. Moreover, given the existing relationships they have with all of their end users, they can clearly be expected to achieve a higher penetration of the market than any new entrant could hope to obtain.

In these circumstances, the Commission can hope for competition in the provision of advanced services only by making the packet switching UNE available to requesting carriers in end offices where the ILECs themselves offer packet switching services to their subscribers. In ¶317, the Commission adopted the "overriding objective . . . [of ensuring] that advanced services are deployed on a timely basis to all Americans so that consumers across America have the full benefits of the 'Information Age.'" Unless the Commission reconsiders its UNE Remand Order and requires packet switching to be available as a UNE in small and medium end offices, it will fore-ordain either that its "overriding objective" will not be met in suburban, small town and rural America, or it will coronate the ILECs as the FCC-sanctioned monopoly providers of such services. That, of course, is directly contrary to the entire spirit of the 1996 amendments to the Act.

In addition to this change in availability of packet switching, the Commission also needs to modify the exception adopted in the UNE Remand Order that permits requesting carriers to obtain the packet switching element where the ILEC has deployed packet switching capability for its own use, the end user is served via a DLC or other remote terminal and the ILEC has not permitted the requesting carrier to deploy a DSLAM at the remote terminal location. In those circumstances, §51.319(c)(5)(ii) permits the requesting carrier to obtain packet switching as a UNE if, in addition to the above conditions, "there are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer." In many instances, this condition, read literally, would be of no use to requesting carriers. For example, if there is just one spare copper loop available at the remote terminal that could be used to connect the end user to the end office, the ILEC could argue that the conditions for the packet switching exception are not met and the requesting carrier should be able to serve the end user by collocating at the central office, installing its DSLAM, and using this one available copper loop to connect with the end user customer. Obviously, it would be grossly uneconomic for a requesting carrier to collocate at the central office under these circumstances. But the rule, read literally, would require it to do so until the available copper loops at the remote terminal were all utilized, after which the requesting carrier – or some other requesting carrier – would quality for the exception. But since no carrier is likely to interconnect in the central office when the number of copper loops available to reach end users is uneconomically small, requesting carriers will stay out of that portion of the market altogether. Indeed, by wording the rule in this fashion, the Commission gives ILECs an incentive to install a single spare copper wire pair at every remote terminal just to preclude

requesting carriers from being able to avail themselves of the packet switching UNE to reach customers served via that remote terminal. Such a result – which Sprint believes obviously was unintended by the Commission – would again contravene the Commission's "overriding objective" of maximizing the deployment of advanced services.

Because of the wide variability in the number of remote terminals that can subtend an end office, and the number of subscribers served by each remote terminal (which can range from 50 to as many as 1,000), there is no single number of spare copper loops per remote terminal that can be prescribed as a commercially realistic minimum that could reasonably justify collocation at the central office by the requesting carrier. Thus, Sprint believes that the "spare copper" condition in §51.319(c)(5)(ii) should simply be eliminated.

V. COMBINATIONS OF ELEMENTS

In ¶479 of the UNE Remand Order, the Commission declined to settle a controversy that has arisen between requesting carriers and ILECs concerning when combinations of elements must be made available. As the Commission noted (*id.*), it had concluded in the First Report and Order that the requirement in §51.315(b), that incumbent LECs may not separate elements that the incumbent LEC "currently" combines, meant that those elements are "ordinarily combined within their network, in the manner in which they are typically combined" (internal quotations and footnote omitted). Some incumbent LECs had argued that this rule comes into play only with respect to elements that are "currently" combined and not to elements that are "normally" combined within their networks. Because the Commission viewed this matter as currently pending before the Eighth Circuit, it declined to address this issue.

Sprint requests the Commission to address this issue on reconsideration and to rule that ILECs must combine separate elements needed to serve a particular customer so long as such elements are ordinarily combined by the ILEC. This issue is important because many of the RBOCs argue that "currently combined" must be applied on a customer-by-customer basis. The RBOC approach means that, for example, a CLEC cannot provide local service through the UNE-P to a customer that has just moved into an area, because the elements needed to serve that particular customer have not yet been combined by the ILEC. Such a result gives the ILEC a clear competitive advantage over CLECs and imposes additional and unnecessary costs on the CLECs. Sprint respectfully submits that this issue of interpretation falls under §51.315(b), which is not pending before the Eighth Circuit, rather than paragraphs (c)-(f), which are before the Court. In either case, it may be expected that the Eighth Circuit will rule before the Commission acts on this petition. Thus, should the Eighth Circuit's decision permit it to do so, the Commission should rule promptly that the requirements to leave combined elements unseparated applies not on a customer-by-customer basis, but rather applies in any instance in which ILECs ordinarily combine these elements within their networks.

VI. CALLING NAME DATABASE

In ¶¶402-417, the Commission determined that the calling name (CNAM) database should be classified as a call-related database and made available to requesting carriers as an unbundled network element. Sprint respectfully requests reconsideration of this determination.

To begin with, the Commission's findings as to the impairment that would be suffered if CNAM were unavailable as a UNE are internally contradictory. In ¶415, the Commission considered the costs a requesting carrier would incur to replicate the ILECs' call-related databases or obtain such services from all credited vendors (referring specifically to LIDB and CNAM), and concluded that "the cost incurred by a requesting carrier to self-provision or use alternative databases does not appear to materially diminish the carrier's ability to provide the services it seeks to offer." This clearly suggests that the Commission

believed that alternatives to CNAM exist or that requesting carriers could themselves replicate the ILECs' databases. Yet in the very next paragraph, the Commission ruled that switched based local competitors "must have access to the incumbent LEC's CNAM database" because "incumbent LECs are the only providers of CNAM database information" (footnote omitted).

The short answer is that the Commission had it right in ¶415: There are indeed alternative providers of the CNAM database. One such vendor is Targus Information Services. Targus advertises that its Caller Name Express™ service provides nationwide calling name delivery with over 140 million names, from a simple database accessible through SS7.[9] Thus, the CNAM database is no different from operator and directory assistance services which, because of their availability from alternative vendors, were not required to be offered as unbundled network elements (see §VH of the UNE Remand Order), and should be removed from the required list of UNEs.

VII. CONCLUSION

Sprint respectfully requests that the Commission reconsider and clarify the UNE Remand Order as requested above.

Respectfully submitted,

SPRINT CORPORATION

/s/ Richard Juhnke

Leon M. Kestenbaum

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February 17, 2000

[1] It may be noted that loops greater than 18,000 feet in length are generally not suitable for DSL-based broadband services, in any case.

[2] See SBC press release, "SBC Launches $6 Billion Broadband Initiative," October 18, 1999 (< http://sbc.com/News_Center/Article.html?query_type=article+query=19991018-01 >).

[3] "Bell South Fast Access Internet Service Deployed in 30 Target Markets," November 11, 1999 (< http://www.bellsouthcorp.com/proactive/documents/render/30182.vtml >).

[4] "Bell Atlantic, 3Com Announce Industry-First DSL Retail Alliance," October 6, 1999 (< http://www.ba.com/nr/1999/Oct/19991006004.html >).

[5] "GTE to Offer Low-Priced, Higher-Speed Internet Access Service While Accelerating Deployment in 17 States," July 22, 1999 (< http://www.gte.com/AboutGTE/NewsCenter/News/Releases/ADSLBronze.html >).

[6] See < http://www.smallbiz.findlaw.com/text/P10_4223.stm >.

[7] See Yankee Group, "What SMBs Want In Local Service: Do You Have It?," November 1998. The relevant page (Exhibit 2) is attached as Appendix B.

[8] Stated differently, assuming such an end office has 2,500 access lines addressable through central office DSLAM collocation, it is the minimum size central office needed to enable the requesting carrier to achieve a subscriber density of 250 subscribers even at an optimistic 10% of market share subscriber penetration by the requesting carrier.

[9] See < http://www.targusinfo.com/products/cname/index.html >. Other information on the scope and reliability of this service is available through that web site.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail or hand-delivery (*) this 11th day of January, 2001, to the following:

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