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October 25, 2001

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
& Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 011177-TP Sprint-Florida, Incorporated's Rebuttal Testimony of
John Clayton

Dear Ms. Bayó:

Enclosed for filing is the original and fifteen (15) copies of Sprint-Florida, Incorporated's
("Sprint") Rebuttal Testimony of John Clayton.

Copies have been served pursuant to the attached Certificate of Service.

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,

Susan S. Masterton

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **REBUTTAL TESTIMONY**

3 **OF**

4 **JOHN CLAYTON**

5
6 **Q. Please state your name, employment and business address.**

7
8 A. My name is John Clayton. I am employed as Director, Local Carrier Markets at
9 Sprint/United Management Company, an affiliate of Sprint-Florida, Incorporated. My
10 business address is 6480 Sprint Parkway, Overland Park, Kansas, 66251.

11
12 **Q. Did you previously file testimony on September 25, 2001 in this proceeding?**

13
14 A. Yes, I did.

15
16 **Q. What is the purpose of your rebuttal testimony?**

17
18 A. I will be rebutting the testimony of Mr. Martinez regarding whether Sprint acted properly
19 when it terminated the Florida Interconnection Agreement (hereinafter "Agreement").
20 Sprint's actions have not adversely impacted MCImetro or its customers nor have they
21 prevented MCImetro from acquiring new customers. I will also be rebutting the
22 testimony of Mr. Monroe on whether the legal and regulatory changes cited by Sprint are
23 sufficient to trigger the change in law provision in the Agreement. I will demonstrate that
24 the changes needed to bring the four year-old Agreement into compliance with current
25 law and Sprint processes are so numerous and interwoven into the fabric of the

1 Agreement that the most expedient course of action is to replace the Agreement in its
2 entirety with a new agreement.

3

4 **Q. Mr. Martinez, in his prefiled direct testimony, testifies that MCImetro was willing**
5 **to entertain amendment language but that Sprint never proposed any. How do you**
6 **respond to that statement?**

7

8 A. I disagree with Mr. Martinez's statement. First, in a letter we sent to MCImetro on May
9 24, 2001, Sprint enclosed a copy of the standard interconnection agreement for
10 MCImetro's review. Sprint believes that since the changes in law and regulation
11 impacted so much of the Agreement, the best and most expedient solution was to begin
12 negotiations from a baseline agreement that would not only reflect the current changes in
13 law, but also changes in Sprint's processes and procedures necessary to comply with the
14 changes in law and regulation.

15

16 The impacts of legal and regulatory changes on processes and procedures cannot be
17 treated lightly. Each new requirement causes a series of closely intertwined actions
18 across several internal work units. New product inventory, ordering and billing codes
19 must be created. Processes for ordering the new service must be developed and
20 implemented. Website enhancements for Sprint's electronic ordering system, IRES, are
21 required. Processes for converting existing services to the new service must be
22 developed. Technician training may be required. These are just a few examples of the
23 numerous back office processes and procedures that have to be developed and
24 documented any time there is a change in law and regulation. The more far-reaching the

1 change in law or regulation, the more significant the process and procedure changes tend
2 to be.

3
4 In addition to providing a copy of our standard agreement, Sprint offered to assist
5 MCImetro in using the Most Favored Nation (“MFN”) provisions under federal law to
6 opt-into another agreement that would replace the existing Agreement. We specifically
7 proposed that MCImetro opt-into the existing interconnection agreement between Sprint
8 and XO Communications in Florida. We felt this made sense, especially since
9 MCImetro’s affiliate company, MCI WorldCom Communications, Inc., had used the
10 MFN procedures to opt-into the Sprint / XO Communications Nevada agreement which
11 is identical to the Sprint / XO Communications Florida interconnection agreement except
12 for state specific pricing.

13
14 Secondly, MCImetro’s May 31, 2001 response to our request for negotiations explicitly
15 rejects Sprint’s request to negotiate amendments to the Agreement. MCImetro’s May 31
16 letter states, “We do not agree that Part A, Section 2.2 and Section 6, when applied to the
17 circumstances listed in the table attached to your letter, require an amendment to this
18 Agreement.” The letter asked only that Sprint bring to MCImetro’s attention issues of
19 “great importance”. There certainly was no indication that MCImetro was willing to
20 negotiate amendments to the Agreement. As outlined in my direct testimony, MCImetro
21 has demonstrated a history of stonewalling any attempts by Sprint to amend the
22 Agreement. Given MCImetro’s failure to respond to our letter of June 21, 2001, Sprint
23 was left with no alternative but to notify MCImetro that it was in breach of the
24 Agreement.

1 Finally, as I attested to in my direct testimony, Sprint never received the letter MCImetro
2 claims it sent to Sprint on June 22, 2001 in response to Sprint's breach notice. The
3 absence of a response from MCImetro during the 45-day cure period for breach left
4 Sprint with little choice but to terminate the Agreement.

5
6 **Q. Mr. Martinez testifies that MCImetro is working on a residential market launch**
7 **and did not want to be without a comprehensive agreement. Will a new agreement**
8 **affect MCImetro's market entry plans?**

9
10 A. Not at all. It will actually make market entry easier for MCImetro to implement.
11 Although the Florida Agreement was a comprehensive agreement on its effective date,
12 significant and numerous regulatory changes since 1997 have made it outdated and
13 ineffectual. The Agreement does not include many of the services that Sprint currently
14 makes available to other ALECs in the state of Florida. Not only does Sprint's current
15 baseline agreement, or in the alternative the Sprint/XO agreement, reflect current law, but
16 these agreements also incorporate many services such as UNE-P, Enhanced Extended
17 Link ("EEL"), line sharing and line splitting, that are not covered by the terminated
18 Agreement.

19
20 For example, when Sprint learned that MCImetro was planning a residential market
21 launch using UNE-P, we immediately informed them that while Sprint was willing to
22 support their request, UNE-P was not covered under the Agreement. The 1997
23 Agreement was executed prior to the rules that led to the development of UNE-P and
24 consequently, the terminated Agreement does not define UNE-P nor does it have pricing
25 or language covering processes for ordering and provisioning UNE-P.

1 **Q. What would happen if MCImetro submitted an order to Sprint for UNE-P?**

2

3 A. The order would be rejected and Sprint and MCImetro would end up disputing the issue
4 before the Commission under the dispute resolution provision in the Agreement. The
5 Commission should keep in mind that other ALECs that have opted-into the Agreement
6 may also try to order services not available to them under the Agreement and risk order
7 rejection. These are the scenarios the Commission is faced with if MCImetro is allowed
8 to continue operating under the terminated Agreement. The only reason a dispute has not
9 arisen to this point is because of the lack of order activity from MCImetro. As I indicated
10 in my direct testimony, Sprint has processed a total of 58 orders for number porting and
11 two orders for directory listing since the Agreement went into effect over four years ago.
12 If indeed MCImetro is planning on a market launch – residential or otherwise, they will
13 need an agreement that will make available services that other ALECs in Florida
14 currently enjoy.

15

16 **Q. What about Mr. Martinez's claim that MCImetro was adversely impacted when**
17 **Sprint disconnected MCImetro's access to IRES and cancelled orders for service?**

18

19 A. It was never the intent of Sprint to terminate existing service and contrary to Mr.
20 Martinez's claims, Sprint did not interrupt service of any existing MCImetro customers.
21 MCImetro's action -- or should I say inaction and lack of cooperation -- left Sprint no
22 other alternative but to stop processing new orders. Nevertheless, this issue was made
23 moot as a result of Sprint's agreement to reinstate order processing for MCImetro, which
24 we communicated to MCImetro in a letter dated September 5, 2001. Additionally, in
25 consideration of this current dispute over the status of the Florida Agreement, Sprint

1 agreed to MCImetro's request to extend post-termination service until December 21,
2 2001.

3

4 **Q. In Mr. Monroe's direct testimony, he states that, in his opinion, there are no**
5 **conflicts between the Agreement and law and therefore MCImetro cannot be in**
6 **breach of the change of law provision. What is your response to this statement?**

7

8 **A. In my opinion Mr. Monroe's testimony is based almost entirely upon his unsubstantiated**
9 **and unsupported legal opinion and it completely disregards any of the facts associated**
10 **with this dispute. His testimony seems to revolve around the notion that unless a specific**
11 **provision is deemed unlawful or illegal, the parties are free to agree to anything above**
12 **and beyond what is required by law. This logic is flawed in many ways.**

13

14 First, as Sprint witness Hunsucker testifies, Sprint's policy has always been to negotiate
15 interconnection agreements within a given regulatory framework -- that is, Sprint has
16 always recognized that existing rules and regulations would likely change over time.
17 Therefore, it has always been important that Sprint include a change of law provision in
18 agreements sufficient to require conformance of the agreement to the changing rules and
19 regulations. As I stated in my direct testimony, this was the intent of the parties when the
20 original Agreement was negotiated. Evidence of that is readily apparent in the fact that
21 the Agreement was renewable solely at MCImetro's option. It doesn't make sense that
22 Sprint would have agreed to a contract with no termination date unless there was an
23 opportunity to initiate changes to the Agreement that reflected changes in the regulatory
24 environment.

1 Secondly, MCImetro's interpretation of the contract, at least based upon their past
2 actions, is that changes to the contract are allowed only when such changes would benefit
3 MCImetro, but not when such changes might be favorable to Sprint. For example, the
4 rates in the Agreement are not the rates Sprint currently offers for some of the unbundled
5 network elements. In this case, Sprint's current prices for a local loop are lower than the
6 prices contained in the terminated Agreement. This is a change of law that works to
7 MCImetro's favor and which we anticipate is a change that MCImetro will want to make,
8 if and when they are ready for their market launch. Using Mr. Monroe's logic, however,
9 even if MCImetro requested renegotiation of these rates, Sprint could argue that the
10 provisions are not subject to renegotiation or modification under the change in law
11 provisions since the parties are free to agree to any prices or rates as long as they are not
12 unlawful.

13
14 Thirdly, as Sprint witness Hunsucker testifies, because other ALECs can opt-into the
15 Agreement under the MFN requirements imposed on ILECs, Mr. Monroe's interpretation
16 essentially binds Sprint forever in its relationships with all ALECs in Florida. Any
17 ALEC that uses MFN requirements to opt-into the MCImetro contact will end up with an
18 agreement that is irrelevant or obsolete as a result of regulatory and industry evolution.

19
20 Finally, the MFN requirement imposed on ILECs has in itself been the subject of a
21 change in law. At the time the Agreement was first negotiated and signed in 1997, the
22 MFN rule in effect required the ILEC to offer an entire 251/252 agreement to any
23 requesting ALEC. Due to changes in law in this area, ALECs now have the ability to use
24 the MFN rules to opt-into portions of existing agreements. This places Sprint at a
25 substantial disadvantage with regard to the MCImetro Agreement. For example, under

1 this scenario, Sprint would have to allow an ALEC to adopt the term provision of the
2 Agreement that allows it to be renewed solely at the ALEC's option. Additionally,
3 ALECs can adopt terms and conditions that include outdated Sprint processes and
4 procedures that are interwoven into the Agreement, even though those processes and
5 procedures have evolved along with the regulatory changes over the years. Therefore,
6 the change in the application of the MFN rule is one of the most onerous of all the
7 changes in law. Sprint would not have agreed to the packaged Agreement if it had
8 known that the Agreement could be MFN'd on a piecemeal basis. The change in the
9 application of the MFN is a change of law that effects the entire Agreement, i.e., any
10 single provision of the Agreement can effectively be MFN'd into perpetuity. Therefore,
11 the change in the MFN rule in of itself, requires renegotiations and replacement of the
12 entire Agreement.

13

14 **Q. Does this conclude your testimony?**

15

16 **A. Yes.**

17

18

19

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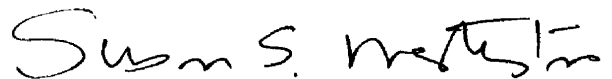
**CERTIFICATE OF SERVICE
DOCKET NO. 011177-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Hand Delivery* or e-mail and U.S. Mail**, this 25th day of October, 2001 to the following:

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