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December 1, 2003

## BY HAND DELIVERY

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

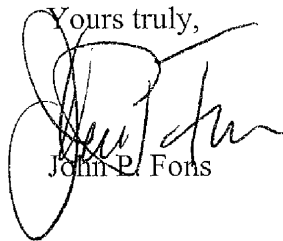
Re: Docket Nos. 030868-TL

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and fifteen (15) copies of Sprint-Florida, Incorporated's Response in Opposition to Attorney General's Motion for Summary Final Order.

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.

Yours truly,  
  
John P. Fons

Enclosures

cc: Certificate of Service List

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: SPRINT-FLORIDA, INCORPORATED'S  
PETITION TO REDUCE INTRASTATE  
SWITCHED NETWORK ACCESS RATES TO  
INTERSTATE PARITY IN A REVENUE  
NEUTRAL MANNER PURSUANT TO  
SECTION 364.164(1), FLORIDA STATUTES

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DOCKET NO. 030868-TL  
FILED: December 1, 2003

**SPRINT-FLORIDA, INCORPORATED'S RESPONSE IN OPPOSITION  
TO ATTORNEY GENERAL'S MOTION FOR SUMMARY FINAL ORDER**

Sprint-Florida, Incorporated (hereinafter "Sprint-Florida"), pursuant to Rule 28-106.204(4), Florida Administrative Code, responds in Opposition to the Attorney General's Motion for Summary Final Order ("AG's Motion"), stating as follows:

1. On October 1, 2003, Sprint-Florida filed its Amended Petition pursuant to Section 364.164(1), Florida Statutes, to reduce its intrastate switched network access rates to interstate parity in a revenue-neutral manner. ("Sprint-Florida's Petition"). On November 17, 2003, just two days prior to Sprint-Florida filing its rebuttal testimony on the five factors the Legislature has mandated the Commission to consider in determining whether to grant Sprint-Florida's Petition, the Attorney General filed his Motion, claiming that: "The record raises no genuine issue as to whether the Petitions will benefit residential consumers." AG Motion at ¶ 5. The Attorney General's Motion is based upon a faulty reading of Section 364.164(1)(a), Florida Statutes, is untimely, is without legal or factual support, does not meet the legal standard for granting a summary final order, and should be denied.

2. Section 120.57(1)(h), Florida Statutes, provides that in any proceeding in which an agency has final order authority, a summary final order can be rendered only if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file,

together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. Similarly, a motion for summary final order may be granted only when "there is no genuine issue as to any material fact." Rule 28-106.204(4), Florida Administrative Code.

3. As this Commission has previously recognized on a number of occasions in which parties have sought the grant of a summary final order:

The purpose of summary judgment, or in this instance, summary final order, is to avoid the expense and delay of trial when no dispute exists concerning material facts . . . . The question for determination on a motion for summary judgment is the existence or nonexistence of a material factual issue. There are two requisites for granting summary judgment: first, there must be no genuine issue of material fact, and second, one of the parties must be entitled to judgment as a matter of law on the undisputed facts.<sup>1</sup>

4. The law in Florida is well settled that on a motion for summary judgment, the burden of proof is on the moving party to show conclusively the absence of any genuine issue as to the material facts, and that the movant is entitled to judgment as a matter of law. *Wills v. Sears, Roebuck & Co.*, 351 So.2d 29 (Fla. 1977). All doubts must be resolved against the movant. *Id.* Additionally, the movants' proof must be such as to overcome all reasonable inferences which could be drawn in favor of the opposing party, as all inferences of fact deductible from the evidence must be drawn against the movant and in favor of the opposing

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<sup>1</sup> *In re: Request for arbitration concerning complaint of ITC^DeltaCom Communications, Inc. against BellSouth Telecommunications, inc. for breach of interconnection terms, and request for immediate relief*, Docket No. 991946-TP, Order No. PSC-00-1540-FOF-TP at 20 (Aug. 24, 2000) (citations omitted). *In re: Request for Arbitration concerning complaint of AT&T Communications of the Southern States, LLC, Teleport Communications Group, Inc., and TCG South Florida for enforcement of interconnection agreements with BellSouth Telecommunications, Inc.*, Docket No. 020919-TP, Order No. PSC-03-0528-FOF-TP at 12-13 (April 21, 2003); *In Re: Request for arbitration concerning complaint of TCG South Florida and Teleport Communications Group against BellSouth Telecommunications, Inc. for breach of terms of interconnection agreement*; Docket No. 001810-TP, Order No. PSC-01-1427-FOF-TP at 23-25 (July 3, 2001).

party. *Maleki P.A. v. M.A. Hajianpour, M.D.*, 771 So.2d 628 (Fla. 4th DCA 2000). In making a motion for summary judgment, the movant not only admits the basic facts established that are favorable to the opposing party, but also every conclusion or inference favorable to the opposing party that might reasonably be made from the pleadings and evidence. *Connell v. Sledge*, 306 So.2d 194 (Fla. 1st DCA 1975). All inferences of fact deducible from such evidence must be drawn against the movant and in favor of the opposing party. *Booker v. Okaloosa Board of Public Instruction*, 323 So.2d 619 (Fla. 1st DCA 1975). Until the movant establishes that the party moved against cannot prevail, it is not necessary for the opposing party to produce evidence to establish that party's prima facie case, as it would be at trial. *Howdeshell v. First National Bank of Clearwater*, 369 So.2d 432 (Fla. 1st DCA 1979).

5. None of the conditions required to be met by the Attorney General have been satisfied in this case. A motion for summary judgment which states only in general terms that no material issues of fact or law exist and that the movant is entitled to the relief requested is insufficient. *Worley v. Sheffield*, 538 So.2d 91 (Fla. 1st DCA 1993). At best, the Attorney General's Motion is nothing more than a recitation of how the Attorney General would like to see the "Tele-Competition Innovation and Infrastructure Enhancement Act" ("2003 Act") be rewritten, particularly, Section 364.164(1)(a), Florida Statutes. But, the burden on the movant is not simply to show that the facts support his or her theory of the case, but rather to demonstrate that the undisputed facts show conclusively that the party moved against cannot prevail. *Burkett v. Parker*, 410 So.2d 947 (Fla. 1st DCA 1982).

6. The Attorney General fails to provide any showing that there is "no genuine issue as to any material fact" as required by Section 120.57(1)(h) and Rule 28-106.204(4) with respect to the factor set forth in Section 364.164(1)(a) or any of the factors set forth by the Legislature to be considered by the Commission in this proceeding. The Attorney General's Motion frames the

issue as being whether, "[i]n evaluating the Petitions, the Commission is required to consider whether those Petitions will benefit residential consumers." AG Motion at ¶ 3. However, the Attorney General's issue is not the "benefit" issue articulated by the Legislature. The 2003 Act is focused on creating a more competitive local exchange market for the benefit of residential consumers. Indeed, the Legislature frames the "benefit" to residential consumers in a particular way - "the creation of a more competitive local exchange market." For that reason, the issue is not some general "benefit" as being proffered here by the Attorney General. To allege, as the Attorney does, that Sprint-Florida has not shown that residential consumers will see some overall or unspecified benefit if Sprint-Florida's Petition is granted, is to misinterpret the plain meaning of the statute. The Attorney General's impermissible interpretation attempts to place a burden on Sprint-Florida to introduce evidence to meet a burden of proof not provided for in the law.

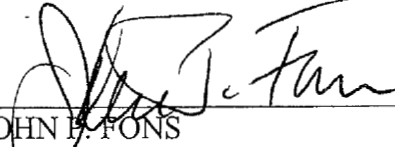
7. Contrary to the Attorney General's assertions, Sprint-Florida, with respect to the legislatively mandated issue, has submitted testimony and exhibits which demonstrate that granting Sprint-Florida's Petition will benefit its residential consumers in the manner set forth by the Legislature. Sprint-Florida's case consists of its submissions, as well as the testimony and exhibits of other parties - such as AT&T and Knology. The record facts demonstrate that: today, Sprint-Florida's residential service rates are being supported with contributions from Sprint-Florida's switched network access charges (Dickerson Direct at Exhibit KWD-2, page 4; Felz Amended Direct at 8-9; Mayo Direct at 11); residential basic local service rates were set below the cost of providing these services (Felz Amended Direct at Exhibit JMF-4; Gordon Amended Direct at 19-22; Mayo Direct at 7-9); these heavily supported residential basic local service rates are preventing the creation of a more competitive local market (Staihr Direct at 4-7; Gordon Amended Direct at 11-14; Boccucci Direct at 11; Fonteix Direct at 2-3); significantly reducing this support will create a more competitive market (Mayo Direct at 12; Gordon Amended Direct

at 24-26; Staihr Direct at 7-10); and the creation of a more competitive local market will benefit residential consumers by bringing them the very significant choices that will not occur for the majority of residential consumers without reducing the current pricing distortions (Staihr Direct at 15-16; Gordon Amended Direct at 24-26; Boccucci Direct at 9). The mere fact that other parties have submitted testimony and exhibits in an attempt to counter Sprint-Florida's case does not in any way meet the standard for granting summary final order. In any event, Sprint-Florida disputes those facts.

8. The Attorney General has addressed an issue which the Legislature itself has decided by both framing the issue with a particular benefit - namely whether granting Sprint-Florida's Petition will create "a more attractive local market" for the benefit of residential consumers - and by legislatively determining the flow-through benefit. At Section 364.163(2), Florida Statutes, the Legislature has mandated that each interexchange carrier experiencing reduced access charges must "decrease its intrastate long distance revenues by the amount necessary to return the benefits of such reductions to both its residential and business customers." This flow-through benefit is not an issue to be resolved in Sprint-Florida's docket, nor is it a factor to be considered by the Commission in this docket. Moreover, it is not, as a matter of law, something about which Sprint-Florida has the burden of proof. *See* Order No. PSC-03-1331-FOF-TL, issued November 21, 2003. Thus, any "benefit" other than the "benefit" framed by the Legislature, is not a "benefit" which can be the subject of a Motion for Final Summary Judgment in this proceeding, nor upon the evidence being submitted in this docket.

WHEREFORE, having demonstrated that the Attorney General's Motion fails to meet the standard for granting a motion for summary final order, both legally and factually, Sprint-Florida respectfully requests that the Attorney General's Motion be denied.

RESPECTFULLY SUBMITTED this 1st day of December, 2003.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail, e-mail or hand delivery (\*) this 1st day of December, 2003, to the following:

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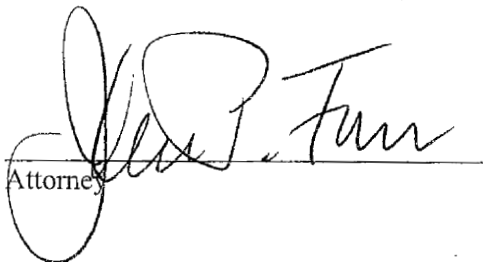
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