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December 23, 2003

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
& Administrative Services
Florida Public Service Commission
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Re: Docket No. 030851-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint Communications Limited Partnership and Sprint-Florida, Incorporated are the original and 15 copies of Sprint's Response in Opposition to AARP's Petition to Intervene.

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

Please acknowledge receipt of this filing by stamping and initialing a copy of this letter and returning same to my assistant. If you have any questions, please do not hesitate to call me at 850/847-0244.

Sincerely,

Susan S. Masterton

Enclosure

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**CERTIFICATE OF SERVICE
DOCKET NO. 030851-TP & 030852-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail and U.S. mail on this 23rd day of December, 2003 to the following:

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Susan S. Masterton *(CSW)*
Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising)	Docket No. 030851-TP
From Federal Communications Commission)	
Triennial UNE review: Local Circuit Switching)	
For Mass Market Customers)	Filed: December 23, 2003
_____)		

SPRINT'S RESPONSE IN OPPOSITION TO AARP'S PETITION TO INTERVENE

Sprint Communications Limited Partnership and Sprint-Florida, Incorporated (collectively, "Sprint"), pursuant to Rule 28-106.204, Florida Administrative Code, hereby file this Response in Opposition to AARP's Motion to Intervene in this docket. AARP's Petition fails to establish that AARP is entitled to intervene pursuant to section 120.57, Florida Statutes, and Rules 25-22.039 And 28-106.205, Florida Administrative Code, and, therefore, its Petition to Intervene should be denied.

1. The Commission opened this docket pursuant to the FCC's Triennial Review Order, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98 and 98-147, FCC Order No. 03-36, released August 21, 2003, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Deployment of Wireline Services Offering Advanced Telecommunications Capability* (hereinafter, "TRO Order") for the purposes of exercising the authority delegated to the Commission by the FCC to conduct a granular review to determine if CLECs may not be impaired without access to the ILECs' unbundled local circuit switching to serve mass market customers in specific markets. (TRO Order at ¶ 493) Pursuant to the TRO, states must, first, apply certain self-

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provisioning and wholesale triggers on a market by market basis, as set forth in TRO Order, and, second, if the triggers are not demonstrated to be satisfied, must evaluate certain operational and economic criteria to determine if market conditions are conducive to competitive entry, in order to determine if competitors in a particular market are not impaired without access to unbundled local circuit switching. (TRO Order at ¶ 494)

2. On November 7, 2003 the Second Procedural Order in this docket was issued setting forth the issues to be considered by the Commission in this docket and to be addressed by the parties in their pre-filed testimony. (Order No. PSC-03-1365-PCO-TP, Appendix A) These issues address various questions to assist the Commission in determining if the FCC-delineated competitive triggers are met or, if the triggers are not met, if a business case analysis establishes that an efficient CLEC could compete in a market without access to the ILEC's unbundled switching. The issues do not discuss or address any potential impact of the Commission's decision on end user customers and such impact is not a criterion which the Commission has been directed to consider by the FCC.

3. Florida's three largest ILECs and several CLECs have intervened in this docket and have filed testimony to address the issues set forth in the Second Procedural Order. On December 15, 2003 AARP filed its Petition to Intervene (AARP Petition), stating that it is a nonprofit membership organization addressing the needs and interests of persons 50 and older. AARP states that its members are retail customers of the ILECs "that will be reviewed in these proceedings." (AARP Petition at ¶ 5) AARP states that its members' substantial interest are affected by any determination about whether ILECs are "offering their network elements to CLECs at a price based on the ILEC's Total Element Long-

Run Incremental cost” and whether there are “impairments to competition in state and local markets resulting from the ILEC’s not doing so.” (AARP Petition at ¶ 6)

4. Rule 28-106.205, Florida Administrative Code and Rule 25-22.039, Florida Administrative Code, require that a party seeking intervention in a Commission proceeding must demonstrate “that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding.” AARP’s Petition fails to meet even the minimal pleading requirements of these rules in that it does not contain “allegations sufficient to demonstrate that the intervenor is entitled to participate.” Therefore, AARP’s Petition should be denied.

5. *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981) sets forth the applicable standards for determining standing in administrative proceedings. *Agrico* sets forth a two-prong test for the standing analysis, that is, the intervenor must demonstrate 1) that it will suffer injury in fact which is of sufficient immediacy to entitle the intervenor to a Section 120.57 hearing and 2) that its substantial injury is of a type or nature which the proceeding is designed to protect. *Agrico*, 406 So. 2d at 482 The substantial interests affected must be real and not speculative. *Ameristeel Corporation v. Clark*, 691 So. 2d 473, 477 (Fla. 1997) The Commission has recognized and applied the *Agrico* and *Ameristeel* standards in its consideration of numerous intervention requests. See, e.g., *In re: Initiation of show casue proceedings against Aloha Uilties, Inc. in Pasco County for failure to charge approved service availability charges*, Order No. PSC-02-1250-SC-SU, issued

September 11, 2002 in Docket No. 020413-SU; *In re: Joint Application of MCI Worldcom, Inc. and Sprint Corporation for Acknowledgement or Approval of Merger*, Order No. PSC-00-0421, issued March 1, 2000, in Docket No. 991799-TP; *In re: Joint Petition for determination of need for an electrical power plant in Volusia County by the Utilities Commission, City of New Smyrna Beach and Duke Energy*, Order No. PSC-99-0535-FOF-EM issued March 22, 1999 in Docket No. 981042-EM; *In re: Application for certificate to provide interexchange telecommunications service by PremierCom, Inc. d/b/a PCI Telecommunications, Inc.*, Order No. PSC-99-0417-PCO-TI issued March 1, 1999, in Docket No. 981091-TI.

6. In addition to case law setting forth the applicable standards for intervention in administrative proceedings, AARP must meet the additional criteria set forth in case law addressing standing for associations who intervene on behalf of the interests of their membership. Such criteria include, in addition to the two-pronged *Agrico* test, that the association must establish that a substantial number of its members are “substantially affected,” that the subject matter of the action must be within the association’s general scope of interest and activity, and that the relief requested must be of the type appropriate for the association to receive on behalf of its members. *Florida Homebuilders Association v. Department of Labor and Employment Security*, 412 So. 2d 251 (Fla. 1982). Such criteria have been further applied and elucidated to require a showing by the association that the interests sought to be protected can be distinguished from the interests of the general public. See, *Florida Society of Ophthalmology v. State of Florida Board of Optometry*, 532 So. 2d 1279 (Fla. 1st DCA 1988), in which the Ophthalmology Society challenged certain actions of the Board of Optometry on the grounds, among

others, that such actions endangered the quality of eye care in the state. The First DCA held that Society's allegations were legally insufficient to establish standing.

7. AARP's petition facially fails to demonstrate that the requirements for standing set forth in the applicable Florida laws, rules and case law are met and therefore should be denied. To the extent that AARP's Petition can be read to allege any substantial interests on behalf of the association and its membership (and Sprint believes it does not), that interest appears to be the general, speculative, and solely economic interest of the association's members in the continued existence of competition in the local exchange market. Just as the ophthalmologists' allegations of a general interest in the public welfare were insufficient to establish standing in *Florida Society of Ophthalmology*, the AARP's general interests in a competitive local exchange market are insufficient to establish standing to intervene in this docket. Like *Ameristeel*, AARP's interests in this docket are too speculative to constitute a substantial interest, and therefore, the first prong of the Agrico test has not been met, so that AARP's Petition must fail. See, *In re: MCI Worldcom and Sprint Corporation Joint Application*, Order No. PSC-00-0421-PAA-TP in which the Commission recognized that failure to meet one prong of the Agrico test is a sufficient basis to deny standing.

8. Neither does AARP meet the second prong of the test. While the TRO emanates from the goal of the 1996 Act to promote competition, the proceedings delegated to the state have a narrow scope. The purpose of the state proceedings is to determine whether access to certain unbundled network elements at TELRIC rates is necessary for competition to exist. By the very nature of the analysis and findings that a state must make under authority delegated to it by the FCC in the TRO, access to

unbundled local switching at TELRIC rates should only be removed in markets where an ILEC has made a clear showing that such access is not necessary for competition to exist.

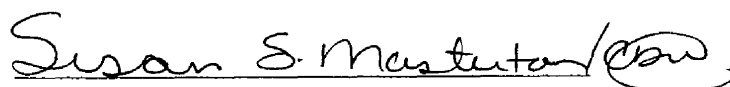
9. CLECs are uniquely in a position to address these issues, since they are the entities who desire to compete with the ILECs for customers and whose ability to compete would be affected by the Commission's determinations. Neither the AARP or its members are affected in this critical way, nor do the association or its members have any information or insight to offer that would assist the Commission in conducting the requisite analysis and rendering the necessary findings. Therefore, neither the AARP's or its members' interests in a competitive local exchange market are at risk in this proceeding.

10. Of particular concern in this docket is that, for the Commission and the parties to conduct a proper analysis under the TRO criteria, a substantial volume of highly proprietary and confidential competitive information has and will continue to be submitted into the record of this proceeding. Intervention and subsequent access to this highly sensitive, competitive information should be limited only to those parties whose interests are clearly and substantially affected, such that their participation is necessary for the Commission to fully and fairly review and make a determination of the issues in this docket.

11. If intervention is opposed, the burden is on the intervenor to demonstrate that it is entitled to intervene. See, *In re: Request for cancellation of Interexchange Telecommunications Certificate No. 3990 by Thrifty Call, Inc.*, Order No. PSC-00-1939-PCO-TI, issued October 20, 2000 in Docket No. 000890-TI. AARP has failed to meet that burden, therefore, AARP's Petition should be denied.

Wherefore, Sprint respectfully requests that the Commission deny AARP's
Petition to Intervene.

RESPECTFULLY submitted this 23rd day of December 2003.



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