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October 26, 2005

Ms. Blanca Bayó
Director
Division of Administrative Services and Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Docket No. 041464-TP
Response to FDN "Notice of Supplemental Authority"

Dear Ms. Bayó:

On October 14, 2005, FDN served Sprint by U.S. Mail with a copy of its "Notice of Supplemental Authority" in this docket. According to FDN the Notice was filed to "bring a recent decision of the Federal Communications Commission ("FCC") to [the Commission's] attention." The Notice was apparently filed with the Commission on October 17, 2005 (Document No. 09975-05). The FCC decision referenced by FDN is the Report and Order in FCC Docket No. 20-33, *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, FCC Order No. 05-150 ("*Broadband Order*").

Although the Commission has no specific rules authorizing or governing the submission of supplemental authority, by past practice the Commission has allowed supplemental authority in accordance with the provisions of Rule 9.225, Florida Rules of Appellate Procedure. (See, Order No. PSC-03-0941-PCO-TP, *In re: Petition for arbitration of open issues resulting from interconnection negotiations with Verizon Florida, Inc. by DIECA Communications, Inc. d/b/a Covad Communications Company*, Docket No. 020960-TP.) The cornerstone of this rule is that the Notice merely bring the relevant decision to the Commission's attention but that the Notice be devoid of argument. To the extent that argument has been included in a Notice the Commission typically has stricken that portion of the notice. (See, Order No. PSC-02-0159-PCO-TP, *In re: Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc.*, Docket No. 001305-TP.)

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While FDN states that its intent in filing the notice is to bring the *Broadband Order* to the attention of the Commission because the decision is relevant to Issue 24 in the arbitration, the letter goes beyond mere notice to include argument when it states: "FDN directs this Commission to paragraphs 126 and 127 which directly support FDN's position in this proceeding." Sprint asserts that this statement amounts to argument, is improper and, therefore, may not be considered by the Commission in rendering its decision and should be stricken.

To the extent that the Commission believes that FDN's comments do not constitute argument, then Sprint submits that rather than supporting FDN's position on Issue 24, the *Broadband Order* simply states that "nothing in this Order changes a requesting telecommunications carrier's UNE rights under section 251 and our implementing rules." (*Broadband Order* at ¶ 127. See also, footnote 21.) Contrary to FDN's representations that the *Broadband Order* supports its position, Sprint believes that the Order fully supports Sprint's position on Issue 24. (Consistent with the *Broadband Order*, the terms Sprint has proposed in this proceeding at 40.4.5 provide for the use of UNEs for xDSL services.)

If you have any questions regarding this letter or need additional information, please let me know.

Sincerely,



Susan S. Masterton

Cc: Parties of Record (by U.S. Mail)
PSC Staff (by Hand Delivery)

**CERTIFICATE OF SERVICE
DOCKET NO. 041464-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. mail or hand delivery on this 26th day of October, 2005 to the following:

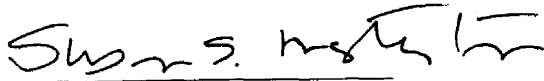
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