

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Sprint Communications)
Company L.P.'s Petition for Arbitration of)
Interconnection Rates, Terms, Conditions) Case No. 96-1021-TP-ARB
and Related Arrangements With GTE North)
Incorporated.)

ENTRY

The Commission finds:

- (1) On January 30, 1997, the Commission issued an Arbitration Award in this case, directing Sprint Communications Company L.P. (Sprint) and GTE North Incorporated (GTE) to file an interconnection agreement incorporating the Commission's determinations therein by February 13, 1997.
- (2) On February 13, 1997, Sprint filed a motion for an extension of time in which to file the agreement until two weeks after the Commission approves an interconnection agreement between AT&T and GTE in Case No. 96-832-TP-ARB. In support of its motion, Sprint indicates that it intends to exercise its right to elect the AT&T/GTE contract pursuant to Section 252(i) of the Telecommunications Act of 1996 (the Act) to use as Sprint's Ohio contract with GTE. Sprint requests the additional time in order to allow it to receive a copy of the approved agreement and to change names and other references in the contract to apply to Sprint. Specifically, Sprint asserts that in order to ensure that it achieves competitive parity in the services obtained from GTE, it is necessary for Sprint to adopt, as a whole, the interconnection agreement between AT&T and GTE.
- (3) On March 4, 1997, GTE filed a memorandum contra. GTE objects to Sprint's request for the following reasons: (1) Sprint did not raise in this case as many or the same issues as did AT&T; (2) Sprint agreed to settle several issues on bases that are inconsistent with the AT&T arbitration decision; (3) Sprint and GTE have never negotiated based on the AT&T agreement; (4) the AT&T agreement itself was never an issue in the Sprint arbitration; (5) to allow Sprint to adopt the AT&T/GTE agreement would violate the Commission's Arbitration Award issued in this case; (6) to allow Sprint to adopt the agreement would subvert the good faith negotiation

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by GTE and the arbitration provisions of Section 252; (7) having commenced arbitration, Sprint lost its right to elect to accept the AT&T/GTE agreement; and (8) to allow Sprint to adopt the agreement would establish an unsound precedent. Further, GTE recognizes that a requesting carrier under Section 252 of the Act has three options for obtaining an interconnection agreement: (1) engage in negotiations to arrive at a voluntarily agreed to interconnection arrangement; (2) seek binding arbitration if an agreement cannot be reached; and (3) purchase interconnection services or network elements from an incumbent local exchange carrier under an interconnection agreement between that carrier and another requesting exchange carrier. Thus, GTE argues that, since Sprint opted to arbitrate the unresolved issues, it is precluded from utilizing the third option by electing to take the AT&T agreement.

Initially in its memorandum, GTE indicates that it is not clear as to whether Sprint intends to elect the entire agreement or negotiate further changes or additions to the AT&T agreement. Specifically, GTE cites to a letter from Sprint, dated February 5, 1997, and attached to GTE's memorandum, which indicates that Sprint desires "to negotiate any other changes that will make the AT&T agreement more closely reflect the business practices of the two parties." GTE argues that Sprint's request should still be denied even if Sprint is willing to elect the AT&T contract in its entirety based on the timing of the request. GTE relies on the stay of the Eighth Circuit Court of Appeals of Section 51.809 of the FCC's First Report and Order¹ as it relates to the "picking and choosing" of rates, terms, and conditions of another interconnection agreement. Specifically, GTE cites to the court's finding that "the 'pick and choose' rule will operate to further undercut any agreements that are actually negotiated or arbitrated." In sum, GTE argues that Sprint's request at this late juncture undermines the integrity of the entire arbitration process provided for under Section 252 of the Act and is an example of what the court was attempting to prevent by staying the FCC's "pick and choose" provision.

- (4) On March 13, 1997, Sprint filed a reply memorandum to GTE's memorandum contra. In its reply, Sprint clearly indicates that it has moved for an extension of time for the purpose of electing the entire interconnection agreement, once

¹ The Federal Communication Commission's First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98 (Aug. 8, 1996).

the agreement is approved. Sprint, therefore, argues that GTE's reliance of the stayed "pick and choose" provision is irrelevant and moot. Further, Sprint expresses concern that initiation of arbitration proceedings should not act as a "cut-off" of Section 252(i) election rights. Sprint points out that a party requesting interconnection has only a limited window under the statute to petition for arbitration or suffer potential waiver.

- (5) We understand GTE's frustration with Sprint's request after having expended time and expense to arbitrate this case. The Commission shares in GTE's frustration in that it is costly and time consuming for the Commission to arbitrate these cases. Nevertheless, we do not believe that Sprint's initiation of the arbitration should necessarily preclude it from electing the AT&T contract in its entirety. We believe that Sprint is entitled to the same terms and conditions as are contained in the AT&T/GTE contract pursuant to Section 252 of the Act. We also recognize Sprint's concern that requesting carriers have a window of opportunity to initiate arbitration, or otherwise waive its right to arbitrate unresolved issues. While this is a legitimate concern, the Commission would suggest that requesting carriers consider the possibility of holding the arbitrations in abeyance pending further negotiations or for the purpose of determining whether it desires to elect another contract that may be pending before the Commission before it initiates an arbitration. The Commission would consider such requests on a case-by-case basis.
- (6) Sprint's request for additional time and motion to elect the AT&T/GTE contract will be granted. Accordingly, Sprint and GTE are directed to submit the executed agreement for approval in a NAG docket, pursuant to the Commission's guidelines in Case No. 96-463-TP-UNC. By approving the agreement, we would not be automatically approving any modifications or amendments approved in the AT&T/GTE case in the future. therefore, the parties shall file any proposed amendments or modifications to the approved agreement in a separate NAG docket. Since there are no matters left for the Commission to resolve in this case, this case should be closed of record.

It is, therefore,

ORDERED, That Sprint's request for additional time and motion to elect the AT&T/GTE contract are granted. It is, further,

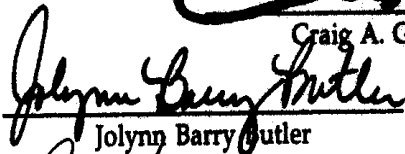
ORDERED, That this case be closed of record. It is, further,

ORDERED, That a copy of this Entry be served upon all telephone companies in Ohio and all new local exchange companies with pending applications.

THE PUBLIC UTILITIES COMMISSION OF OHIO



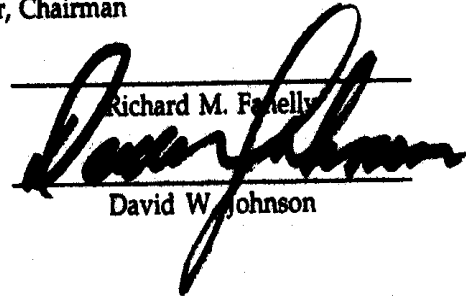
Craig A. Glazer, Chairman



Jolynn Barry Butler



Ronda Hartman Bergus



Richard M. Fanelly

David W. Johnson

MKF:geb

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A True Copy


Gary E. Vigarito
Secretary

SERVICE NOTICE

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CASE NUMBER 96-1021-TP-ARB
CASE DESCRIPTION SPRINT COMMUNICATIONS/GTE NORTH
DOCUMENT SIGNED ON April 10, 1997
DATE OF SERVICE 4/10/97

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PARTIES OF RECORD

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