

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. _____
	)	
SPRINT CORPORATION and	)	
JOINT VENTURE CO.,	)	Filed: <b>[July 13, 1995]</b>
	)	
Defendants.	)	
	)	

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, filed its Complaint on July 13, 1995,

AND WHEREAS, plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication on any issue of fact or law,

AND WHEREAS, defendants have further consented after any consummation as defined in the Stipulation entered into by defendants and the United States on July 13, 1995, to be bound by the provisions of this Final Judgment pending its approval by the Court,

AND WHEREAS, plaintiff the United States believes that entry of this Final Judgment is necessary to protect competition in the United States telecommunications and enhanced telecommunications markets,

THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED:

**I**

**Jurisdiction**

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended.

**II**

**Substantive Restrictions and Obligations**

Reporting and Disclosure Requirements

A. Sprint or Joint Venture Co. shall not offer, supply, distribute, or otherwise provide in the United States any telecommunications or enhanced telecommunications service that makes use of telecommunications services provided by FT in France or between the United States and France, or DT in Germany or between the United States and Germany, unless the following information is disclosed in the United States by Sprint or Joint Venture Co., or such disclosure is expressly waived, in whole or in part, by plaintiff through written notice to defendants and the Court:

1. By Joint Venture Co., within 30 days following any agreement or change to an agreement - The prices, terms and conditions, including any applicable discounts, on which

FT or DT Products and Services are provided by FT to Joint Venture Co. in France or by DT to Joint Venture Co. in Germany pursuant to interconnection agreements;

2. By Joint Venture Co., within 30 days following any agreement or change to any agreement, or the provision of service absent any specific agreement - The prices, terms, and conditions, including any applicable discounts, on which FT or DT Products and Services are provided by FT to Joint Venture Co. in France or by DT to Joint Venture Co. in Germany for use by Joint Venture Co. in the supply of telecommunications or enhanced telecommunications services between the United States and France or between the United States and Germany or are provided by FT in France or DT in Germany in conjunction with such Joint Venture Co. services where FT or DT is acting as the distributor for Joint Venture Co.;

3. By Sprint, with respect to international switched telecommunications or enhanced telecommunications services jointly provided by FT and Sprint, or DT and Sprint, on a correspondent basis between the United States and France or between the United States and Germany, and to the extent not already disclosed publicly pursuant to the rules and regulations of the Federal Communications Commission, or otherwise to the corporations referred to in Section V.F:

(i) within 30 days following any agreement or change to an agreement, or the provision of service absent any specific agreement, the accounting and settlement rates and other terms and conditions for the provision of each such service, including the methodology by which proportionate return of traffic is calculated; and

(ii) on an annual basis, for any such services for which more than one accounting and settlement rate may be applicable (e.g., rates for peak and off-peak service), or services with different accounting and settlement rates which are pooled or otherwise combined for calculating proportionate returns, if other United States international telecommunications providers do not have or receive data sufficient to determine whether they are receiving their appropriate share of return traffic in each accounting rate category (e.g., the total volumes of United States traffic to FT and DT, and total volumes of FT and DT traffic to the United States, for each type of traffic with a different accounting rate), Sprint's minutes of traffic to and from FT and DT in each accounting rate category and any other applicable measure of traffic volume;

4. By Joint Venture Co., on a semiannual basis - Schedules of FT or DT Products and Services provided by FT to Joint Venture Co. in France and DT to Joint Venture Co. in Germany for use by Joint Venture Co. in the supply of telecommunications or enhanced telecommunications services between the United States and France or Germany or provided by FT in France or DT in Germany in conjunction with such Joint Venture Co. services where FT or DT is acting as the distributor for Joint Venture Co., showing:

(i) the types of circuits (including capacity) and telecommunications services provided;

(ii) the actual average time intervals between order and delivery of circuits (separately indicating average intervals for analog circuits, digital circuits

up to 2 megabits, and digital circuits 2 megabits and larger) and telecommunications services; and

(iii) the number of outages and actual average time intervals between fault report and restoration of service for circuits (separately indicating average intervals for analog and for digital circuits) and telecommunications services;

but excluding the identities of individual customers of FT, DT, Sprint, or Joint Venture Co. or the location of circuits or telecommunications services dedicated to the use of such customers;

5. By Sprint - Schedules showing:

(i) on a semiannual basis, separately for analog international private line circuits (“IPLCs”) and for digital IPLCs jointly provided by FT or DT and Sprint between the United States and France or Germany, the actual average time intervals between order and delivery by FT or DT;

(ii) on an annual basis, separately for analog IPLCs and for digital IPLCs jointly provided by FT and Sprint between the United States and France, and by DT and Sprint between the United States and Germany, the number of outages and actual average time intervals between fault report and restoration of service, for any outages that occurred in the international facility, in the cablehead or earth station outside the United States, indicating separately the number of outages and actual average time intervals to restoration of service in each such area; and

(iii) on a semiannual basis, for circuits used to provide international switched telecommunications services or enhanced telecommunications services

on a correspondent basis between the United States and France or Germany, the average number of circuit equivalents available to Sprint and the percentage of calls that failed to complete during the busy hour.

6. By Sprint and Joint Venture Co., within 30 days of receipt, any information from FT or DT relating to a Network Change. For purposes of this Section II.A.6, a Network Change is any material change or decision relating to the design of, technical standards used in, or points of interconnection to, the FT or DT public switched telephone networks (“FT/DT PSTNs”) that would materially affect the terms or conditions on which Sprint, Joint Venture Co. or any other person are able to have access to, or interconnect with, the FT/DT PSTNs for telecommunications or enhanced telecommunications services within France or Germany or between the United States and France or the United States and Germany.

7. By Sprint and Joint Venture Co., within 30 days of receipt of any information from FT or DT, or otherwise learning of any discount or more favorable term - Any discounts or favorable terms offered by FT or DT to a customer of FT or DT, for FT or DT Products and Services, that is conditioned on Sprint or Joint Venture Co. being selected as the United States provider of telecommunications or enhanced telecommunications products or services for such customer.

The obligations of Section II.A. shall not extend to the disclosure of intellectual property or other proprietary information of the defendants, FT or DT that has been maintained as confidential by its owner, except to the extent that it is of a type expressly required to be disclosed herein, or is necessary for United States international telecommunications providers to interconnect with the FT/DT PSTNs, or for United States international telecommunications

providers to use FT's or DT's international telecommunications or enhanced telecommunications correspondent services.

Restrictions on Sharing of Information Obtained by FT and DT

B. Sprint and Joint Venture Co. shall not receive or seek to receive from FT or DT, or from any persons designated by FT or DT to sit on the Board of Directors of Sprint:

1. any information that is identified as proprietary by United States telecommunications or enhanced telecommunications service providers (and maintained as confidential by them) and is obtained by FT or DT from such providers as the result of FT's or DT's provision of interconnection or other telecommunications services to them in France or Germany;
2. any confidential, non-public information obtained by FT or DT as a result of their correspondent relationships or agreements to connect international half-circuits with other United States international telecommunications or enhanced telecommunications service providers, except to the extent necessary for Sprint to comply with its obligations under Section II.A.3(ii) concerning disclosure of the total volume of traffic (but not the individual traffic volumes for other providers) received by FT or DT from the United States and sent by FT or DT to the United States that is subject to the Proportionate Return Commitment, or under Section II.A.5 (but not including individual information on other providers); and
3. any non-public information about the future prices or pricing plans of any provider of international telecommunications services between the United States and France or the United States and Germany with which Sprint competes in the provision of such services.

Further, Sprint and Joint Venture Co. may not employ any personnel who (i) are at the same time employed by FT or DT and have access to any of the types of information that Sprint and Joint Venture Co. are not permitted to receive from FT or DT under this Section II.B, or (ii) are employed by the Joint Venture or by Sprint, and have been employed by FT or DT within the preceding six months, and had received within that time any of the types of information that Sprint and Joint Venture Co. are not permitted to receive under this Section II.B.

Ability of Competitors to Obtain Licenses and Authorizations for Entry

C. Sprint and Joint Venture Co. shall not offer (directly or through FT or DT), and shall not provide facilities to FT or DT enabling FT or DT to offer, any particular international telecommunications or enhanced telecommunications service between the United States and France or Germany, unless:

1. offering such a service between the United States and France does not require a license in France and offering such service between the United States and Germany does not require a license in Germany; or
2. if a class license is required to offer such a service in France or Germany, such a license is in effect for other United States international telecommunications providers not affiliated with FT, DT, Sprint or Joint Venture Co. in France and in Germany; or
3. if an individual license is required in France or in Germany to offer such a service, established licensing procedures are in effect as of the time of the offering of the service by which other United States international telecommunications providers are also able to secure such a license, and (i) one or more United States international telecommunications providers

other than FT, DT, Sprint or Joint Venture Co. and unaffiliated with FT, DT, Sprint or Joint Venture Co. have secured such a license in France and in Germany, or (ii) if Sprint or Joint Venture Co. or FT or DT is the first provider to seek a license to offer such a service, other United States international telecommunications providers are also able to secure such a license within a reasonable time and in no event longer than the time it took Sprint, Joint Venture Co., FT, or DT to obtain such a license, after having applied for such a license, unless the additional time required is attributable to delay caused by the applicant. This Section II.C shall operate separately for France and Germany. It shall not restrict Sprint or Joint Venture Co. from providing existing correspondent services to France or Germany pursuant to bilateral agreements with FT or DT that have also been made available to other United States international telecommunications providers. "License," for purposes of this Section II.C., means any form of authorization, whether or not formally characterized as a license, that must be obtained from a governmental body in order to offer a telecommunications or enhanced telecommunications service.

### **III**

#### **Obligations while Phase I of this Final Judgment Is in Effect Prior to Authorization of Facilities-Based Competition in France and Germany**

##### Scope of Activities of the Joint Venture

A. Joint Venture Co. and Sprint will not acquire an ownership interest in, or control over, (i) any facilities in France or Germany that are legally reserved to FT or DT, or (ii) any

international half circuits terminating in France or Germany that are used for telecommunications service between the United States and France or the United States and Germany, except to the extent that, and in no greater than the aggregate quantity that, other providers unaffiliated with FT, DT, Sprint or Joint Venture Co. actually own and control such international half-circuits, or plaintiff and defendants agree that meaningful competition exists to such international half-circuits provided by FT or DT. "Control" for purposes of Section III.A and B shall not include publicly available leases or other publicly available uses of such facilities.

B. Joint Venture Co. and Sprint will not acquire an ownership interest in, or control over, the Public Data Networks.

C. Joint Venture Co. and Sprint may provide FT or DT Products and Services only pursuant to a sales agency or resale agreement, and provided that (i) such agreements are not exclusive, and (ii) other United States international telecommunications providers are able to obtain FT or DT Products and Services directly from FT or DT on a nondiscriminatory basis; provided, however, that such FT or DT Products and Services may be used by Joint Venture Co. and Sprint as inputs to their products and services to end users pursuant to the requirements of this Final Judgment.

#### Conduct of the Joint Venture and Sprint

D. 1. Sprint and Joint Venture Co. shall not purchase, acquire or accept from FT or DT any FT or DT Products and Services on any discriminatory basis for use in the offer, supply, distribution or other provision by Sprint or Joint Venture Co. of any telecommunications

or enhanced telecommunications service in the United States or between the United States and France or the United States and Germany.

For purposes of this Section III.D, “discriminatory basis” shall mean terms more favorable to Sprint or Joint Venture Co. than are made available to other similarly situated United States international telecommunications providers with respect to:

(i) the prices (including but not limited to accounting and settlement rates and division of settlements) of any FT or DT Products and Services, whether or not purchased, acquired or accepted from FT or DT alone or bundled with any other product or service of FT or DT;

(ii) the availability of volume or other discounts, or material differences in non-price terms of service, including offers that while not restricted to Sprint or Joint Venture Co. on their face are available to Sprint or Joint Venture Co. but would not reasonably be available to any United States international telecommunications providers not affiliated with FT or DT, Sprint or Joint Venture Co.;

(iii) material differences in the type or quality of any FT or DT Products and Services, including but not limited to availability of leased lines and international half circuits of the same type and capacity (including the average provisioning times, number of outages, and time intervals between fault report and restoration of service), and, for switched services, percentage of circuit equivalents available during the busy hour and percentages of calls blocked;

- (iv) interconnection with the FT/DT PSTNs, including interconnection at no less advantageous points in the network, and comparable availability of numbers to the extent that FT and DT have responsibility for number assignments; and
- (v) terms of operating agreements for correspondent services and connection of international half-circuits.

Persons that are “similarly situated” shall mean United States international telecommunications providers (including their subsidiaries and affiliates) that are generally comparable to Sprint and Joint Venture Co. with respect to the volume or type of FT or DT Products and Services purchased, acquired or accepted from FT and DT, provided that volume and type are relevant distinctions in establishing service conditions. If defendants seek to rebut a claim of discrimination by establishing the existence of a justification of costs, defendants shall have the burden of proof to establish such justification. Defendants shall make available to plaintiff all information that was available to them, whether possessed by them or obtained from FT or DT, in considering the relevance of such distinctions.

2. Sprint and Joint Venture Co. may not benefit from any discount or more favorable term offered by FT or DT to any customer for FT or DT Products or Services, that is conditioned on Sprint or Joint Venture Co. being selected as the United States provider of a telecommunications or enhanced telecommunications service.

E. Sprint shall not accept any correspondent telecommunications traffic from France or Germany, from FT or DT respectively, other than in a manner consistent with their Proportionate Return Commitment and the policies of the Federal Communications Commission

concerning proportionate return. Sprint shall not accept or benefit from any alteration in the methodology (including assignment of new services to proportionate return categories) by which FT or DT allocate proportionate return traffic among United States international telecommunications providers with whom they have operating agreements if inconsistent with the policies of the Federal Communications Commission with respect to Sprint, FT, and DT, or the change in methodology has the effect of substantially favoring Sprint with respect to all other United States international telecommunications providers, either in the value of traffic (if types of minutes with different accounting rates are pooled for purposes of calculating proportionate return) or volume. In order to implement these requirements:

1. Sprint and Joint Venture Co. shall disclose on a quarterly basis the volume of correspondent telecommunications traffic received by Sprint or Joint Venture Co. from France through FT or from Germany through DT, respectively (either in the form of reports received from FT or DT or from its own records, if no such reports are received or Sprint has reason to believe they are not accurate), and the volume of correspondent telecommunications traffic sent by Sprint to FT or DT from the United States (either in the form of its reports to FT or DT or from its own records, if no such reports are made), separately showing the volume of traffic in each accounting rate category, where types of correspondent traffic that have different accounting rates have been pooled for calculation of proportionate return, and also separately showing what volume of correspondent traffic has been counted for purposes of proportionate return and what has been excluded.

2. If plaintiff believes that, in any quarterly period, Sprint has accepted correspondent telecommunications traffic in a manner inconsistent with the Proportionate Return

Commitment or the policies of the Federal Communications Commission concerning proportionate return, or has benefited from an alteration of the methodology of proportionate return calculation in its favor, then it shall notify Sprint of such belief and the reasons therefor, and may also bring this notification and the supporting information to the attention of the Federal Communications Commission. Within 90 days after receipt of such notification, Sprint shall respond in writing thereto and take all necessary measures to ensure that its conduct complies with its obligations under Section III.E.

F. In order to ensure that the activities of Joint Venture Co. and Sprint are not subsidized by FT and DT during Phase I of this Final Judgment:

1. Joint Venture Co. shall be established and operated as a distinct entity separate from FT and DT until Phase II takes effect for both France and Germany;
2. Joint Venture Co. and Sprint shall obtain their own debt financing on their own credit, provided that Sprint, FT and DT:
  - (i) may make capital contributions or commercially reasonable loans to Joint Venture Co. as required to enable Joint Venture Co. to conduct the venture business;
  - (ii) may pledge their venture interests in Joint Venture Co. in connection with nonrecourse financings for Joint Venture Co.; and
  - (iii) may guarantee any indebtedness of Joint Venture Co., provided that Sprint, FT and DT may only make payments pursuant to any such guarantee following a default by Joint Venture Co. in respect of such indebtedness;

3. Joint Venture Co. and Sprint shall maintain accounting systems and records separate from FT and DT, that identify, individually, payments or transfers to or from FT and DT relating to the purchase, acquisition or acceptance of any FT or DT Products and Services, and the Joint Venture services for which such FT or DT Products or Services are used. Such accounting systems and records of Joint Venture Co. will be made available pursuant to the visitorial provisions of Section VI;

4. Joint Venture Co. and Sprint may not allocate directly or indirectly any part of their operating expenses, costs, depreciation, or other expenses of their businesses to any parts of FT or DT's business units responsible for FT or DT Products and Services (including without limitation the proportionate costs based on work actually performed that are attributable to shared employees or sales or marketing of Sprint or Joint Venture Co. products and services by FT or DT employees), provided, however, that nothing herein shall prevent Sprint and Joint Venture Co. from charging FT and DT for products and services provided to them by Sprint or Joint Venture Co., on the basis of prices charged to third parties (in the case of products or services sold to third parties in commercial quantities) or full cost reimbursement or other arm's length pricing method (in the case of products and services not sold to third parties in commercial quantities); and

5. Joint Venture Co. and Sprint will not receive any material subsidy (including forgiveness of debt) directly or indirectly from FT or DT, or any investment or payment from FT or DT that is not recorded in the books of Joint Venture Co. or Sprint as an investment in debt or equity.

G. 1. Sprint may not offer, supply, distribute or otherwise provide any correspondent telecommunications or correspondent enhanced telecommunications service between the United States and France or Germany pursuant to any operating agreement with FT or DT, unless with respect to such service, at least one other United States international telecommunications provider has also obtained an operating agreement with FT and DT for the provision of such service between the United States and France and Germany. This provision will operate separately for France and for Germany.

2. If a licensed United States international telecommunications provider has requested but has not received an operating agreement with FT or DT for the provision of IDDD voice service or any other services that make use of the FT/DT PSTNs, then Sprint shall offer to carry the correspondent traffic of such United States international telecommunications provider between the United States and the countries for which an operating agreement has been requested, France or Germany, at rates and on terms and conditions that are commercially competitive to those on which other United States international telecommunications providers that have operating agreements are able to provide service, and at rate schedules to be updated on at least an annual basis (and filed with the FCC, as required) which reflect the estimated value of any adjustments in proportionate return traffic that may be received by Sprint from France or from Germany as a result of the traffic originated by United States international telecommunications providers whose traffic is being carried over Sprint's facilities.

H. Sprint or Joint Venture Co. shall not offer, supply, distribute, or otherwise provide in the United States any telecommunications or enhanced telecommunications service that makes use of FT or DT Products and Services, if, with respect to such FT or DT Products and Services,

(1) FT or DT have established any proprietary or nonstandardized interface or protocol used by Sprint and Joint Venture Co. to obtain access to such products or services, and (2) FT or DT no longer continue to provide on a basis consistent with previous operations, a non-proprietary or standardized interface or protocol used to obtain access to such FT or DT Products or Services.

I. Sprint or Joint Venture Co. shall not offer, supply, distribute, or otherwise provide in the United States any data telecommunications or enhanced telecommunications service that makes use of the Public Data Networks to complete data telecommunications in France or Germany, unless the Public Data Networks that are based on the X.25 or any other protocol, continue to be available to all other United States international telecommunications providers on nondiscriminatory terms to complete data telecommunications between the United States and France and between the United States and Germany, and within France and Germany for traffic originating within the United States, France or Germany, using the X.75 standard protocol for interconnection between data networks, or any generally accepted standard network interconnection protocol that may modify or replace the X.75 standard. If these requirements are met, Joint Venture Co. and Sprint may also offer data telecommunications services other than those based on the X.25/X.75 protocols using the Public Data Networks.

#### **IV**

##### **Applicability and Effect**

The provisions of this Final Judgment shall be binding upon defendants, their affiliates, subsidiaries, successors and assigns (except for any Sprint business that is subsequently spun-off or otherwise divested and in which neither FT nor DT have any ownership

interest), officers, agents, servants, employees and attorneys. Defendants shall cooperate with the United States Department of Justice in ensuring that the provisions of this Final Judgment are carried out. Neither this Final Judgment nor any of its terms or provisions shall constitute any evidence against, an admission by, or an estoppel against the defendants. The effective date of this Final Judgment shall be the date upon which it is entered.

## V

### Definitions

For the purposes of this Final Judgment:

A. “Affiliate” and “subsidiary” mean any entity in which a person has equity ownership, or managerial or operational control, directly or indirectly through one or more intermediaries, provided that these terms, when used in connection with Sprint do not include Joint Venture Co., Atlas, FT or DT; when used in connection with FT do not include Joint Venture Co., Sprint or DT but do include Atlas; when used in connection with DT do not include Joint Venture Co., Sprint, or FT but do include Atlas; and when used in connection with Joint Venture Co. do not include Sprint, Atlas, FT or DT (but do include all entities which Joint Venture Co. controls, or which are jointly controlled by Sprint, FT and DT). Atlas, FT and DT shall not be deemed to be persons in active concert or participation with Joint Venture Co. or Sprint for purposes of this Final Judgment. Affiliates and subsidiaries of Sprint and Joint Venture Co. that are not controlled by Sprint or Joint Venture Co. do not have substantive compliance obligations under Sections II and III of this Final Judgment.

B. "Atlas" means a joint venture identified in an agreement entered into between FT and DT on December 15, 1994, as amended, formed, or to be formed, by FT and DT to provide certain telecommunications services in Europe, regardless of the name that entity may subsequently have, or the percentages of ownership of FT or DT or the services or geographic areas in which that joint venture may operate, and any subsidiary, affiliate, predecessor, successor or assign of that joint venture, or any other entity jointly owned by FT and DT and having substantially similar purposes.

C. "Control" means, with respect to any entity's relationship to another entity, any of the following, unless another standard of control is specified in a provision of this Final Judgment:

(1) ownership, directly or indirectly, by such entity of equity or other ownership interest entitling it to exercise in the aggregate 50% or more of the voting power of the entity in question;

(2) the possession by such entity of the power, directly or indirectly, to elect 50% or more of the board of directors (or equivalent governing body) of the entity in question;

(3) the ability to direct or cause the direction of the management, operations, or policies of the entity in question, provided, however, that any party's obligations under the Joint Venture Agreement in the form entered into on June 22, 1995 (exclusive of any subsequent amendments) shall not constitute control under Section V.C.

Where more than one entity exercises joint control over an entity, each shall be deemed to have control.

D. “Correspondent” means a bilaterally negotiated arrangement between a provider of telecommunications services in the United States and a provider of telecommunications services in France, or between a provider of telecommunications services in the United States and a provider of telecommunications services in Germany, by which each party undertakes to terminate in its country through its public switched network or its public data network traffic originated by the other party, for provision of an international telecommunications or such enhanced telecommunications service. A service managed by Joint Venture Co., and provided without correspondent relationships with any other provider, shall not be deemed to constitute a correspondent service.

E. “Defendant” or “defendants” means Sprint and Joint Venture Co.

F. “Disclose,” for purposes of Sections II.A.1-7 and III.E, means disclosure to the United States Department of Justice Antitrust Division, which may further disclose such information to any United States international telecommunications provider that directly or through a subsidiary or affiliate (i) holds or has applied for a license from either the United States Federal Communications Commission or the French *Direction Générale des Postes et Télécommunications* (“DGPT”), or successors in responsibility to such agencies, to provide international telecommunications or enhanced telecommunications services between the United States and France, or actually provides telecommunications or enhanced telecommunications services between the United States and France, for services where no license is required, or (ii) holds or has applied for a license from either the United States Federal Communications Commission or the German *Bundesministerium für Post und Telekommunikation* (“BMPT”), or successors in responsibility to such agencies, to provide international telecommunications

services or enhanced telecommunications services between the United States and Germany, or actually provides telecommunications or enhanced telecommunications services between the United States and Germany, for services where no license is required. Disclosure by the Department of Justice to any provider described above shall be made only upon agreement by such provider, in the form prescribed in the Stipulation entered into by defendants and the United States on July 13, 1995, not to disclose any non-public information to any other person, apart from governmental authorities in the United States, France or Germany. Where Joint Venture Co. is required to disclose in Section II.A particular telecommunications services provided, this shall include disclosure of the identity of each of the services, and reasonable detail about each of the services to the extent not already published elsewhere, but shall not require disclosure of underlying facilities used to provide a particular service that is offered on a unitary basis, except to the extent necessary to identify the service and the means of interconnection with the service.

G. “DT” means Deutsche Telekom A.G., and any entity controlled by DT, provided that DT does not include Joint Venture Co., FT, or Sprint, but does include Atlas.

H. “Enhanced telecommunications service” means any telecommunications service that involves as an integral part of the service the provision of features or capabilities that are additional to the conveyance (including switching) of the information transmitted. Although enhanced telecommunications services use telecommunications services for conveyance, their additional features or capabilities do not lose their enhanced status as a result.

I. “Facility” means: (i) any line, trunk, wire, cable, tube, pipe, satellite, earth station, antenna or other means that is directly used or designed or adapted for use in the conveyance, transmission, origination or reception of a telecommunications or enhanced telecommunications

service; (ii) any switch, multiplexer or other equipment or apparatus that is directly used or designed or adapted for use in connection with the conveyance, transmission, origination, reception, switching, signaling, modulation, amplification, routing, collection, storage, forwarding, transformation, translation, conversion, delivery or other provision of any telecommunications or enhanced telecommunications service, and (iii) any structure, conduit, pole, or other thing in, on, by or from which any facility as described in (i) or (ii) is or may be installed, supported, carried or suspended.

J. “France” means the Republic of France, excluding its overseas departments and territories for which traffic is reported separately to the Federal Communications Commission.

K. “FT” means France Télécom, and any entity controlled by FT, provided that FT does not include Joint Venture Co., DT, or Sprint, but does include Atlas and Transpac.

L. “FT or DT Products and Services” shall mean any of the following telecommunications or enhanced telecommunications services or facilities in France or Germany, or between the United States and France or the United States and Germany, provided by FT or DT, regardless of whether such services or facilities are considered to be reserved exclusively to FT or DT under the national law of France or Germany:

(i) correspondent services (but not including enhanced telecommunications services provided by Atlas, unless Atlas is acting as a reseller or sales agent of such services or the services involve interconnection to the Public Data Networks);

(ii) dedicated or switched transit services;

(iii) leased lines or international half circuits between the United States and France or between the United States and Germany (including leased lines or international half circuits that may be provided with additional quality, provisioning or maintenance guarantees or alternate routing features), unless plaintiff and defendants agree that meaningful competition exists to such leased lines or international half-circuits provided by DT or FT; or

(iv) interconnection to the FT/DT PSTNs, including access to customers using ISDN services.

M. “Germany” means the Federal Republic of Germany.

N. “Interconnection,” “interconnect” and “interconnection agreement” mean interconnection under the FT Schedule of Obligations (“*Cahier des Charges*”) (or any subsequent or other condition governing interconnection with FT that may be imposed by government authorities in France), and under the Telecommunications Installation Act (“*Fernmeldeanlagenengesetz*”) (or any subsequent or other condition governing interconnection with DT that may be imposed by government authorities in Germany), or access to the FT or DT public switched telephone networks that may be obtained outside the terms of such legal obligations.

O. “Joint Venture Co.” means the entities referred to in the Joint Venture Agreement entered into by Sprint, FT and DT on June 22, 1995, as the GBN Parent Entity, the ROW Parent Entity, and the ROE Parent Entity (including the governing boards or bodies of such entities) to be formed in accordance with Sections 4.2, 5.2 and 6.2 of the Joint Venture Agreement, and each other entity to be formed pursuant to the terms of the Joint Venture Agreement (including the

Global Venture Board, Global Venture Committee and Global Venture Office to be formed in accordance with Section 3.1-3.10 of the Joint Venture Agreement), regardless of the name under which these entities may subsequently do business, or any other entity jointly owned by Sprint, FT and DT and having among its purposes substantially the same purposes as described for the Joint Venture or any of these entities in the Joint Venture Agreement, and any predecessor (whether the predecessor is jointly owned by Sprint, FT and DT or separately owned by any one of them and any one of them formed to conduct the Joint Venture Co. business), successor, or assign of such entities, or any entity controlled by any of these entities. Atlas, FT, DT and Sprint shall not be deemed to be a Joint Venture Co. The individual members of the Global Venture Board, Global Venture Committee and Global Venture Office, are not personally defendants, but are responsible in their official capacities as members of such entities for ensuring compliance of Joint Venture Co. with this Final Judgment, and responding to requests for documents and information under Section VI, in the same manner as any officer of a defendant.

P. "Phase I" means that period of time after the entry of this Final Judgment and before the conditions in Phase II have been met.

Q. "Phase II" means that time that begins when the national governments of France and Germany have:

(1) removed all of the legal prohibitions on provision of the following services and facilities by entities other than FT and DT and their subsidiaries and affiliates --

- (i) the construction, ownership or control of both domestic and international telecommunications facilities, and use of such facilities to provide any telecommunications or enhanced telecommunications services, and
  - (ii) the provision of public switched domestic and international voice services; and
- (2) issued one or more licenses or other necessary authorizations, to entities other than FT, DT, Sprint or Joint Venture Co. and unaffiliated with FT, DT, Sprint or Joint Venture Co., for --

- (i) the construction or ownership, and control, of both (a) domestic telecommunications facilities to serve territory in which one-half or more of the national populations of France and Germany reside, and (b) international telecommunications facilities capable of being used to provide a competitive facilities-based alternative, directly or indirectly, between France and Germany and the United States, and

- (ii) the provision of public switched domestic long distance voice services, without any limitation on geographic scope or types of services offered, and international voice service between the United States and France and Germany.

Unless otherwise noted in this Final Judgment, Phase II applies separately to France and Germany, and shall commence with respect to services and facilities between the United States and a country when the conditions are met for that country, even if they are not met in the other country.

R. "Proportionate Return Commitment" means the commitment of each of FT and DT to transmit correspondent voice telecommunications services traffic to the United States, to licensed U.S. international telecommunications carriers holding operating agreements for such services with FT and DT, in the same proportions as the correspondent voice telecommunications traffic from the United States to France or Germany that FT and DT, respectively, receive from such U.S. carriers. If the Federal Communications Commission adopts proportionate return policies that are made specifically applicable to the relationship between Sprint, FT and DT and that conflict with this Proportionate Return Commitment, the Proportionate Return Commitment shall be modified to be consistent with such policies.

S. "Public Data Network" means either or both of the public data network operated by Transpac in France and the public data network in Germany operated under the "Datex" designation (Datex-P, Datex-J, and the Datex-L service) as of the signing of the Stipulation to enter this Final Judgment, whether such networks are held by FT, DT, Atlas, or any subsidiary or affiliate of FT or DT now or in the future.

T. "Sprint" means Sprint Corporation, and any entity controlled by Sprint. Sprint does not include Joint Venture Co., Atlas, FT, or DT, or any FT or DT employees who may serve on Sprint's Board of Directors.

U. "Telecommunications service" means the conveyance, by electrical, magnetic, electromagnetic, electromechanical or electrochemical means (including fiber-optics), of information consisting of:

- speech, music and other sounds;
- visual images;

- signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter, including but not limited to data, otherwise than in the form of sounds or visual images;
- signals serving for the actuation or control of machinery or apparatus;
- or
- translation or conversion that does not alter the form or content of information as received from that which is originally sent.

For these purposes “convey” and “conveyance” include transmission, switching, and receiving, and cognate expressions shall be construed accordingly. A telecommunications service includes all facilities used in providing such service, and the installation, maintenance, repair, adjustment, replacement and removal of any such facilities. A service that is considered a “telecommunications service” under this definition retains that status when it is used to provide an enhanced telecommunications service, or when used in combination with equipment, facilities or other services.

V. “United States” means the fifty states, the District of Columbia, and all territories, dependencies, or possessions of the United States.

W. “United States international telecommunications provider” means any person or entity actually providing international telecommunications services or enhanced telecommunications services to providers or users in the United States, and that is incorporated in the United States, or that is ultimately controlled by United States persons within the meaning of 16 C.F.R. § 801.1., including its subsidiaries and affiliates, or any provider of telecommunications services with which such a United States international telecommunications

provider is affiliated. For purposes of this definition, an affiliate shall mean any entity in which a person or entity has a direct or indirect equity interest or whose equity is owned directly or indirectly by a person or entity in the amount of 10% or more.

## VI

### **Visitorial and Compliance Provisions**

A. Sprint and Joint Venture Co. each agree to maintain sufficient records and documents to demonstrate compliance with the requirements of this Final Judgment.

B. For the purposes of determining or securing compliance of defendants with this Final Judgment, duly authorized representatives of the plaintiff, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the relevant defendant, shall have access without restraint or interference to Sprint and to Joint Venture Co. in the United States:

1. during their office hours to inspect and copy all records and documents in their possession or control relating to any matters contained in this Final Judgment; and

2. to interview or take sworn testimony from their officers, directors, employees, trustees, or agents, who may have counsel present, relating to any matter contained in this Final Judgment; provided, however, that Joint Venture Co. officers who are or were employees of FT or DT shall be required to produce information only concerning Joint Venture Co., and that Joint Venture Co. or Sprint directors who are or were employees of FT or DT shall be required to produce only Joint Venture Co. and Sprint documents and to provide information only concerning Joint Venture Co. and Sprint.

C. Joint Venture Co. consents to make available to duly authorized representatives of the plaintiff, for the purposes of determining whether defendants have complied with the requirements of this Final Judgment and to secure their compliance:

1. at the premises of the Antitrust Division in Washington, D.C., within sixty days of receipt of written request by the Attorney General or Assistant Attorney General in charge of the Antitrust Division, records and documents in the possession or control of Joint Venture Co.; and

2. for interviews or sworn testimony, in the United States if requested by plaintiff but subject to their reasonable convenience, officers, directors, employees, trustees or agents, who may have counsel present; provided, however, that Joint Venture Co. officers who are or were employees of FT or DT shall be required to produce information only concerning Joint Venture Co., and Joint Venture Co. directors who are or were employees of FT or DT shall be required to produce only Joint Venture Co. documents and to provide information only concerning Joint Venture Co.

D. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, a defendant shall submit written reports, under oath if requested, relating to any of the matters contained in this decree.

E. No information or documents obtained by the means provided in this Section VI shall be divulged by the plaintiff to any person other than the United States Department of Justice, the Federal Communications Commission, and their employees, agents and contractors, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this decree, or for identifying to the DGPT or other appropriate

French regulatory agencies conduct by defendants or FT that may violate French law or regulations or FT's license to operate its French public telecommunications system (but no documents received from defendants pursuant to this Section VI shall be disclosed to French authorities by the Department of Justice), or for identifying to the BMPT or other appropriate German regulatory agencies conduct by defendants or DT that may violate German law or regulations or DT's license to operate its German public telecommunications system (but no documents received from defendants pursuant to this Section VI shall be disclosed to German authorities by the Department of Justice), or as otherwise required by law. Prior to divulging any documents, interviews or sworn testimony obtained pursuant to this Section VI to the Federal Communications Commission, or any French or German regulatory agencies, plaintiff will obtain assurances that such materials are protected from disclosure to third parties to the extent permitted by law.

## **VII**

### **Retention of Jurisdiction**

Jurisdiction is retained by this Court for the purposes of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate to carry out or construe this decree, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

## VIII

### Modification

A. Any party to this Final Judgment may seek modification of its substantive terms and obligations and other parties to the Final Judgment shall have an opportunity to respond to such a motion. If the motion is contested by another party, it shall only be granted if the movant makes a clear showing that (i) a significant change in circumstances or significant new event subsequent to the entry of the Final Judgment requires modification of the Final Judgment to avoid substantial harm to competition or consumers in the United States, or to avoid substantial hardship to defendants, and (ii) the proposed modification is (a) in the public interest, (b) suitably tailored to the changed circumstances or new events and would not result in serious hardship to any defendant, and (c) consistent with the purposes of the antitrust laws of the United States and with the telecommunications regulatory regimes of the United States, France and Germany. If a motion to modify this Final Judgment is not contested by any party, it shall be granted if the proposed modification is within the reaches of the public interest.

B. Neither the absence of specific reference to a particular event in the Final Judgment nor the foreseeability of such an event at the time this Final Judgment was entered, shall preclude this Court's consideration of any modification request. This standard for obtaining contested modifications shall not require the United States to initiate a separate antitrust action before seeking modifications. The same standard shall apply to any party seeking modification of this Final Judgment. Where modifications of the Final Judgment are sought, the provisions of Section VI of this Final Judgment may be invoked to obtain any

information or documents needed to evaluate the proposed modification prior to decision by the Court.

C. In addition to VIII.A and VIII.B, it is not the intent of the parties that Sprint should be competitively disadvantaged in such a way as to harm competition. If defendants believe that changed circumstances have caused any terms of the Final Judgment to operate in a way that is harmful to competition, they may present to plaintiff the reasons therefore and any supporting evidence, and if plaintiff in its sole discretion agrees that modification of the Final Judgment is appropriate, a request for modification shall be presented to the Court.

## **IX**

### **Sanctions**

Nothing in this Final Judgment shall prevent the United States from seeking, or this Court from imposing, against defendants or any other person, any relief available under any applicable provision of law.

## **X**

### **Further Provisions**

- A. The entry of this Final Judgment is in the public interest.
- B. The substantive restrictions and obligations of this Final Judgment shall be removed five years from the date that Phase II of this Final Judgment has taken effect with respect to both France and Germany, unless this Final Judgment has been previously terminated. The substantive obligations of Section III of this Final Judgment shall be removed on the date

that Phase I of this Final Judgment ends, separately with respect to France and with respect to Germany, unless otherwise specified in this Final Judgment.

DATED:

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United States District Judge