



ORIGINAL

FPSC-77 AREA OF RECORDS

Charles J. Rehwinkel
General Attorney

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971241-TL

September 24, 1997

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Petition of Sprint-Florida, Incorporated for a Waiver

Dear Ms. Bayo:

Enclosed for filing is the original and fifteen (15) copies of Sprint-Florida, Incorporated Petition for a Waiver.

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.

Sincerely,

ACK _____
AFA _____
API _____
CAF _____
CJU _____
CTM _____
EAD _____
LE _____
LH _____
H _____
RC _____
SLC _____
WAS _____
OTH _____


Charles J. Rehwinkel

CJR/th

Enclosures

DOCUMENT NUMBER-DATE

09810 SEP 24 5

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Sprint-)
Florida, Incorporated)
for a waiver of certain of)
the requirements of Rule)
25-4.0161, F.A.C.)
_____)

Filed: September 24, 1997

Docket No.

PETITION OF SPRINT-FLORIDA, INCORPORATED FOR A WAIVER

COMES NOW SPRINT-FLORIDA, INCORPORATED ("Sprint-Florida" or "Sprint"), pursuant to Commission Rule 25-22.036, F.A.C. and Section 120.542, Florida Statutes, and files this request for a waiver from the certain of the requirements of Rule 25-4.0161, F.A.C. such that Sprint-Florida's filing of the Regulatory Assessment Fee return and payment ("RAF filing") be deemed timely or alternatively that Sprint-Florida be allowed an extension of 30 days with which to have its RAF considered by the Commission. In support, Sprint-Florida states as follows:

I. The petitioner is:

Sprint-Florida, Incorporated
Box 165000
Altamonte Springs, Florida 32716

DOCUMENT NUMBER-DATE

09810 SEP 24 97

FPSC-RECORDS/REPORTING

II. The petitioner is represented by:

**Charles J. Rehwinkel
General Attorney
Sprint-Florida, Incorporated
P.O. Box 2214
Tallahassee, Florida 32301**

III. Applicable Rule:

Petitioner seeks relief primarily from the provisions of Rule 25-4.0161(2)&(3) primarily, or alternatively Rule 25-4.0161(7)(a)&(b) which read:

(2) Telecommunications companies that owed gross regulatory assessment fees of \$10,000 or more for the preceding calendar year shall pay the fee and remit the appropriate form twice a year. The regulatory assessment fee and appropriate form shall be filed no later than July 30 for the preceding period of January 1 through June 30, and no later than January 30 of the following year for the period of July 1 through December 31. Telecommunications companies that owed gross regulatory assessment fees of less than \$10,000 for the preceding calendar year shall pay the fee and remit the appropriate form once a year. The regulatory assessment fee and appropriate form shall be filed no later than January 30 of the subsequent year for the current calendar year operations.

(3) If the due date falls on a Saturday, Sunday or legal holiday, the due date is extended to the next business day. If the fees are sent by registered mail, the date of the registration is the United States Postal Service's postmark date. If the fees are sent by certified mail and the receipt is postmarked by a postal employee, the date on the receipt is the United States Postal Service's postmark date. The

postmarked certified mail receipt is evidence that the fees were delivered. Regulatory assessment fees are considered paid on the date they are postmarked by the United States Postal Service or received and logged in by the Commission' division of Administration in Tallahassee. Fees are considered timely paid if properly addressed, with sufficient postage, and postmarked no later than the due date.

(7) A company may request from the division of Administration a 30 day extension of its due date for the payment of regulatory assessment fees or for filing its return form.

(a) The request for extension must be made in writing and accompanied by a statement of good cause.

(b) The request for extension must be received by the Division of Administration at least two weeks before the due date.

IV. Statutory Authority.

The subject rule(s) cites as authority Sections 350.113, 364.336 and 364.337(4), Florida Statutes as the law being implemented. At this time, the Petitioner is unaware of any additional statute implemented by the rule.

V. Action Requested.

Petitioner Sprint-Florida primarily seeks a waiver of the implied rule

requirement that the delivery of the Regulatory Assessment Fee and return ("RAF filing") be to an actual employee of the United States Postal Service employee and thus relief from having to pay a penalty of \$39,426.40.

Alternatively, Sprint seeks a waiver from the requirement that any request for extension of time to make the RAF filing for the first half of 1997 be made in advance. A waiver of the Commission's own prior request requirement would allow the Commission, if the primary waiver request is denied, to consider the RAF filing timely filed within the 30 day extension period. Relief in the alternative would still require the payment of a statutory charge of \$4,928.30

VI. Factual Basis For Waiver.

On July 30, 1997, the RAF filing for the operations of Sprint-Florida, Incorporated for the first six months of 1997 became due at the FPSC. On that date Sprint-Florida was to make its payment under a new internal process. In the process of insuring that the payment met the rule requirement that the payment be postmarked by a postal employee and that the date of the receipt be the United State's Postal Service's postmark date, the responsible employee hand carried the letter down to the mailroom to insure the proper treatment. It was emphasized to Sprint's designated internal postal employee who was in charge of the mailroom that the envelope had to be postmarked July 30, 1997.

Postmarking is done at the mail center by the designated "postal employee" via a postage meter. Unfortunately, the postage meter at the Financial Service Center's building was out of postage. At that point, Sprint's designated postal employee sent the envelope to another building with a mailroom. In the transition between buildings, the importance of the envelope being postmarked July 30, 1997 was evidently not adequately communicated.

As a result, the filing was not postmarked until the next day, July 31, 1997. Instead of going out in the evening mail on Wednesday night, the filing was sent out the next day by Certified Mail and arrived at the FPSC on Monday, August 4, 1997. Sprint submits that this is the likely date of arrival even had the filing been postmarked and mailed on Wednesday evening as intended.

On August 8, 1997, the Bureau of Fiscal Services sent Sprint a letter with a copy of the postmarked envelope and the RAF filing showing a July 31, 1997 postmark and an August 4, 1997 deposit date (and assumed receipt date). See, Exhibit 1. The letter reflects a calculation of penalties and interest owed by Sprint in the amount of \$39,426.40. On August 20, 1997, Sprint filed a letter with the Bureau of Fiscal Services indicating the company's intent to challenge the assessment of the penalty or to seek a waiver or other relief. See, Exhibit 2.

VII. UNDERLYING STATUTE and RELIEF REQUESTED

Section 120.542(1) requires that the waiver request demonstrate that the "purpose of the underlying statute will be or has been achieved by other means by the person." Sprint-Florida's requested relief is presented in the alternative.

A. Primary Relief Requested.

The primary relief sought by Sprint is for a waiver of the rule's apparent requirement that for determination of timely filing by mail the delivery of the RAF filing be made to an actual employee of the United States Postal Service.¹ Sprint urges that the Commission find that the purposes of the statute have been met by the delivery of the letter to the postal employee in charge of Sprint's mailroom. Petitioner also requests that the Commission further find that the RAF filing was received and deposited by the Commission on Monday, August 4, 1997 and that that date is likely the same date the filing would have been received had it been actually sent on July 30. Together these findings would substantially meet the purpose of the underlying statute because the company manifested an intent to comply with the timely filing requirements of the statutes and the RAF filing was actually received in a timely fashion.

To the extent deemed necessary, Sprint requests a waiver of the portion of the rule that the delivery of the RAF filing to the employee be to a United States Postal Service employee. In this regard, Sprint submits that the delivery

¹Rule 25-4.0161(3) is phrased in terms of the postmark date being "evidence that the fees were delivered" and that fees are "considered" paid on the date they are postmarked. Nothing in the rule expressly states that these are the exclusive means of effectuating delivery and hence the purposes of the statute.

to a designated internal postal employee, albeit not a U.S. Government employee, would be evidence that filing was made in a substantially timely fashion. The rule speaks of the postmark as "evidence" of delivery and that the fees are "considered" paid on the date postmarked. The essence of Sprint's argument is that this language of the rule should not be read to constitute the only "evidence" or "consideration" that delivery or filing is timely made. Sprint urges that the rule be read to allow other methods of mail delivery that substantially comply with the statutory requirements be considered. The facts of this case support such an interpretation as advocated herein.

Sprint realizes that such a waiver could be viewed as opening a "Pandora's Box" if granted in isolation. Coupled with the objective fact that the RAF filing was received in a timely fashion, no mischief would result in the future by intentional delay through "in-house" delivery of RAF filings. Clearly the facts and timing of this situation mitigate against abuse that might otherwise follow a favorable ruling for Sprint.

The economic hardship of paying a penalty of \$39,426 coupled with the facts surrounding the delivery of the RAF filing and timely receipt of the payment by the Commission provide a basis for the Commission granting a waiver resulting in a finding that there should be no assessment of penalties and interest.

This issue was recently addressed in the case of In re: Petition for waiver

of penalty for late payment of regulatory assessment fees pursuant to Rule 25-7.0131, F.A.C., by City Gas Company of Florida. Order No. PSC-97-0767-FOF-GU, Docket No. 970360-GU, Issued June 30, 1997. There the Commission denied the request for a waiver because the Petition did not meet the requirements of Section 120.542 and because the blanket request for a waiver of the rule was seen as effectively a request for an otherwise prohibited waiver of the statute. In that case City Gas had not completed preparation of the RAF filing such that it could be delivered. Sprint recognizes that the ruling in City Gas represents a statement that the Agency will not or cannot grant a waiver under such circumstances. Sprint urges that the Commission consider the circumstances of this waiver on its own merits and determine if the unique conditions of delivery of the completed RAF filing (as opposed to a delay in the preparation of the filing) meet the purposes of the rule and the statute.

Sprint further notes that under similar circumstances, in the case of In Re: Petition for Declaratory Statement, or Alternatively, for Waiver of Penalty Imposed for Late Payment of Regulatory Assessment Fees by BellSouth Telecommunication, Inc., Order No. PSC-96-0569-FOF-TL, Docket No. 960191, issued May 1, 1995, BellSouth filed its regulatory assessment fee one day late and requested a waiver of the penalty citing illnesses that resulted in absences of office personnel and an unusually heavy workload as the basis for the waiver request. The Commission found that those circumstances

constituted excusable neglect and waived the penalty. As noted in the decision in City Gas, the BellSouth decision was issued prior to the adoption of Section 120.542(1) (explicitly forbidding waiver of a statute). While this is correct, the request for a waiver in this instance effectively asks that the Commission find that the facts support that Sprint effectively and in good faith "delivered" the RAF filing and substantially complied with the statutory requirement that the fees be paid on time in order to avoid a penalty.

The primary requested relief is that the provisions of Rule 25-4.0161 are met by the delivery of the RAF filing to the internal postal employee and the subsequent receipt by the Commission of the letter at the same time it would have been received had it been mailed on July 30. On this basis the Petitioner requests that the rule be waived so that the interests of fairness and equity can be served.

B. Alternative Relief Requested.

In the alternative, Sprint requests relief to the extent allowed by Section 350.113(5), Fla. Stat., wherein the Commission has authority to extend the deadline for making the RAF filing by 30 days for good cause shown. Sprint seeks a waiver of the provisions of the Commission's rule governing the granting of the extension. This pleading should be considered the written request for the extension of time and the statement of good cause for purposes of the rule and statute.

Section 350.113 and 364.336, Fla. Stat. govern the method of payment of RAFs. Both Statutes require that the return and payment be filed within 30 days of the end of the 6-month period. Section 350.113(5) in particular states that:

(5) The commission, for good cause shown by written request, may extend for a period of 30 days the time for paying any fee or for filing any report thereto. If an extension is granted, there shall be collected a charge of 0.75 percent of the fee to be remitted for an extension of 15 days or less, or a charge of 1.5 percent of the charge for an extension of more than 15 days.

By Rule 25-4.0161(7), F.A.C., the Commission has implemented this particular section by requiring the request for extension to be filed two weeks in advance of the original due date.

Sprint-Florida's alternative waiver request is for a waiver of the advance filing requirement and for the company to consequently receive only a one day extension of the filing due date. The purposes of the statute would be fulfilled if the Commission were to waive its own rule because (assuming good cause exists) the statute contemplates that an extension may be granted and that if granted, the 0.75% (or \$4,928.30) charge must be paid.

There is no statutory requirement that the extension request be received in advance of the due date. In that regard there would be no prohibition against granting the waiver under the provisions of 120.542(1), Fla. Stat. Furthermore, such action by the Commission would be not be inconsistent with

the concern expressed in the recent City Gas case where the Commission was concerned that "if the rule were waived, the statute would be effectively waived." Order No. PSC-97-0767-FOF-GU at 6. The issue of the extension of time was not raised by the company before the Commission in City Gas.

The purposes of the statute would be served in granting the alternative relief in that the filing extension could be allowed as plainly contemplated in the statute. The extension coupled with the payment of the charge would fulfill the intent of the law that payments be subject to a charge if not timely filed. Furthermore, there would be no benefit received by Sprint for the delay, if any, in payment of the funds.

WHEREFOR, in consideration of the above, Sprint respectfully requests that the Florida Public Service Commission:

(1) Waive the provisions of rule 25-4.0161(2) & (3) to the extent necessary to deem the delivery of the RAF filing in compliance with the intent and purposes of Section 350.113, Fla. Stat. , or, ALTERNATIVELY

(2) Waive the provisions of the Rule 25-4.0161(7) that requires that extensions of time be requested in advance and to then concurrently grant a one day extension of time conditioned upon the payment of the

charge of 0.75%.

RESPECTFULLY SUBMITTED this 24th day of September, 1997.



**Charles J. Rehwinkel
General Attorney
Sprint-Florida, Incorporated
P.O. Box 2214
MC FTLHO0107
Tallahassee, Florida 32301**

3/12/97 Joked: J. Sakman
J. Johns

STATE OF FLORIDA

Commissioners:
 JULIA L. JOHNSON, CHAIRMAN
 SUSAN F. CLARK
 J. TERRY DEASON
 JOE GARCIA
 DIANE K. KIESLING



STEVE TRIBBLE, DIRECTOR
 DIVISION OF ADMINISTRATION
 (904) 413-6330

Public Service Commission

August 08, 1997

TL727
 Sprint-Florida, Incorporated
 P. O. Box 2214 (MC FLTLHO0107)
 Tallahassee, FL 32316-2214



Dear Sir:

Communication Company

Our records indicate that the envelope enclosing your Regulatory Assessment Fee payment for the period January 1, 1997 through June 30, 1997, was postmarked after the due date of July 30, 1997. In accordance with Florida Statute 350.113(4), penalty and interest charges are assessed as follows:

Penalty Due	(\$657,106.66 x 5%)	\$32,855.33
Interest Due	(\$657,106.66 x 1%)	<u>6,571.07</u>
Total Due		\$39,426.40

To avoid additional interest charges, your payment must be postmarked or delivered to the above address by August 22, 1997.

If you have any questions, please call Mr. Charles Byrne at (904) 413-6267.

Yours truly,

Evelyn H. Sewell, Chief
 Bureau of Fiscal Services

EHS/CB/8-8-97.P&I

c: Mr. Charles Byrne

Sprint-Florida, Inc.
6860 West 115th St.
MS: KSOPKD0105
Overland Park, KS 66211-2400

Fold at line over top of envelope to
the right of the return address

CERTIFIED

P 503 121 004

MAIL



< Keep Envelope >

ATTN: FISCAL
FLORIDA PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0876



Communication Company Regulatory Assessment Fee Return
Florida Public Service Commission

STATUS:
XXX Actual Return
 Estimated Return

PERIOD COVERED:
01/1/97 to 06/30/97

DEPOSIT DATE

0884 • **AUG 04 1997**
 Sprint-Florida, Incorporated
 P. O. Box 2214 (MC FLTLHO0101)
 Tallahassee, FL 32316-2214

FOR PSC USE ONLY	
Check# <u>3903443</u>	0603004
\$ <u>657,106.66</u>	003001
\$	P
	0603004
	004011
\$	I
Postmark Date <u>7/24/97</u>	
Initials of Preparer <u>11</u>	

LOCAL SERVICES REVENUES

	Total	Intrastate
1. Basic area revenues (5001)	160,093,319.29	160,093,319.29
2. Optional extended area revenue (5002)	315,834.56	315,834.56
3. Cellular mobile revenue (5003)	0.00	0.00
4. Other mobile services revenue (5004)	(1,644.14)	(1,644.14)
5. Public telephone revenue (5010)	2,431,570.25	2,431,570.25
6. Local private line revenue (5040)	8,175,578.93	8,175,578.93
7. Customer premises revenue (5050)	1,445,513.51	1,445,513.51
8. Other local exchange revenue (5060)	68,745,698.95	68,745,698.95
9. Other local exchange revenue settlements (5069)	0.00	0.00
10. Total local services revenue (add lines 1 through 9)	241,205,871.35	241,205,871.35

NETWORK ACCESS SERVICES REVENUES

11. End user revenue (5081)	44,323,043.36	0.00
12. Switched access revenue (5082)	94,481,323.87	0.00
13. Special access revenue (5083)	16,117,715.23	0.00
14. State access revenue (5084)	99,981,762.80	99,981,762.80
15. Total access services revenues (add lines 11 through 14)	254,903,845.26	99,981,762.80

LONG DISTANCE NETWORK SERVICES REVENUES

16. Long Distance Message Revenue (5100)	14,705,532.09	14,695,578.03
17. Long distance inward-only revenue (5111)	279,572.00	278,609.90
18. Long distance outward-only revenue (5121)	215,771.94	215,771.94
19. Subvoice grade long distance private network revenues (5121)	0.00	0.00
20. Voice grade long distance private network revenues (5122)	849,866.00	849,866.00
21. Audio program grade long distance private network revenues (5123)	0.00	0.00
22. Video program grade long distance private network revenues (5124)	0.00	0.00
23. Digital transmission grade long distance private network revenue (5125)	0.00	0.00

24. Long distance private network switching revenues (5126)	0.00	0.00
25. Other long distance private network revenues (5128)	5,727,626.14	5,726,856.14
26. Other long distance private network settlements (5129)	(33,235.52)	(33,235.52)
27. Other long distance revenue (5160)	0.00	0.00
28. Other long distance revenue settlements (5169)	0.00	0.00
29. Net long distance revenues (add lines 16 through 28)	21,745,132.65	21,733,446.49

MISCELLANEOUS REVENUES

30. Directory revenue (gross billing) (5230)	37,437,957.52	17,417,957.52
31. Rent revenue (gross billing) (5240)	3,509,336.05	2,116,672.91
32. Corporate operation revenue (5250)	6,750.00	6,750.00
33. Special billing arrangement revenue (5261)	8,087.71	8,087.71
34. Customer operations revenue (5262)	1,479,165.65	1,479,165.65
35. Plant operation revenue (5263)	0.00	0.00
36. Other incidental regulated revenue (5264)	3,822,766.03	3,485,407.82
37. Other revenue settlements (5269)	0.00	0.00
38. Carrier billing and collection revenue (5270)	7,168,448.50	2,262,735.59
39. Total miscellaneous revenues (add lines 30 through 38)	53,433,106.46	45,563,362.80
40. Total gross revenues for Regulatory assessment (add lines 10, 15, 29, and 39)	571,287,955.72	408,484,442.64
41. Regulatory assessment fee due (Multiply Line 40 by 0.0015)		612,726.66
42. Less: payments made for June 30 period, if any		0.00
43. Net regulatory assessment fee due		612,726.66
44. Penalty for late payment		0.00
45. Interest for late payment		0.00
46. Total Amount Due		612,726.66
47. Imputed assessment on consolidated directory operations estimated at \$46,800 (\$93,600 for all of 1997) minus a \$2,420 overpayment (\$418 underpayment for UTI and \$2,838 overpayment for Centel) in 1996 due to estimation of Directory revenue		44,380.00
48. Total amount due after assessment		657,106.66

As provided in Section 364.336, Florida Statutes, the minimum annual fee is \$50

I, the undersigned owner/officer of the above-named vendor, have read the foregoing and declare to the best of my knowledge and belief, the above is a true and correct statement. I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree


 (Signature of Company Official)

John I. Lehman
 (Name - Please Print)

Controller 07/28/97
 (Title) (Date)

Telephone Number (913) 433-1100
F. E. I. Number 59-0248365



Charles J. Rehwinkel
General Attorney

Post Office Box 2214 MC2565
Tallahassee, FL 32316
Voice 904 847 0244
Fax 904 599 1458

August 20, 1997

Ms. Evelyn H. Sewell
Bureau of Fiscal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

**Re: 1997 Regulatory Assessment Fee For Sprint-Florida, Incorporated
(TL727)**

Dear Ms. Sewell:

Sprint-Florida, Incorporated is in receipt of your letter of August 8, 1997 regarding our Regulatory Assessment Fee for the first half of 1997.

On August 15, 1997 you spoke with Ben Poag who indicated that Sprint-Florida is currently investigating the cause of our payment being post-marked one day after the July 30, 1997 deadline. Mr. Poag also indicated that the company intends to seek a determination by the Commission of what amount if any the company owes in fines or interest. As I understand it, payment of the penalty and interest requested by the Commission in the amount of \$39,426.40 would not be required at this time under these circumstances.

By this letter, Sprint-Florida, Incorporated is formally advising you of our intent to fully investigate the circumstances of this payment and request relief from the Commission. This letter is therefore being sent in lieu of the payment of penalties and interest at this time.

Please advise me at your earliest convenience if this approach is of concern to you. At our earliest opportunity we will report the circumstances of the late postmark. If you have any questions, please do not hesitate to call me at 847-0244.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles J. Rehwinkel", written in a cursive style.

Charles J. Rehwinkel

cc: Jerry Johns
Alan Berg
Judi Kohli
Jack Lehman