

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Sprint-Florida, Incorporated for violation of service standards.

DOCKET NO. 991377-TL
ORDER NO. PSC-00-0869-PCO-TL
ISSUED: May 2, 2000

ORDER ESTABLISHING PROCEDURE

On September 10, 1999, a docket was established to initiate show cause proceedings against Sprint-Florida, Incorporated (Sprint) for its apparent violations of service standards. This matter has been scheduled for an administrative hearing.

On March 23, 2000, our staff held an informal meeting with representatives of Sprint and the Office of Public Counsel (OPC). In lieu of our staff requesting the issuance of an Order to Show Cause, Sprint offered to provide a letter acknowledging the following: the scope of the apparent violations scheduled for administrative hearing; the possible penalties to which it is subject in this proceeding; and waiver of any due process issues that may have otherwise been raised because no show cause order will be issued. OPC had no objection to Sprint filing an acknowledgment letter in lieu of the issuance of a show cause order.

On March 27, 2000, Sprint provided our staff with a letter that acknowledges the scope of its apparent violations and possible penalties to which it is subject at the administrative hearing as well as waiving any due process or noticing issues based on a failure to issue an Order to Show Cause. On March 23, 2000, Sprint verbally acknowledged that the time frame to be covered in this proceeding. On April 25, 2000, Sprint provided our staff with a letter that acknowledges the time frame to be covered in this proceeding. Sprint's acknowledgment letters are attached and incorporated herein as Attachments "B" and "C". This Order shall serve as sufficient notice to Sprint of its apparent willful violations of the service standards and the possible penalties to which it is subject at the administrative hearing. Specifically, Sprint acknowledges that in this proceeding, it is on notice that it is subject to the following:

1. Sprint-Florida Incorporated will be required to show cause why it should not be fined up to \$25,000 per day

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FPSC-RECORDS/REPORTING

for the period of January 1996 through December 1999 for each of the 1034 apparent willful violations of Rule 25-4.070(3)(a), Florida Administrative Code, Interruption of Service, or have Certificate Number 22 canceled.

2. Sprint-Florida Incorporated will be required to show cause why it should not be fined up to \$25,000 per day for the period of January 1996 through December 1999 for each of the 254 apparent willful violations of Rule 25-4.066(2), Florida Administrative Code, Availability of Service, or have Certificate Number 22 canceled.

3. Sprint-Florida Incorporated will be required to show cause why it should not be fined up to \$25,000 per day for the period of January 1996 through December 1999 for each of the 54 apparent willful violations of Rule 25-4.073, Florida Administrative Code, Answering Time-business office, or have Certificate Number 22 canceled.

4. Sprint-Florida Incorporated will be required to show cause why it should not be fined up to \$25,000 per day for the period of January 1996 through December 1999 for each of the 34 apparent willful violation of Rule 25-4.073, Florida Administrative Code, Answering Time-to repair, or have Certificate Number 22 canceled.

5. The number of apparent violations of these service standard rules will cover the period of January 1996 through December 1999.

The above enumerated matters shall control the scope of this proceeding unless changed by Commission order. This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

Discovery

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten

days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for September 6, 2000. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by August 30, 2000. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 75, and requests for production of documents, including all subparts, shall be limited to 75.

Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183, Florida Statutes.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of Records and Reporting, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of Records and Reporting by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified

on a composite basis, and the witness sponsoring each;

- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon;
- (i) a statement identifying the parties' pending requests or claims for confidentiality; and
- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held August 28, 2000 at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good

cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes of Use by Time of Day

Tentative Issues

Attached to this order as Appendix "A" is a tentative list of the issues which have been identified in this proceeding. Prefiled

testimony and prehearing statements shall address the issues set forth in Appendix "A".

Controlling Dates

The following dates have been established to govern the key activities of this case.

- | | |
|------------------------------------------------------------------------|-------------------|
| 1) Direct testimony
and exhibits- Staff | May 17, 2000 |
| 2) Direct testimony
and exhibits- Intervenor | June 14, 2000 |
| 3) Rebuttal testimony
and exhibits- Company | July 12, 2000 |
| 4) Surrebuttal testimony and exhibits,
if any- Staff and Intervenor | July 31, 2000 |
| 5) Prehearing Statements | August 14, 2000 |
| 6) Prehearing Conference | August 28, 2000 |
| 7) Hearing | September 6, 2000 |
| 8) Briefs | October 4, 2000 |

Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

Post-Hearing Procedure

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

Based upon the foregoing, it is

ORDERED by Chairman Joe Garcia, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission. It is further

ORDERED that the letters attached hereto shall be incorporated into the body of this Order.

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By ORDER of Chairman Joe Garcia, as Prehearing Officer, this
2nd day of May, 2000.



JOE GARCIA
Chairman and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060,

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Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

APPENDIX A

- Issue 1: (a) During the period of January 1996 through December 1999, was Sprint Florida in willful violation of Rule 25-4.073, Florida Administrative Code, business office answer time?
- (b) If so, how many violations were there, if any, and what is the appropriate action, penalty, and/or fine amount to be imposed by the Commission for any violations.
- Issue 2: (a) During the period of January 1996 through December 1999, was Sprint Florida in willful violation of Rule 25-4.073, Florida Administrative Code, answer time to repair?
- (b) If so, how many violations were there, if any, and what is the appropriate action, penalty, and/or fine amount to be imposed by the Commission for any violations.
- Issue 3: (a) During the period of January 1996 through December 1999, was Sprint Florida in willful violation of Rule 25-4.070(3)(a), Florida Administrative Code, which requires restoration of interrupted service within 24 hours of report?
- (b) If so, how many violations were there, if any, and what is the appropriate action, penalty, and/or fine amount to be imposed by the Commission for any violations.
- Issue 4: (a) During the period of January 1996 through December 1999, was Sprint Florida in willful violation of Rule 25-4.066(2), Florida Administrative Code, which requires installation of primary service within 3 working days?
- (b) If so, how many violations were there, if any, and what is the appropriate action, penalty, and/or fine amount to be imposed by the Commission for any violations.

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Issue 5: In determining the appropriate action to be taken, if any, for violation of a service rule, what factors in mitigation or aggravation, if any, should be considered?

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ATTACHMENT B



Charles J. Rehwinkel
Senior Attorney

Law/External Affairs
Post Office Box 2214
Tallahassee, FL 32316-2214
Mailstop FLTLH00107
Voice 850 847 0244
Fax 850 878 0777
charles.j.rehwinkel@mail.sprint.com

March 27, 2000

Patricia Christensen
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 991377-TL.

Dear Ms. Christensen:

I am writing you to confirm that Sprint-Florida, Incorporated (Sprint) recognizes that the Florida Public Service Commission staff has opened an investigation into certain aspects of Sprint's service. As Sprint understands it, the action is being taken in response to quarterly reports that Sprint has filed in the past.

Sprint recognizes that the reports submitted by Sprint indicate that certain aspects of Sprint's service, while meeting the FPSC standards in most categories, have, at times, not met certain categories of the requirements of the Commission's rules in some months over the period January 1, 1998 through December 31, 1999. Specifically, Sprint understands and acknowledges that the Commission intends to inquire into and consider the propriety of taking action regarding Sprint's service with respect to Rules 25-4.066; 25-4.070(3)(a) & (b); 25-4.073 and 25-4.0770, Florida Administrative Code. At this time Sprint also understands and acknowledges that the Commission intends to inquire into and consider the propriety of taking action regarding Sprint's service for the period January 1, 1998 through December 31, 1999. Sprint further understands and acknowledges that this matter has been set for an administrative hearing on Sprint's level of compliance with the above rules within the stated time frame.

Under these circumstances, Sprint acknowledges that the Florida Public Service Commission possesses the authority to investigate this matter and render an order taking action(s) pursuant to its statutory authority, including the monetary penalties provided for in Section 364.285, Florida Statutes. Sprint will not contest any Commission action within the scope of these provisions on the basis that failure to issue an Order to Show Cause or some similar document would deprive Sprint of due process or fail to provide adequate notice of any action that the Commission might take against Sprint with respect to the aforementioned service measures for the period January 1, 1998 through December 31, 1999.

Sprint fully reserves its rights to contest the correctness of any factual or legal conclusion that the Commission might reach in applying the law to any evidence entered into the record of this Docket. Sprint further understands that the Commission will be considering in Docket No. 991376-TL whether to extend the relevant time frame back to January 1, 1996. Sprint reserves all rights that it has at this time regarding such possible Commission action.

Sprint's acknowledgement of the Commission's jurisdiction in no way constitutes a waiver of Sprint's rights in any other respect, including, but not limited to, the propriety of the application of the provisions of Chapter 364 and the Commission's Rules to Sprint in this matter.

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Please call me if you have any questions about this letter or Sprint's acknowledgement of the Commission's jurisdiction in the Docket.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles J. Rehwinkel". The signature is fluid and cursive, with a large initial "C" and "R".

Charles J. Rehwinkel

cc: Charles J. Beck, Office of the Public Counsel

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ATTACHMENT C



Charles J. Rehwinkel
Senior Attorney

Law/External Affairs
Post Office Box 2214
Tallahassee, FL 32316-2214
Mailstop FLTLH00107
Voice 850 847 0244
Fax 850 878 0777
charles.j.rehwinkel@mail.sprint.com

April 25, 2000

Patricia Christensen, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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APR 27 2000
FLORIDA PUBLIC SERVICE COMMISSION
LEGAL DIVISION

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Re: Docket No. 991377-TL.

Dear Ms. Christensen:

I am writing you to advise you that Sprint withdraws the second and third sentences in the fourth paragraph in our March 24, 2000 letter (attached). Sprint recognizes, consistent with the remainder of the March 24th letter, that the Commission may take action, for the years 1996 and 1997, regarding Sprint's service with respect to Rules 25-4.066; 25-4.070(3)(a) & (b); 25-4.073 and 25-4.0770, Florida Administrative Code

Please call me if you have any questions about this letter or Sprint's acknowledgement of the Commission's jurisdiction in the Docket.

Sincerely,

Charles J. Rehwinkel

Enclosure

cc: Charles J. Beck, Office of the Public Counsel