

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for submission of proposals for relay service, beginning in June 2005, for the hearing and speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

DOCKET NO. 040763-TP
ORDER NO. PSC-05-0988-FOF-TP
ISSUED: October 13, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR

FINAL ORDER IMPOSING LIQUIDATED DAMAGES AND APPOINTING NEW MEMBER
TO THE TASA ADVISORY COMMITTEE

BY THE COMMISSION:

Case Background

The Telecommunications Access System Act of 1991 (TASA), Section 427.701, Florida Statutes, established a statewide telecommunications relay system. This system provides telecommunications service for hearing impaired persons functionally equivalent to the service provided to hearing persons.

Sprint began providing relay service under contract in Florida beginning June 1, 2000, under Docket Number 991222-TP. That contract expired May 31, 2005, and Sprint was awarded a new contract under Docket Number 040763-TP with service beginning June 1, 2005.

There are many different types of service provided by the relay system. One such service is the relaying of calls from a person using a Telecommunications Device for the Deaf (TDD). A keyboard is used by a hearing-impaired person to type to the relay operator. The relay operator voices the communication to the hearing person. When the hearing person voices back to the relay operator, the operator then types the message to the TDD user. The typing speed of the relay operator is very important for the TDD user to be able to converse with the hearing person.

Pursuant to contract, this Commission requires the relay system provider to comply with certain service standards. One of the service standards is the requirement that the relay operator

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type at a minimum speed of 60 words per minute (wpm) on live relay calls. Technological aids such as macros used to type commonly used words or phrases with minimal keystrokes are allowed to be used to achieve this typing speed.

Sprint has not been complying with this requirement; therefore, we find it appropriate that this Commission collect liquidated damages as provided by Section B-60 of the contract.

We have vested authority under Chapter 427, Florida Statutes.

Liquidated Damages

Section 427.706, Florida Statutes, tasks the Advisory Committee with the responsibility of advising our staff on relay matters. Our staff was advised in 2003, by the committee, that some relay operators, also known as communications assistants (CA), had very heavy accents which impeded relay conversations. During the meeting, our staff suggested to Sprint that it conduct test calls to determine which CAs had accents. However, Sprint was reluctant to conduct the tests and requested that it be provided with the CA's identification number when a user experienced an accent problem and it would take corrective action. Our staff continued to encourage Sprint to initiate an adequate number of test calls for several months. Because of Sprint's reluctance to conduct test calls, our staff began testing in September, 2003. Our staff's test calls evaluated the CAs for not only accents or understandability, but for courteous behavior, answer time, and typing speed.

Our staff provided CA numbers to Sprint in regard to the accent problem and the problem appears to have been corrected to-date. However, Sprint was unable to achieve an acceptable level of compliance with the required typing speed.

The typing speed standard was set by the Federal Communications Commission (FCC). The FCC certifies each state relay system and Chapter 427, Florida Statutes, mandates that this Commission follow the pertinent FCC rules. As part of the certification process, certain minimum standards must be incorporated into the relay system. One such standard is typing speed as defined in 47 C.F.R. §64.604. This requirement, along with others, was modified by the FCC in 2000 and was adopted by this Commission as amendment one to the last contract. FTRI paid a lump sum of \$1,773,000 to Sprint for the upgrades necessary to comply with the new FCC minimum requirements, which included the increase of typing speed from 55 wpm to 60 wpm, for the duration of the last contract. The FCC language pertaining to typing speed reads as follows:

§64.604 Mandatory minimum standards

(a)(iii) CAs must provide a typing speed of a minimum of 60 words per minute. Technological aids may be used to reach the required typing speed. Providers must give oral-to-type tests of CA speed.

Slow operator typing is frustrating to users, which causes premature hang-ups leading to higher costs for consumers due to the added length of the calls and the increase in multiple calls.

Adhering to the 60 wpm requirement will reduce the total length of calls saving the state money, reduce the number of hang-ups, and lead to a more functionally equivalent service such as hearing persons experience.

In Order FCC 03-112, released June 17, 2003, the FCC addressed its expectation that new CAs have the capability of typing 60 wpm by stating:

Certainly a new hire without any CA experience is not capable of performing the job without some training, and our requirement does not obviate a training period for CAs. We find, however, that it is reasonable to expect a trained typist, with or without technological assistance, to meet the 60 wpm minimum. We clarify that a CA must test at 60 wpm prior to the time he or she first begins facilitating TRS calls for the public. We conclude that the rule requiring CAs to provide a typing speed of 60 wpm is reasonable and necessary under the functional equivalent mandate. (§84-85)

Sprint provided its results of its oral-to-type tests for the period of September 2003, through March 2004, and reported 100% achievement of 60 wpm. This was considerably different from the results our staff observed during live test calls. In March 2004, Sprint began testing live relay calls using prepared scripts. Sprint reported that only 80% of the operators met 60 wpm that month. Our staff's test calls for the same month reflected that 60% of the operators typed at 60 wpm or higher. Each month thereafter, Sprint reported better results than our staff's testing. Our staff met with Sprint several times to ensure both parties were testing in the same manner. Our staff also provided Sprint with scripts that staff was using and Sprint's test results continued to be better than our staff's. Sprint and our staff were not able to conclusively determine why the test results were so different. Therefore, Sprint suggested that an independent third party should conduct test calls. By this time the contract was in its final stage and the RFP was in the process of being released so independent third party testing was not pursued.

In early 2005, Sprint began to direct Florida relay calls to its fastest typists (many of which were located out of state at other Sprint call centers) to improve the service. The results improved.

To ensure that the new contract clearly defined the typing speed standard, the Commission incorporated the following language in the Request for Proposals (RFP).

Section B-7(c) A minimum typing speed of 60 words per minute on live relay calls. Technological aids may be used to reach the required typing speed.

Upon award of the new contract, Sprint and our staff met in February 2005. Sprint assured staff that the addition of the new relay center located in Jacksonville would resolve the typing speed problem. In addition to the new relay center, Sprint stated that it would hire a third party testing firm to comply with the testing requirements of 150 live relay calls per month as required by Section B-7(c) of the RFP. Sprint hired the Paisley Group, Ltd. for the independent testing. The Paisley Group provided the first report of its testing for June 2005. It reported that it completed 67 test calls through the Miami call center. On 11 of the calls the operator failed to

type a minimum of 60 wpm. It also reported that it completed 83 test calls through the new Jacksonville center. On 39 of the calls the operators failed to meet the typing speed. This is a 16.4% and 47% failure rate respectively. The Paisley Group provided its report for test calls made in July, 2005 which showed some improvement in the Miami center which measured 92.4%. The Jacksonville center improved to 72.6%.

Current Contract Regarding Typing Speed

This Commission is not collecting liquidated damages for the previous contract period. The previous discussion is provided to demonstrate Sprint's awareness of the failure, the length of time our staff has worked with Sprint seeking corrective action, and the continued failure to meet the requirement of Section B-7(c) of the new contract that started June 1, 2005. Attachment C is a copy of the liquidated damages section from the RFP.

Upon consideration, we find it appropriate to impose liquidated damages in the amount of \$100,000. Our staff shall continue to monitor Sprint's compliance of all services required by the contract and bring additional recommendations before us when appropriate. If these problems are not deemed to be sufficiently corrected, this Commission reserves the right to revisit the suggestion by our staff that an additional amount of \$205,000 is warranted. At this point we find \$100,000 is a more appropriate amount, but will consider additional fines if future circumstances demonstrate they are necessary. Accordingly, we find it appropriate to require Sprint to pay liquidated damages by crediting the Florida Telecommunications Relay, Inc. (FTRI) account \$100,000 for failure to meet the typing speed requirement of Section B-7(c) of its contract for the period of June 1, 2005, through July 31, 2005.

Advisory Committee Appointee

Section 427.706(2)(e), Florida Statutes, requires two representatives of telecommunications companies, one representing a local exchange telecommunications company and one representing an interexchange telecommunications company, recommended by the Florida Telecommunications Industry Association (FTIA) to be on the Advisory Committee. Mr. Chris McDonald served as a committee member representing AT&T which is an interexchange telecommunications company. Mr. McDonald is no longer employed by an interexchange telecommunications company and FTIA has recommended Mr. Brian Musselwhite as his replacement.

We approve Mr. Musselwhite as Mr. Chris McDonald's replacement on the TASA Advisory Committee effective immediately.

Therefore it is,

ORDERED by the Florida Public Service Commission that Sprint shall pay liquidated damages by crediting the Florida Telecommunications Relay, Inc. (FTRI) account \$100,000 for failure to meet the typing speed requirement of Section B-7(c) of its contract for the period of June 1, 2005, through July 31, 2005. It is further

ORDERED that Mr. Musselwhite shall replace Mr. Chris McDonald on the TASA Advisory Committee effective immediately. It is further

ORDERED that this docket should remain open during the contract period with Sprint as the relay provider.

By ORDER of the Florida Public Service Commission this 13th day of October, 2005.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By:



Kay Flynn, Chief
Bureau of Records

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.