

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING
AND
AN 10:45
RECEIVED-FPSC

DATE: FEBRUARY 8, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF COMMUNICATIONS (KING, ^{ru}TUDOR) ^{RNT}
 DIVISION OF APPEALS (BROWN) ^{MLB}
 DIVISION OF POLICY ANALYSIS & INTERGOVERNMENTAL LIAISON
 (MILLER) ^{CM}

RE: DOCKET NO. 991222-TP - REQUEST FOR SUBMISSION OF PROPOSALS FOR RELAY SERVICE, BEGINNING IN JUNE 2000, FOR THE HEARING AND SPEECH IMPAIRED, AND OTHER IMPLEMENTATION MATTERS IN COMPLIANCE WITH THE FLORIDA TELECOMMUNICATIONS ACCESS SYSTEM ACT OF 1991.

AGENDA: 02/15/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: THE CURRENT CONTRACT WITH MCI EXPIRES ON MAY 31, 2000 and AT&T HAS PROTESTED THE COMMISSION'S CONTRACT AWARD TO SPRINT. THEREFORE, A COMMISSION DECISION IS NEEDED TO SELECT AN INTERIM RELAY SERVICE PROVIDER IN ORDER TO PREVENT A LAPSE IN SERVICE.

SPECIAL INSTRUCTIONS: PLEASE PLACE NEAR THE BEGINNING OF THE AGENDA OR SCHEDULE A TIME CERTAIN TO REDUCE INTERPRETER COSTS. ALSO, THIS DOCKET SHOULD BE HEARD AFTER DOCKET 960598-TP.

FILE NAME AND LOCATION: S:\PSC\CMU\WP\991222B.RCM

DOCUMENT NUMBER-DATE
01700 FEB-88
FPSC-RECORDS/REPORTING

CASE BACKGROUND

The Commission's contract with MCI for the provision of relay service expires on May 31, 2000. At its January 11, 2000, Special Agenda the Commission voted to issue a letter of intent to award the next relay contract, beginning June 1, 2000, to Sprint; however, AT&T has filed a formal protest of that award. In accordance with the requirements of Section 120.57(3), Florida Statutes, the contract award process between Sprint and the Florida Public Service Commission (FPSC) has stopped. Therefore, the FPSC currently does not have a contract with any provider for the provision of relay service after May 31, 2000.

The Telecommunications Access System Act of 1991, found in Chapter 427, Part II of the Florida Statutes, requires that the FPSC shall establish, implement, promote, and oversee the administration of a statewide telecommunications relay service for the benefit of Floridians with hearing or speech impairments and those who communicate with them. Because of this statutory provision, as well as provisions in federal law (including the Americans with Disabilities Act), and because interruption in the provision of relay service presents an immediate and serious danger to the safety and welfare of Florida's hearing and speech impaired community, the FPSC must secure the services of a relay service provider so that the interim provider will have sufficient time to be able to provide service prior to the expiration of the Commission's contract with MCI. Accordingly, staff believes the following recommendation to award an interim contract to a relay provider is appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Florida Public Service Commission contract, beginning June 1, 2000, on an interim basis, for the provision of relay service?

RECOMMENDATION: Yes, the Executive Director should finalize and sign a contract with Sprint, as described further below, to provide the Florida Relay Service (FRS) on an interim basis. (TUDOR)

STAFF ANALYSIS: The Commission's current contract with MCI for the provision of relay service expires on May 31, 2000. At its January 11, 2000, Special Agenda the Commission voted to issue a letter of intent to award the next relay contract to Sprint; however, AT&T has filed a formal protest of that award. Because of AT&T's protest, the process between Sprint and the FPSC to finalize a three year contract has stopped. Section 120.57 (3)(c), Florida Statutes, provides:

Upon receipt of the formal written protest which has been timely filed, the agency shall stop the bid solicitation process or the contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health safety, safety, or welfare.

Therefore, the FPSC currently does not have a contract with any relay provider for the provision of relay service after May 31, 2000.

Interruption in relay service while AT&T's protest is resolved is unacceptable. Florida's hearing and speech impaired community, and those who communicate with them, depend on FRS. Loss of the service presents a clear, immediate danger to the public safety and welfare. Under the law the FPSC must insure uninterrupted relay service. The FPSC must move forward to secure a relay service provider in spite of any bid award protest. An interim contract should generally include the current request for proposals

provisions with modifications in areas such as price, duration and place to reflect the temporary nature of the service.

Because a relay service provider must begin providing service in less than 4 months, staff believes that an interim contract should be awarded to Sprint under the Emergency Procurement rule found in Chapter 25-25, Florida Administrative Code (F.A.C.). The Emergency Procurement rule allows for award of a contract without a competitive bidding process when an emergency exists. Specifically, Rule 25-25.011, Florida Administrative Code, states:

A purchase order or contract may be awarded for commodities or services without competitive bidding when the Agency Head determines and certifies in writing under oath, that an emergency exists which constitutes a threat to the public health, safety, or welfare, or when the delay incident to competitive bidding may be detrimental to the interests of the Commission. Emergency procurement shall be accomplished with such competition as may be prudent under the circumstances. (emphasis added)

It is staff's position that failure to secure the services of a relay provider, as soon as possible, would constitute a threat to the public health, safety, or welfare. Floridians have had relay service available to them for almost 10 years and have become dependent on that service for not only business and personal calls, but also for emergency situations. Furthermore, staff believes that because our current contract with MCI expires in approximately sixteen weeks, there is not time to go through the competitive bidding process. While it appears that under these circumstances the Commission could continue the permanent contract award process under section 120.57(3)(c), Florida Statutes, it is unclear that Sprint would be willing to enter a permanent contract with the protest pending. An interim contract under the Commission's emergency procurement rule is a feasible and reasonably practical alternative to proceeding with the permanent award.

INTERIM CONTRACT

One possible provider during the interim period would be the current relay provider, MCI. MCI was contacted concerning this possibility and has explored this option. However, as of the date of this recommendation, MCI had been unable to provide a statement of its interest, capability or terms under which it would provide the service during an interim contract. If MCI does file a proposal for interim service before the agenda, staff will summarize it at the agenda.

AT&T has filed (Feb. 4, 2000) a general proposal to provide service during the interim period (Attachment 1). AT&T has proposed to provide the interim service in the same way and at the same price as it had proposed to provide service under its permanent proposal, with one exception. The RFP called for 80% of Florida calls to be handled from a relay center located in Florida and in its interim proposal, AT&T proposes to handle those calls from its out of state centers.

Subsequent to receiving AT&T's February 4, 2000 letter, staff inquired about AT&T's interim proposal in the area of liquidated damages. In its response dated February 7, 2000 (Attachment 2), AT&T indicated that for its interim proposal it would comply with the same liquidated damages provisions as is contained in MCI's current contract (Attachment 3). (The only differences in the current MCI provision and the 1999 RFP are that the provision relating to answer time violations is calculated on a per month rather than a per day basis and MCI included a force majeure provision and a provision that it would not be held liable if the contract violation was due to an act of the State.)

Thus, as a part of its interim proposal, AT&T will agree to having no cap on its liquidated damages and will not object to item d. dealing with other liquidated damages. These are the items to which AT&T did not agree in its response to the RFP when it filed its proposal.

Sprint has also filed an interim proposal as a confidential document. Since the document is confidential, it is not analyzed in this recommendation. However, staff believes that the proposal

is a reasonable proposal for the provision of service during a short interim period.

Importantly, if Sprint is awarded an interim contract, it will be ready to provide service under a permanent contract immediately after the resolution of the protest and any subsequent court appeal. It appears that the bid protest cycle will result in the Commission making a decision on the protest in approximately May or June. Since the current contract expires on May 31, 2000, it is quite possible that a permanent contract could be awarded and service provided under that permanent contract in June, just as the Commission intended when it voted on January 11, 2000 when it indicated its intent to award the permanent contract to Sprint.

If the interim contract is awarded to a provider other than Sprint and if the Commission continues with its initial decision to select Sprint as the permanent provider after the protest is resolved, the permanent provider Sprint will need about four to six months after May or June to prepare during the second half of the year 2000 to provide service and, in the meantime, the interim provider would be providing the service during Sprint's preparation time.

The attached table (Attachment 4) depicts the timeframes for resolving the protest (assuming no succeeding court challenge) and implementing the permanent service under the two scenarios of: (1) awarding the interim contract to Sprint and (2) awarding the interim contract to a provider other than Sprint.

Reasons for selecting Sprint as an interim provider are:

1. Sprint provided the overall best permanent proposal to provide relay service.
2. Sprint was selected by the Commission to provide Florida's relay service and that was a correct decision.
3. The Commission staff believes it is likely that the Commission's January 11, 2000 decision to award the permanent contract to Sprint will prevail after the protest.

4. The service should begin to be provided as soon as possible after the protest is resolved by the permanent provider. The only way that can happen is for Sprint to be awarded the interim contract so that it can begin preparing to provide service on or as close as possible to June 1, 2000.
5. Continuous relay service will be provided to Floridians after the current contract expires on May 31, 2000.

Reasons for selecting AT&T as an interim provider are:

1. The cost for relay is lower during the protest period.
2. There can still be a transition period from AT&T to Sprint if/when the protest is resolved in Sprint's favor.
3. Continuous relay service will be provided to Floridians after the current contract expires on May 31, 2000.

After evaluating possible alternatives, staff believes that an interim contract for up to one year for the provision of relay service, as described in Sprint's filing, should be awarded to Sprint. This will allow the quickest transition to the most likely permanent provider after the protest is resolved while best protecting Floridians.

DOCKET NO. 991222-TP
DATE: February 8, 2000

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. (BROWN)

STAFF ANALYSIS: This docket should remain open for the life of the contract.



295 N. Maple Avenue
Basking Ridge, NJ 07920

February 4, 2000

Blanca Bayo
Florida Public Service Commission
Division of Records and Reporting
2450 Shumard Oaks, Blvd.
Tallahassee, Florida 32399-0850

Re: Emergency Procurement Service for Docket No. 991222-TP

Dear Ms. Bayo:

AT&T Corp. received notice, on Wednesday, February 2, 2000, that the Florida Public Service Commission ("the PSC") intends to make an emergency procurement of Telecommunications Relay Services (TRS) for customers with hearing and speech impairments. Florida Administrative Code Rule 25-25.011, which governs emergency procurements by the PSC under section 350.0603, Florida Statutes, requires that the PSC accomplish such emergency procurements "with such competition as may be prudent under the circumstances." In order to assist the PSC in meeting the standard, AT&T submits the following proposal for the provision of the emergency services being sought.

AT&T is pleased to offer its premier Telecommunications Relay Service to the citizens of the State of Florida. AT&T stands ready to bring the highest rated TRS, at the best price, to all Floridians. In the recent Florida bid technical evaluations, AT&T's bid received the highest technical score. And, AT&T's bid offered the lowest price per minute by several cents per minute, thereby potentially saving the citizens of Florida more than a million dollars over the anticipated three year contract. In general, AT&T offers to provide Telecommunications Relay Service as set forth in AT&T's bid response, in compliance with the PSC's recent RFP issued in Docket No. 991222-TP. AT&T does not know the exact parameters of the emergency services the PSC wishes to secure, but understands that the PSC wishes to ensure continuation of Telecommunications Relay



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Service upon the expiration of the current contract. AT&T would be happy to confer with the PSC regarding the details of any emergency service needs.

AT&T is passionate in its desire to bring its TRS to the citizens of Florida. We encourage the Commission to recognize the bid evaluators' scoring of the recent RFP which determined that AT&T TRS is truly the best the industry has to offer, and select AT&T as its TRS provider.

The heart of this offer to provide emergency service is AT&T's continuing commitment to its RFP response. The only change in our proposal is to dynamically route emergency service calls through AT&T's existing nine (9) relay centers. However, upon a decision to award us an ongoing service contract, AT&T would – as promised in its RFP response – aggressively pursue implementing a new state-of-the-art, *in-state Florida Relay Center*.

Selecting AT&T will provide Florida with a distinct technological advantage at the low price of \$.69 per minute. The technological advantage results from the use of the Relay 2000SM Platform, which is a multi-tiered series of sophisticated network components that include up-front automation, call control, dynamic call routing, enhanced protocols including Turbo CodeTM (TM of Ultratec, Inc.) and 711 dialing readiness. AT&T's up-front automation feature provides the fastest call set up in the industry which connects callers through relay to their desired number within an average of 5 seconds. The availability of Turbo CodeTM allows relay calls to transmit quicker and more efficiently. Additionally, with AT&T's 711 dialing readiness, we're ready to provide the relay users of Florida with three digit access instead of relying upon 800 numbers. While many of our competitors charge extra for these features, AT&T includes these and many more, at no additional cost. For example, Sprint's response to the Florida RFP charged an additional one cent (\$.01) per relay minute increase for Turbo CodeTM.



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In fact, the strength of AT&T's network makes us confident that AT&T is the best provider for your need. Because AT&T itself is the primary facilitator of the lines, we are better equipped to handle changes, emergencies and/or system-wide improvements. You see, we own our own product. We do not rely on contractors to carry our signal. Not one of our minutes is outsourced. Not even for a mile.

The state-of-the-art Florida Relay Center will be staffed with dedicated and continually trained employees who share our confidence in the AT&T product. AT&T looks forward to an opportunity to manage a Florida Relay Center, patterned after our other successful relay service structures. The Florida Relay Center would house technical experts, create new jobs, and change lives.

We think this is what the evaluators saw when they reviewed our bid response and responded by giving AT&T the highest marks on the technical proposal. We hope you will give us a chance to prove we are the best. It is our fervent hope you will select AT&T to provide the citizens of Florida with the best TRS in the country!

My name is Sue Decker. I am the General Manager of AT&T's Accessible Communications Services Division and I submit this proposal on behalf of AT&T. My own hearing impairment drives my passionate desire to meet the needs of the Deaf community and my commitment to providing excellent Telecommunications Relay Services. Nothing would make me happier than to bring AT&T TRS to Florida. Please feel free to contact me to discuss this proposal in more detail. I can be reached on (908) 221-8144 or email sdecker@att.com.

A handwritten signature in cursive script that reads "Sue Decker".

D. Sue Decker
ACS General Manager

Cc: Richard Tudor



295 N. Maple Avenue
Basking Ridge, NJ 07920

February 7, 2000

Mr. Richard Tudor
Florida Public Service Commission
2450 Shumard Oaks, Blvd.
Tallahassee, Florida 32399-0850

Re: Emergency Procurement Service for Docket No. 991222-TP - Response to R. Tudor Inquiry

Dear Mr. Tudor:

In response to your email inquiry of February 7, 2000, AT&T responds as follows. I understand you to be asking about AT&T's response to section B.47 of the RFP, and inquiring whether you should presume "[AT&T's] interim proposal regarding liquidated damages to be the same as [AT&T's] liquidated damages proposal in the permanent proposal". Please do not presume that this is the case. To date, much to AT&T's concern and disappointment, there has been great confusion about AT&T's response to the liquidated damage provision. AT&T attempted to clarify such misunderstandings in its January 6, 2000 letter, and wishes its interim and permanent RFP proposals to be considered in conjunction with AT&T's clarification efforts in its January letter.

In addition, in making its interim proposal, AT&T submits the following further clarifications.

First, AT&T's utmost priority is to understand any different needs or contract specifications the Commission might design in seeking to procure emergency procurement services. If the Commission has any interim contract specifications, AT&T would like an opportunity to consider such and respond. AT&T would quickly undertake to consider its ability to meet any such needs. For example, if the Commission has different liquidated damages specifications, AT&T requests to be informed of the same so that it might have a chance to respond affirmatively. AT&T is eager for the opportunity to serve the needs of the Commission and the citizens of Florida, and we hope to bring you the best Telecommunications Relay Service.

Second, in the absence of any further interim specifications regarding liquidated damages, AT&T alternatively offers to amend section B.47 of its RFP reply to reflect AT&T's willingness to agree to the same liquidated damages provisions as MCI agreed to in its current contract with the Commission. In place of its own responses, AT&T would adopt MCI's compliant responses to sections A.22 on pages 11-12 and B.44 on pages 93-94 of the 1996 RFP in their entirety, thereby leaving undisturbed the contractual advantages currently enjoyed by the Commission and Florida consumers.

I hope this answers your questions. Please do not hesitate to contact me with any contract specifications for interim/emergency service, or with any further questions you may have. It is AT&T's goal to provide service to meet the needs of Florida's relay customers. Thank you.

Sincerely,

D. Sue Decker
Ph: (908) 221-8144
Email: sdecker@att.com

Cc: Blanco Bayo (to be filed by hand delivery on February 8, 2000)

44. Liquidated Damages for Failure to Initiate Services on Time or to Provide Contracted Services for the Life of the Contract.

Implementation of the Florida Relay Service in a timely matter is essential. Failure by the Provider to implement the service by June 1, 1997 shall be considered a significant and material breach of the Provider's commitment. For every day the service is delayed, the Provider shall pay to the Administrator, for deposit in its operating fund, the sum of \$25,000 per day.

Liquidated damages shall accrue in amounts up to the following amounts per day of violation:

- a. For failure to meet answer time, blockage rate or transmission level requirement - \$5,000
- b. For failure to meet complaint resolution requirement - \$1,000
- c. For failure to provide reports - \$500
- d. For failure to provide contracted services for the life of the contract, the FPSC reserves the right to require the payment by the Provider, of liquidated damages

in an amount commensurate with the duration and extent of the system deficiencies.

Any liquidated damages may be paid by means of the Administrator deducting the amount of the liquidated damage from a monthly payment to the provider. Such action shall only occur upon order of the FPSC.

MCI understands and will comply, with the following understanding:

Liquidated damages set forth in this provision shall not be applicable when the failure to implement the service is due to Force Majeure events as described below in MCI's Response to this RFP or is a result of an act or omission on the part of the State of Florida, the FPSC, their employees or agents.

RELAY SERVICE TIMELINE

ASSUMING SELECTION OF SPRINT AS PERMANENT FPSC PROVIDER STANDS

	1/00	2/00	3/00	4/00	5/00	6/00	7/00	8/00	9/00	10/00	11/00	12/00	1/01
PSC decision to award contract to Sprint													
AT&T Protest	Protest resolved by FPSC												
Sprint offer to provide interim service during protest period													
AT&T offer to provide interim service during protest period.													
PSC Decision on an interim contract.													
	As interim contractor, <u>Sprint</u> begins preparations to provide service on an interim basis.					Sprint begins providing service on schedule - 6/1/00 as decided at 1/11/00 agenda							
	OR												
	As interim contractor, a provider <u>other than Sprint</u> begins preparations to provide service on an interim basis.					Even though protest is resolved, provider other than Sprint begins providing interim service while Sprint begins preparing to provide service on a permanent basis.					Sprint begins providing service six months later than originally voted at 1/11/00 Agenda.		