

M E M O R A N D U M

January 5, 1998

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FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (COX) *WLC MCB*

RE: DOCKET NO. 971241-TL - PETITION OF SPRINT-FLORIDA,
INCORPORATED FOR WAIVER OF CERTAIN REQUIREMENTS OF RULE
25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES;
TELECOMMUNICATIONS COMPANIES.

75C-98-0011-FDF-TL

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER DENYING
WAIVER PETITION with attachments, to be issued in the above
referenced docket. (Number of pages in order - 8)

WPC/bm
Attachment
cc: Division of Administration (Lake)
I: 971241.wpc

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Sprint-
Florida, Incorporated for waiver
of certain requirements of Rule
25-4.0161, F.A.C., Regulatory
Assessment Fees;
Telecommunications Companies.

DOCKET NO. 971241-TL
ORDER NO. PSC-98-0011-FOF-TL
ISSUED: January 5, 1998

The following Commissioners participated in the disposition of
this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING WAIVER PETITION

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

Pursuant to Section 364.336, Florida Statutes, and Commission
Rule 25-4.0161, Florida Administrative Code, Sprint-Florida,
Incorporated's (Sprint) regulatory assessment fee (RAF) return and
payment for the period of January 1, 1997, through June 30, 1997,
was due on July 30, 1997. Sprint's filing arrived at the
Commission by Certified Mail on August 4, 1997. The postmark on
this RAF filing was July 31, 1997, one day after the statutory
deadline.

On August 8, 1997, our Bureau of Fiscal Services (Fiscal
Services) sent Sprint a letter with a copy of the postmarked

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envelope and the RAF filing indicating a July 31, 1997, postmark and an August 4, 1997, deposit date. The letter calculated penalty and interest owed by Sprint in the amount of \$39,426.40. On August 20, 1997, Sprint filed a letter with Fiscal Services indicating the company's intent to challenge the assessment of the penalty or to seek a waiver or other relief.

On September 24, 1997, Sprint filed a petition for a waiver from the requirements of Rule 25-4.0161 (2) and (3), Florida Administrative Code, so that Sprint's RAF filing would be deemed timely. In the alternative, Sprint requested that the Commission waive the requirements of Rule 4.0161 (7), Florida Administration Code, so that Sprint Florida would be allowed a retroactive extension of 30 days from the July 30 due date within which to deliver its RAF to the Commission.

The Notice of Petition for Waiver was submitted to the Secretary of State for publication in the Florida Administrative Weekly October 8, 1997. The comment period ended October 31, 1997. No comments were submitted.

II. DISCUSSION

A. Waiver of Rule 25-4.0161 (2) and (3)

Rule 25-24.0161 (2) and (3), Florida Administrative Code, provides:

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

In its primary waiver request, Sprint seeks a waiver of what Sprint terms the "implied requirement" of this rule that the RAF filing be to an actual employee of the United States Postal Service. Sprint believes that it has substantially complied with the underlying statute's purpose that RAFs be filed in a timely fashion by the delivery of its RAF filing to its own internal mailroom employee by the due date. Furthermore, Sprint contends that the Commission's August 4, 1997, receipt of the RAF filing was the same time it would have been received had it been mailed on July 30, 1997, the statutory deadline.

Sprint asserts that it has met the burden of Section 120.542, Florida Statutes, for the granting of a waiver. Sprint believes that it has complied with the requirement of the underlying statute that RAFs be paid within 30 days following each six-month period by the delivery method that it exercised. Sprint also alleges that levying of the statutory penalty and interest of \$39,426.40 would result in economic hardship for Sprint.

Upon consideration, we hereby deny Sprint's primary request for waiver. Sprint has not met the requirements of Section 120.542, Florida Statutes, for granting a waiver and provides no reasonable factual basis for its request. With regard to Section 120.542, Sprint must demonstrate that the purpose of the underlying statute will be met if we were to grant the waiver, and that continued enforcement of the rule's requirements will result in substantial hardship for Sprint or violate principles of fairness.

We do not believe that granting the waiver would comply with the purpose of the underlying statute that RAFs be filed in a timely fashion. Sprint's RAF filing was filed one day after the statutory deadline. In its petition, the company acknowledges that

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the petition was not timely filed because its internal postage meter used for postmarking was out of postage and the importance of a timely postmark was not adequately communicated when the letter was transferred to another Sprint mailroom. Nevertheless, Sprint maintains that the combination of the delivery of the filing to its own mailroom employee, who had the ability to post mark the filing, and the alleged fact that the filing was received at the same time it would have been received if postmarked in a timely fashion constitutes substantial compliance with our rule's, and thereby the statute's, requirement that the filing be postmarked by the U.S. Postal Service by the due date.

We do not agree with this analysis regarding substantial compliance by delivery to the Sprint mailroom worker. Even if we were to agree with this analysis, the letter was not postmarked by the due date as the rule requires and was therefore not filed in a timely fashion. Sprint offers no reasonable excuse that would merit a waiver of the rule's post-marking requirement.

Sprint cites to previous Commission decisions involving City Gas Company of Florida and BellSouth Telecommunications, Inc. foregoing the assessment of statutory penalties and interest for late RAF filings as authority for its request for waiver. Each of these decisions were completely different factual situations and are not sufficient precedent to forgive payment of penalty and interest charges given the facts presented in this situation. Sprint's failure to communicate the importance of filing its regulatory assessment fees in a timely fashion to its employees is simply not a sufficient reason to waive the rule's and the statute's requirement that regulatory assessment fees be timely filed.

Finally, Sprint offers no justification for its contention that the \$39,426.40 statutory penalty would result in economic hardship for Sprint or violate principles of fairness. Therefore, Sprint has failed to meet the waiver requirements of Section 120.542, Florida Statutes.

B. Waiver of Rule 25-4.0161 (7)

Rule 25-4.0161 (7), Florida Administrative Code, states in pertinent part:

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

a) The request for extension must be written 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.

If the primary waiver request is denied, Sprint alternatively requests that we waive our Rule 25-4.0161 (7)(b)'s requirements that a request of a 30 day extension of time to make a RAF filing must be received by our Division of Administration at least two weeks prior to the due date of the RAF filing. If we were to grant this waiver and grant the request for extension of time, the relief sought would be a lesser statutory charge of \$9,856.60. Sprint contends that under Section 350.113(5), Florida Statutes, we have authority to extend the deadline for making the RAF filing by 30 days for good cause shown. Sprint also states that this September 24, 1997, pleading constitutes its written request for the extension of time and statement of good cause for purposes of the rule and statute.

Sprint's primary argument for a waiver is that its waiver request complies with the waiver requirements of Section 120.542, Florida Statutes, because the underlying statute, Section 350.113(5), Florida Statutes, does not require that a request for extension of time to make a RAF filing be received in advance of the due date. Section 350.113(5), Florida Statutes, states as follows:

(5) The commission, for good cause shown by written request, may extend for a period not to exceed 30 days the time for paying any fee or for filing any report related thereto. If an extension is granted, there shall be collected a charge of .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 fee for an extension of more than 15 days. No other penalty or interest shall be collected if in lieu of paying the interest charge imposed this subsection, a regulated company may remit an estimated amount of fee by the 30th day following a 6-month period. Any regulated company which remits an estimated payment by such date shall be granted a 30-day extension period in which to file and remit the actual fee due without the interest charge provided hereunder being imposed, unless the estimated fee payment remitted is less than 90 percent of the actual fee due for such period.

Sprint argues that we may grant the request if Sprint has demonstrated good cause. If this request were granted, Sprint would then pay the appropriate statutory fee of the charge of 1.5% for the extension of time.

Upon consideration, we do not agree that Sprint has met the waiver requirements of Section 120.542, Florida Statutes. Foremost, we do not believe that a request for an extension of time made 56 days after the statutory due date constitutes compliance with the underlying statute's requirement that a company can make a request for an extension of time. At a minimum, a request for extension of time should be filed by the due date. Furthermore, the rule requires that the request be two weeks in advance of the due date. Under the rule's requirement, Sprint's request was filed 70 days late. Sprint has failed to allege any substantial hardship or violation of principles of fairness that would result if this rule were enforced in this situation. Accordingly, we hereby deny Sprint's alternative waiver request, which amounts to a request for a retroactive extension of time of 56 days to file its regulatory assessment fees.

III. Conclusion

In summary, we deny Sprint's petition for waiver of Rule 25-4.0161 (2) and (3) or, in the alternative, waiver of Rule 25-4.0161 (7), Florida Administrative Code. Accordingly, Sprint shall pay the appropriate statutory penalty and interest in the amount of \$39,426.40.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sprint-Florida, Incorporated's petition for waiver of Rule 25-4.0161 (2) and (3), Florida Administrative Code, or, in the alternative,

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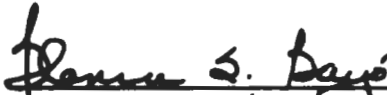
waiver of Rule 25-4.0161 (7), Florida Administrative Code, is denied. It is further

ORDERED that Sprint shall pay the appropriate statutory penalty and interest in the amount of \$39,426.40. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final and upon the Commission's receipt of Sprint-Florida, Incorporated's payment of \$39,426.40, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 5th day of January, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

WPC

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 26, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the effective date 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.