

M E M O R A N D U M

January 25, 1999

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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (COX) *WPC*

RE: DOCKET NO. 980128-TL - In re: Consideration of Sprint-Florida, Incorporated's failure to provide additional telephone service to Upper Captiva Island, as required by Sections 364.025(1) and 364.15, Florida Statutes.

99-0158-FDF-TL

Attached is an **Notice of Proposed Agency Action Order Closing Docket** to be issued in the above-referenced docket. (Number of pages in order - 7)

WPC/slh
Attachment
cc: Division of Communications
I:980128.wpc

See 6

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of Sprint-Florida, Incorporated's failure to provide additional telephone service to Upper Captiva Island, as required by Sections 364.025(1) and 364.15, Florida Statutes.

DOCKET NO. 980128-TL
ORDER NO. PSC-99-0158-FOF-TL
ISSUED: January 25, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER CLOSING DOCKET

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.

Background

Upper Captiva Island, an unbridged island just north of Captiva Island, is about four miles long, totaling about 700 acres, two-thirds of which is state-owned wilderness. About 250 private residences occupy the northern one-third of the island.

In September 1997, the Upper Captiva Civic Association (UCCA) asked us to investigate Sprint-Florida, Incorporated's (Sprint) provision of telephone service to Upper Captiva Island. Also, in October 1997, the UCCA forwarded a copy of a resident's letter where a Sprint Business Office representative told the resident

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that "Sprint's facilities were at load capacity, and that there would be no new telephone service extended to island residents until a tower was built . . ." In response, our staff wrote to Sprint in December 1997 to investigate Sprint's ability to provide additional service (new service beyond the service already provided) to island residents. After Sprint reported both cable maintenance and capacity problems, we opened this investigatory docket in January 1998.

Sprint provides service to Upper Captiva Island from Captiva Island via 36,000 feet of 200-pair, submarine and buried, copper cable. Sprint serves approximately 285 lines, providing 160 lines over physical copper pairs and 125 lines over a B-281 analog carrier system. It cannot provide feeder relief via the existing facilities due to cable design, cable maintenance, obsolete carrier equipment, and permitting reasons.

Beginning in 1992, Sprint's planners, after studying both fiber and radio relief solutions, decided to provide radio relief for economic reasons but were unable to acquire the required easements. The UCCA and the Fire District have strongly opposed Sprint's plans to build a radio tower on the island. Recently, after failing to secure a state park lands easement, Sprint acquired a private property easement and began Spread Spectrum Radio construction that was to be completed by the end of 1998.

Discussion

Section 364.025 (1), Florida Statutes, states:

For a period of 4 years after January 1, 1996, each local exchange telecommunications company shall be required to furnish basic local exchange service within a reasonable time period to any person requesting such service within the company's service territory.

Upon review, we will take no further action against Sprint for its apparent failure to comply with Section 364.025(1), Florida Statutes, because of the unusual circumstances Sprint faced in trying to provide additional feeder facilities to the island, and because these unusual circumstances prevented Sprint from providing additional feeder facilities to the island in a reasonable time period. These unusual circumstances are set forth below.

Sprint provides service to the island via 36,000 feet of 200-pair copper cable from Captiva Island that includes submarine cable under the Intracoastal Waterway and buried cable along the island's west coast through state park lands to the northern, populated section. There are two inaccessible, underwater load points on the submarine feeder cable to the island that Sprint's technicians cannot repair or remove for lack of slack in the cable; this makes feeder relief via the existing cable impossible because new digital carrier systems require removal of the load points.

Sprint cannot provide additional service by enlarging the current analog system because it is obsolete, its backplane is defective and cannot be repaired, and replacement parts are no longer available. Furthermore, the buried cable is deteriorating and needs to be removed. Sprint no longer has a permit to pass through state park lands that have since been declared "environmentally sensitive" by the Department of Environmental Resources, and needs to remove or abandon the cable when it provides feeder relief to the island. On three separate occasions from 1991 to 1993, Sprint replaced more than 2,100 feet of buried cable due to tree damage, exposure, and washout from tropical storms. These replacement cables are exposed, encased in conduit on the ground.

In early 1992, unable to enlarge the analog carrier system for physical and replacement parts reasons, Sprint studied feeder relief solutions via fiber cable and radio systems. After acquiring easements for fiber relief in March 1994, Sprint determined the fiber relief costs (approximately \$1,400,000) to be prohibitive and concentrated on radio relief solutions. From early 1992 to November 1998, when it acquired a private property lease, Sprint sought to acquire the easements necessary to construct feeder relief to the island, meeting with temporary success and several failures. From March 1994 to March 1996, Sprint pursued permits from the following organizations: the Department of Environmental Protection, North Captiva Air, Inc., the Federal Communications Commission, and Lee County. After acquiring an easement for a radio tower on Fire District property in March 1995, island residents opposed the 96-foot tower height. When Sprint started construction in March 1996, residents halted construction.

Before 1997, Sprint provided new service to Upper Captiva Island by spare physical pairs, by disconnects, and by enlarging the analog carrier system. When Sprint recognized that its feeder cable to Upper Captiva Island was at 100 per cent capacity in

February 1997, it alerted its business office service representatives that it might not be able to provide new primary service until feeder facilities could be constructed. Sprint directed its business office service representatives to tell Upper Captiva callers that "Due to the company's inability to secure suitable facilities and rights for the provision of service without unreasonable expense, there is a temporary shortage of facilities in your area necessary to provide service. The company regrets any delay experienced and is using its best efforts to secure the necessary means to meet the service requirements." Sprint held its first new service order (over 30 days) in November 1997.

After studying several alternative radio solutions (other routes and systems) and finding them technically inferior, Sprint tried to resume construction of radio relief facilities in March 1997. The Fire District (fearing that the tower might fall during a storm and damage the Fire Station) sued and stopped construction. Then in October 1997, because it opposed tower construction and wanted Sprint to construct fiber facilities to the Island, the UCCA appealed to the Lee County Commission. The UCCA also challenged the easement's validity. The County Commission approved the UCCA's application to rezone the easement to prohibit tower construction at the Fire District site. Also, in October 1997, the UCCA contacted us, requesting an investigation of Sprint's provision of telephone service to the island.

After holding its first service request in November 1997 and upon the UCCA's request, Sprint intensified its efforts to acquire the easements necessary to provide feeder relief. In January 1998, after deciding to provide Spread Spectrum Radio (SSR) relief to Upper Captiva Island, Sprint's planners met with the Fire District to seek approval for a 45-foot tower. We have previously approved in October 1997 in Docket No. 950814-TL the use of SSR technology for the unbridged Dog Island located off Carabelle. GTC Inc. replaced Dog Island's cellular service with SSR telephone service in June 1998. Initially, Sprint reported a broad gauge estimate of \$500,000 for the full cost of SSR relief for the Upper Captiva project; in March 1998, Sprint estimated the construction cost of SSR relief at \$50,000 excluding tower and Digital Loop Carrier costs. The Fire District Board voted in March 1998 not to reconsider a tower site on Fire District property.

On April 30, 1998, our staff chaired a meeting of Sprint, UCCA representatives, Fire District members, and island residents to discuss the service problem at Upper Captiva; all agreed to work

together to find an acceptable solution and easements, and Sprint agreed to limit the tower's height to 50 feet. After the Fire District's Board discussed the need for a tower site on May 29, 1998, the UCCA called an Open Forum for all parties and residents on June 20, 1998, to discuss Sprint's Fire District proposal and an alternate state park lands site. Our staff and Sprint learned at the Forum that the Fire District had decided in May not to approve a Fire District tower site. All agreed that the best solution was to jointly pursue a state park lands easement. Sprint next learned that the State of Florida refused to grant an easement except as a last resort, no matter what it might cost Sprint to pursue a private property easement. After again failing to acquire an easement at the Fire District and failing to acquire a State easement, Sprint committed to acquiring a private easement. It signed a private property lease on October 21, 1998, for a 60-foot tower. Sprint notified the UCCA, who notified Upper Captiva residents, that it had acquired the necessary easement and would begin construction of SSR feeder relief to the island. Sprint reports the number of unfilled, new primary service requests quarterly in Schedule 3 of its Periodic Reports to this Commission. Its 4Q97, 1Q98, and 2Q98 reports show two, eight, and fourteen unfilled primary service requests, respectively, for Upper Captiva residents. Finally, Sprint began SSR construction in October 1998, and expects to complete installation and cutover by the end of this year, providing additional new service to the residents of the island (satisfying the above 14 held service requests) in January 1999.

Section 364.15, Florida Statutes, states:

Whenever the Commission finds, on its own motion or upon complaint . . . that any additions or extensions should reasonably be made to any telecommunications facility . . . in order to secure adequate service or facilities for telecommunications services, the commission shall make and serve an order directing that such repairs, improvements, changes, additions, or extensions be made.

Upon review, we will not direct Sprint to construct additions to its telephone facilities servicing Upper Captiva Island per Section 364.15, Florida Statutes, because Sprint began construction of SSR facilities in October 1998. Sprint anticipates completion on December 31, 1998. We, therefore, expect Sprint to provide

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service for the held orders and for any new primary services to Upper Captiva residents in January 1999.

Conclusion

In summary, we will take no further action against Sprint for its apparent failure under Section 364.025(1), Florida Statutes. We believe that the unusual circumstances prevented Sprint from providing additional facilities within a reasonable time period. We also will not direct Sprint to make additions under Section 364.15, Florida Statutes, because it will soon complete construction of the needed feeder additions. Therefore, this docket shall be closed since there are no further matters for us to address.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that no further action shall be taken against Sprint-Florida, Incorporated regarding its alleged failure to provide additional telephone service to Upper Captiva Island, as required by Section 364.025(1) and 364.15, Florida Statutes. 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 28-106.201, 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, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 25th day of January, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: _____

Kay Flynn
Kay Flynn, Chief
Bureau of Records

(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. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, 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 February 15, 1999.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

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.