

FLORIDA PUBLIC SERVICE COMMISSION
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MEMORANDUM

SEPTEMBER 25, 1997

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FPSC - Records/Reporting

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

FROM: DIVISION OF COMMUNICATIONS (WILLIAMS, STRONG) *WJ*
DIVISION OF AUDITING & FINANCIAL ANALYSIS (LESTER) *LD*
DIVISION OF LEGAL SERVICES (PENA, COX) *LP WJC MCB*

RE: DOCKET NO. 970385-TI - APPLICATION FOR CERTIFICATE TO
PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICE BY
SPRINT SPECTRUM L.P. AND REQUEST FOR WAIVER OF BOND
REQUIREMENT.

AGENDA: 10/07/97 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

SPECIAL INSTRUCTIONS: I:\PSC\CMU\WP\970385.RCM

CASE BACKGROUND

On March 27, 1997, this Commission received an application from Sprint Spectrum L.P. (Sprint Spectrum) for certification as an interexchange telecommunication service company. Thereafter, on June 17, 1997, the Commission received a petition from Sprint Spectrum seeking a waiver of Rule 25-24.490(2), Florida Administrative Code. The rule requires that a company maintain on file with the Commission a bond covering its current balance of deposits and advance payments from its customers.

Sprint Spectrum L.P.'s Petition for Waiver of Bond Requirement was filed on June 17, 1997. The Notice of Petition of Waiver of Bond Requirement was submitted to the Secretary of State for publication in the Florida Administrative Weekly on July 2, 1997. The comment period ended on July 25, 1997, and no comments were submitted. The Statutory Deadline for the Commission's decision regarding this petition is September 15, 1997. Due to needed modifications on its tariff Sprint Spectrum agreed to extend the review process beyond the Statutory Deadline.

DOCUMENT NUMBER-DATE

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The Commission has addressed several bond waiver petitions in the past, and has approved or denied them based on the financial data provided by the petitioning interexchange telecommunications carrier. As explained below, staff recommends that Sprint Spectrum be granted a certificate to operate as an interexchange telecommunications service provider and be granted the waiver from Rule 25-24.490(2), Florida Administrative Code.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Sprint Spectrum a certificate to provide interexchange telecommunications service within the State of Florida as provided by Section 364.377(3), Florida Statutes?

RECOMMENDATION: Yes. Sprint Spectrum should be granted,

Florida Public Service Commission Certificate No. 5240
(Williams)

STAFF ANALYSIS: Section 364.337(3), Florida Statutes reads as follows:

The commission shall grant a certificate of authority to provide intrastate interexchange telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area to be served.

Sprint Spectrum filed an application with the Commission on March 27, 1997, to offer telecommunications service as a reseller of telecommunications services in Florida. The company has sufficient managerial and technical capabilities in the provision of telecommunications service. A review of Sprint Spectrum's financial capability by the Division of Auditing and Financial Analysis indicates that the application appears to meet the requirements of Section 364.337(3), Florida Statutes.

Therefore, staff recommends that the Commission grant Sprint Spectrum a certificate to provide interexchange telecommunications service.

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ISSUE 2: Should Sprint Spectrum be granted a waiver of Rule 25-24.490(2), Florida Administrative Code, Customer Relations; Rules Incorporated?

RECOMMENDATION: Yes. (Cox)

STAFF ANALYSIS: Rule 25-24.490(2), Florida Administrative Code, states as follows:

An interexchange company may require a deposit as a condition of service and may collect advance payments for more than one month of service if it maintains on file with the Commission a bond covering its current balance of deposits and advance payments (for more than one month's service). A company may apply to the Commission for a waiver of the bond requirement by demonstrating that it possesses the financial resources and income to provide assurance of continued operation under its certificate over the long term.

Staff believes that the company has demonstrated adequate financial resources and income to assure the longevity of its operations. Sprint Spectrum has nearly \$10 billion in capitalization and financial commitments. The company has also invested millions of dollars in its construction of Florida PCS networks. Further, Sprint Spectrum predicts income in excess of \$30 million for its first year of operations in Florida.

In addition to meeting the requirements of Rule 25-24.490(2), Florida Administrative Code, for waiver of the bond requirement, Sprint Spectrum's petition for waiver must also meet the requirements of Chapter 120.542, Florida Statutes. Under this statutory requirement, a petitioner requesting a waiver of a Commission rule must first demonstrate that the purpose of the underlying statute will otherwise be served if waiver of the rule is granted. Secondly, the petitioner must demonstrate that continued enforcement of the rule would result in substantial hardship for the petitioner or violate principles of fairness.

Staff believes that Sprint Spectrum's amended petition meets the requirements of Chapter 120.542, Florida Statutes. First, the petitioner has demonstrated that the pro-consumer, public interest purposes of Chapter 364.03 and 364.337, Florida Statutes,

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underlying Rule 25-24.490(2), Florida Administrative Code, will be served if the Commission grants the waiver request. Sprint Spectrum has demonstrated that a bond is not necessary to protect consumers' interests in this situation because of its substantial financial resources and overall stability.

Secondly, the company has demonstrated that the Commission's enforcement of the bond requirement would result in substantial economic hardship for the company. Enforcement of the bond requirement would force Sprint Spectrum to invest a great amount of money in a bond and its associated expenses. Given Sprint Spectrum's financial stability and size, the posting of a bond is not necessary to protect the public interest. Moreover, the Commission has already granted Sprint Spectrum's wireless competitors waivers of this bond requirement. Accordingly, staff recommends that Sprint Spectrum's waiver petition be granted.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected by the Commission's Proposed Agency Action, files a protest within 21 days of the issuance date of the order, this docket should be closed. (K.Peña)

STAFF ANALYSIS: This docket should be closed, if no person whose substantial interests are affected by the Commission's Proposed Agency Action, files a protest within 21 days of the issuance date of the order.