

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

MEMORANDUM

DECEMBER 4, 1997

RECEIVED

DEC 04 1997  
2:05  
FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (COX) *WPC MCB*  
DIVISION OF ADMINISTRATION (LAKE) *ST*

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.

AGENDA: DECEMBER 16, 1997 - REGULAR AGENDA - PROPOSED AGENCY  
ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: DECEMBER 23, 1997 - STATUTORY DEADLINE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\971241.RCM

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 post mark on this RAF filing was July 31, 1997, one day after the statutory deadline.

On August 8, 1997, the Commission's Bureau of Fiscal Services (Fiscal Services) sent Sprint a letter with a copy of the post-marked envelope and the RAF filing indicating a July 31, 1997, postmark and an August 4, 1997, deposit date. (See Attachment 1) 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. (See Attachment 2)

DOCUMENT CONTROL

12411 DEC-45

FPSC - RECORDS/REPORTING

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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 requests 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. The statutory deadline for the Commission's decision regarding this petition is December 23, 1997.

Staff believes that the following recommendations are appropriate.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant Sprint-Florida, Incorporated's petition for waiver from the requirements of Rule 25-4.0161 (2) and (3), Florida Administrative Code, so that its filing of the Regulatory Assessment Fee return and payment would be deemed timely; or, in the alternative, grant a waiver of the requirements of Rule 4.0161 (7), Florida Administrative Code, so that Sprint-Florida would be allowed an extension of 30 days from the July 30 due date within which to file its RAF return?

**RECOMMENDATION:** No. The Commission should deny Sprint Florida'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 should pay the appropriate statutory penalty and interest in the amount of \$39,426.40. (COX)

#### **STAFF ANALYSIS:**

##### **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

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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 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.

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Staff recommends that Sprint's primary request for waiver be denied. 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 the Commission 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.

Staff fails to see how 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 admits that the petition was not timely filed because its internal postage meter used for post-marking was out of postage and the importance of the timely post mark was not adequately communicated when the letter was transferred to another mailroom. Nevertheless, Sprint maintains that 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 post-marked in a timely fashion constitutes substantial compliance with the Commission rule's, and thereby the statute's, requirement that the filing be postmarked by the U.S. Postal Service by the due date.

Staff fails to see any merit to this analysis. Even if the Commission were to agree that the Sprint mailroom employee were the equivalent of the U.S. Postal Service employee for purposes of the rule and the statute, 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 should be not considered sufficient precedent to forgive payment of penalty and interest charges here. 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 must be paid on time.

Further, Sprint offers no justification for its contention

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that the \$39,426.40 statutory penalty would result in economic hardship for Sprint. Therefore, Sprint has failed to meet the waiver requirements of Section 120.542, Florida Statutes.

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 the Commission waive Commission 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 the Commission's Division of Administration at least two weeks prior to the due date of the RAF filing. If the Commission 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, the Commission has 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 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

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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 the Commission 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.

Staff does not agree that Sprint has met the waiver requirements of Section 120.542, Florida Statutes. Foremost, staff does 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, staff recommends that the Commission 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.

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**ISSUE 2:** Should this docket be closed? (COX)

**RECOMMENDATION:** Yes, this docket should be closed unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action. If the Commission approves staff's recommendation on Issue 1, this docket should remain open until the Commission has received Sprint's payment of the appropriate statutory penalty and interest charges. (COX)

**STAFF ANALYSIS:** Whether staff's recommendation on Issue 1 is approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, this docket should be closed. If the Commission approves staff's recommendation on Issue 1, this docket should remain open until the Commission has received Sprint's payment of the appropriate statutory penalty and interest charges.

STATE OF FLORIDA

Commissioners:  
JULIA L. JOINSON, CHAIRMAN  
SUSAN F. CLARK  
J. TERRY DEASON  
JOE GARCIA  
DIANE K. KIESLING



STEVE TRUBBLE, DIRECTOR  
DIVISION OF ADMINISTRATION  
(904) 413-6330

**Public Service Commission**

August 08, 1997

TL727  
Sprint-Florida, Incorporated  
P. O. Box 2214 (MC FLTLHO0107)  
Tallahassee, FL 32316-2214

Dear Sir:

Communication Company

Our records indicate that the envelope enclosing your Regulatory Assessment Fee payment for the period January 1, 1997 through June 30, 1997, was postmarked after the due date of July 30, 1997. In accordance with Florida Statute 350.113(4), penalty and interest charges are assessed as follows:

Penalty Due	(\$657,106.66 x 5%)	\$32,855.33
Interest Due	(\$657,106.66 x 1%)	<u>6,571.07</u>
Total Due		\$39,426.40

To avoid additional interest charges, your payment must be postmarked or delivered to the above address by August 22, 1997.

If you have any questions, please call Mr. Charles Byrne at (904) 413-6267.

Yours truly,

Evelyn H. Sewell, Chief  
Bureau of Fiscal Services

EHS/CB/8-8-97.P&I

c: Mr. Charles Byrne



**Communication Company Regulatory Assessment Fee Return**  
Florida Public Service Commission

**STATUS:**  
XXX Actual Return  
Estimated Return  
**PERIOD COVERED:**  
01/1/97 to 06/30/97

**DEPOSIT DATE**

**1684** **AUG 04 1997**  
Sprint-Florida, Incorporated  
P. O. Box 2214 (MC FLTLHO0101)  
Tallahassee, FL 32316-2214

FOR PSC USE ONLY	
Check# <u>3903983</u>	0603004
\$ <u>657,106.66</u>	003001
	P
	0603004
	004011
	I
Postmark Date <u>7/31/97</u>	
Initials of Preparer <u>JS</u>	

**LOCAL SERVICES REVENUES**

	Total	Intrastate
1. Basic area revenues (5001)	160,093,319.29	160,093,319.29
2. Optional extended area revenue (5002)	315,834.56	315,834.56
3. Cellular mobile revenue (5003)	0.00	0.00
4. Other mobile services revenue (5004)	(1,644.14)	(1,644.14)
5. Public telephone revenue (5010)	2,431,570.25	2,431,570.25
6. Local private line revenue (5040)	8,175,578.93	8,175,578.93
7. Customer premises revenue (5050)	1,445,513.51	1,445,513.51
8. Other local exchange revenue (5060)	68,745,698.95	68,745,698.95
9. Other local exchange revenue settlements (5069)	0.00	0.00
10. Total local services revenue (add lines 1 through 9)	241,205,871.35	241,205,871.35

**NETWORK ACCESS SERVICES REVENUES**

11. End user revenue (5081)	44,323,043.36	0.00
12. Switched access revenue (5082)	94,481,323.87	0.00
13. Special access revenue (5083)	16,117,715.23	0.00
14. State access revenue (5084)	99,981,762.80	99,981,762.80
15. Total access services revenues (add lines 11 through 14)	254,903,845.26	99,981,762.80

**LONG DISTANCE NETWORK SERVICES REVENUES**

16. Long Distance Message Revenue (5100)	14,705,532.09	14,695,578.03
17. Long distance inward-only revenue (5111)	279,572.00	278,609.90
18. Long distance outward-only revenue (5112)	215,771.94	215,771.94
19. Subvoice grade long distance private network revenues (5121)	0.00	0.00
20. Voice grade long distance private network revenues (5122)	849,866.00	849,866.00
21. Audio program grade long distance private network revenues (5123)	0.00	0.00
22. Video program grade long distance private network revenues (5124)	0.00	0.00
23. Digital transmission grade long distance private network revenue (5125)	0.00	0.00

24. Long distance private network switching revenues (5126)	0.00	0.00
25. Other long distance private network revenues (5128)	5,727,626.14	5,726,856.14
26. Other long distance private network settlements (5129)	(33,235.52)	(33,235.52)
27. Other long distance revenue (5160)	0.00	0.00
28. Other long distance revenue settlements (5169)	0.00	0.00
29. Net long distance revenues (add lines 16 through 28)	21,745,132.65	21,733,446.49

**MISCELLANEOUS REVENUES**

30. Directory revenue (gross billing) (5230)	37,437,957.52	37,437,957.52
31. Rent revenue (gross billing) (5240)	3,509,336.05	2,116,672.91
32. Corporate operation revenue (5250)	6,750.00	6,750.00
33. Special billing arrangement revenue (5261)	8,082.71	8,082.71
34. Customer operations revenue (5262)	1,679,765.65	245,755.45
35. Plant operation revenue (5263)	0.00	0.00
36. Other incidental regulated revenue (5264)	3,822,766.03	3,485,407.82
37. Other revenue settlements (5269)	0.00	0.00
38. Carrier billing and collection revenue (5270)	7,168,448.50	2,262,735.55
39. Total miscellaneous revenues (add lines 30 through 38)	53,433,106.46	45,563,362.00
40. Total gross revenues for Regulatory assessment (add lines 10, 15, 29, and 39)	571,287,955.72	408,484,442.64
41. Regulatory assessment fee due (Multiply Line 40 by 0.0015)		612,726.66
42. Less: payments made for June 30 period, if any		0.00
43. Net regulatory assessment fee due		612,726.66
44. Penalty for late payment		0.00
45. Interest for late payment		0.00
46. Total Amount Due		612,726.66
47. Imputed assessment on consolidated directory operations estimated at \$46,800 (\$93,600 for all of 1997) minus a \$2,420 overpayment (\$418 underpayment for UTF and \$2,838 overpayment for Centel) in 1996 due to estimation of Directory revenue		44,380.00
48. Total amount due after assessment		657,106.66

As provided in Section 364.336, Florida Statutes, the minimum annual fee is \$50

I, the undersigned owner/officer of the above-named vendor, have read the foregoing and declare to the best of my knowledge and belief, the above is a true and correct statement. I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

  
(Signature of Company Official)

John I. Lehman  
(Name - Please Print)

Controller  
(Title)

07/28/97  
(Date)

Telephone Number :  
F. E. I. Number :

(913) 433-1100  
59-0248365

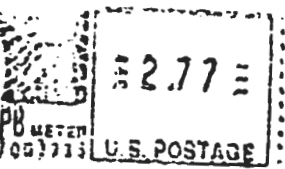
Sprint-Florida, Inc.  
6860 West 115th St.  
MS: KSOPKD0105  
Overland Park, KS 66211-2400

Fold at line over top of envelope to  
the right of the return address

**CERTIFIED**

P 503 121 004

**MAIL**



ATTN: FISCAL  
FLORIDA PUBLIC SERVICE COMMISSION  
2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FL 32399-0876





**Charles J. Rehwinkel**  
General Attorney

Post Office Box 2214 AM 2165  
Tallahassee FL 32316  
Voice 904 847 0244  
Fax 904 599 1458

August 20, 1997

Ms. Evelyn H. Sewell  
Bureau of Fiscal Services  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

**Re: 1997 Regulatory Assessment Fee For Sprint-Florida, Incorporated  
(TL727)**

Dear Ms. Sewell:

Sprint-Florida, Incorporated is in receipt of your letter of August 8, 1997 regarding our Regulatory Assessment Fee for the first half of 1997.

On August 16, 1997 you spoke with Ben Poag who indicated that Sprint-Florida is currently investigating the cause of our payment being post-marked one day after the July 30, 1997 deadline. Mr. Poag also indicated that the company intends to seek a determination by the Commission of what amount if any the company owes in fines or interest. As I understand it, payment of the penalty and interest requested by the Commission in the amount of \$39,426.40 would not be required at this time under these circumstances.

By this letter, Sprint-Florida, Incorporated is formally advising you of our intent to fully investigate the circumstances of this payment and request relief from the Commission. This letter is therefore being sent in lieu of the payment of penalties and interest at this time.

Please advise me at your earliest convenience if this approach is of concern to you. At our earliest opportunity we will report the circumstances of the late postmark. If you have any questions, please do not hesitate to call me at 847-0244.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles J. Rehwinkel", written over a horizontal line.

Charles J. Rehwinkel

cc: Jerry Johns  
Alan Berg  
Judi Kohli  
Jack Lehman