

ORIGINAL



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September 9, 1998

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Special Project No. 980000A-SP, Docket No. 980733-TL  
Sprint-Florida Incorporated's Response to the Attorney  
General's Motion to Compel Discovery Responses from  
Sprint-Florida, Incorporated

Dear Ms. Bayo:

Enclosed for filing is the original and fifteen (15) copies  
of Sprint-Florida, Inc.'s Response to the Attorney General's  
Motion to Compel Discovery Responses from Sprint-Florida,  
Incorporated.

Please acknowledge receipt and filing of the above by  
stamping the duplicate copy of this letter and returning the  
same to this writer.

ACK \_\_\_\_\_

AFA 2

APP \_\_\_\_\_

CAF \_\_\_\_\_

CMU \_\_\_\_\_

CTR \_\_\_\_\_

EAG \_\_\_\_\_

LEG 2

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OPC \_\_\_\_\_

RCH 2

SEC 1

WAS \_\_\_\_\_

OTH eye d kpl

Thank you for your assistance in this matter.

Sincerely,

*Susan S. Masterton*

Susan S. Masterton

CJR/th

Enclosures

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT DATE

09834 SEP-98

FPSC-BUREAU OF RECORDS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Discovery and related )  
study on fair and reasonable )  
rates and on relationships )  
among costs and charges )  
associated with certain tele- )  
communications services )  
provided by local exchange )  
companies (LECs), as required )  
by Ch. 98-277, Laws of )  
Florida )

Special Project No. 980000A-SP  
Docket No. 980733-TL

Filed: September 9, 1998

**Sprint-Florida, Incorporated's Response to the Attorney General's Motion to Compel Discovery Responses from Sprint-Florida, Incorporated**

COMES NOW, Sprint-Florida, Incorporated and submits its response to the Florida Attorney General's Motion to Compel.

Sprint initially raises a concern and objection to the Attorney General's request that the Commission issue an order on this matter. Sprint urges that the Commissioner assigned to administer the "discovery"<sup>1</sup> docket to decline to issue any order that would allow appellate rights or the provisions of Ch. 120, Florida Statutes, to be interjected into this study proceeding. Certainly direction from the Commissioner would be useful in guiding the participants' behavior. Ultimately, however, the Legislature will be the forum where the adequacy of the study and the attendant access to records will be judged.

Sprint-Florida's basic response to the Attorney General's motion is that it impermissibly seeks production of documents and information not confined to the limited scope of discovery permitted intervenors in this study proceeding. Fundamental to Sprint's position is the fact that neither the Attorney General

<sup>1</sup> Though Sprint uses the term "discovery" throughout for convenience, it is our position that the traditional legal concept of discovery from an evidentiary standpoint was never contemplated by the legislature. Discovery here refers to access to the books and records for the very limited purposes envisioned by the Legislature.

nor any "intervenor" would have access to Sprint's books and records absent the very limited grant of access to "the books and records related to the cost of basic residential telecommunications service ... for the purpose of verifying the cost data and analysis submitted" (as that cost data and analysis is prescribed by the commission) provided in Section 2 (2)(b) of Ch. 98-277, Laws of Florida.

Without this statutory language, participants in the study proceeding would have no discovery rights. Sections 364.17 (prescription of forms of reports) and 364.18 (authorization to inspect the books and records), Florida Statutes, have been repealed as to price capped LECs. Nowhere does the Legislature indicate any intent to repeal that exemption other than by the limited affirmative grant of access for verification purposes.

The dispute before the Commission arises in part because the Attorney General's discovery was served without regard to the responses to the Commission's Data Requests submitted by Sprint (and BellSouth and GTE). A simple reading of the discovery request reveals as much.<sup>2</sup> The problem with this approach is that it is not limited to verification of the submitted cost data and analysis. The core of Sprint's objections<sup>3</sup> is that several requests blatantly seek to supplement the Commission's prescribed cost data and analysis. This is significant because the prescribed information must have been submitted by August 1, 1998. The two June 19, 1998, Data Requests represent the information prescribed by the Commission pursuant to Ch. 98-277, Laws of Florida.

While many of the Attorney General's questions fall within the scope of allowable access to records, several do not. As Sprint's Objections to the Attorney General's First Set of Interrogatories and Third Request for Production of Documents (attached hereto as Exhibit A) indicates, Sprint has limited its objections to these questions because such supplemental discovery is improper under the limited discovery implicit in the legislative study requested of the Commission.

Examples of overreaching by the Attorney General in the objectionable requests involve both Commission staff Data Requests. In regard to the forward-looking data request, Interrogatories 19(a), 19(b) and 21 seek to have Sprint conduct additional contribution studies beyond those requested in staff requests 1-4 (D'Haeseleer)<sup>4</sup>. Additionally, in regard to the embedded data

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<sup>2</sup> The Attorney General has withdrawn discovery requests for apparently this very reason.

<sup>3</sup> Sprint submitted preliminary objections on August 17. This filing is attached as Exhibit 1 and incorporated herein by reference.

<sup>4</sup> Each Data Request was dated June 19<sup>th</sup>. The forward-looking request was submitted by Walter D'Haeseleer while the embedded request was from Timothy Devlin.

request, the Attorney General seeks to have Sprint provide non-regulated revenue and cost information (Interrogatories 6,7) and to perform a directory advertising gross profit analysis (Interrogatory 9, P.O.D.s 11,12). Each of these discovery requests is improper because it constitutes an attempt to supplement the June 19, 1998, Data Requests. In both Data Requests the staff clearly defined the requested information and Sprint responded fully in providing the information. At that point participant's limited records access rights first accrued.

Despite the Attorney General's suggestion to the contrary, the Discovery Docket No. 980733-TL does not constitute an independent stand alone right to access Sprint's records. Discovery rights are not self-starting. That "docket" was opened as an administrative convenience to recognize the fact that some degree of discovery might be required under the language of Ch. 98-277, Laws of Florida.

Special Project 980000A-SP is the substantive proceeding by which legally cognizable rights, if any, should be measured. Clearly no adjudicative process is underway in that proceeding. No parties' substantial interests are being determined. Chairman Johnson has repeatedly stated that the Commission is merely gathering facts to present in the form of a report to the Legislature. (Comments of Chairman Julia Johnson at August 24, 1998, Public Hearing in West Palm Beach; September 2, 1998, Public Hearing in Quincy.)

Sprint's concerns are driven primarily by our belief that the plain reading of the law limits records and information access to the cost data and analysis information submitted by the local exchange companies (as prescribed by the commission), pursuant to Section 2 (2)(b) of Ch. 98-277, Laws of Florida. The law further limits this access by participants to verifying the data thus submitted. Clearly, the Legislature has not contemplated an independent right by persons to conduct discovery in order to submit a "case-in-chief" to the commission.

A similar concern was raised at the Commission's June 2, 1998, Internal Affairs meeting when the Commission was considering its work plan for this study, the landlord-tenant study (980000B-SP) and the universal service study (Docket No. 989696-TP). At that time the commission declined to address the scope of discovery in this proceeding, preferring instead to address the issue as raised, if at all. Subsequently, this dispute has arisen.

Of the three studies, only Study 1 is to be conducted pursuant to a formal hearing process (Docket No. 980696-TP). Studies 2 & 3 (Special Projects 980000A & 980000B) are being conducted pursuant to an informal information

gathering process. Of these two studies, only 980000A involves any "discovery." The multi-tenant access study (980000B) does not involve discovery. This fact is significant because it isolates the access to records and information by participants to only the cost verification authorized in the law.

Putatively, the basis for discovery in Study 2 is the language in the new law that gives intervenors access to company records for purposes of verifying the submitted cost data and analysis. The commission has already decided that the term "intervenor" does not independently entitle those entities to a hearing.<sup>5</sup> Rather, the term is given meaning in context with the other words in the same sentence of the statute which spell out the scope of permissible access to records for which "intervention" in the study is allowed. The contrast to the lack of statutorily sanctioned discovery in Study 3 (980000B-SP) confirms this position.

Sprint further submits that The Uniform Rules of Procedure, which apply to Commission proceedings, apply only to proceedings under Ch. 120, Florida Statutes. See, Rule 28-106.101, F.A.C. Under these rules discovery is available to parties "whose substantial interests may be determined in the proceeding." Such "parties" may petition for leave to intervene. Furthermore, discovery is available in the manner provided in Rules 1.280 through 1.400, F.R.C.P. See, Rules 28-106.205 (Intervention) and 28.106.206 (Discovery). Rule 1.280(b)(1) F.R.C.P., provides that discovery is available regarding any matter that is relevant to the subject matter of the "pending action."

Taken together, these provisions further support the conclusion that there is no independent discovery right pursuant to Ch. 120, Florida Statutes. Here there is no "pending action". The Commission will make no determination affecting the substantial interests of a person. Rather, the Legislature will have the first opportunity to take action, if any, upon receipt of the Commission's report.<sup>6</sup> Finally, any discovery in this proceeding lacks the linkage to the evidentiary standard implicit in the Florida Rules of Civil Procedure. Because there is no pending action, the difference between conventional discovery and the verification access type created by the Legislature is material. The Florida Rules of Civil Procedure provide no guidance in this matter.

Additionally, Sprint-Florida, Incorporated respectfully disputes the Attorney General's reading of Ch. 98-277, Laws Florida, on the following specific points.

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<sup>5</sup> Intervention is not even being allowed in either of the above-styled matters. Sprint was notified by letter that our Petition to Intervene would not be entertained.

<sup>6</sup> The Legislature is not an administrative agency and, therefore, is not bound by the procedures set forth in Ch. 120, Florida Statutes.

1. There is no basis in the law to equate "charges" with revenues. The two have little in common. Charges are the equivalent of prices. Revenues relate to financial indicators, i.e., earnings. The use of the term "charges" in the statute does not give a participant access to revenue information.
2. The Attorney General misconstrues the scope of verification allowed. Whatever access to records is allowed is strictly limited to the cost data and analysis supporting the cost of residential basic local telecommunications service. No "discovery" is allowed relative to the relationships between the costs and charges of all other services. The statute states that access is granted for records related to the cost of providing residential basic local telecommunications service.
3. The Attorney General's argument regarding non-regulated information reveals that the Attorney General wishes to explore the earnings of these and other services. Although the Attorney General purports to seek allocation details, in fact, no allocation details are sought.
4. The Attorney General makes no attempt to justify its request for the directory advertising for Z-9 to be filled out (Interrogatory 9, P.O.D.s 11, 12). Staff did not request this quintessential ratemaking adjustment (although form Z-8, for example, was requested).
5. Apparently Sprint-Florida, Incorporated misunderstood the Attorney General's request to be a continuing discovery request. Sprint can and will work with the Attorney General to provide information requested by other participants.

In view of the above, Sprint respectfully requests that the Commission decline to issue any order compelling discovery beyond that already provided. In fact, Sprint urges that no order be issued that would implicate Ch. 120, Florida Statutes, or appellate intervention in this legislative study.

Respectfully submitted this 9th day of September, 1998.

*Charles J. Renwinkel* ssm

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**ATTORNEYS FOR SPRINT-FLORIDA,  
INCORPORATED**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Discovery and related )  
study on fair and reasonable )  
rates and on relationships )  
among costs and charges )  
associated with certain tele- )  
communications services )  
Provided by local exchange )  
companies (LECs), as required )  
by Chapter 980277, Laws of )  
Florida )

Special Project No. 980000A-SP  
Docket No. 980733-TL

Filed: August 17, 1998

**Sprint-Florida, Incorporated's Objections to the Attorney General's First Set of Interrogatories (1-47) and Third Request for Production of Documents (6-29)**

Sprint-Florida, Incorporated (Sprint), by and through its undersigned attorneys, submits its objections to the Attorney General's First Set of Interrogatories (1-47 and Third Request for Production of Documents (6-29), served on Sprint by hand delivery on Friday August 7, 1998, stating as follows:

**INTRODUCTORY STATEMENT**

The Order Establishing Procedure in this study requires that all objections to discovery be made within ten days of service of the discovery request. In the context of a legislatively requested study proceeding where discovery is limited to verification of the submitted cost data and analysis, this accelerated filing time is burdensome and provides inadequate time to carefully analyze and digest the nature and scope of discovery requests especially when the discovery consisting of approximately 130 interrogatories (including subparts) is hand delivered on a Friday afternoon.

Consequently, in order to avoid inadvertent waiver of its objection rights, Sprint must initially object to all discovery requests. It is not Sprint's intention by doing so to unduly delay responses to legitimate discovery requests. Should additional grounds for objection arise as Sprint prepares its response to this discovery, Sprint reserves the right to revise or supplement its objections.

Sprint will lodge these objections by setting out several general objections that will be identified by number. These numbers will then be listed next to the

number of the discovery request to which an objection is directed. Additional objections or bases for objections may be indicated in addition to the number-coded objections.

### Numbered Objections

1. Sprint-Florida objects to this discovery request on the grounds that it requests revenue information which is not relevant to the verification of the cost data and analysis submitted by Sprint-Florida in compliance with Ch. 98-277, Laws of Florida. Additionally, this discovery request seeks records and information unrelated to the cost of providing residential basic local telecommunications service.
2. Sprint-Florida objects to this discovery request on the grounds that it requires Sprint-Florida to perform a separate study and analysis which is outside the scope of the Commission Staff's original data request and is, in any event, not related to the verification of the cost data and analysis submitted by Sprint-Florida in compliance with Ch. 98-277, Laws of Florida.
3. Sprint-Florida objects to this discovery request on the grounds that it requests information concerning Sprint-Florida's unregulated services. Revenue or cost information relating to unregulated services is not relevant to the verification of the cost data and analysis submitted by Sprint-Florida in compliance with Ch. 98-277, Laws of Florida, or to the cost of providing residential basic local telecommunications service.
4. Sprint-Florida objects to this discovery request on the grounds that the requested information might be relevant, if at all, only to the cost of providing residential basic local telecommunications service in a rate base, rate of return environment. Sprint-Florida has elected price regulation pursuant to Section 364.051 (1), Florida Statutes. Having done so, Sprint-Florida is exempt from rate base, rate of return regulation and the requirements relating thereto. Nothing contained in Ch. 98-277, Laws of Florida, eliminates or modifies that exemption as it relates to the cost of providing residential basic local telecommunications

### INTERROGATORIES

Interrogatory No. 1(a):

Objection(s): 1

Interrogatory No. 2(a)

Objection(s): 1,2

Interrogatory No. 2(d)

Objection(s): Sprint objects on the basis that it does not understand the question.

Interrogatory No. 3(b)

Objection(s): 1

Interrogatory No.6(a)

Objection(s): 1,3,4

Interrogatory Nos. 6(b) -(g)

Objection(s): 3,4

Interrogatory No. 6(h)

Objection(s): 3

Interrogatory No. 7

Objection(s): 1,3,4

Interrogatory Nos. 9 (a-f)

Objection(s): 1,2,3,4 Sprint's objection to this discovery request is fundamental. The information sought is a recreation of a ratemaking adjustment that was done for purposes of establishing rates or refund entitlement when Sprint was subject to ratebase, rate-of-return regulation. The Commission and the Legislature have made clear that the study proceeding is not a rate case. Requiring Sprint to conduct a study of directory accounts to recreate a schedule that the Company has been statutorily exempt from would be improper and contrary to the plain scope of this proceeding and the limited discovery rights granted to "Intervenors" in this study process.

Interrogatory Nos. 14(a)-(b)

Objection(s):1

Interrogatory No. 18(a)

Objection(s): 1

Interrogatory No. 18(b)

**Objection(s): 1**

**Interrogatory Nos. 19 (a) & (b)**

**Objection(s): 1,2.** Additionally, Sprint objects on the basis that the request seeks to require Sprint to conduct contribution analyses additional to those required by the Commission. Under the statutory authority for this proceeding, only the Commission is authorized to define the scope of the study and thus the contribution analyses to be conducted. The deadline for submittal of the required cost data and analysis was August 3, 1998. Sprint fully complied with that Data Request. The Commission should, in any event, decline to allow unlimited numbers of "intervenor" to submit individualized supplemental data and analyses requests.

**Interrogatory No. 20**

**Objection(s): 1**

**Interrogatory No. 21**

**Objection(s): 1,2.** Additionally, Sprint objects on the basis that the request seeks to require Sprint to conduct contribution analyses additional to those required by the Commission. Under the statutory authority for this proceeding, only the Commission is authorized to define the scope of the study and thus the contribution analyses to be conducted. The deadline for submittal of the required cost data and analysis was August 3, 1998. Sprint fully complied with that Data Request. The Commission should, in any event, decline, to allow unlimited numbers of "intervenor" to submit individualized supplemental data and analyses requests.

**Interrogatory No. 23(a), (d)**

**Objection(s): 1**

**Interrogatory No. 28(a),(b)**

**Objection(s): 1,2**

**Interrogatory No. 28(c)-(e)**

**Objection(s):** Sprint objects on the basis that it does not understand the question.

**REQUESTS FOR PRODUCTION OF DOCUMENTS (P.O.D.)**

P.O.D. No. 6

**Objection(s):** Sprint objects to the attempt to make this request continuing. The Florida Rules of Civil Procedure, Rule 1.280(e) make clear that a responding party has the obligation to make a complete response and thereafter has no duty to supplement responses. Any objection applicable to other parties' discovery requests will be applicable.

P.O.D. No. 9

**Objection(s):** 1,3,4

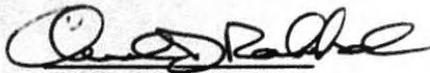
P.O.D. No. 11

**Objection(s):** 1,2,3,4 Sprint's objection to this discovery request is fundamental. The information sought is a recreation of a ratemaking adjustment that was done for purposes of establishing rates or refund entitlement when Sprint was subject to ratebase, rate-of-return regulation. The Commission and the Legislature have made clear that the study proceeding is not a rate case. Requiring Sprint to conduct a study of directory accounts to recreate a schedule that the Company has been statutorily exempt from would be improper and contrary to the plain scope of this proceeding and the limited discovery rights granted to "intervenors" in this study process. Furthermore, this document request seeks the creation of a document, rather than production of a document already in existence.

P.O.D. No. 12

**Objection(s):** 1,2,3,4 Sprint's objection to this discovery request is fundamental. The information sought is a recreation of a ratemaking adjustment that was done for purposes of establishing rates or refund entitlement when Sprint was subject to ratebase, rate-of-return regulation. The Commission and the Legislature have made clear that the study proceeding is not a rate case. Requiring Sprint to conduct a study of directory accounts to recreate a schedule that the Company has been statutorily exempt from would be improper and contrary to the plain scope of this proceeding and the limited discovery rights granted to "intervenors" in this study process.

Respectfully submitted this 17th day of August, 1998.



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**ATTORNEYS FOR SPRINT FLORIDA, INC.**

**CERTIFICATE OF SERVICE  
SPECIAL PROJECT 980000A-SP**

**I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 9th day of September, 1998 to the following:**

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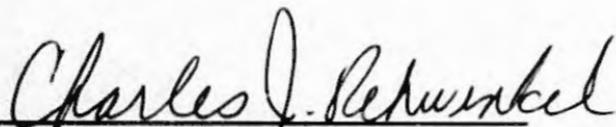
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