Sprint

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ORIGINAL



August 25, 2000

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

Re: Docket No. 000121-TP (OSS)

Dear Ms. Bayo:

Enclosed for filing is the original and fifteen (15) copies of Sprint's Comments on the issues addressed at the August 8, 2000 workshop, which we asked that you file in the caption matter.

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

Sincerely,

Susan S. Masterton

Susan S. Masterton

Enclosure

cc: Parties of Record

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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| In re: Investigation into the Establishment of Operations Support Systems Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies | DOCKET 000121-TP<br><br>Filed: August 25, 2000 |

## Comments of Sprint

COMES Now Sprint Communications Company Limited Partnership and Sprint-Florida, Inc. ("Sprint") and pursuant to the request from Commission Staff, provides these post-workshop comments and responses to the questions raised in the Staff's Workshop notice in this docket issued June 14, 2000.

## General

In response to the specific request of Commission Staff, Sprint provides the following post workshop comments to the questions raised by Commission Staff in their notice of June 14, 2000. While these comments represent Sprint's position on these issues, Sprint believes the Commission's focus on performance penalties is premature, given that performance measurements have not been established for Sprint. While it may be possible to develop a framework for performance penalties, Sprint does not believe a comprehensive plan for performance penalties can be developed without finalizing the performance measurements. Sprint encourages the Commission Staff to focus efforts first on the development of the performance measurements and standards, and following that, determine the appropriate enforcement mechanism to ensure compliance with those measurements and standards.

Sprint has included as Attachment A to these comments an outline of the Sprint Performance Penalty Plan. Although Sprint's plan is in the development stage and not yet in place in any of its operating companies, Sprint offers the plan for the Commission Staff's consideration, subject to the concerns discussed above concerning lack of formalized performance measurements. Sprint expects that its penalty plan will be subject to ongoing revisions as the issue is addressed in other state commission proceedings.

**Sprint Comments on Staff Questions**

1. **Does the Commission have the authority to establish, in advance, a generic enforcement mechanism provision which would be inserted in interconnection agreements in the event negotiations on this provision fail?**

   Yes, if Commission action is within the context of arbitration or approval of agreed upon terms and conditions for interconnection. The Commission has authority under Chapter 364, Florida Statutes, and the Federal Telecommunications Act (47 U.S.C. §151, et. seq.) to implement the provisions of the Act through generic proceedings or the arbitration and approval of interconnection agreements. Any action pursuant to such authority would then form the basis for any Commission action to establish performance measures for ILECs and subsequent action to enforce ILEC compliance with these measures.

   Specifically, the Act provides the Commission the authority to arbitrate any unresolved issues the parties are unable to negotiate for interconnection agreements, which could include issues related to ILEC performance measures and enforcement mechanisms [47 U.S.C. §§ 251 and 252]. In resolving open issues the Commission is

not limited to the language submitted by the parties, but may impose appropriate conditions consistent with the requirements of the Act [47 U.S.C. §252 (a)(4)].

The issue of Commission authority to establish measures and mechanisms in advance is largely moot, however, if the parties can reach voluntary agreement regarding appropriate performance measures and self-executing enforcement mechanisms, including the payment of penalties for performance failures.

**2. Does the adoption of an enforcement mechanism provision by the Commission constitute the awarding of damages?**

A self-executing enforcement mechanism adopted by the parties as part of an interconnection agreement (whether adopted pursuant to an arbitration order or voluntary negotiations) that requires an ILEC to pay a fixed penalty to an ALEC for failing to meet performance measures as set forth in the agreement would not constitute the award of damages in the traditional sense by the Commission. A mechanism that requires the payment of a predetermined penalty to the ALEC would be more akin to an incentive mechanism. The customer (here the ALEC) is not being compensated for a loss in the sense of damages, but rather the compensation is a penalty to secure or incent performance. These penalties do not constitute a pre-estimate of actual damages. Similarly, Commission oversight and arbitration of disputes related to provisions of an interconnection agreement establishing performance standards and penalties for failure to comply would not constitute an award of damages as contemplated in Southern Bell v. Mobile America Corporation, 291 So. 2d (Fla. 1974).

**3. What should be the objective of an enforcement mechanism?**

The objective of an appropriately developed enforcement mechanism should be to drive ILECs to provide parity service to ALECs as required by the Telecommunications Act of 1996 and FCC rules. ILECs are required to provide non-discriminatory access to their systems and processes at a level of quality that is at least equal to that which the incumbent LEC provides itself. A comprehensive set of performance measurements that incorporates the appropriate statistical analysis techniques provides the information necessary to objectively evaluate if the ILEC is indeed providing the required level of service to its ALEC customers. The enforcement mechanism establishes the incentive for ILECs to provide the required level of service or risk the consequences of paying financial penalties for not meeting the established performance standards.

**4. For purposes of evaluating ILEC performance in the context of an interconnection agreement, how should any Commission established enforcement mechanism be structured conceptually?**

**a. Frequency of monitoring?**

ILEC performance data should be reported and evaluated on a monthly basis. An appropriate interval, such as 20 days, should be allowed after the end of the month for the month's data to be accumulated and analyzed and the reports prepared.

**b. Time frame to be evaluated?**

The performance measurement results should be evaluated on a monthly basis. However, the enforcement mechanism should assign higher penalties for

performance which is deficient over a number of consecutive months. See discussion under question 8.

**c. Level of disaggregation across metrics and offerings?**

The enforcement mechanism should be structured in a manner consistent with the underlying performance measurements. In other words, the enforcement mechanism should be applied based on the level of disaggregation reflected in the individual performance measures. Sprint supports performance measurement disaggregation that is sufficient to allow for like-to-like comparisons. Examples of disaggregation levels supported in Sprint's performance measurements include reporting based on geographic, product and order type criterion.

**d. How should items a, b, and c above be balanced to provide statistical significance for metrics with a small number of observations per reporting period?**

For performance measures where the standard is parity, Sprint supports the use of the modified z-test statistic as the basis for a statistical comparison between the service levels provided to each individual ALEC to the service performance levels Sprint provides to its retail customers. If the sample size is less than six for any measure, specialized statistical techniques, such as permutation testing, are required to evaluate the results.

For performance measures where the standard is based on a benchmark, Sprint supports the use of an adjustment table which recognizes that in some small

sample situations, the benchmark cannot be achieved unless there are zero misses. For example, if the benchmark for a particular measure is 90% and the sample size is 5, a miss on one transaction would result in an 80% performance rate, which would not meet the standard. Sprint believes it is appropriate to make allowances for such situations on benchmark measures.

**e. Automatic penalties for non-compliance?**

Sprint believes that to be effective, penalties for non-compliance with established performance measurements should be self-executing and fairly simple to implement and monitor. As such, application of penalties should be automatic and should not require the ALECs that have been harmed to file complaints or other requests for enforcement with the Commission.

Sprint does believe that appropriate mitigation measures should be included in a properly designed penalty plan. Examples of mitigation measures in Sprint's proposal include use of:

- Statistical parameters and a forgiveness plan to minimize the risk of random variation.
- A limited root-cause analysis process to provide the ILEC with a reasonable opportunity to explain exceptional conditions that caused an out-of-parity condition and to justify why an incentive should not be paid.
- A procedural cap on the total monthly incentives which if reached, could trigger a Commission review prior to application of any further penalties.

**5. For purposes of evaluating ILEC performance in the aggregate, how should the Commission's enforcement mechanism be structured conceptually?**

Sprint does not believe it is necessary for the Commission to implement enforcement mechanisms based on an aggregation of the ILEC's performance. A properly constructed set of performance measurements and an enforcement mechanism that reviews performance provided to individual ALECs will identify and address performance deficiencies in ILEC systems and processes. While performance levels provided by the ILEC may vary somewhat across ALECs, it is very likely that ILEC performance deficiencies will affect most, if not all CLECs. Therefore, there is no additional information to be gathered from aggregating ILEC performance data for all ALEC customers and applying some additional level of penalties.

Furthermore, Sprint believes the individual ALECs are the party that suffers harm if the ILEC does not provide the required levels of service, and as such, should be the party receiving the remedies. Aggregating performance results and requiring ILECs to make payments to a government or industry fund as some parties have suggested does nothing for the ALEC that has been affected by the substandard performance.

**6. How should the dollar value of penalties be determined?**

The performance incentives should be designed such that they are sufficient to drive ILECs to achieve parity on a continuing basis. However, the incentives must not be so high that an ALEC is more desirous of receiving poor service and collecting large remedies, than receiving parity service. Incentives should recognize the relative

size of the ILEC, and should be scalable (perhaps based on access lines) to reflect that the amount necessary to incent a large ILEC to address performance issues is different than the amount necessary to incent a smaller ILEC. Sprint believes it is entirely inappropriate to establish a standard penalty amount to be applicable for all ILECs. For example, if an ILEC with 5 million access lines was not providing parity service and was subject to $5 million in annual penalties, it may be more cost beneficial for the company to pay the fine rather than correct the underlying deficiencies; however, if the $5 million fine was assessed on an ILEC with only 50,000 access lines, the results could be financially devastating to the ILEC.

7. **Should there be a cap on penalty amounts and if so, how should that cap be determined?**

Sprint supports use of a procedural cap on penalty amounts that would allow either the ILEC or an ALEC to request a Commission hearing prior to the payment of additional penalty amounts. The use of a procedural cap is intended to serve as a safety-net mechanism for all parties and is not intended in anyway to reduce or limit the ultimate amount of penalty amounts. A procedural cap and opportunity for Commission hearing provides the ability for the Commission to consider any unintended consequences that could have resulted from the design and implementation of a penalty plan. In the development of penalty plans, parties are in many cases agreeing to measures, standards and penalties that have never been used, much less tested. The use of a procedural cap provides a vehicle for a subsequent review by the Commission to determine whether aspects of the penalty plan require

adjustment to continue to meet their desired objective, that being to incent the ILEC to provide non-discriminatory service to ALECs.

**8. How and when should consequences be escalated?**

Sprint believes that incentive payments should increase relative to the certainty that a violation of a performance measure has occurred and the frequency of the sub-standard performance. Sprint proposes that the certainty of the performance violation be addressed by establishing three levels of penalties (ordinary, intermediate and severe) for both parity and benchmark measures. The dollar amount of the penalties would increase for each incentive level. The frequency of the performance violation would be addressed through the establishment of a "chronic" multiplier, which would increase the dollar amount of the penalty for performance levels which do not meet the standard for three consecutive months or more.

**9. How should extraordinary events be handled?**

Sprint believes performance incentive plans should allow the ILEC to identify, through a root cause analysis process, events which result in apparent out-of-parity conditions that were beyond the reasonable control of the ILEC. Sprint believes such a list of "excludable events" should be documented and agreed to by all parties as a part of the initial development of the performance incentive plan. Sprint believes the following situations should be allowed as reasonable exceptions which can be used to justify situations where a penalty should not be applicable:

- Significant activity by a third party external to and not controlled by the ILEC (e.g., damaged facilities, third party systems, bomb threats).

- Failure of an ALEC process or system (e.g., backlog of orders).
- Environmental events not considered force majeure (e.g., fire or other hazardous condition).
- Force majeure events.

In any case, the ILEC would be obligated to pay any penalty amount owed the ALECs by the due date established by the Commission, up to the procedural cap discussed above, until such time the extraordinary events are agreed upon. This "pay first" policy serves as a reasonable balance between the needs of the various parties.

Respectfully submitted this 25th day of August, 2000.

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# Sprint
## CLEC Performance Compliance Incentive Plan

### 1. Compliance Incentive Plan Overview

1.1. The Sprint compliance incentive plan as described herein is dependent upon implementation of Sprint's national standard CLEC performance measurement and reporting plan.

1.2. The Sprint compliance incentive plan incorporates separate incentive structures for parity measures (those measurements where service levels provided to CLECs can be compared to the levels provided to Sprint's ILEC retail customers) and benchmark measures (those measurements where there is no comparable retail process for comparison).

1.3. Compliance incentives will be applied on a submeasure basis for each CLEC entitled to receive incentive payments under the provisions of this plan. A submeasure is the individual, disaggregated reported result for each measurement as defined in Sprint's performance measurement and reporting plan.

1.4. To determine the appropriate compliance incentive amounts for each parity sub-measurement, Sprint's ILEC retail results will be compared to the individual CLEC results for the submeasure.

1.5. The compliance incentive amount due is scaled based upon the number of Sprint ILEC access lines in the state.

1.6. For parity measurements, statistical testing will be used to determine the significance of the differences between Sprint's ILEC results and the individual CLEC results for each submeasure.

1.7. To determine the appropriate compliance incentive amounts for each benchmark sub-measurement, the CLEC performance results will be compared to the benchmark as defined within the performance measurement and reporting plan.

1.8. Compliance incentives will be calculated on a monthly basis and paid to the CLECs in accordance with the provisions defined within this plan.

### 2. Parity Measurement Compliance Incentives

2.1. Compliance incentives for parity submeasures are based upon statistical comparison of service performance levels provided to each individual CLEC compared to service levels provided to Sprint's ILEC retail customers.

2.2. Performance levels will be determined using the modified z-test statistic. Separate z-test calculations will be used for measures reported as means (averages), proportions (percentages) and rates.

2.3. Compliance incentives will be applicable when the calculated z-test value (Z-score) is equal to or less than -1.65 (the critical value).

2.4. For measurement results reported as a mean, if either the Sprint ILEC retail or CLEC sample size is less than six (6), a permutation test will be used to determine the z-score.

2.5. Sprint will also refund all non-recurring (NRCs) and monthly recurring charges (MRCs) in addition to any applicable ordinary intermediate or severe incentives when the z-test value is less than or equal to -1.04 for the completion interval performance measurement only. Waiver of the NRCs and MRCs is limited to the charges associated with CLEC installation orders that exceed the Sprint ILEC retail installation average by one day or more.

2.6. The level of compliance incentive payment increases as the z-test value decreases. The following table delineates the incentive payments due to each affected CLEC when a parity analysis applies:

| PARITY MEASURE INCENTIVES | | |
|---|---|---|
| **Performance Level** | **Incentive Level** | **Incentive Payment per Submeasure per Month** |
| Modified z-test value > -1.04 | No incentives applicable | No incentives applicable |
| Modified z-test value <= -1.04 and > -1.65 | Completion Interval Measurement only | Refund of MRCs and NRCs |
| Modified z-test value <= -1.65 and > -2.36 | Ordinary | To be determined |
| Modified z-test value <= -2.36 and > -3.0 | Intermediate | To be determined |
| Modified z-test value <= -3.0 | Severe | To be determined |

## 3. Benchmark Measure Incentives

3.1. Compliance incentives for benchmark submeasures are determined by a comparison of achieved service performance levels provided by Sprint to the CLECs in relation to the established benchmarks.

3.2. Service performance levels that do not achieve the benchmarks are subject to incentive payments. No statistical evaluation is performed for benchmark

submeasures.

3.3. The level of compliance incentive payment increases as the difference between the established benchmark and Sprint's actual performance results for each CLEC increases. The following table delineates the incentive payments due to each affected CLEC when a parity analysis applies:

| BENCHMARK MEASURES | | |
|---|---|---|
| **Performance Level** | **Incentive Level** | **Incentive Payment per Submeasure per Month** |
| Standard missed by less than 5 percentage points | Ordinary | To be determined |
| Standard missed by > 5 percentage points but < 10 percentage points | Intermediate | To be determined |
| Standard missed by 10 percentage points | Severe | To be determined |

## 4. Chronic Incentive Payments

4.1. If either a parity measure or a benchmark submeasure is missed for three consecutive months or more, chronic incentive payments apply in addition to any ordinary, intermediate or severe incentive payments.

4.2. Chronic incentive payments are calculated by accumulating the appropriate compliance incentive amounts for the entire period previous to the current month for which a submeasure is missed and applying a 1.5 multiplier to calculate the current month chronic payment.

## 5. Other Compliance Incentives

5.1. Compliance Incentives are applicable to non-regulatory approved late reports, incomplete reports (missing sub-metrics) and late corrective action reports where they are applicable.

5.2. The incentive payment for incomplete reports (i.e., missing sub-metrics) will be established by multiplying the number of missing sub-metrics for that monthly reporting period by the pre-determined incentive amount for "ordinary" out of parity conditions.

## 6. Procedural Cap

6.1. The total amount of compliance incentives paid by Sprint is subject to a monthly procedural cap as noted in Attachment C. Any amount that would be applicable in excess of the cap is subject to a Commission hearing.

6.2. In the event the total amount of compliance incentives due to the CLECs exceeds the monthly procedural cap, Sprint will pay to each CLEC an allocated amount based upon the CLECs percentage of the total calculated compliance incentives due.

6.3. If Sprint should exceed the procedural cap for three consecutive months or six times in any twelve-month period, a formal show cause proceeding before the Commission will be triggered.

## 7. Application and Payment of Performance Incentives

7.1. Each CLEC has the option of either accepting any performance incentives under the Sprint proposed structure, in lieu of other remedies, or the CLEC may choose to pursue other remedies at law for the harm caused by the ILEC.

7.1.1. The CLEC has a six-month period within which to make this election and may initially accept such financial penalties, but must refund them to the ILEC if the CLEC elects to pursue such other remedies.

7.2. The total compliance incentive payments due each CLEC will be calculated on a monthly basis and will be paid directly to each CLECs no later than 45 calendar days from the date the monthly performance reports are issued.

7.2.1. For example, if the monthly performance reports are issued by the15th of the month following the reported month, the compliance incentive payments are due to the CLECs no later than 45 calendar days from the $15^{th}$.

7.3. Certain performance measures within Sprint's performance measurement plan are reported for diagnostic purposes only and no compliance incentives are applicable.

## 8. Mitigation Provisions

8.1. The use of a critical value of -1.65 for parity measures (except for the completion interval measurement that has a critical value of 1.04) provides a reasonable level of deviation from the strict parity requirement and helps minimize the risk of failure purely due random variation.

8.2. To further mitigate the impacts of random variation, the following forgiveness plan allows Sprint to avoid having to pay compliance incentives on missed submeasures up to twice in a calendar year. This forgiveness plan is applied separately for each submeasure and each CLEC as follows:

8.2.1. Sprint's compliance incentive obligation to the CLECs will be forgiven on a submeasure basis only when certain criteria are met. These criteria are:

8.2.1.1. One forgiveness per submeasure is accrued each six months.

8.2.1.2. No more than two forgivenesses can be accrued per submeasure.

8.2.1.3. A forgiveness can only be used to offset the compliance incentive payment due for the same submeasure for which the forgiveness was originally provided.

8.2.1.4. If a forgiveness is available to be used, it must be used at the first opportunity, with the following exceptions:

8.2.1.4.1. An available forgiveness may never be used in consecutive months

8.2.1.4.2. Available forgivenesses may never be used to offset either a severe or a chronic miss on a particular submeasure.

8.3. A limited root-cause analysis process will be performed by Sprint within 30 days following the issuance of the monthly performance reports to provide a reasonable opportunity to explain exceptional conditions that caused an out-of-parity condition and to justify why a compliance incentive payment may not be warranted.

8.3.1. Examples of these exceptional conditions include, but are not limited to the following:

8.3.1.1. Significant activity by a third party external to and not controlled by the ILEC (e.g., damaged facilities, third party systems, bomb threats)

8.3.1.2. Failure of a CLEC process or system (e.g., CLEC switch failure, CLEC backlog of orders)

8.3.1.3. Environmental events not considered force majeure (e.g., fire or other hazardous condition)

8.3.1.4. Force majeure events

8.3.2. Sprint will continue to calculate and pay compliance incentives to the CLECs during this root cause analysis period.

8.4. Either Sprint or the CLEC may initiate a request for an expedited hearing process to resolve differences associated with performance parity and incentive payment issues; however, payments must continue to the CLECs.

8.5. Upon initial deployment of Sprint's performance measurement and reporting plan in a state, a "burn-in" period of six-months will be required to stabilize the measurements before compliance incentives are applicable.

Communications Services Tax Simplification Law

Following are some areas that we would like either clarification on or that we believe should be revised in addition to the list provided at the August 9, 2000, meeting:

1. 202.19(3)(c) provides that a municipality may charge a fee for use of rights-of-way other than a dealer of communications services. 202.17 provides for registration as a dealer and 202.10(4) provides that a dealer is a provider of communications services. There are several companies that either have or are about to place dark fiber or cable in rights-of-way and are not actually dealers of communications services although they have authorization from the Public Service Commission.

Is DOR going to take actions to assure that the companies that are registered are in fact providers of communications services? If a company occupies our rights-of-way and does not provide communications services, can we charge a fee even though DOR may allow them to register? While I can see AT&T, MCI, and others who will have taxable services not paying a fee, to allow others, such as the electric companies, who do not provide services, to get away with paying nothing is not right. Our electric company has now reported made an agreement to allow the use of their dark fiber to an internet provider who still will not pay any taxes under this law.

2. While you are reviewing the provisions of 202.20 regarding the rate established by emergency ordinance, please consider the last sentence in 202.20(1)(c) "at the end of the year" and the effect this may have on the period of collection.

3. 202.22(2)(b)1 contains "including changes in service addresses" since we do not know the service addresses, this probably should be changed to street addresses. This section and 202.22(2)(b)2 provide the times for changes in local addresses. The timing seems to postpone implementation for over a year. Could we get some explanation on this timing and how it is supposed to work.

4. 202.22(2)(b)3 provides that dealers shall collect and remit local communications services "only" for those addresses in the DOR database. Why the word "only"? Most dealers know the taxing authority when service is provided especially in new subdivisions, so why do we have to wait for taxes until DOR updates their database?

5. 202.24(2)(a) and(b) need to be revised with respect to in-kind services of cable service to allow these provisions.

6. Should 202.26(3)(e) be revised to read dealers instead of "taxpayers"?

7. Should 202.27(1) be revised to read dealers instead of "taxpayers"? Also, should you consider requiring payment of no less than the amount collected?

8. Should 202.28(1)(b) be revised to read dealers instead of "taxpayers"?

9. Should 202.28(2)(a) be revised to read remit rather than "pay"?

10. Should 202.30(2)(a) and (b) be revised to read dealers instead of "taxpayers"?

11. Will DOR administrative guidelines provide procedures for reporting by local governments and actions by DOR regarding new providers of services or those not collecting and remitting or should 202.35 contain such provisions?

12. Should the first sentence of 202.36(1) also contain a person who is required to assess, collect and remit taxes? Also, should "taxpayer" in 202.36(4)(a), (b)(1), (c)(1) and (2) and (i)(1)(a) be changed to dealer?

Submitted by Imogene Isaacs, Internal Auditor, City of West Palm Beach, Florida.

CERTIFICATE OF SERVICE
DOCKET NO. 000121-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail or hand-delivery this 25th day of April, 2000 to the following:

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