

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

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RECORDS AND REPORTING

DATE: SEPTEMBER 14, 2000

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

FROM: DIVISION OF LEGAL SERVICES (CHRISTENSEN) *RZ*
DIVISION OF COMPETITIVE SERVICES (HOWELL, KENNEDY) *BIC*
REK

RE: DOCKET NO. 991377-TL - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST SPRINT-FLORIDA, INCORPORATED FOR VIOLATION OF SERVICE STANDARDS.

AGENDA: 09/26/00 - REGULAR AGENDA - SETTLEMENT - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 11/13/00 - STATUTORY DEADLINE FOR RULE WAIVER

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\991377.RCM

CASE BACKGROUND

- 9/10/99 - Commission staff (staff) opened this docket to initiate show cause proceedings against Sprint-Florida, Incorporated (Sprint) for violation of service standards.
- 9/17/99 - The Office of Public Counsel (OPC) filed a Citizens' Notice of Intervention.
- 12/20/99 - The Commission issued Order No. PSC-99-2493-PCO-TL, acknowledging the Citizens' intervention.
- 01/28/00 - Sprint reported \$502,403,773.33 in operating revenues for the period July 1, 1999 through December 31, 1999.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

- 5/2/00 - The Commission issued Order No. PSC-00-0869-PCO-TL, establishing procedure.
- 5/23/00 - The Commission issued Order No. PSC-00-1020-PCO-TL, granting Sprint's and the OPC's joint motion for modification of staff testimony filing date.
- 6/2/00 - The Commission issued Order No. PSC-00-1055-PCO-TL, which modified the testimony filing dates established in Order Nos. PSC-00-1020-PCO-TL and PSC-00-0869-PCO-TL.
- 6/20/00 - In response to Sprint's filing on February 2, 2000, of a Motion for Temporary Protective Order and Request for Confidential Classification of certain information provided in response to Citizens' first request for production of documents and Citizens' first set of interrogatories, the Commission issued Order No. PSC-00-1122-PCO-TL, granting Sprint's motion.
- 6/30/00 - The Commission issued Order No. PSC-00-1190-PCO-TL, granting Sprint's and the OPC's renewal of Joint Motion for Continuance of the Hearing, and that all testimony filing dates be suspended pending establishment of new hearing dates.
- 7/27/00 - Sprint and the OPC filed a Stipulation and Settlement and Petition for Limited Waiver of Rule Nos. 25-4.066(2), 25-4.070(3)(a), 25-4.073(1)(c) and (1)(d), and 25-4.110(2), Florida Administrative Code. (Attachment A, pages 18-34)
- 8/11/00 - Notice published in Florida Administrative Weekly (FAW) for Sprint's and the OPC's joint petition for waiver of Rule Nos. 25-4.066(2), 25-4.070(3)(a), 25-4.073(1)(c) and (1)(d), and 25-4.110(2), Florida Administrative Code.
- 8/15/00 - Sprint filed clarifications regarding Sprint's and the OPC's Stipulation and Settlement and Petition for Limited Waiver of Rule Nos. 25-4.066(2), 25-4.070(3)(a), 25-4.073(1)(c) and (1)(d), and 25-4.110(2), Florida Administrative Code. (Attachment B, pages 35-44)
- 8/25/00 - Response close date for the August 11, 2000, FAW Notice. No comments were received regarding Sprint's and the OPC's joint petition for waiver of Rule Nos. 25-4.066(2), 25-4.070(3)(a), 25-4.073(1)(c) and (1)(d), and 25-4.110(2), Florida Administrative Code.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the Stipulation and Settlement and Petition for Limited Waiver of Rules 25-4.066(2), 25-4.070(3)(a), 25-4.073(1)(c) and (1)(d), and 25-4.110(2), Florida Administrative Code, (Stipulation and Settlement Agreement) offered jointly by Sprint-Florida, Incorporated and the Office of Public Counsel as settlement for the show cause proceedings against Sprint-Florida, Incorporated for its apparent violations of service standards?

RECOMMENDATION: No. Staff recommends that the Commission deny the Stipulation and Settlement and Petition for Limited Waiver of Rules 25-4.066(2), 25-4.070(3)(a), 25-4.073(1)(c) and (1)(d), and 25-4.110(2), Florida Administrative Code, offered by Sprint-Florida, Incorporated and the Office of Public Counsel. The Stipulation and Settlement does not offer any monetary penalties for Sprint's past apparent violations of the service standards. Staff believes that the joint Stipulation and Settlement leads to inequities amongst Florida consumers contrary to the purpose of Chapter 364, Florida Statutes, by lowering the service standards to be applied to and among Sprint's customers. Further, the creation of the Community Service Fund for Lifeline education is not related to the harm suffered by customers who are affected by Sprint's failure to meet business and repair answer times. Therefore, Staff further recommends that the show cause proceeding against Sprint-Florida, Incorporated for its apparent violations of the service standards be set for hearing. **(Kennedy/Christensen)**

STAFF ANALYSIS: Discussions of staff's position in this docket are presented below.

I. **Summary of Stipulation and Settlement and Petition for Limited Waiver of Rules 25-4.066(2), 25-4.070(3)(a), 25-4.073(1)(c) and (1)(d) and 25-4.110(2), Florida Administrative Code**

Attachment A (pages 18-34) is the joint Stipulation and Settlement, and Petition for Limited Waivers of various Commission rules governing service quality. Staff believes that portions of the Stipulation and Settlement Agreement have merit, but because it is a stipulated agreement in whole, denial of any part results in the entire agreement being denied. Staff does not agree with all the parts of the agreement, in particular the lack of a monetary penalty offer, lowering of the service standards, and creation of a fund which is not related to the delay in answer times.

To summarize, the Stipulation and Settlement Agreement offers the following:

- A Service Guarantee Plan, for a minimum of two years, wherein Sprint will automatically provide direct credits to customers whose service is affected by delayed installation or repair.
- A Community Service Fund wherein Sprint will provide credits to the Fund when it fails to meet the proposed answer time and accessibility standards when customers call the business or repair offices. The Community Service Fund will be used to educate customers about and promote Sprint's Lifeline service.
- No monetary penalties against Sprint for its violation of Commission rules during the period January 1, 1996, through March 31, 2000.
- Application of the Commission's current service standards during the interim period of April 1, 2000, to the point-in-time where the proposed Service Guarantee Plan would be implemented (January 1, 2001 or six months after the Commission's order approving the Stipulation and Settlement Agreement).
- A Safe Harbor Threshold wherein Sprint will not be subject to punitive action by the Commission unless its performance falls below the proposed thresholds.
- Force Majeure, wherein Sprint will be relieved of its obligations to provide credits for failure to meet the Service Guarantee Objectives for installation and repair service and answer time during declared emergencies such as hurricanes, work stoppages or acts of third parties outside of Sprint's control.

II. Analysis of Stipulation and Settlement Agreement

A. No Offer of Monetary Penalties for Past Apparent Violations

The reasons staff opened this show cause docket were to investigate why Sprint has apparently failed to meet the rule requirements, to seek corrective action and a penalty for the past performance for the time period covered by the docket, and to encourage compliance with the rules in the future. The rule waivers, combined with the proposed Service Guarantee Plan, only mitigate the "future" failings that Sprint may experience in serving Florida's Citizens. However, the Stipulation and

Settlement Agreement requires that Sprint be absolved of past indiscretions and defines a grace period from January 1, 1996 through March 31, 2000. Thus, Sprint would not be required to pay any monetary penalty for its past apparent violations of the service standards.

Thereafter, the Stipulation and Settlement Agreement provides that Sprint, for the period April 1, 2000, until the time the Service Guarantee Plan becomes effective, would be subject to the Commission's current service standards. If Sprint fails to meet the service standards during this interim period, staff could initiate another show cause docket which would subject Sprint to the possibility of monetary penalties. Staff notes that the Stipulation and Settlement Agreement does not address why Sprint did not or cannot meet the current service standards. However, initiation of a show cause docket within the interim period would appear to create a complication which should have been addressed in the Stipulation and Settlement Agreement.

In addition, staff believes that the proposal to create a Community Service Fund sets a precedent that will possibly hinder the Commission in settlements of other future show cause dockets. Staff believes that the collection of money for the Community Service Fund is no different than the collection of monetary penalties. Section 364.285, Florida Statutes, clearly directs the Commission to deposit any collected penalties in the General Revenue Fund. It is staff's opinion that any monies collected for failing to meet a service standard would be viewed as a penalty and would fall under the statutory requirement of deposit in the General Revenue Fund. Furthermore, pursuant to Section 364.0252, Florida Statutes, the company can be required to promote Lifeline services without this agreement.

Moreover, in all prior cases involving rule violations, the Commission has required a fine or accepted a monetary settlement to resolve the show cause actions. To accept this Stipulation and Settlement Agreement would be contrary to prior Commission policy. Staff is concerned that this type of settlement will set a precedent that will hinder the Commission's decisions in future show cause dockets for not only local exchange companies, but also other telecommunications companies. Staff is not aware of any previous docket where a company has been granted a waiver of rule requirements that it was failing to meet in lieu of a fine or show cause order.

B. Lower Service Standards

The parties are asking the Commission to agree to alternative service standards that redefine the level of service upon which the Commission shall have the authority to take action against Sprint pursuant to Section 364.285, Florida Statutes. The alternative service standards set the thresholds (Safe Harbor Thresholds) for punitive action levied by the Commission at levels of 80% of the service standards defined in current Commission rules. The alternative standards proposed are as follows:

- Business Office Answer Time - 68% of calls directed to the business office answer queue answered within 55 seconds. (Refer to pages 13 and 14 for current standards.)
- Repair Answer Time - 72% of the calls directed to the repair answer queue answered within 30 seconds (or where an interactive voice response unit (IVRU) is utilized - 76% of the calls directed to the repair answer queue answered within 55 seconds). (Refer to pages 13 and 14 for current standards.)
- Installation - For each exchange, 72% of new primary service orders completed within 72 hours. (Refer to page 12 for current standard.)
- Repair, Out-of-Service - For each exchange, 76% of out-of-service conditions restored within 24 hours. (Refer to page 13 for current standard.)

The parties have offered no plausible reason for the proposed relaxation of the service standards, other than to lessen the chances of punitive action by the Commission. Sprint proposes to provide monetary rewards to customers who fail to obtain quality service. Monetary rewards given to affected customers have merit; however, Sprint needs to demonstrate why the current standards cannot be achieved before asking the Commission to lower these standards. Moreover, if Sprint believes it can meet the current service standards during the interim period, as defined in the Stipulation and Settlement Agreement, staff does not understand why Sprint needs lower standards.

Furthermore, staff believes that acceptance of these alternative standards may inadvertently cause harm to Florida's citizens. In practice, staff believes that Sprint may manage its operations to stay just above the "triggering" levels of the Safe

Harbor provisions, to avoid punitive action by the Commission. When this occurs, customers may be subjected to increased delays in primary service installation and repairs to existing service. For example, Sprint serves customers via 103 exchanges. Some exchanges are located in sparsely populated rural areas and others in low income areas where penetration of residential lines is typically lower than in affluent or metropolitan areas. Sprint can manage the work schedules of its personnel resources to stay slightly above the Safe Harbor Thresholds in rural and low income areas and maintain higher levels of service in affluent and metropolitan areas. Because the Safe Harbor Thresholds limit the Commission's response to when the proposed standards are violated for more than two consecutive months, Sprint can deploy its technicians to remote work sites, such as a rural area, when it is convenient to the staffing budget, rather than based on the needs of the rural community. This may inadvertently result in discrimination against the citizens in rural and low income territories.

Section 364.10(1), Florida Statutes, states:

A telecommunications company may not make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Staff believes that acceptance of the Stipulation and Settlement Agreement would reduce Sprint's incentives to fulfill the intent of Section 364.10(1), Florida Statutes.

Furthermore, granting the requested waivers of Rule Nos. 25-4.066(2) and 25-4.070(3)(a), Florida Administrative Code, would effectively allow Sprint to pay each customer for missing the current rule requirements in lieu of being held liable for the current rule requirements. The Commission cannot, if the settlement is approved, impose any legal action against Sprint until the company falls below 80% of the current requirements. In other words, if the company is now required to install service 90% of the time within 3 working days, the new standard will be 72%, as long as the company credits the customers in accordance with the proposed Service Guarantee Plan. The provisions of the Service Guarantee Plan are described in Attachment A, pages 22-26. Although some customers may like this type of compensation, it is staff's opinion, based on complaints, that most customers would probably prefer to get their service within 3 days. For example, a person operating a single-line business out of their house may lose far more revenue by not having a telephone for an extended

period of time than the compensation through the Service Guarantee Plan could possibly offer.

The same analysis holds true for repair. Customers that lose phone service due to a failure in Sprint's network, will be subject to a 19% greater chance that their phone service will not be restored in 24 hours. The financial incentives proposed in Sprint's Service Guarantee Plan for failure to meet the proposed primary service installation intervals and the out-of-service restoration intervals, cannot adequately compensate business customers that need phone service to conduct their business and residential customers that need phone service to obtain emergency services.

The OPC and Sprint are also requesting a waiver of Rule 25-4.073(1)(c) and (d), Florida Administrative Code, as it applies to answer times for repair service. Staff agrees with the concept of this rule waiver as far as using average speed of answer as a standard and commends the parties in reaching a reasonable standard. However, staff does not agree with the resulting community service credits. As stated previously, Staff believes this would result in a collection of a penalty that would not be deposited in the General Revenue Fund.

The last rule requested to be waived is Rule 25-4.110(2), Florida Administrative Code, which has been renumbered due to a recent amendment and is now Rule 25-4.110(6). Any Order resulting from these proceedings should refer to the new rule number. Rule 25-4.110(6), Florida Administrative Code, states:

Each company shall make appropriate adjustments or refunds where the subscriber's service is interrupted by other than the subscriber's negligent or willful act, and remains out of order in excess of 24 hours after the subscriber notifies the company of the interruption. The refund to the subscriber shall be the pro rata part of the month's charge for the period of days and that portion of the service and facilities rendered useless or inoperative; except that the refund shall not be applicable for the time that the company stands ready to repair the service and the subscriber does not provide access to the company for such restoration work. The refund may be accomplished by a credit on a subsequent bill for telephone service.

Under the Stipulation and Settlement offer, this rule must be waived in order for Sprint to make the credits as set

forth in the proposed Service Guarantee Plan. Staff acknowledges that, in some ways, the credit provisions of the proposed Service Guarantee Plan are more favorable to Sprint's Florida customers than the credit provisions currently stated in Rule 25-4.110(6), Florida Administrative Code.

However, if the settlement is approved, it effectively would allow Sprint to be regulated under a different set of requirements than other LECs. The Commission has two other show cause dockets pending against two other large LECs. If the other two dockets result in settlements that differ from this settlement, consumers across Florida will receive different levels of service. Staff believes that it is more appropriate to address the ideas proposed by the OPC and Sprint in the current rulemaking docket (Docket Number 991473-TP), which would make the rules applicable to all LECs.

Staff believes that continuing and finalizing the rulemaking on the Commission's service standards would be the best approach for satisfying the "future" welfare of Florida's citizens. All of Florida's service standards would be addressed simultaneously.

C. No Relationship Between Fund and Harm

The Community Service Fund is directly linked to the waiver of Rules 25-4.073(1)(c) and (1)(d), Florida Administrative Code, Answering Time. Funding will be provided in the form of Community Service Credits issued if and when Sprint fails to meet its proposed objectives regarding answer times to repair and answer times to the business office. The Community Service Fund will be used to promote and educate customers about Sprint's Lifeline service. The Stipulation and Settlement Agreement provides that the parties reserve the right to agree to a different manner to dispose of monies, subject to the approval of the Commission. Sprint offers an initial credit of \$100,000 to the Community Service Fund.

Staff believes that Sprint's proposal to contribute to a fund used to educate consumers and promote Sprint's Lifeline is not relevant to this proceeding. If funding is not sufficiently related to the provisioning of telecommunications services in a reasonable time frame, there is no nexus between the Stipulation and Settlement Agreement's proposed remedy and the harm to the customers. Although, funding educational awareness of the Lifeline program is laudable, it is not related to harm incurred by customers affected by the company's failure to meet business and repair answer times.

Staff is currently involved with other activities directly associated with Lifeline and believes that any attempt to link Lifeline with any settlement in the proceeding is not warranted. These activities include:

- Rulemaking regarding funding to advertise the Lifeline program,
- Public service announcements, and
- Joint effort of the Commission and the Department of Community Affairs, whereby automatic enrollment in the Lifeline program will be made available to Florida residents that qualify for Lifeline services.

Moreover, staff notes that the monies for the Community Service Fund will materialize as a result of inferior service to Sprint's customers. The Stipulation and Settlement Agreement does not address any process improvement initiatives to improve customer service. To provide an acceptable level of service to its customers, staff believes Sprint would need to improve its processes or increase its staff to fulfill the current service standards that were designed to meet the needs of Florida's Citizens.

D. Legal Analysis of the Limited Waiver Provision

Section 120.542(2), Florida Statutes, states:

...waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate the principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the ... waiver.

In the Stipulation and Settlement Agreement, the parties argue that the provisions of the settlement would meet the underlying purpose of the Statute by other means. The parties aver that by providing direct credits to the customers whose service is affected by delays in installation or repair, the purpose of the underlying statutes is satisfied. The parties argue that the direct and material credits to basic service subscribers meets the provisions of the Florida Statutes which authorize the Commission to

establish, monitor and enforce service standards such as Section 364.01(4) and Section 364.025, Florida Statute (carrier of last resort, service availability respectively). The parties further assert that the graduated credit schedules will act as discipline mechanisms because penalties increase in relation to the length of the delay.

As stated previously, staff believes that the parties' proposed credit plan does not meet the underlying purpose of Chapter 364, Florida Statutes. The purpose of the service standard rules is to define standards that are effective and equally applicable to all Florida consumers. Under the proposed plan, the service standards are lowered for Sprint, and thus, lowered for Sprint customers. Moreover, the Safe Harbor Thresholds provide Sprint with an economic safe harbor. The company is only subject to Commission enforcement if it fails to meet its lowered service standards in the same exchange for two consecutive months. This provision does not represent a disciplinary measure for Sprint. In fact, this provision protects Sprint when there are delays in service to customers not attributable to a Force Majeure. Although, Sprint is required to credit customers for service delays, the monetary liability appears to be much lower under this plan than the monetary liability under the current rules.

Further, the parties state that application of Rule Nos. 25-4.066(2), 25-4.070(3)(a), 25-4.073(1)(c) and (1)(d), and 25-4.110(2), Florida Administrative Code, while the settlement is in effect, would constitute unfairness or economic hardship for Sprint because this would lead to duplicate penalties.

Staff concurs that Sprint would be subject to an economic hardship if the settlement is approved without the limited waiver of Rule Nos. 25-4.066(2), 25-4.070(3)(a), 25-4.073(1)(c) and (1)(d), and 25-4.110(2), Florida Administrative Code. However, staff believes if the settlement is rejected for any reason, Sprint would not suffer any economic hardship because Sprint would not be operating under the settlement and no waiver would be necessary.

Staff does not believe that the Stipulation and Settlement Agreement proposed by the parties should be accepted. Staff has stated previously that it believes the settlement would result in inequities amongst Florida consumers, which is not the purpose of Chapter 364. In addition, staff does not believe that there is a nexus between the customer service fund for Lifeline education and the harm to customers affected by the delay in business and repair times. Therefore, it is staff's belief that the parties have not demonstrated that the Stipulation and Settlement proposed by Sprint

and OPC meets the underlying purpose of Chapter 364, Florida Statutes.

Based on the foregoing, staff believes that the limited waiver of Rules Nos. 25-4.066(2), 25-4.070(3)(a), 25-4.073(1)(c) and (1)(d), and 25-4.110(2), Florida Administrative Code, should be denied because it does not meet the requirements of Section 120.542, Florida Statutes.

III. Results of Staff's Analyses of Sprint's Performance Data

Due to the magnitude of the apparent violations of the service standard rules involved in this docket, staff believes it is essential to address the apparent violations in this recommendation.

Rule 25-4.0185, Florida Administrative Code, Periodic Reports, requires that Sprint submit quarterly reports to the Commission. Staff evaluates the quarterly reports to assess Sprint's performance relative to the Commission's rules on service standards. In filing these periodic reports, Sprint attests that the information provided is both true and accurate. During the period January 1, 1996, through December 31, 1999, staff's analyses of Sprint's quarterly reports indicate that Sprint had failed to consistently meet the service standards defined in Rule Nos. 25-4.066(2), 25-4.070(3)(a), and 25-4.073(1)(c) and (1)(d), Florida Administrative Code.

- **Rule 25-4.066(2), Florida Administrative Code, Availability of Service**

Rule 25-4.066(2), Florida Administrative Code, states:

Where central office and outside plant facilities are readily available, at least 90 percent of all requests for primary service in any calendar month shall normally be satisfied in each exchange or service center within an interval of three working days after receipt of application when all tariff requirements relating thereto have been complied with, except those instances where a later installation date is requested by the applicant or where special equipment or services are involved.

As demonstrated in the quarterly reports filed during the period January 1, 1996, through December 31, 1999, Sprint failed to meet the requirement that at least 90 percent of all requests for

primary service be satisfied within 3 days per exchange as measured monthly. Sprint operates 103 exchanges within Florida and based on monthly measurements, the base line for the number of exchanges for the purposes of data collection is 12 times 103 exchanges or 1236 measurements per year. Sprint's periodic reports indicate that it failed to meet the primary service installation standard in 63 exchanges (5.1%) during 1996, in zero exchanges during 1997, in 10 exchanges (0.8%) during 1998, and in 181 exchanges (14.6%) during 1999. Staff notes that the majority of the primary service installation violations for 1999 occurred during the last four months of the year.

- **Rule 25-4.070(3)(a), Florida Administrative Code, Customer Trouble Reports**

Rule 25-4.070(3)(a), Florida Administrative Code, states:

Service Interruption: Restoration of interrupted service shall be scheduled to insure at least 95 percent shall be cleared within 24 hours of report in each exchange as measured on a monthly basis. For any exchange failing to meet this objective, the company shall provide an explanation with its periodic report to the Commission.

Quarterly reports filed during the period January 1, 1996, through December 31, 1999, demonstrated that Sprint had failed to meet the requirement that at least 95 percent of interrupted service shall be cleared within 24 hours of report in each exchange as measured monthly. Sprint's periodic reports indicate that it failed to meet the interrupted service repair standard in 324 exchanges (26.2%) during 1996, in 163 exchanges (13.2%) during 1997, in 247 exchanges (20%) during 1998, and in 300 exchanges (24.3%) during 1999. Staff notes the positive trend in 1997 was followed by a negative trend in 1998 and 1999.

- **Rules 25-4.073(1)(c) and (1)(d), Florida Administrative Code, Answering Time**

Rules 25-4.073(1)(c) and (1)(d), Florida Administrative Code, state:

(c) At least ninety (90%) percent of all calls directed to intercept, directory assistance and repair services and eighty (80%) percent of all calls to business offices shall be answered within thirty (30) seconds after the last digit is dialed.

(d) Notwithstanding (c) above, when a company utilizes a menu driven, automated, interactive answering system (referred to as the system), at least (95%) percent of the calls offered shall be answered within 15 seconds after the last digit is dialed. The initial recorded message presented by the system to the customer shall only identify the company and the general options available to the customer. The option of transferring to a live attendant shall be included in the initial message. For subscribers electing the option of transferring to a live assistant, except for business office calls, at least ninety-five (95%) percent of all calls shall be transferred by the system to a live attendant prepared to give immediate assistance within fifty-five (55) seconds after the last digit of the telephone number listed in the directory for the company's service(s) was dialed. Eighty-five (85%) percent of all such calls directed to any business office shall be transferred by the system to a live attendant within fifty-five (55) seconds after the last digit is dialed. At any time during the call, the customer shall be transferred to live assistance if the customer fails to interact with the system for a time period of ten (10) seconds following any prompt. For the purposes of this section, interaction means responding to a customer prompt offered by the system by keying (pressing) a number or character of a Dual-Tone Multiple-Frequency (DTMF) keypad associated with a telephone.

Sprint's quarterly reports filed during the period January 1, 1996, through December 31, 1999, demonstrated that Sprint had failed to meet the answer time standard for calls to repair and the answer time standard for calls to the business office. Sprint's periodic reports indicate that it failed to meet the answer time standard for calls to repair 16 occurrences of a possible 24 during 1996, 3 occurrences of a possible 14 during 1997, 11 occurrences of a possible 12 during 1998, and 4 occurrences of a possible 12 during 1999. Sprint failed to meet the answer time standard for calls to the business office 11 occurrences of a possible 45 during 1996, 12 occurrences of a possible 48 during 1997, 16 occurrences of a possible 38 during 1998, and 12 occurrences of a possible 36 during 1999. The possible number of occurrences varied each year because Sprint maintained more than one business office in its operating territories, and utilized a combination of live attendants and interactive answering systems.

In summary the following table illustrates the apparent violations, by rule, for the period of 1996 through 1999.

Table 1 - Number of Apparent Rule Violations

Commission Rule	Number of Violations/Year				Total
	1996	1997	1998	1999	
25-4.066(2) Availability of Service	63	0	10	181	254
25-4.070(3) (a) Customer Trouble Reports	324	163	247	300	1034
25-4.073(1) (c) Answering Time (Repair)	16	3	11	4	34
25-4.073(1) (d) Answering Time (Business Office)	11	12	16	12	51
Grand Total					1424

IV. Conclusion

Although the parties' goals are very commendable, staff believes that the method, wherein Sprint would provide funds, is not an acceptable option to mitigate Sprint's past or future violations of the Commission's current rules. Furthermore, the rule waivers (alternative standards) proposed in the Stipulation and Settlement Agreement are not necessary and do not meet the statutory criteria if the Stipulation and Settlement Agreement is not accepted.

Based on the foregoing, staff recommends that the Commission deny the Stipulation and Settlement and Petition for Limited Waiver of Rules 25-4.066(2), 25-4.070(3) (a), 25-4.073(1) (c) and (1) (d), and 25-4.110(2), Florida Administrative Code, offered by Sprint-Florida, Incorporated and the Office of Public Counsel. The Stipulation and Settlement does not offer any monetary penalties for Sprint's past apparent violations of the service standards. Staff believes that the joint Stipulation and Settlement leads to inequities amongst Florida consumers contrary to the purpose of Chapter 364, Florida Statutes, by lowering the service standards to

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be applied to and among Sprint's customers. Further, the creation of the Community Service Fund for Lifeline education is not related to the harm suffered by customers who are affected by Sprint's failure to meet business and repair answer times. Therefore, Staff further recommends that the show cause proceeding against Sprint-Florida, Incorporated for its apparent violations of the service standards be set for hearing.

DOCKET NO. 991377-TL
DATE: SEPTEMBER 14, 2000

Issue 2: Should this docket be closed?

Recommendation: No. If the Commission accepts staff's recommendation on Issue 1, then this docket should remain open and be scheduled for hearing. **(Christensen)**

Staff Analysis: If the Commission accepts staff's recommendation on Issue 1, then this docket should remain open and be scheduled for hearing.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause
proceedings against Sprint-Florida,
Incorporated for violations of
service standards /

Docket No. 991377-TL

Filed: July 27, 2000

**STIPULATION AND SETTLEMENT AND PETITION FOR LIMITED WAIVER
OF RULES 25-4.066 (2), 25-4.070 (3)(A), 25-4.073 (1)(C) AND (1)(D) AND 25-
4.110(2), FLORIDA ADMINISTRATIVE CODE**

Pursuant to Section 120.57(4), Florida Statutes (1999), Sprint-Florida, Incorporated (Sprint or the Company) and the Office of the Public Counsel (OPC or Citizens) (hereinafter the Parties) have entered into this Stipulation and Settlement to effect an informal disposition and complete and binding resolution of any and all matters and issues which might be addressed by the Florida Public Service Commission (FPSC or Commission) in this docket. This Stipulation and Settlement avoids the time, expense and uncertainty associated with adversarial litigation in keeping with the Florida Public Service Commission's long-standing policy and practice of encouraging parties in contested proceedings to settle issues whenever possible. Concurrent with this Stipulation and Settlement, the Parties are herein requesting a waiver of certain quality of service rules as a condition of implementing the Service Guarantee Plan that forms the basis of the settlement of this docket. Accordingly, without prejudice to any Party's position in any other proceeding before the Florida Public Service Commission or any other venue, present or future, the Parties stipulate and agree as follows:

1. BACKGROUND & INTRODUCTION

This Docket was initiated on September 10, 1999 pursuant to a memorandum dated September 10, 1999. The OPC intervened on September 17, 1999. On April 13, 2000, an issue identification conference was held. At that time the Parties agreed with the FPSC staff (Staff) to establish a list of issues. In letters dated March 27, 2000 and April 25, 2000 Sprint acknowledged that the FPSC has jurisdiction to make a determination regarding Sprint's compliance with Rules 25-4.066 (2), 25-4.070 (3)(a), 25-4.073(1) (c) and (1)(d) and 25-4.110(2), Florida Administrative Code, for the period of January 1, 1996 through December 31, 1999. These letters were acknowledged and issues established for this docket in Order No. PSC-00-0869-PCO-TL issued May 2, 2000. The OPC has served two Requests for Production of Documents and one set of Interrogatories on Sprint. Sprint has made its responses to the discovery available to the OPC for inspection.

Since the initiation of the Docket, the Parties have engaged in discussions for the purposes of resolving this matter. To this end the Parties have reached the following Stipulation and Settlement in full resolution of the issues before the Commission. Furthermore, the Parties agree to include the first quarter (January – March) 2000 in the period to which this Stipulation and Settlement applies, for any violation of the aforesaid rules.

As resolution of this docket and in lieu of any fine or other penalty that the Commission could otherwise assess in this matter, except as provided for in Section 3(D)(4), the Parties agree that Sprint will incur the cost of and establish a Service Guarantee Plan that

will automatically compensate customers and/or require the payment of funds by Sprint in the event that certain service objectives are not met. The Service Guarantee Plan will not require customers whose service is not installed or repaired within the objectives set out below to request that a credit to be placed on the bill. Any credits called for in the plan will be applied automatically. Payment of funds for failure to meet answer time criteria will be made as set out below. The Stipulation and Settlement generally, and the Service Guarantee Plan, specifically, are not intended to eliminate the FPSC's statutory authority to establish, monitor compliance with and/or enforce service quality standards. It represents a compromise of the Parties between possible assessment and payment of penalties and/or fines and a desire to insure that customers receive direct and immediate tangible relief when service does not meet the agreed upon Service Guarantee Objectives.

To that end, and except as provided for in Section 3(D)(4), the Parties agree that the initial payment to be made pursuant to Section 3(D)(2) and the Service Guarantee Plan are intended to substitute for the imposition of any sanction that the Commission might lawfully impose as a result of any hearing that could be held in this matter as set out in Order No. PSC-00-0869-PCO-TL. The Stipulation and Settlement is intended to take the place of any hearing that might be held in this Docket.

2. JOINT PETITION FOR A WAIVER OF RULES 25-4.066 (2), 25-4.070 (3)(A), 25-4.073 (1)(C) AND (1)(D) AND 25-4.110(2), FLORIDA ADMINISTRATIVE CODE

By this Stipulation and Settlement the Parties jointly request a limited waiver of the applicability of Florida Public Service Commission Rules 25-4.066 (2), 25-4.070

(3)(a), 25-4.073(1)(c) (as applicable to repair service) and (1)(d), and 25-4.110(2), Florida Administrative Code. Pursuant to Section 120.542, Florida Statutes, the Parties submit that the Service Guarantee Plan contained in this Stipulation and Settlement satisfies the requirement that a demonstration be made that the purpose of the underlying statute will be achieved by other means. By providing direct credits to customers whose service is affected by delayed installation or repair, the purpose of the underlying statutes are achieved. Provisions of Florida Statutes authorizing or directing the Commission to establish, monitor and enforce service standards, such as Section 364.01(4), 364.025, Florida Statutes (1999) (carrier of last resort obligations, service availability) will be adequately met if the basic service subscriber receives a direct and material credit for being without basic service. The graduated credit schedule will also act to discipline Sprint by imposing increasing and substantial penalties the longer repair of, or access to, service is delayed.

The Service Guarantee Plan meets the quality of service provisions of Chapter 364 by giving immediate and direct compensation to customers and provides similarly swift penalties to Sprint for not meeting objectives that are consistent with the existing Commission service rules. In addition, application of the above rules to Sprint at the same time direct credits are being made or accrued would constitute unfairness or economic hardship by imposing duplicate penalties. For this reason, the Parties request a waiver so that the Service Guarantee Plan can be implemented. The waiver is requested only for the time the Service Guarantee Plan is in effect and except as provided for in Section (D)(4). It is further the intent of the Parties that the waiver will be effective as to any amendments to the subject rules.

3. THE SERVICE GUARANTEE PLAN

The Parties hereby establish a Service Guarantee Plan that establishes four Service Guarantee Objectives, establishes credits for failure to meet these objectives and contains term and definitional language for application of the Service Guarantee Plan. Two of the objectives are designed to result in direct and automatic credits to customers if the objectives are not met. These are for installation of primary, basic service (where facilities are available) and repair of out-of-service conditions. The other two objectives are established for answer time in the business office and repair queues serving basic service customers. Failure to meet the answer time objectives will result in credits (referred to herein as "Community Service Credits") being made to a Community Service Fund that will educate customers about and promote Sprint's Lifeline service.

A. Service Guarantee Objectives and Credits Schedule

1. Repair - Out of Service (Service Interruption):

Sprint agrees to make the applicable automatic credits on the bills of each residential and single line business customer for whom Sprint fails to meet the Service Guarantee Objective specified in Table 1. An out-of-service condition for purposes of this Service Guarantee Objective occurs when a subscriber's service is interrupted other than by a negligent or willful act of the subscriber and it remains out of service in excess of 24 hours after being reported to the Company and where the customer is able to continue to take service (e.g. not where the service location has been destroyed by fire, flood, wind,

etc.). Sundays and holidays are excluded in calculating service outage duration for purposes of determining applicability of the credits in Table 1. In no event shall the Service Guarantee Credit for failure to meet a (Repair - Out of Service) Service Guarantee Objective be less than \$10.

Sprint will commit to continue providing automatic adjustments or refunds to customers who experience out-of-service conditions during Sunday or holiday periods, where such Sunday or holiday periods are not included in the duration calculation for purposes of the Service Guarantee Credit. Such adjustments or refunds shall not be deemed Service Guarantee Credits, shall be provided only for a Sunday or holiday not covered by the Service Guarantee Credit and will be calculated and credited to the customer consistent with Rule 25-4.110(2), Florida Administrative Code.

TABLE 1

<i>Repair - Out of Service</i>	
<i>Duration</i>	<i>Credit^a</i>
<i>≤ 24 Hours*</i>	<i>\$0</i>
<i>> 24 to 36 Hours</i>	<i>25% of 1 Month's Recurring Local Service</i>
<i>> 36 to 48 Hours</i>	<i>50% of 1 Month's Recurring Local Service</i>
<i>> 2 to 5 Days</i>	<i>100% of 1 Month's Recurring Local Service</i>
<i>> 5 Days</i>	<i>200% of 1 Month's Recurring Local Service</i>

****Service Guarantee Objective.
§ \$10 minimum credit.***

2. Service Installation Intervals:

Sprint agrees to make the applicable automatic credits on the bills of each residential and single line business customer for whom Sprint fails to meet the Service Guarantee

Objective specified in Table 2. This Service Guarantee Objective is applicable for primary local service only. Table 2 contains Sprint's commitment regarding the service installation intervals, service guarantee criteria and associated customer Service Guarantee Credits where central office and outside plant facilities are readily available. The duration shall be calculated beginning upon receipt of application when all tariff requirements relating thereto have been complied with, except those instances where a later installation date is requested by the applicant or where special equipment or services are involved. Where the applicant requests a later date, the duration shall be calculated as if the requested date is day 3. Saturdays, Sundays and holidays are excluded for determining the applicable credits in Table 2, except that duration greater than 15 work days will be determined based on calendar days, including Saturdays, Sundays and holidays. Sprint will still be subject to FPSC Rule 24-066 (3) & (5), Florida Administrative Code where central office or outside plant facilities are not readily available.

TABLE 2

Primary Service Installation Intervals

<i>Duration</i>	<i>Credit</i>
<i>≤ 3 Days*</i>	<i>\$0</i>
<i>> 3 to 6 Days</i>	<i>\$20</i>
<i>> 6 to 15 Days</i>	<i>\$50</i>
<i>> 15 to 30 Days</i>	<i>\$100</i>

***Service Guarantee Objective**

3. Answer Time - Repair and Business Office:

Answer time for residence and business basic service customers will be measured

and reported based on the Average Speed of Answer (ASA). Measurement of ASA begins when the call leaves the Integrated Voice Response Unit (IVRU) and ends when a service representative answers the call or the caller abandons the call. Where an IVRU is not used, measurement of ASA begins as soon as the call is received at the automatic call distributor and ends when a service representative answers the call or the caller abandons the call. The Company will forecast expected demand and provide incoming access lines (trunks) to the business office and repair call centers at a P.01 grade of service for the average busy hour busy season. Within 30 seconds after the customer enters the IVRU, the caller will be given the option to exit the menu and be connected to a service representative. Sprint will credit the Community Service Fund for disposition in the amounts specified in Table 3 and/or Table 4 when the achieved ASA and/or Accessibility results do not meet the Service Guarantee Objectives specified in Tables 3 and 4.

Achievement of the Service Guarantee Objective and payment of any applicable Community Service Credits shall be determined separately for the business office that is designated to serve residential and single-line business basic service customers and separately for repair. Furthermore, Service Guarantee Objective achievement and applicable credit payment shall be determined separately for ASA and Accessibility. For example, 94% accessibility and 47 seconds ASA for a given queue would produce a community service credit of \$15,000 for the reporting month.

Answer time Service Guarantee Objectives and associated Community Service Credits for Answer Time results, ASA and Accessibility, are as follows:

TABLE 3

<i>Answer Time AS1 (seconds)</i>	<i>Community Service Credit</i>
$\leq 35^*$	\$-0-
$> 35 \leq 45$	\$5,000
$> 45 \leq 60$	\$10,000
$> 60 \leq 90$	\$25,000
> 90	\$50,000

*Service Guarantee Objective

TABLE 4

<i>Accessibility (%)</i>	<i>Community Service Credit</i>
95 to 100*	\$-0-
$> 90 \leq 95$	\$5,000
$> 85 \leq 90$	\$10,000
$> 70 \leq 85$	\$25,000
≤ 70	\$50,000

*Service Guarantee Objective

Where the Company maintains a separate call center queue for non-basic business service customers, the criteria and credits are not applicable and answer time reporting is not required by the Service Guarantee Plan.

B. General Terms

- 1. Implementation Date:** Sprint will implement this Service Guarantee Plan no later than January 1, 2001 or within six month's of a final Commission order approving the Stipulation and Settlement, whichever is later. To the extent that the Service Guarantee Plan (or any portion thereof) is implemented earlier for any Service Guarantee Objective, upon notification to the Public Counsel and Commission Staff, the applicable

safe harbor provisions of this Service Guarantee Plan will apply for such portion implemented early.

2. **Credits:** Credits to customers will be made automatically and will not require the customer to request them.

C. Definitions

1. **Accessibility:** Where an IVRU is not used, Accessibility for a particular queue is defined as the percentage of calls directed by the customer to the particular queue, where the numerator is the total number of calls either answered by a service representative or abandoned by the customer and the denominator is the total number of calls directed by the customer to the particular queue. Where an IVRU is used, Accessibility for a particular queue is defined as the percentage of calls exiting the IVRU and directed by the customer to the particular queue, where the numerator is the total number of calls either answered by a service representative or abandoned by the customer and the denominator is the total number of calls exiting the IVRU and directed by the customer to the particular queue.
2. **Average Speed of Answer (ASA):** For a given month, the sum of the total number of seconds of all calls accessing a queue measured from the time each call exits the IVRU until the call is abandoned or answered by service representative, divided by the total number of calls.
3. **Service Representative:** A repair or business office live attendant prepared to assist a customer with either a repair or service inquiry or request.
4. **Local Service:** As defined in Section 364.02 (2), Florida Statutes (1999).
5. **Recurring Local Service:** The base amount for application of the percentages in Table 1, which shall be the charges for: recurring regulated basic and non-basic services, the Subscriber Line Charge, franchise fee (if any) and a prorated portion of the total taxes applicable to regulated local service. The base amount will not include the 911 surcharge, the local number portability charge or discretionary sales surtax. The service guarantee credit will be based on the recurring regulated local services of the customer for the period during which the credit is applied.
6. **Grade of Service:** Percent of calls encountering a busy. A P.01 grade of service requires sufficient incoming access lines or trunks such that 99 percent of calls will not encounter a busy condition in the average busy season busy hour.

7. **Service Guarantee Objective:** The standard(s) shown in Tables 1 through 4 for which no monetary credit will be required.
8. **Community Service Credits:** Credits made to the Community Service Fund when the Company fails to achieve the Service Guarantee Objectives established in Table 3 and/or Table 4.
9. **Community Service Fund:** The fund (i.e. corporate undertaking) established pursuant to Section 3(D)(2) and/or the fund (i.e. corporate undertaking) created by the payment of credits required when the Company fails to achieve the Service Guarantee Objectives established in Table 3 and/or Table 4.
10. **Safe Harbor Threshold:** The level of service below which the Commission shall have the authority to take action against Sprint pursuant to Section 364.285, Florida Statutes, the provisions of the Service Guarantee Plan notwithstanding. For this purpose the applicable threshold service levels shall be based on 80% of the FPSC rules in effect on the date of filing of the Stipulation and Settlement including application of Rule 25-4.070(6) (exclusion due to emergency situations), to wit:
 - (i). Business office answer time – 68% of calls directed to the business office answer queue answered within 55 seconds;
 - (ii). Repair answer time – 72% of the calls directed to the repair answer queue answered within 30 seconds (or where an IVRU is utilized – 76% of the calls directed to the repair answer queue answered within 55 seconds);
 - (iii). Installation -- For each exchange, 72% of new primary service orders completed within 72 hours; and
 - (iv.). Repair, out-of-service – For each exchange, 76% of out-of-service conditions restored within 24 hours.

For (i) and (ii), suspension of the Safe Harbor provided in Section 3(D)(3) shall occur for a particular Service Guarantee Objective only when the same queue fails to meet the threshold service level for two consecutive months. Suspension of the safe harbor will occur for a particular Service Guarantee Objective with respect to (iii) and (iv) above on an exchange-by-exchange basis and only when the same exchange fails to meet the threshold service level for two consecutive months. Restoration of the Safe Harbor shall only occur after the answer time or affected exchange equals or exceeds the applicable objective(s) contained in (i) through (iv) herein for two consecutive months.

D. Other Provisions of the Service Guarantee Plan

1. Force Majeure

In the event of an emergency due to major events such as hurricanes, work stoppages, or acts of third parties outside Sprint's control when it is reasonable to expect that the Company will be unable to meet its installation, repair and answer time objectives, Sprint may declare a service emergency. In declaring a service emergency, the Company shall define the geographic area, on a minimum of an exchange basis, where the emergency exists, may make indefinite commitments for installation and repair services within the affected areas, shall initiate public service announcements to inform customers, and shall notify the Commission at the time of implementation and termination of the service emergency period. In such cases, the Company shall be relieved of its obligations to provide credits for failure to meet the Service Guarantee Objectives for installation and repair service and answer time.

Where Sprint is relieved of meeting the Service Guarantee Objectives, it will revert to making refunds or adjustments for customers affected by a service emergency, pursuant to Rule 25-4.110(2), Florida Administrative Code, for out-of-service conditions defined by Rule 25-4.070(1)(b), Florida Administrative Code.

2. Establishment of a Community Service Fund and Disposition of Community Service Credits

Sprint shall establish a Community Service Fund in the form of a corporate

undertaking. If, pursuant to Section 3(A)(3) of the Service Guarantee Plan, Sprint makes credits to the Community Service Fund for failure to meet repair and business office answer time Service Guarantee Objectives, such amounts shall be disposed of, in coordination with the Office of Public Counsel, to educate customers about and promote Sprint's Lifeline service. Community Service Credits shall be accrued monthly and shall be spent during the calendar year following the accrual. For example, any amounts accrued during calendar 2001 shall be spent to educate customers about and promote Sprint's Lifeline service during calendar year 2002. The Parties reserve the right to agree to a different manner to dispose of amounts credited pursuant to Section 3(A)(3) of the Service Guarantee Plan, subject to the approval of the Florida Public Service Commission.

In addition, separate and apart from any credits that may be made pursuant to Section 3(A)(3) of the Service Guarantee Plan, Sprint agrees to credit an amount of \$100,000 to the Community Service Fund. Regardless of any credits made or disposed of as otherwise provided herein, \$100,000 shall be spent prior to January 1, 2002 to educate customers about and promote Sprint's Lifeline service.

3. Safe Harbor

Sprint's obligation to implement the Service Guarantee Plan is contingent upon the Commission granting the waiver requested herein. Therefore, except for the period of April 1, 2000 through the implementation date, during the life of the Service Guarantee Plan, the Company shall not be subject to Florida Public Service Commission Rules 25-4.066 (2), 25-4.070 (3)(a), 25-4.073 (c) and (d) and 25-4.110(2), Florida Administrative Code, except as

otherwise specified herein.

4. Commission's Continuing Jurisdiction

The intent of the Parties is that the Commission shall have the right to enforce the provisions of this Service Guarantee Plan including, but not limited to, verification that the credits are made consistent with the Service Guarantee Plan. Furthermore, it is not the intent to deprive the Commission of its authority to resolve customer complaints and monitor and ensure that service is adequate and reasonable and resolve customer complaints. The Parties contemplate that the Commission will retain its ability to monitor service through auditing and reviewing filed reports.

The Parties contemplate that this Stipulation and Settlement will resolve all issues defined in Order No. PSC-00-0869-PCO-TL for the defined period (January 1, 1996 through March 31, 2000) and that the automatic credits will provide a safe harbor to Sprint for Commission sanctions that might otherwise be imposed pursuant to Rules 25-4.066 (2), 25-4.070 (3)(a), 25-4.073 (c) and (d) and 25-4.110(2), Florida Administrative Code, for the duration of the Service Guarantee Plan.

However, the Parties further recognize that the Commission's monitoring efforts and/or the level of service complaints may warrant Commission inquiry into Sprint's overall level of service. For this reason the Parties further agree that any safe harbor that the Service Guarantee Plan provides will apply as long as the Company's results reported on a quarterly basis do not drop below the Safe Harbor Threshold. The Company will continue

to report service results to the FPSC as required under the rules in effect on the date of the filing of this Stipulation and settlement. In addition, Sprint will provide monthly reports to the Commission and the Office of the Public Counsel within 30 days of the end of the reporting month detailing the amount of credits related to installation, repair-out-of-service, business office answer time and repair answer time.

5. Term of Service Guarantee Plan

The term of the Service Guarantee Plan is for a minimum period of two years beginning on the implementation date, however, the Parties may mutually agree to extend the Service Guarantee Plan, subject to Commission approval. The Parties also will meet not later than the 18th month of the Service Guarantee Plan to discuss the potential for extending the Service Guarantee Plan and to address any aspects of the Service Guarantee Plan that should be modified. Additionally, each party will work in good faith to address and correct any unanticipated difficulties in a manner consistent with the intent of the Service Guarantee Plan.

4. MISCELLANEOUS MATTERS

This Stipulation and Settlement will become effective on the day following the vote of the Florida Public Service Commission approving this Stipulation and Settlement. The Florida Public Service Commission's decision will be reflected in a final order.

No Party to this Stipulation and Settlement will request, support or seek to impose a change in the application of any provision hereof. Furthermore, subject to the

approvals of the Florida Public Service Commission set forth herein, all Parties hereto waive any right to request further administrative or judicial proceedings in regards to the establishment or implementation of this Stipulation and Settlement. This waiver of the right to further administrative or judicial proceedings shall include (but not be limited to): a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code; a motion for reconsideration of the decision in this matter in the form prescribed by Rule 25-22.060, Florida Administrative Code; or a notice of appeal to initiate judicial review by the Florida Supreme Court pursuant to Rule 9.110, Florida Rules of Appellate Procedure, in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

This Stipulation and Settlement is contingent upon the Florida Public Service Commission's acceptance of the provisions herein, which acceptance shall include explicit recognition by the Florida Public Service Commission that all such matters are resolved by this Stipulation and Settlement.

This Stipulation and Settlement is also contingent upon approval in its entirety by the Florida Public Service Commission. This Stipulation and Settlement will resolve all matters in this docket pursuant to and in accordance with Section 120.57(4), Florida Statutes (1999). This docket will be closed effective on the date the Florida Public Service Commission order approving this Stipulation and Settlement is final. If this Stipulation and Settlement is not accepted and approved without modification by an order not subject to further proceedings or judicial review, then this Stipulation and Settlement shall be considered null and void and of no further force or effect.

In the event that the FPSC does not accept this document in its entirety pursuant to its terms, this document shall not be admissible in any hearing on the matters established by this docket, or in any other docket or forum. Moreover, no Party to this Stipulation and Settlement waives any position on any issue that it could have otherwise asserted in this or any other docket as if this document had never been developed and written.

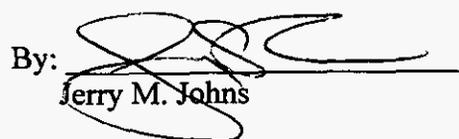
This Stipulation and Settlement dated this 21st day of July 2000 may be executed in counterpart originals and a facsimile of an original signature shall be deemed an original.

The Parties evidence their acceptance and agreement with the provisions of this Stipulation and Settlement by their signatures:

Office of Public Counsel
111 W. Madison Street, Room 812
Tallahassee, Florida 32399-1400

Sprint-Florida, Incorporated
1313 Blair Stone Road
Tallahassee, Florida 32301

By: 
Jack Shreve

By: 
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VIA HAND DELIVERY

August 15, 2000

Ms. Cathy Bedell
General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 991377-TP

Dear Ms. Bedell:

Thank you and Ms. Davis for taking the time Friday to sit down with Charlie Beck and me to discuss issues that Commission Staff has raised regarding the Stipulation and Settlement that the Office of the Public Counsel and Sprint – Florida (“parties”) have filed in the matter. We are impressed with the thoughtfulness of Staff’s questions and hope that our responses are equally well received. In our discussion you raised several issues that either required explanation, assurance and/or further detail. You have asked for a response to these matters so that a recommendation can be prepared for the Commissioners. The joint response of the Parties is provided below.

1. The Staff has raised a concern about the sentence in the Waiver Petition portion of the Stipulation and Settlement, which states:

It is further the intent of the Parties that the waiver will be effective as to any amendments to the subject rules.

Staff has raised the valid concern that the Commission may not be able to grant a waiver of a rule that has not yet been adopted. The parties wish to clarify that the sentence is only intended to state the desire of the parties that the Commission be apprised that if and when any revision to the relevant rules occurs during the life of the Service Guarantee Plan (SGP), that the parties would like for the waiver to be extended. Certainly whether a

waiver would continue would depend on the factors before the Commission at that time. The provision is not intended to bind a future Commission. The parties felt it would be best to indicate to the Commission up front our desire that if the SGP is producing real net benefits to the customers and company alike, it should be allowed to continue. We recognize that any future revision to the relevant rules will inevitably impact the extension of the SGP.

2. The Staff inquired as to the base of customers eligible for the credits for delayed installation and repair of service. The intent of the parties, as expressed in the SGP, is that the same customer base that is covered in the existing rules is covered in the SGP. The Commission's current rules generally govern the provision of service to basic service customers. Furthermore, Rule 25-4.066(2) establishes an objective that (on an exchange level) service for primary lines shall be installed within 3 working days, in 90% of the instances. Consequently, per the SGP, credits will be given to basic service customers whose primary service installation takes longer than 3 days.

In the same vein, the current rule requires that (on an exchange level) 95% of all interruptions of service shall be repaired (or the customer informed if it is his problem) within 24 hours. Under the SGP, the same customer base will be entitled to receive credits where restoral or customer information exceeds 24 hours.

As you can see, the SGP fully tracks the existing customer base for repair as well as service installation. The same customer that the existing rule is intended to cover will be eligible for credits under the SGP.

3. The Staff has inquired as to the definition of "service interruption" with respect to service that when it is found to "test OK" or, when "found OK", a repeat trouble is reported. It is fully the intent of the parties that the parameters defining when an interruption is corrected or the customer is informed shall be exactly as those used for purposes of calculating rebates pursuant to Rule 25-4.110(2).¹ Sprint will consider interruptions that "test OK" and are "found OK" as eligible for SGP credits in the identical way that these interruptions are considered for rebates currently. Likewise the duration associated with repeat (i.e. new) reports of an out-of-service condition coming within 72 hours of a cleared (including "test OK" or "found OK") out-of-service trouble report will be bridged to the time associated with the immediately previous condition for purposes of SGP credit-eligibility the same as is done today for rebate purposes. It has been the intent throughout the process of developing the SGP that, except as provided on pp. 5-6 of the Stipulation and Settlement where Sundays and Holidays are excluded in determining SGP credits (but not refunds), the intervals for credit eligibility would be determined the same as in the current refund environment.

¹ Please note that the most recent reference to one portion of the rebate rule is 25-4.110(6). Contemporaneous with the negotiation of the Stipulation and Settlement the Commission revised the numbering from 25-4.110(2) to 25-4.110(6). The actual service rule provision only refers to Rule 25-4.110 with no reference to subsection.

4. The Staff has inquired about the answer time provisions and whether a customer who would be reported as answered could encounter a message that Sprint could not answer the call or otherwise be "blocked". The answer is no. Except for network busies (discussed below), any blockage that would occur due to high volume (or any other reason) would occur before a call could be measured for purposes of determining ASA. In Section C.2, the definition of ASA precludes a "blocked" call from being in either the numerator or the denominator. A blocked call does not access the queue and therefore will not be reported as answered.

A blocked call is included in the denominator in calculating Accessibility, however. As provided for in C.1, the denominator for purposes of calculating Accessibility is all calls exiting the IVRU and directed by the customer to a particular queue. The key difference is the term "accessing" in the ASA definition in C.2. The blockage that reduces Accessibility (and generally involves the message) occurs between the IVRU and the ACD. A blocked call does not access the queue and therefore will not count toward achieving an ASA. That blocked call will count against Sprint by reducing Accessibility. Please note that ASA and Accessibility are independent measures and Sprint is subject to graduated penalties for failure to achieve either or both. The "blocked" calls referred to here are not the busies that can occur up to the standard engineering design level of P.01 (as defined in Section C.6.), prior to the call entering the IVRU.

5. Staff has asked whether credits will continue to be made pursuant to the SGP when suspension of the Safe Harbor occurs pursuant to Sections C.10 and D(3). The answer is that the parties intended that the payment of the credits will continue even where the Commission has the ability to impose sanctions where service has fallen below the 80% trigger point. In an earlier draft of the Stipulation and Settlement, a clause was included that provided that suspension of the SGP would have relieved Sprint of making credits for any aspect of service for which the Safe Harbor would be suspended. This provision was ultimately not agreed to, so the parties consider the silence on the issue to require that credits continue. The parties hereby reaffirm this intent.

6. The Staff asked what would change with respect to the reporting that occurs today. The answer is that Sprint would continue to file the same quarterly reports that it files today, plus the monthly reports that would detail the credits made. In other words, Sprint would report on a dual track. Such reporting would allow the Commission to make a comparative analysis of results on a traditional basis and under the SGP. The only change the parties might propose to the quarterly reports is to *add* a column on Schedules (2), (11), (15) and (16) to indicate whether the Safe Harbor suspension is triggered. This would ease the administrative burden on Staff in monitoring the SGP. Sprint will add such a column unless it proves technically infeasible to do so.

7. The Staff also asked whether the reference to "a quarterly basis" in the last complete sentence on page 14 (section D.4) evinced any intent to average results for purposes of the Safe Harbor threshold. The answer is no. The intent is that suspension of the Safe Harbor (or restoral of the Safe Harbor) will be made based on the quarterly

reports as currently filed. There will be no averaging. Each month's results stand alone for purposes of calculations under Section C.10.

8. The Staff has expressed some concern about the inclusion of the Community Service Fund (CSF) in the amount of \$100,000 in lieu of a fine. Your question was how it relates to quality of service and whether it was appropriate as part of the SGP. The parties believe that together with the financial "penalty" discussed below, the expenditure of the \$100,000 is appropriate. Instead of a non-specific contribution to the general fund, the payment directly relates to telephone service. It will benefit Sprint's customers by educating existing customers about the availability of Lifeline service and holds the possibility of bringing more customers on line, thus enhancing the value of all customers' services. In addition, the Commission's approval of the expenditure will be consistent with Section 364.0252 which requires the Commission to undertake efforts to "inform[] customers concerning the availability of Lifeline and Link-Up..."

9. The Staff also inquired as to why a fine (i.e. payment to the State of Florida General Fund) was not included. It appears that the Staff inquiry was premised in the notion that the provisions of the plan are prospective only. To this end, the Staff has delivered a letter to Ben Poag requesting certain information. (See attached Letter from Rick Moses to Ben Poag, dated August 11, 2000). The parties respectfully submit that the provisions of the SGP do impose a penalty upon Sprint in that hundreds of thousands of dollars in credits will be made even where Sprint is providing service that meets and/or exceeds Commission's current objectives.

In response the Mr. Moses' letter, Sprint offers the total number of qualifying service orders and the total number of qualifying trouble tickets for the latest twelve months of available data (July 1999 - June 2000) as an indicator of current volumes. When current (most recent 12 months) volume of service orders and trouble tickets are measured against the available results from the year (1997) with the lowest number of service order and trouble tickets missing the objective (6% for service orders and 3.6% for repair), the penalty (including the CSF) to Sprint over the two year life of the SGP would be \$1,160,844. This amount is calculated by multiplying the expected volume times the relevant percentage times the minimum payment (\$20 for service orders and \$10 for out-of-service tickets) times the number of years of the SGP, like so:

Service Orders:

$$278,965 \times .06 \times \$20 \times 2 = 669,516$$

Out-of-Service Tickets:

$$543,512 \times .036 \times \$10 \times 2 = 391,328$$

CSF:

	<u>100,000</u>
Total Penalty	\$1,160,844

This is a conservative impact since it assumes credits at the minimum levels only and does not consider the impact of business rates or longer duration delays. Furthermore, if Sprint were to provide service at the objectives in all exchanges at the current volume, the minimum impact calculated the same way (but using 5% for out-of-service tickets and 10% for service orders) for the two-year life of the SGP period would be \$1,759,372. Attached for Staff's consideration are spreadsheets showing the calculation in more detail and a summary of the volumes for service orders and out-of-service tickets since January 1, 1997.

Clearly, the cost to Sprint for past results will be material. The impact of this "atonement" for past service deficiencies was certainly considered by the parties in the design of the SGP.

The parties have considered Staff's concerns about the Lifeline related purposes of the CSF and the supposed "lack" of any fine and, in light of the demonstrable impact on Sprint, believe resolutely that the Commission should evaluate the entire settlement for its overall customer and public interest benefits.

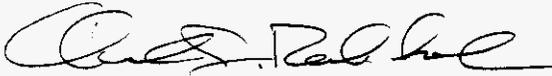
10. The Staff has also inquired about the determination of the implementation date with respect to the finality of any Commission order approving the Stipulation and Settlement and the SGP. We agree that the language leaves some room for interpretation. The intent of the parties can best be gleaned from reading the Stipulation and Settlement together with the Joint Motion for Expedited Consideration and Approval of Stipulation and Settlement (Joint Motion). In the Joint Motion, the parties contemplate that the Petition for Waiver embedded in the Stipulation and Settlement would likely be dealt with as a Notice of Proposed Agency Action (PAA). We therefore expressly requested that the effective date of the final order approving the settlement of the docket be synchronized with the issuance of a Consummating order on the PAA. See Joint Motion at pp.2-3. Section B.1 of the SGP establishes the required implementation date of the SGP at the later of January 1, 2000 or six months after the final order approving the Stipulation and Settlement. The term "final order" in that section should be read to mean the effective date of such order. Thus, if the final order contains an effective contingent upon the Consummating order date, the implementation date will be six months after the date of the Consummating order.

The parties hope these responses address Staff's concerns. We respectfully urge that the Staff give favorable consideration to the Stipulation and Settlement and these additional explanations, clarifications and assurances and to recommend the Stipulation and Settlement favorably to the Commission.

I am authorized to state that the Office of the Public Counsel concurs in this letter. Please call Charlie Beck at 850/488-9330 or Charles Rehwinkel at 850/847-0244 if you

have any questions or concerns regarding these responses.

Sincerely,



Charles J. Rehwinkel

Attachments

cc: Charlie Beck
Noreen Davis

Commissioners:
J. TERRY DEASON, CHAIRMAN
E. LEON JACOBS, JR.
LILA A. JABER



DIVISION OF COMPETITIVE SERVICES
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

August 10, 2000

Mr. F. B. (Ben) Poag
Director, Regulatory Affairs
Sprint-Florida, Incorporated
P. O. Box 2214, (MC FLTLHO0107)
Tallahassee, Florida 32316-2214

Re: Docket No. 991377-FL Initiation of Show Cause Proceeding

Dear Mr. Poag:

In regard to the settlement proposal filed with the Commission by the Office of Public Counsel and Sprint-Florida, I would like to know the amount of credit and number of customers involved if credit were issued using the "Service Guarantee Objectives and Credits Schedule", as outlined in the settlement, to those customers that actually experienced the late installations and prolonged repair intervals. Please focus on those customers involved during the time frame of the docket (January 1996 through December 1999).

If Sprint does not have data available for this entire period, please submit data for the time frame Sprint does have records.

Please advise by August 15, 2000 as to when we can expect this data. If you have any questions please call me at 850/413-6582.

Sincerely,

A handwritten signature in cursive script that reads "Rick Moses".

Rick Moses
Chief, Service Quality Bureau

cc: Walter D'Haeseleer
Beth Salak

Sprint, Southern Operations
 Florida Public Service Commission
 Customer Exchange Results

	Service Installation			Rule 25.4 Criteria		Repair Restoration		
	Total Requests	Completed w/in 3-Days	%			Total OCS	Cleared w/in 24 Hours	%
Jan-97	32,712	31,254	95.5%			25,428	23,743	93.4%
Feb-97	31,877	29,832	94.2%			22,045	21,015	95.3%
Mar-97	25,663	24,146	94.1%			23,189	22,490	97.0%
Apr-97	27,633	25,821	93.4%			22,651	22,231	98.1%
May-97	28,023	26,234	93.8%			18,638	18,065	96.9%
Jun-97	28,848	26,837	93.7%			24,274	23,570	97.1%
Jul-97	28,219	26,521	94.0%			31,384	30,313	96.6%
Aug-97	36,028	33,775	93.7%			27,589	26,848	97.3%
Sep-97	29,637	27,827	93.9%			24,969	24,304	97.3%
Oct-97	29,227	27,501	94.1%			25,184	24,645	97.9%
Nov-97	32,186	30,257	94.0%			24,507	23,772	97.0%
Dec-97	28,875	27,114	93.9%			32,969	30,617	92.8%
Jan-98	32,884	31,178	94.8%			33,821	32,026	94.7%
Feb-98	30,157	28,091	93.1%			35,080	33,549	95.7%
Mar-98	27,361	25,383	92.8%			36,344	34,928	96.1%
Apr-98	27,700	25,428	91.8%			29,968	29,378	98.0%
May-98	26,672	24,539	92.0%			26,617	26,003	97.9%
Jun-98	27,297	25,003	91.6%			32,329	31,564	97.6%
Jul-98	27,151	24,708	91.0%			42,257	40,167	95.1%
Aug-98	34,842	31,447	90.3%			44,456	41,127	92.5%
Sep-98	25,655	23,510	91.6%			39,822	37,552	94.1%
Oct-98	29,315	26,786	91.4%			34,314	31,378	91.4%
Nov-98	27,484	25,258	91.9%			32,536	30,053	92.4%
Dec-98	25,437	23,896	93.9%			31,578	30,127	95.4%
Jan-99	31,213	29,031	93.0%			34,803	33,148	95.2%
Feb-99	29,392	27,017	91.9%			29,410	28,868	98.2%
Mar-99	25,096	23,174	92.3%			32,977	32,289	97.9%
Apr-99	24,062	22,125	91.9%			32,805	31,640	97.0%
May-99	27,303	25,399	93.0%			36,047	34,750	96.4%
Jun-99	25,859	23,966	92.8%			49,131	46,159	94.0%
Jul-99	24,085	21,896	90.9%			47,980	44,510	92.8%
Aug-99	24,140	21,864	91.1%			50,701	47,734	94.1%
Sep-99	21,393	18,970	88.7%			45,717	40,936	89.5%
Oct-99	24,512	21,691	88.5%			45,566	40,264	88.4%
Nov-99	24,248	19,754	81.5%			42,497	33,579	79.0%
Dec-99	21,412	15,980	74.5%			38,643	35,900	92.9%
Jan-00	26,097	21,269	81.5%			48,946	47,162	96.4%
Feb-00	23,805	20,768	87.2%			44,133	43,344	98.2%
Mar-00	22,782	20,401	89.5%			46,059	45,208	98.2%
Apr-00	22,107	20,024	90.6%			39,640	38,773	97.8%
May-00	21,770	19,965	91.8%			37,761	37,155	98.4%

DOCKET NO. 991377-TL
DATE: SEPTEMBER 14, 2000

Sprint, Southern Operations
Florida Public Service Commission
Customer Exchange Results

ATTACHMENT B

Rule 25-4 Criteria									
Jun-00	22,814	20,514	90.7%			55,890	53,820	96.3%	