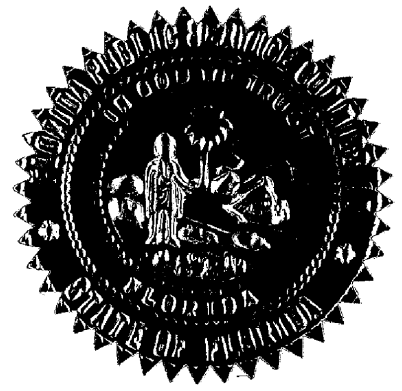


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040763-TP

In the Matter of

REQUEST FOR SUBMISSION OF PROPOSALS
FOR RELAY SERVICE, BEGINNING IN JUNE
2005, FOR THE HEARING AND SPEECH
IMPAIRED, AND OTHER IMPLEMENTATION
MATTERS IN COMPLIANCE WITH THE
FLORIDA TELECOMMUNICATIONS ACCESS
SYSTEM ACT OF 1991.



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 3

BEFORE: CHAIRMAN BRAULIO L. BAEZ
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER RUDOLPH "RUDY" BRADLEY
 COMMISSIONER LISA POLAK EDGAR

DATE: Tuesday, September 20, 2005

PLACE: Betty Easley Conference Center
 Room 152
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
 Official FPSC Hearings Reporter
 (850) 413-6734

1 APPEARANCES:

2 CHARLES J. REHWINKEL and MIKE LIGAS, representing
3 Sprint.

4 RICK KOTTLER, attending via telephone, representing
5 the Deaf and Hard of Hearing Community.

6 MIKE TWOMEY, ESQUIRE, representing Bud Hansen,
7 Sugarmill Woods Civic Association, Joanna Southerland and John
8 and Sheila Costigan.

9 JASON ROJAS, ESQUIRE, BETH SALAK and RICK MOSES,
10 representing the Florida Public Service Commission Staff.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN BAEZ: Commissioners, that brings us to Item 3.

MR. MOSES: Good morning, Commissioners. Rick Moses with the Commission staff. Issue 1 of Item 3 is staff's recommendation to collect liquidated damages from Sprint for its failure to comply with its contractual obligation regarding the relay operators' minimum typing speed of 60 words per minute on live relay calls. This recommendation is based on the test results of Sprint's independent third party, the Paisley Group, for the first two months of the new contract that began in June 1st of 2005.

Issue 2 of the recommendation, it is staff's recommendation to replace Mr. Chris McDonald, who was with AT&T, with Mr. Brian Musselwhite as a member of the TASA Advisory Board Committee.

And Issue 3 is a recommendation to keep the docket open.

And I believe Sprint is here to address the Commission. And also Mr. Rick Kottler is on the phone, who is a TASA Advisory Committee member.

CHAIRMAN BAEZ: Mr. Kottler, are you on the phone, sir?

MR. KOTTLER: Yes, sir, I am.

CHAIRMAN BAEZ: Okay. I'm going to ask you to hold

1 off just one second. We can hear from Mr. Rehwinkel first and
2 then we'll hear from you, if that's all right.

3 MR. KOTTLER: Thank you.

4 CHAIRMAN BAEZ: Thank you, sir.

5 MR. REHWINKEL: Good morning, Mr. Chairman,
6 Commissioners. My name is Charles Rehwinkel, State Vice
7 President of Florida for Sprint. With me here is Mike Ligas,
8 L-I-G-A-S, who is the Vice President of Sprint Relay.

9 What I would ask, Commission, Commissioners, today is
10 if I could let Mr. Ligas make a few preliminary comments about
11 the issue at hand, and I will follow up with some brief remarks
12 about the legal issues in this matter.

13 CHAIRMAN BAEZ: Go ahead, Mr. Ligas.

14 MR. LIGAS: Members of the Florida Public Service
15 Commission, good morning. My name is Mike Ligas. I'm the Vice
16 President of Sprint Relay, and I'm here today to accept
17 responsibility for service that both staff and I feel is
18 unacceptable. Sprint takes pride in the service that we
19 provide to the deaf and hard-of-hearing consumers, and we've
20 committed extensive resources to this service over the past 15
21 years. We've always been known in the industry as the leader
22 in quality services and, quite frankly, this issue is an
23 embarrassment to me, my organization and our reputation.

24 We've worked with staff for over two years on this
25 issue and we thought we had it under control. We opened a new

1 call center in Jacksonville specifically to provide service to
2 the new contract that started June 1st, 2005, and we
3 acknowledge that we stumbled out of the gate during the first
4 two months of this contract. I know that we've made
5 significant progress over the past 30 to 45 days.

6 In response to this issue, Sprint has fired over
7 100 agents during the past two years for failing to meet live
8 online typing speed requirements of this contract. We've also
9 changed our hiring practices -- and it helps if I have them in
10 order. Sorry. We've changed our hiring practices, modified
11 our training program and added incentives to our agents for
12 better performance. For example, we've increased the criteria
13 for taking live calls by 17 percent. This service has a
14 significant human factor to it, so it will never be 100 percent
15 perfect. The service is a critical service for consumers who
16 are deaf and hard of hearing, and we take our responsibility
17 very seriously.

18 Two years ago I had a conversation with Ms. Salak and
19 Mr. Moses, and I predicted two things that would happen.
20 Number one, that Florida would have the best relay service
21 possible and, number two, eventually the day would come that I
22 would tell them that Sprint has done all that we can do. Today
23 I can tell you that Florida has one of the best relay services
24 in the country. It isn't perfect and it will never be perfect
25 due to the human element involved. I've had our competition

1 tested and I know that the relay service now provided by Sprint
2 since July in the state of Florida is the best available. And
3 we're not quite at the point -- and number two, we're not quite
4 to the point where I can say we've done all that we can do,
5 but, based on recent testing results, we're almost there.

6 In conclusion, I'd like to say that I regret that
7 Sprint's service has not always met the expectations of the
8 state, and I promise that Sprint will continue to look for and
9 find ways to improve the human factor in the services that we
10 deliver to the consumers of the state of Florida. Thank you
11 for your time.

12 CHAIRMAN BAEZ: Thank you, Mr. Ligas.

13 MR. REHWINKEL: Commissioners, thank you again for
14 your consideration. You've heard from Mr. Ligas. Sprint has
15 acknowledged that our typing speed in June and July was not up
16 to our standards or yours, and we have apologized for the
17 amount of time that this matter has taken from your staff. You
18 have an excellent and dedicated staff who truly care about the
19 customers of the relay. They are sincere in bringing this
20 matter before you, and we recognize that. We also believe that
21 the misstep that occurred when we opened the Jacksonville
22 center is behind us. We believe that our typing speed is on
23 target and is meeting the expectations of the contract and,
24 most importantly, the customers.

25 The question that is before you today is what amount

1 of liquidated damages should be based -- assessed based on this
2 contract? There is really no other question before you. Staff
3 is proposing that you assess liquidated damages in the amount
4 of \$305,000. They propose this based on a calculation of
5 \$5,000 per day for each of the 61 days in the months of June
6 and July of 2005. Sprint respectfully disputes this
7 calculation and the basis for it.

8 Under the circumstances, we do not argue with the
9 assessment of some level of liquidated damages, just the
10 amount, and this is why. I would ask you to look at the only
11 source available to the Commission for assessing liquidated
12 damages, which is found on Page 10 of the recommendation and is
13 Attachment C. And it recounts Section 60(E) of the contract.
14 And I would just like to read a portion of that Attachment C.

15 It states that, "Liquidated damages shall accrue in
16 the amounts up to the following amounts per day of violation.
17 A, for failure to meet answer time requirements, \$25,000. B,
18 for failure to meet blockage rate or transmission level
19 requirement, \$5,000. C, for failure to meet complaint
20 resolution requirement, \$1,000. D, for failure to provide
21 timely reports, \$500. E, for failure to provide contracted
22 services for the life of the contract, the FPSC reserves the
23 right to require the payment by the provider of liquidated
24 damages in the amount commensurate with the duration and extent
25 of the system deficiencies."

1 As you can see, Commissioners, there is no mention of
2 deficient typing speed in the liquidated damages section.
3 Staff suggests that the Commission analogize the current facts
4 to the MCI case. This analogy does not apply in our opinion.
5 In the MCI case, the liquidated damages assessment was for
6 failure to meet the answer time and blockage standards, each a
7 separate requirement and each specified in the contract. These
8 were specifically and expressly enumerated in the contract and
9 each included a specific amount of \$5,000 per day. In today's
10 case there is a typing speed standard listed elsewhere in the
11 contract, and Sprint acknowledges that we had some deficiencies
12 in the first two months of the 2005 contract, but deficient
13 typing speed is not listed in the liquidated damages section.
14 It follows then that there is also no enumerated dollar amount
15 for sampled deficiencies since there is no scheduled violation
16 for typing speed deficiency in the liquidated damages section,
17 60(E). These two obvious and crucial differences distinguish
18 the MCI case and this situation.

19 In addition, answer time is an objectively and
20 mechanically measured phenomenon, while typing speed is
21 measured by a subjective and sampled process utilizing human
22 judgment and numerous variables.

23 In addition, in the MCI situation answer time was
24 clearly missed on every day of the time periods in question,
25 while the sampling results from the independent testing, which

1 Sprint does not dispute here today, reveals that on at least
2 eight of the 41 tested days there was no sample-derived
3 deficiency. In other words, the sample calls came in above
4 60 words per minute. For these reasons we respectfully
5 challenge the staff's basis, proposed basis for assessing
6 liquidated damages.

7 But despite what we see as a clear case of doubt as
8 to the applicability of the liquidated damages section of the
9 contract to these facts, Sprint is not before you urging that
10 no liquidated damages be imposed. Rather, because we
11 acknowledge that we stumbled, but in light of the fact that
12 there is no express authority for imposing liquidated damages
13 for typing speed deficiency, and because we, over the course of
14 200,000 calls in June and July, have only logged 39 total
15 complaints while receiving eight commendations for service
16 proficiency and none of these complaints related to typing
17 speed, and because the proposed liquidated damages amounts to
18 34 percent of the total billings for the two months in
19 question, we urge the Commission to exercise reasoned judgment
20 and limit liquidated damages to \$50,000.

21 We are embarrassed by this matter, as Mr. Ligas has
22 said. We have gotten the message from staff. We have taken
23 the right steps to provide the high quality of service that you
24 expect, and we hope that the decision in this matter will be
25 appropriate measured against the facts. That's all I have to

1 say. Thank you for your consideration.

2 CHAIRMAN BAEZ: Thank you, Mr. Rehwinkel.

3 Commissioners, we have Mr. Rick Kottler with the Deaf
4 and Hard of Hearing Services of the Treasure Coast who would
5 like to also make comments. Mr. Kottler.

6 MR. KOTTLER: Yes, sir.

7 CHAIRMAN BAEZ: Go ahead, sir.

8 MR. KOTTLER: Thank you. If I might introduce
9 myself, besides being the Executive Director of Deaf and Hard
10 of Hearing Services, I'm the President of Deaf Service Center
11 Association of Florida, I am on the Florida Coordinating
12 Council for Deaf and Hard of Hearing, and am also on the TASA
13 Committee.

14 I appreciate what Sprint has said today. I'm going
15 to be very honest with you. This is the first time I've heard
16 them step up to the plate and say, we've dropped the ball. And
17 I think that's, that's very important and I applaud them for
18 it.

19 This is -- what's important to understand is this is
20 not something that just happened over the last couple of
21 months. This has been going on for years, if you look at the
22 document provided by staff. Sprint has disputed it for years.
23 They say, well, you know, they didn't like the way that the
24 staff was doing the testing. That's why it was put into the
25 contract this year that the testing would be standardized and

1 would be done by an independent evaluation group. You've heard
2 that there's no complaints, and that's probably true. People
3 have been complaining for years and it's not been dealt with,
4 and after a while you stop complaining because nobody is
5 listening.

6 The other side of that is now we have the video relay
7 service and people are switching. They're stopping using the
8 traditional relay service because video is that much easier. I
9 know that there's people, I personally know people in the deaf
10 and hard of hearing community who use Sidekicks and they have
11 their Sidekicks programmed with 800 numbers of relay services
12 other than the Florida Relay Service because of the operator
13 problem.

14 I appreciate the fact that Sprint accepts the
15 problem. My basic problem is that they've not done anything
16 about it for years when they were asked nice to do it. I don't
17 think it's my position to, to talk to you at all about the
18 amount of liquidated damages. I think we'll leave that up to
19 your discretion and that of staff. But I would hope that you
20 would not let them off the hook because, again, this is not a
21 two-month problem, this is an ongoing, yearly problem that
22 needs to be corrected. And for once, and literally for once
23 something was put in the contract that could hold their feet to
24 the fire and make them correct it.

25 So I thank you very much and I'd be glad to answer

1 any questions. If not, then I'm going to drop off.

2 CHAIRMAN BAEZ: Thank you, Mr. Kottler.

3 Questions of Mr. Kottler at this point?

4 Thank you, sir.

5 MR. KOTTLER: Thank you.

6 CHAIRMAN BAEZ: Commissioners, questions?

7 Commissioner Deason.

8 COMMISSIONER DEASON: I have a question for staff.

9 Given the, the liquidated, liquidated damages language in the
10 contract, how did you come up with the \$5,000 per day suggested
11 amount?

12 MR. MOSES: Well, the only experience, the only
13 experience that the Commission has had in liquidated damages
14 was the two recommendations, in the MCI recommendations back in
15 '96. Those did address specific things: Answer time and
16 blockage in the first one to the tune of, I think,
17 \$1.2 million, and there was a second one for a different time
18 period just for answer time, which ended up being \$5,000 a day,
19 and it was \$175,000.

20 We looked at answer time as being something that
21 delays the customer in getting their service. And we looked at
22 typing speed being much the same; it delays the person in
23 getting their service. Whenever someone speaks at a normal
24 rate of about 150 words per minute and the minimum typing speed
25 is 60 words per minute, that's a significant change. And when

1 you're not even meeting the 60 words, we've got some -- in
2 fact, this last month there was one call in there, the
3 communications assistant was typing at 38 words a minute. So
4 you can imagine the delay that the person that's trying to use
5 the service is experiencing, and in some cases to the point
6 they're probably losing their train of thought. Now, granted,
7 a lot of these misses are in the 50s, but there's a lot of them
8 in the 40s and some in the 30s, and we think that the
9 communications assistants need additional training or some
10 different type of training in order to meet the speed.

11 But as far as answering your question, how we came up
12 with that, we just looked at it as an equivalent type of
13 violation.

14 COMMISSIONER DEASON: As to what occurred previously
15 with MCI?

16 MR. MOSES: Yes.

17 COMMISSIONER DEASON: I guess this is a question for
18 legal. Do we have the legal authority -- given the wording of
19 the liquidated damages section, do we have the ability to
20 impose a \$5,000 a day --

21 MR. ROJAS: Yes, you do. Yes, you do, Commissioner.
22 The language of the contract under Section E is very broad and
23 allows Commission discretion.

24 COMMISSIONER DEASON: Okay. Mr. Rehwinkel, do you
25 agree with that?

1 MR. REHWINKEL: Commissioner Deason, the language in
2 Section 60(E), (E), the way I read that language, I think that
3 there's two elements to it. One, I think it really is
4 something that you look at the totality of the contract and
5 likely at the end of the contract period, and it's a valuation
6 of services rendered over the life of the contract. In
7 addition, even if it would be construed to apply to this
8 circumstance, there is a requirement that the requirement of
9 payment by the provider must be in an amount commensurate with
10 the duration and extent of the system deficiencies. So I think
11 it would be a judgment call on the Commission's part about
12 making that equivalency between the dollar amount of liquidated
13 damages and the duration and extent of the system deficiencies.
14 It's interesting that it is not cited as the basis for it by
15 the staff. But, again, we're not here saying that you should
16 not impose any liquidated damages. We think that it should be
17 a reasonable and reasoned amount rather than analogized to the
18 MCI situation.

19 COMMISSIONER DEASON: What is your recourse if you
20 believe the Commission imposes liquidated damages that are not
21 commensurate with the duration and extent of the system
22 deficiencies?

23 MR. REHWINKEL: What is our recourse? That's a
24 matter for our contract lawyers to determine. I don't know.
25 We would certainly look at what our legal options were if we

1 felt like the damages were out of kilter with the extent and
2 duration. I don't know if you could take a proceeding before,
3 before DOAH. I really just don't know and I have not
4 researched that. I'm definitely not here to suggest to you
5 that we want to litigate this issue further.

6 COMMISSIONER DEASON: Mr. Chairman, another question
7 for staff.

8 Do we have the ability to -- I know we've done it
9 before in terms of fines. This is really not a fine; this is
10 liquidated damages. But do we have the ability in terms of
11 liquidated damages to make an assessment and have it contingent
12 or making it subject to future compliance, and then, for
13 example, if the Commission were inclined to impose a certain
14 amount of liquidated damages contingent upon the, the future
15 performance of this particular standard, and if that future
16 performance is met, that part of those liquidated damages would
17 be forgiven, for lack of a better term; is that something
18 within our discretion or not?

19 I mean, the ultimate goal is to get the communication
20 assistants or associates, the CAs, whatever that means, to get,
21 to get the typing speed up to requirement. And it seems to me
22 that a possibility would be to make a finding of liquidated
23 damages -- assess that in the future if there's continued
24 noncompliance with that. Is that something that's within our
25 discretion?

1 MR. ROJAS: I, I would, I would hazard a guess to say
2 it is, but I'm not certain.

3 COMMISSIONER DEASON: It's within our discretion
4 until a higher authority tells us it's not; is that, is that
5 the case?

6 CHAIRMAN BAEZ: Shoot first, ask questions later.

7 MR. MELSON: Commissioner, we're dealing with a
8 little bit of a strange animal here because at the bottom we've
9 got a contract. And ordinarily in a contractual situation if
10 you thought the other party owed you liquidated damages and you
11 were setting off and they disagreed, they'd take you to court.

12 We've got a provision at the end of this liquidated
13 damage provision though that says the action will occur only on
14 order of the Commission. So it sounds as though the parties in
15 the contract contemplate that the order of the Commission will
16 be sort of the final determination of the damages. Given that,
17 I frankly don't know how it plays out. But I think Mr. Rojas
18 is right; if you -- I think you've got the flexibility under
19 this language since it talks about the duration extent of the
20 deficiencies to say that we are interested in curing the
21 deficiencies, we're going to do something contingent. That is
22 subject to challenge in some form. And I, like Mr. Rehwinkel,
23 I haven't figured out exactly what that form is, but I think
24 it's probably no more subject to challenge than what Sprint
25 might characterize as an unreasonable, you know, noncontingent

1 penalty.

2 COMMISSIONER DEASON: Commissioners, I'd like to
3 throw out kind of a framework, and I'd like for some feedback
4 from other Commissioners.

5 Just sitting here, it seems to me that perhaps a, a
6 fair treatment would be to impose liquidated damages of
7 \$100,000 immediately without question, suspend the remaining
8 \$205,000 contingent upon reporting requirements and the actual
9 performance of this particular standard. And if performance
10 meets or exceeds the requirements, then those liquidated
11 damages would not be imposed, the remaining \$205,000. But if
12 we have continued nonperformance under the contract, not only
13 would we seek the \$205,000, but we would seek additional
14 liquidated damages for future nonperformance. So I'd like some
15 feedback as to whether Commissioners think that's workable, and
16 from staff as well. Staff, if there's some problem there that
17 I don't see at this point, please bring it forward. I'm just
18 trying to look for a reasonable way to get this matter resolved
19 and provide the correct incentives to get it resolved.

20 CHAIRMAN BAEZ: Commissioner Bradley.

21 COMMISSIONER BRADLEY: Conceptually I, I agree with
22 what you said. The ultimate goal is to get the number up to
23 60 words per minute. You threw the figure 100 out. I was
24 thinking more or less along the lines of \$75,000. But
25 conceptually I agree, and I think that conceptually you put it

1 on the table.

2 MR. MOSES: Commissioners, if I could just make one
3 suggestion. This is just --

4 COMMISSIONER BRADLEY: It might be a good idea -- is
5 a good idea.

6 MR. MOSES: Okay. Sorry.

7 CHAIRMAN BAEZ: Mr. Moses, go ahead.

8 MR. MOSES: We've been working with them for two
9 years on this particular matter. We began a testing program,
10 we've shared that testing program with Sprint, they've come and
11 monitored us, we've been back and forth, and they have not been
12 able to achieve it yet. And I'm not sure that a smaller fine
13 is going to get their attention, just to put it point blankly.

14 We have been told all along we've had their attention
15 and improvements were going to be made. We haven't seen it. I
16 just got the report yesterday for the results for this last
17 month's, and the best they got was about 83 to 86 percent and
18 that was it. And in order to achieve that, it's my
19 understanding from one of the employees that they're actually
20 gating the calls, which they're directing those calls to the
21 fastest typist they know they have. I'm not sure how they're
22 going to do it.

23 Another thing that we did in this last RFP is we
24 eliminated the requirement that they even have a call center in
25 Florida. We also eliminated the requirement that they had to

1 route 80 percent of the traffic through the call centers in
2 Florida. The reason we did that, through our test results we
3 found that they had faster typists in the northern centers or
4 the other centers in other states. That gave them a lot of
5 flexibility. They could route all of these calls to those
6 other centers, close up the two centers in Florida and probably
7 would make the typing speed requirements.

8 The other thing to keep in mind is the FCC does a
9 state certification of our program. The minimum typing speed
10 under the FCC is 60 words per minute. If they don't achieve
11 it, state certification is in jeopardy. I'm just not sure a
12 lower amount on a fine is going to do the trick, but that's
13 just my opinion.

14 CHAIRMAN BAEZ: Commissioners, before -- I have a
15 question. I'm trying to, I'm trying to understand how the, how
16 the testing and the measurement works because -- I guess I want
17 to understand how, how the violations occur for the entire
18 month or how we extrapolate that to the 61-day period. If you
19 can help me understand that.

20 MR. MOSES: Okay. Essentially in the RFP we made
21 clarifying language in the typing speed section that there
22 would be a minimum of 150 calls made per month on live calls,
23 and it was laid out as far as we count the number of strokes
24 and the spaces and everything, divide it by five to get the
25 average word. There was no question about that in the bidders'

1 conference that we had with the bidders. Everybody agreed to
2 it. Sprint even voluntarily, this was not a requirement of the
3 RFP, elected to have an independent third party tester because,
4 as we've written in the recommendation, staff's and Sprint's
5 testing was always radically different and it kind of stayed
6 radically different in the same percentage. We never could
7 explain that. So then we said, well, let's get an independent
8 tester out there. Maybe it's a problem with the way we're
9 doing it or the way they're doing it. We didn't know. So the
10 independent tester started doing the tests and found out that
11 their test results pretty well mirror imaged what staff was
12 coming up with. So we don't think they have been in compliance
13 by a significant amount for the two years that we've been
14 working with them.

15 So we're just strictly -- and to further answer your
16 question, what we're using is that 150 calls that the
17 independent tester is doing, and they're doing them randomly,
18 so we're figuring the sample size is large enough to see every
19 day they're probably having about the same average of failure
20 rate.

21 COMMISSIONER BRADLEY: Mr. Chairman.

22 CHAIRMAN BAEZ: Okay. Commissioner Bradley, if
23 you'll just indulge me for a moment. I think Mr. Rehwinkel had
24 a response, and then you can go ahead and ask your question.

25 MR. REHWINKEL: Yes. Commissioner, I just want to

1 emphasize, we've talked about a historical period before
2 June 1st of this year and we're talking here about June and
3 July of this year. There were much different contractual
4 requirements before now, and I don't dispute that Mr. Moses and
5 staff have spent a great deal of time over the last two years
6 dealing with this issue. The FCC's requirements deal with
7 off-line testing. The Florida Commission is somewhat alone in
8 the country in the way they pursue live testing. And we don't
9 dispute the live testing concept because what you're doing is
10 measuring the customer experience, and that is the most
11 important thing. It's more important than what the contract
12 says.

13 We went through a period of getting together about
14 how live testing would be done. There is -- has always been a
15 gap in their testing and our testing. And one of the things
16 that I'm going to postulate to you, I've got no scientific
17 evidence that proves this, but I want to postulate to you why
18 you might have a consistent gap between the staff's testing and
19 even the independent tester's testing and Sprint's testing.
20 You have to remember that the testing of these calls is a very
21 subjective process. These tests are proxies, they approximate
22 the live experience. There is no such thing as a normal
23 conversation. There are as many conversations as are
24 conversants out there in the world. There are people that
25 speak as slow as I do and there are people that speak as fast

1 as Mr. Ligas does. We're just different. The court reporter
2 can confirm to you that there are just, there are a wide range
3 of paces and cadences that they will be typing for.

4 We do not dispute that these -- that right out of the
5 gate in Jacksonville especially our typing speed was below par.
6 But we're at a point right now where the typing speed is very
7 good. There's -- this is not a precise measure, it is not a
8 precision-driven process. So our numbers -- if you look at
9 the, the test results for August, you will see quite a few
10 misses that count against us that are 58.8, 59.8, 58.9, 59.3,
11 57.8, 58.1, 58.7. Yes, there are some that fall below 50 and
12 those people have been fired. But what these results show is
13 that compared to June the level is up very close to 60 where
14 you're measuring. And what I'm saying to you, just like in the
15 rate of return environment where you have a broad range, that
16 where people are to operate within, numbers and results by this
17 subjective testing process that come in below 60 but maybe in
18 the mid to high 50s don't necessarily mean that the live
19 experience on everyday calls is deficient. This is a surrogate
20 process that's out there. And I'm not criticizing. I'm just
21 saying be careful as far as evaluating it or setting it up as
22 an absolute where if you're on one side or the other of it,
23 that means you made it or you failed.

24 What we're providing today, I think, gives very close
25 to the expected performance. We cannot justify or explain the

1 June and July process. We're not, we're not -- the process
2 that we had once we came to a good understanding with staff was
3 not a bad experience. We have steadily improved upon that
4 since we had the conversations with staff. And I commend staff
5 because they put some discipline into the way we looked at this
6 process, they brought some perspective to the way the customers
7 looked at this process, and they have made things better for
8 the customers of the state of Florida. But I would not want
9 you to believe that we are here providing deficient service.
10 We did in June. We've admitted it. We've come here and are
11 going to take our punishment, if you will, on that.

12 But from here on forward we will be very happy to
13 have the staff monitor our results. We ask that you recognize
14 that there is some subjectivity in this process. We will be
15 here and work with staff on this. You will see a consistent
16 output from us. But I urge you not to be bound up in the
17 history of the past because it is somewhat tangled. It is not
18 under the same contract, we are here under a new contract, and
19 we will, we will perform under that contract from here on out.

20 CHAIRMAN BAEZ: Commissioner Bradley, you had a
21 question, sir.

22 COMMISSIONER BRADLEY: Right. I don't -- just to
23 correct Mr. Moses, I don't think that we heard the same
24 explanation of what Commissioner Deason said. He, he didn't --
25 I don't think you said that you want to impose a smaller fine.

1 I thought that you said that you were willing to go with a
2 smaller fine upfront and hold in abeyance the larger amount to
3 allow Sprint the opportunity to, during that time frame, either
4 correct the deficiency or not correct it. And if that, if
5 correction occurs, then we will suspend, because I thought
6 that's what we are trying to accomplish, suspend the larger
7 fine but the difference between what we may agree to and what's
8 left. However, if Sprint does not reach that milestone, then
9 the larger fine will kick in. Is that what I heard you --

10 COMMISSIONER DEASON: Yes, Commissioner, that's the
11 concept that I was trying to get out there and was wanting
12 feedback.

13 COMMISSIONER BRADLEY: Okay. Well, what did you
14 hear, Mr. Moses?

15 MR. MOSES: I was just suggesting or just trying to
16 explain the difficulties we've had. And as far as expecting
17 them to -- and I think you just heard Mr. Rehwinkel just say
18 that it's never going to be perfect. I just don't think that
19 they're going to come up 100 percent on this thing, and we're
20 going to be right back before you. So I didn't know if you
21 wanted to -- and that's a perfect way to address it, if that's
22 your choice. I mean, I believe you've got full latitude under
23 the liquidated damages section under that last paragraph and
24 that was the reason that was in there.

25 And if I might comment on that part, the reason that

1 paragraph was in there, there's over 60 parts to that RFP.
2 Every one of those parts is considered a service or a
3 contractual agreement between the parties, and it would be
4 virtually impossible to list out every one of those things
5 separately and put a dollar amount specifically for each one of
6 those items. And that was the reason that was a catch-all
7 category there.

8 CHAIRMAN BAEZ: Just by way, Commissioner Edgar --
9 Commissioner Deason, I do remember some years ago that, and it
10 may have been in a show cause context, I don't remember exactly
11 what the, what the issue was that we did, quote, suspend a
12 fine. That there was, there was, in fact, a, a focus on
13 compliance, on results, and in order to incent those results we
14 sort of, we left a fairly hefty fine hanging over the -- and,
15 again, I don't remember who the parties were, but we did, we
16 did leave a fairly hefty fine hanging over the offending
17 party's head. So I do recall something like that. I don't
18 know if it translates well into this. I'm inclined to think
19 that it does, but --

20 COMMISSIONER DEASON: Yeah. The reason I -- I think
21 that we have historically used that approach when it comes to
22 fines. But this being liquidated damages, I asked a question
23 as to whether we could mimic that general concept over to
24 liquidated damages.

25 CHAIRMAN BAEZ: Right. I agree with you. But I, I

1 don't recall what the results were; if, if, if the desired
2 incentive actually took place or, or bore itself out. But, you
3 know, it's a, it's a concept that I'm comfortable discussing
4 anyway.

5 Commissioner Edgar, I'm sorry.

6 COMMISSIONER EDGAR: That's fine. First of all,
7 Commissioner Deason, I am very interested in the concept that
8 you've thrown out. In fact, I'm wishing that I had thought of
9 it first.

10 But before we get into further discussion perhaps
11 about specific amount and rationale for an amount, I would like
12 to say to Mr. Rehwinkel or Mr. Ligas, you've mentioned firings,
13 you've mentioned a commitment to improved performance. I would
14 like to hear a little bit more about what, what is built into
15 your performance plan in order to meet and maintain the
16 standards that have been laid out.

17 MR. LIGAS: This is Mike Ligas. A couple of things.
18 First of all, the FCC defines 60 words per minute as an
19 oral-to-type test, and we've asked the FCC to clarify whether
20 that is in a testing environment or on live testing calls, on
21 live calls. The FCC has declined to specify whether vendors or
22 providers are required to do it on live calls or in the testing
23 environment. The industry standard that every company uses
24 that provides relay in the United States is they do the
25 oral-to-type test in a testing environment. It is a bit of a

1 controlled environment and it allows the vendors to assess
2 their typing capabilities.

3 One of the things that we have done instead of --
4 previously we've made sure that the agent could type 60 words
5 per minute in that controlled environment. We've increased
6 that minimum requirement to 70 words per minute so that when
7 they get to the live environment, they will -- there's a lot of
8 different issues that happen, there's a lot of variables. It's
9 a large room, there's a lot of, lot of things happening all
10 over the place. The person may speak slower or faster, they
11 may not be able to pace the person appropriately. So we bump
12 up their, what I call the graduation criteria, the criteria to
13 be able to go take live calls from what was a 60-minute minimum
14 to a 70-word-per-minute minimum. Once again, the FCC says
15 60 words a minute, and we've increased that specifically to
16 address the needs of Florida. If it was not for this issue, we
17 probably would still be at 60 words a minute, and actually I
18 want to thank staff for kind of pushing us in that way.

19 The long period of time that Mr. Moses talks about
20 over the past two years was a period of assessment and
21 reassessment: How is staff testing; how is Sprint testing;
22 who, who thinks -- who determines, excuse me -- how do we each
23 interpret the FCC's rules? And we've had many meetings with
24 them. From an incentive standpoint, we have incentives in our
25 call centers both in Florida that is basically a recognition

1 incentive program. Right now it's not a monetary incentive
2 program. An agent who comes, who passes a live test, and we
3 get all the results from the third party, gets significant peer
4 recognition, supervisor recognition. They have essentially a
5 placard that goes up in their cube that's visible to everyone
6 on the floor that they've passed one of these live tests.
7 Because they don't know when the test is coming; it is, it is a
8 random event.

9 To highlight the issues of the variables, we have
10 seen, we have seen many different -- if you take one agent and
11 you can see how they've been tested over the course of a few
12 months, we know we have a good agent when they test at 78, 68,
13 72, they might have a day where they have a difficult call and
14 they get a 58 or a 56, then they're back up to 72. That's not
15 an agent that we're concerned about, although that 56 or 57
16 that they got will show up on the test results and become sort
17 of part of our record, if you will. We know we have a bad
18 agent if they type 48, 52, 56, they hit 61 one day and then
19 they're back down to 38. Those people are gone immediately.
20 If they get tested more than twice and they come up with below
21 60 words a minute and it's -- I mean, you can tell over the
22 course of time we have scores on all of our agents. We know
23 who the good agents are and who the bad agents are. We've
24 gotten rid of all of the bad agents. And it's not just, as
25 Mr. Moses suggests, we're not gating to, to the best agents.

1 We're putting the calls into the appropriate gates. We have
2 specialty gates called voice carryover. Those agents do this
3 special service time and time again. So what we've done
4 essentially is taken a proactive approach. And, you know,
5 we've been working with staff for two years. We have never
6 said to them, hey, look, you know, we don't, this is not right,
7 we don't agree with you. We've always said, let's understand
8 each other and keep working toward improvement.

9 The issue that sort of is self-perpetuating is that
10 if you terminate an agent who continually hits 58 words a
11 minute, that agent will not -- on live calls -- they could be
12 doing 65 words a minute in the test environment. But if they
13 hit live calls at 58 words a minute, you're going to get rid of
14 an agent who's probably a pretty decent agent. It's sort of
15 like riding a bike for the first time. You can get on your
16 bicycle and with the help of your father or your mother,
17 whoever, you're going to be wobbly at first, you're going to be
18 a little bit uncertain. But as soon as you get a little bit of
19 confidence, you're off and running. And once you get that
20 confidence, you always know how to ride a bike, whether it's a,
21 you know, a big bike or a small bike, you know how to ride a
22 bike. And that's really what happens with the agents through
23 the testing process. They go through the testing, they pass
24 the oral-to-type test at 70 words a minute, they get a little
25 bit of confidence, but they don't get proficient until they

1 really get through a period of time to kind of gain all of that
2 confidence.

3 In Jacksonville, when we first started that center,
4 that's what we had, a bunch of agents that had a period of
5 testing behind them, we gave them a lot of live -- we gave them
6 as much testing as we possibly could to get the center up in
7 time for the new contract. No, it was not required. We
8 thought it was the best thing to do for the state from a jobs
9 perspective. It was part of our proposal to the state to keep
10 the jobs in the state of Florida. We, we heard the feedback
11 that we had problems in Miami, so we decided to spend a couple
12 of million dollars and build a new center up in, up in
13 Jacksonville. We felt that was important and we felt that was
14 the right thing to do.

15 I firmly believe that we will never get to
16 100 percent 60 words a minute. It won't happen. If that's the
17 expectation, then we need to have a discussion about, about the
18 realities of, of testing in a live environment because we have
19 plenty of agents that will, they'll test five, six times at 70,
20 80 words a minute and then they'll get one call and they do 55.
21 So 100 percent at 60 words a minute is just not reality. I
22 know it's the goal. We're continuing to strive to that goal.
23 But we have -- in my opinion, we've made significant
24 improvements since the new contract began June 1st. Sir?

25 CHAIRMAN BAEZ: Mr. Ligas, you --

1 MR. LIGAS: I said a lot. I know. I'm sorry.

2 CHAIRMAN BAEZ: No. And I appreciate -- I'm sorry.

3 Commissioner Edgar, if you've got a follow-up, go ahead. I've
4 heard you a couple of times now allude to the, the
5 impossibility of, of perfection, and I appreciate that. My
6 question to you is was there an understanding between the
7 company and the Commission staff as to -- that live testing was
8 going to be the standard?

9 MR. LIGAS: Uh-huh. Yes.

10 CHAIRMAN BAEZ: And having -- and understanding that,
11 the company did agree to the 60 percent. I mean, it's starting
12 to sound to me like a case of agreeing, agreeing to, agreeing
13 to unrealistic expectations from the outset and then we'll live
14 to, we'll live to -- I'll talk my way out of it later. I mean
15 --

16 MR. LIGAS: That was not the intent, sir.

17 CHAIRMAN BAEZ: But I guess -- you've answered --
18 you've said that there was -- I mean, you knew the live testing
19 requirement walking into the contract.

20 MR. LIGAS: Yes.

21 CHAIRMAN BAEZ: And you knew that the 60 percent was,
22 was, was --

23 MR. LIGAS: 60 words a minute?

24 CHAIRMAN BAEZ: 60 words a minute was the
25 expectation. Did, did you not know then that it was an

1 impossible standard? I have to -- I've got to ask.

2 MR. REHWINKEL: Mr. Chairman, let me -- I want to
3 again take you back to the testing process. If there was some
4 sort of a Geiger counter like machine that you could put on and
5 you could see, you could test as people were, were handling
6 calls, the CAs were handling calls, and you knew that on an
7 objective basis that they were or were not making, you could,
8 you could do that. There's no place in the country where there
9 is any defined standards that, or any mechanized process that
10 says with precision that this person is meeting the standard.
11 I mean, what these are are scripts. And I don't have any fault
12 with the scripts, but I think what they do is give you a gauge
13 of whether you're making -- certainly when you look at the June
14 results, the gauge, the meter says they failed. But when I
15 look at results in recent days where you have, you know, we're
16 in the 90 percent range and we're missing with 58s or 57s, I
17 don't think you can say that we did not deliver on the calls,
18 that the customers are experiencing deficient service. It's
19 just something -- there's going to be a little bit of unknowing
20 involved there.

21 CHAIRMAN BAEZ: But your -- but, Mr. Rehwinkel, if we
22 went through the trouble, and I have, and I'm drawing a blank
23 on who we are exactly, what the relationships are, but,
24 nevertheless, if all involved went through the trouble of
25 actually establishing an objective standard, and I think, I

1 would hope from, from a lengthy, from this lengthy discussion
2 that we're having now, and obviously there's a notion, an idea
3 on the table to resolve this at least from the Commissioners'
4 perspective, but I would hope that all involved on the next
5 go-round, this is a two-year -- is it a two-year agreement?
6 How long is this --

7 MR. MOSES: I believe it's three years with four
8 one-year options.

9 CHAIRMAN BAEZ: Okay. So I think we're getting to
10 pinpoint some, a friction point here that needs, that needs
11 better fleshing out. But we did go through the trouble,
12 everything, a lot of effort was involved in establishing an
13 objective standard, and it becomes very difficult once that has
14 been done to say, you know, it's more of a feel thing than it
15 is, than it is a measurement thing. I mean, it becomes --

16 MR. LIGAS: Sir, even, even the --

17 MR. REHWINKEL: One of the things that I want to say
18 about the feel thing versus the measure thing is that when we
19 went into this process, we did not -- we said we would get an
20 independent tester, and Paisley is doing this. And as far as
21 we know, we're the only ones, the state of Florida is the only
22 one that they're doing this for.

23 I would just caution the Commission not to set up an
24 expectation of impossibility here. We are very comfortable --

25 CHAIRMAN BAEZ: Perhaps it's too late for that. And

1 again, there's, there's --

2 MR. REHWINKEL: I think --

3 CHAIRMAN BAEZ: There's a conversation to be had
4 somewhere as to whether the standard is impossible and whether
5 everybody can appreciate the difference between live testing
6 and oral, oral-to-type testing or -- you know, there may be
7 some work to be done there.

8 MR. REHWINKEL: But I think, as we've discussed, the
9 goal is to have the customers have the customer experience that
10 the Commission expects that they have. There's two ways this
11 thing can play out. The staff can monitor our, our monthly
12 reports and they can gauge whether we're in compliance or not.
13 And I urge that there be some level of subjectivity in there.
14 I'm not talking about a wide range of subjectivity, but enough
15 to where they can exercise reasoned judgment about it. And
16 we're okay with that.

17 But if a standard is going to be set where it's each
18 and every call that's tested has got to have a 60.0 or greater
19 score on it or we're right back in here, that's not productive
20 for us and I don't think it's productive for staff.

21 CHAIRMAN BAEZ: But was that not the -- and, again, I
22 don't have the benefit of an intimate knowledge of the
23 agreement, but was that not, was that not what was agreed to?
24 I guess I go back to my question to Mr. Ligas. Walking into
25 the contract, was that the expectation that was understood from

1 everyone involved or wasn't it? And, please, don't
2 misunderstand. I mean, I, I appreciate the fine point that,
3 that you're making. I understand it completely. In fact, I
4 may be inclined to agree with it. But I guess we all go back
5 to what did everybody know that they were agreeing to?

6 MR. LIGAS: Sir, when we bid the contract, we felt
7 through our discussions with staff that they understood the
8 subjectivity of it. We sat side by side with them, and you
9 have two or three different timers on the same call and you
10 will get three different times. You could have a 58, a 61 and
11 a 63 on the same exact call simply because of the subjectivity
12 of when people are clicking the stopwatch. We felt through our
13 discussions with staff that they understood that subjectivity
14 and they understood -- I believe from my perspective that we
15 both understood 60 words per minute, a substantial compliance
16 is, is reasonable. I never got the impression that 100 percent
17 of the calls had to be measured at 60 words per minute because
18 I don't believe that is -- I don't believe that is an
19 achievable objective. You know, and every time we fire
20 somebody, we've got to hire somebody new, they take time to
21 get -- you're kind of in this death spiral eventually, and I
22 don't want to get us there. I think that we are in substantial
23 compliance with this contract now. I admit and I regret that
24 we had problems in June and July, and I believe that we're on
25 the right path to success. I want to continue to work with

1 staff to make sure this is the best relay service in the
2 country. We've put a lot of effort into this and --

3 COMMISSIONER BRADLEY: Mr. Chairman.

4 CHAIRMAN BAEZ: Commissioner Bradley.

5 COMMISSIONER BRADLEY: A question of staff. Staff,
6 have you had an opportunity to, to compare what we're doing to
7 other states to see if --

8 MR. MOSES: I have been in contact with other states.
9 One of the states only relies on Sprint's testing to ensure
10 compliance with the, with the FCC mandate which is in all of
11 the contracts. One other state has a call center in the state
12 that requires 100 percent of the calls to be within that state,
13 and they're a contracted person that does independent testing.
14 And they're seeing about the same results as we are as far as
15 noncompliance. And it's up to that state in order to, excuse
16 me, to enforce their contracts, and I don't know if they've
17 done anything about it or not. After speaking with some of the
18 other states though, they're going to start looking into the
19 typing speed and start looking at their own testing programs
20 instead of relying on Sprint to give them the compliance
21 information.

22 One other thing I'd like to mention, and I'll read to
23 you the requirement that's in the RFP that Sprint agreed to, is
24 it says, "A minimum of 150 test calls per month using prepared
25 scripts that reflect a typical conversation in calling through

1 the relay system the same as other live calls shall be
2 completed by the provider to ensure compliance with this
3 requirement."

4 So I think that was pretty clear that we were going
5 to rely on those 150 test calls to see if they're in compliance
6 with the 60 words per minute.

7 COMMISSIONER BRADLEY: Okay. But my question was do
8 we have any data that indicates, and I think you answered the
9 question, that indicates how the word-per-minute requirement
10 compares to the Florida requirement? You know --

11 MR. LIGAS: Sir --

12 COMMISSIONER BRADLEY: Staff.

13 MR. MOSES: Okay. I'm not sure if I understand your
14 question.

15 COMMISSIONER BRADLEY: How does, how does -- okay.

16 MS. SALAK: Commissioner, I believe Florida is
17 fairing better than other states. I believe our testing
18 results are better than other states, so.

19 COMMISSIONER BRADLEY: Okay. Are there any other
20 states that are meeting the 60-word-per-minute requirement that
21 you know of, or do you have knowledge?

22 MR. MOSES: I don't know, sir. I don't know.

23 MR. LIGAS: Sir, we're -- we've commissioned the same
24 group that is doing the test calls in Florida and providing the
25 results to staff, we've commissioned them to test our

1 competitors because I wanted to find out for myself if what we
2 were providing was good, better or worse than other states.
3 The results aren't in. I have the preliminary results. I'd be
4 glad to pass the results to staff in about two weeks when
5 they're completed, but so far the results are that Sprint's
6 service is better than one of our providers, head and shoulders
7 above the other provider and light years ahead of the other two
8 providers. Based on these preliminary results, this is the
9 best relay service in the country.

10 COMMISSIONER BRADLEY: And I'll tell you what, what
11 is lingering in my mind. The gentleman who represents the
12 specific consumers that we're talking about, I wish that he was
13 still on the line because, you know, it's noteworthy that he
14 found the service to be in his opinion, I think, unacceptable.
15 But he didn't make a recommendation as to what the severity of
16 the penalty should be, and I wish that he was still on so that
17 I could ask him how Florida compares with, with other states.

18 You know, I don't know how we get to a resolution as
19 it relates to this particular issue because I -- in my mind
20 ultimately what we want to do is to have an acceptable amount
21 of words typed per minute, be it 60, 65, 50. I don't know
22 what's acceptable. It would seem to me that what is acceptable
23 probably would be based upon the skill and the experience of
24 the typist. I don't know what is acceptable.

25 I don't -- I would hate to create a situation that's,

1 in terms of a number that's unachievable. But then also I
2 wouldn't want to rule and put forth a lower expectation if a
3 higher expectation is achievable. That's my quandary.

4 MS. SALAK: Commissioners --

5 COMMISSIONER BRADLEY: And that's why I thought
6 Commissioner Deason's suggestion might be a good idea, because
7 it would give a little bit more time for assessment and
8 evaluation, but, yes.

9 CHAIRMAN BAEZ: Ms. Salak.

10 MS. SALAK: I was just going to say that obviously
11 staff will continue to monitor the situation. We will continue
12 to work with Sprint to help try to improve their service.

13 As you can see from our history with Sprint, we do
14 not come to agenda lightly with liquidated damages. So we will
15 continue to do that. And before you see a recommendation from
16 us again, you, of course, will -- we will put that same time
17 and consideration into it. And so it would be a situation
18 where we thought that we just couldn't work anymore with them
19 or we just have reached a certain level. So, you know, there
20 may be times when they -- we believe the standard is 60 words
21 on a live call, we believe that is the standard. However, we
22 have also observed during the past year that it dropped below
23 and under the old contract -- we weren't, we didn't rush down
24 here. We continued to work with them and tried to improve it,
25 and I think that will be true in the future, too. We will --

1 just like we do monitoring all standards and quality of service
2 that we have for all the companies, we will continue to do the
3 same with Sprint. So when we come here, we will, we will be
4 showing you exactly what the results have been, and we would
5 only come here when we thought that we needed some incentives
6 added.

7 CHAIRMAN BAEZ: Mr. Twomey.

8 MR. TWOMEY: Mr. Chairman, Commissioners, good
9 morning. Mike Twomey.

10 CHAIRMAN BAEZ: On behalf of who, Mr. Twomey?

11 MR. TWOMEY: Bud Hansen, Sugarmill Woods Civic
12 Association, Joanna Sutherland, John and Sheila Costigan, all
13 of whom are customers of Sprint or have associational
14 representation, in the case of Sugarmill Woods, of a large
15 number of people who are served by Sprint as their ILEC.

16 CHAIRMAN BAEZ: On the, on the relay service?

17 MR. TWOMEY: No, sir.

18 CHAIRMAN BAEZ: Just generally?

19 MR. TWOMEY: They are served generally. And I want
20 to, if I have a moment, I want, I want to tell you why they
21 have an interest in this.

22 CHAIRMAN BAEZ: I'm interested in hearing it.

23 MR. TWOMEY: Yes, sir. The -- and you have a rule,
24 as pointed out by Mr. Wahlen in his -- I came to speak on
25 Item 8, but, listening to this, I started thinking about what

1 was going on and how my clients were impacted on this as well,
2 and it's this, Mr. Chairman. I don't know what this company is
3 being paid annually for this contract but I know who's paying
4 it. The, the deaf and hard of hearing community certainly has
5 a first-person interest in having their services rendered
6 properly consistent with the client that this company bid for
7 and took. They're not, they're not involuntarily required to
8 do this. They asked for it, they got the contract. They
9 apparently knew what the circumstances and the criterion were.

10 Who pays for it? We all pay for it. I suspect,
11 unless you don't have Sprint, the four of you Commissioners pay
12 for it. I pay for it monthly in my bill. My clients pay for
13 the rendering of this service through their, their bills.
14 They're entitled -- I mean, it's not a small amount of money,
15 and they've paid for it year in and year out for probably a
16 couple of decades now. They are entitled to have proper
17 services rendered for the money paid to this company. And my
18 clients and all of Sprint's customers that pay into the relay
19 service on a monthly basis have an obligation to get good
20 quality service for the money rendered.

21 Your staff has come to you as I have listened to this
22 item today, and they've said they've dealt problematically with
23 this company for the better part of two years. Now there's
24 nothing, there's nothing subjective about 60 percent or
25 60 words per minute. Either you meet it or you don't meet it.

1 We all know that you get what you pay for. If you want to get
2 typists that can type 60 words per minute, you can go out and
3 find them. They probably cost more than people that don't know
4 how to type well, are learning or type 30, 40, or even 57 words
5 per minute. So I think my clients have, are affected by this.
6 I think your staff, from what I've listened to the last hour,
7 is correct. They came to you only after due consideration of
8 this matter for years. I think -- I don't think, I would urge
9 you on behalf of my clients to take your staff's advice, impose
10 the full fine as liquidated damages, send a message to this
11 company to get it correct now, and on a going-forward -- that
12 will give them an incentive. That would send a clear message.
13 Impose the full amount and tell them clearly that if they don't
14 get it straight immediately or shortly, they should come back
15 and you'll hit them with some more or perhaps take the contract
16 away. But I'd urge you to adopt your staff recommendation.
17 Thank you.

18 MR. REHWINKEL: Mr. Chairman, I would -- I beg your
19 indulgence to make a statement for the record. This agenda
20 item states that this is a regular agenda; interested persons
21 may participate.

22 CHAIRMAN BAEZ: Not interesting persons. Interested
23 persons.

24 MR. REHWINKEL: If that was the case, I wouldn't even
25 be here. Interested persons may participate. There's no

1 standard. Mr. Twomey has expressed an interest just like
2 Mr. Kottler did. Certainly any LEC customer who has a
3 surcharge on the bill is paying for this, not just Sprint LEC
4 customers. So I hazard a guess that Mr. Twomey is posturing to
5 speak on an item that he has no legal right to speak on later
6 today and is making that case here today. So this is not
7 related to this item here. Mr. Twomey has not participated in
8 any discussions over the past many months about this matter. I
9 would urge you to take for what it's worth his comments. Thank
10 you.

11 MR. TWOMEY: Mr. Chairman, I can get the rule.

12 Mr. Wahlen cited the rule.

13 CHAIRMAN BAEZ: Commissioners, questions?

14 COMMISSIONER EDGAR: Mr. Chairman.

15 CHAIRMAN BAEZ: Go ahead, Commissioner Edgar.

16 COMMISSIONER EDGAR: A slight comment and then maybe
17 a question, if I may.

18 CHAIRMAN BAEZ: Go ahead. You have the floor.

19 COMMISSIONER EDGAR: As always with these items --
20 with all of the items that come before us, I appreciated the
21 discussion, the question and answer, and I have found it very
22 informative and I've learned from it. So I thank my colleagues
23 and thank all who have participated for giving me a greater
24 appreciation and a greater depth of understanding of some of
25 the issues before us.

1 As is really not rare in contracting and procurement,
2 I am not certain in my mind that there was a true meeting of
3 the minds on compliance, the definition of compliance, the
4 testing to meet compliance, whether it's full compliance,
5 substantial compliance. Substantial compliance is not a term I
6 see in the material before me, but it is, it is a point worthy
7 of consideration, I think. The language before us says, and
8 I'm quoting, "Any amount commensurate with the duration and
9 extent of the system deficiencies." I feel that the
10 information I've heard has convinced me that there are some
11 system deficiencies that need to be addressed, perhaps have
12 been, will continue to be, but there is an issue there. But
13 yet I'm uncertain for the basis as to how to determine an
14 appropriate amount to levy basically that meets commensurate
15 with the duration and extent. So, so struggling with that, I
16 would very much like to come back to the concept that
17 Commissioner Deason proposed to us initially. I think it has
18 great merit. And I would look to, to my fellow Commissioners,
19 to Sprint and then also to staff to help us perhaps figure out
20 how to make that the most workable, at what time frame to come
21 back, what steps may need to take place between now and then as
22 far as monitoring and reporting and bringing an item back to us
23 so that we have greater assurance that there is compliance to
24 the extent that is appropriate.

25 CHAIRMAN BAEZ: Well, I appreciate your comments and

1 I had hoped we would get back to Commissioner Deason's
2 suggestion because I find it worthy of discussion and
3 consideration. I'll tell you where I'm coming from. I
4 think -- first of all, let me say this. I don't think I've
5 ever heard a company come up here and use the word, the exact
6 words of "firing people." Okay. Now that, that choice of
7 words is interesting to me because it conveys some, some
8 sincere level of seriousness. You know, no euphemisms for
9 letting people go or replacing resources and, you know, that
10 kind of thing. You came out and said it, and I appreciate
11 that. There's not -- we don't get enough of that kind of talk
12 here.

13 But I will say this: I also find a \$300,000 fine --
14 and I appreciate staff's diligence and circumspection and only
15 coming when they felt it was proper and they have had enough,
16 they had had enough, done enough legwork, as it happens, over,
17 over several years for it to rise to the level of coming before
18 the Commission. I do appreciate that. But I think \$300,000 or
19 certainly the number, the percentage that it represents on the
20 contract basis was a little, was a little shocking to me for
21 what it's worth. It's not that I have any problem with the
22 company having to own up to its responsibilities under a
23 contract. I believe you signed it. There may not have been,
24 as Commissioner Edgar suggested and I agree, a 100 percent pure
25 meeting of the minds. And I think -- I'll repeat again, as

1 part of this discussion this morning, I think both staff and
2 the company have a lot of, a lot more discussion to, to further
3 that meeting of the minds. But at the end of the day it is, it
4 is a contract, just like I can appreciate Mr. Rehwinkel's
5 argument that there isn't a number, a specific number tied to
6 it and that should be considered tied to it contractually,
7 explicitly. I also think it is a contract after all, and I
8 think that there has to be some responsibility and some
9 accountability for, for your decision to take on, take on those
10 obligations.

11 Commissioner Deason, as to your proposal, I don't, I
12 don't even have a problem with the number that you proposed. I
13 think \$100,000 off the bat and refund it or however it is that
14 it's supposed to flow back to the customers or whatever the
15 plan is --

16 MS. SALAK: It reduces the bill.

17 CHAIRMAN BAEZ: It reduces the bill. Exactly. It's
18 an immediate benefit to the ratepayers. I think the \$200,000
19 fine hanging over their heads is, should give some incentive
20 for them to do better. I am, I am, I will confess, a bit
21 caught on what the after, you know, what the day two process is
22 beyond this clearing up of the understanding that we're all to
23 have about, about the company's performance here on after. I
24 don't know what the day two looks like exactly. If you've
25 thought of it --

1 COMMISSIONER BRADLEY: Well.

2 CHAIRMAN BAEZ: Commissioner Bradley, you had a
3 question or --

4 COMMISSIONER BRADLEY: I want to ask Mr. Rehwinkel a
5 question. And you piqued my interest in that term that you
6 used, "firing people." Why have you been letting people go?
7 Is it because they --

8 MR. REHWINKEL: I'll let Mr. Ligas answer that, if
9 it's okay.

10 MR. LIGAS: It's interesting that you picked up on
11 that one word because we had a long discussion about that word
12 and which word was the appropriate to use.

13 We essentially have kind of a one strike and you're,
14 or two strikes and you're out policy right now. If an agent
15 shows up on a test, a live test call performed by the third
16 party tester, one time, they go back into the training room and
17 they get sufficient training until they can get, until they
18 prove repeatedly that they do 70 words per minute in that
19 controlled environment. If they can do that, then they go back
20 on the floor. If they come up another time within a short
21 period of time on a live test call and they're once again below
22 60 words a minute, even if it's 59.1, they're fired.
23 There's -- and it shows our commitment to meeting the goals of
24 this contract. We simply have no room for, for accepting less
25 than the 60 words per minute standard. It will happen, I know

1 it will happen because it's humans that are engaged in the
2 processing of the call. However, we simply have, we have to
3 take the appropriate action to make sure we provide the service
4 that we agreed to provide to the state. So that's why we have
5 terminated that many folks over the two-year period. It is, it
6 is a difficult thing for us to do, but we want to make sure
7 that we meet the needs of the contract.

8 COMMISSIONER DEASON: Mr. Chairman.

9 CHAIRMAN BAEZ: Commissioner Deason.

10 COMMISSIONER DEASON: The discussion of this matter
11 has, I guess, evolved a little more broadly than I first
12 anticipated. And Mr. Twomey brought up the subject of who pays
13 for this, and it's a legitimate subject, and it's one that,
14 it's a concern that I share.

15 I have, I have seen the cost of this service escalate
16 over the years. It's certainly not an insignificant amount. I
17 think this Commission has been very diligent to oversee this
18 service both from the quality of the service and the cost of
19 administering this very needed program. And one of the
20 concerns, quite frankly, that I have with staff's
21 recommendation is that what signal is that going to give to
22 future companies that may want to bid on this contract? If we
23 can take 34 percent of the revenue, and I think that was the
24 number that was given out, for failure to meet the
25 60-word-per-minute standard, this is going to be a very risky

1 contract for future companies to come in and bid upon if, if
2 34 percent of their revenue can just be taken away by that.
3 Now I don't mean to defend noncompliance with the contract by
4 any stretch. If there's noncompliance, there's noncompliance,
5 and there should be consequences for that. And someone should
6 not come in with a cavalier attitude and bid on a contract and
7 not expect to meet the provisions of the contract. They're
8 going to have to suffer for that. But at the same time I have
9 concerns that in the long-term we may be increasing the risk
10 profile of providing this service and increasing ultimately the
11 cost to consumers of providing this service, and that's
12 something that I consider as well. I want Mr. Twomey to know
13 that and all the consumers to know that. So we have to reach a
14 balance here. What we -- the balance we have to reach is one
15 of giving, of making sure the contract is met in the long-term
16 and customers get the quality of service that they deserve in
17 the least cost approach. If we impose the liquidated damages,
18 it's a one-time reinfusion of \$300,000 back into the fund that
19 we administer. But does that mean that in the future we're
20 going to, the fund is going to have to be much larger to
21 compensate companies for the risk profile of providing this
22 service? And that's a judgment call, and I don't know what the
23 right answer is.

24 I think \$100,000 liquidated damages at this point
25 should get Sprint's attention. I think that it will. I think

1 \$205,000 hanging over their head as an additional attention
2 getter will get the right results. I'm very hopeful of that.
3 And if it doesn't get the right results, then the consequences
4 would be paid.

5 But I think we're sending a signal to potential
6 bidders on future contracts that this Commission is going to be
7 reasonable. And if a standard is not met, there are going to
8 be consequences, but you're going to be given the ability to
9 correct those measures, and it is not going to be a situation
10 where you're automatically going to have 34 percent of your
11 revenue taken away on the front end of a contract. So that's
12 the balance I'm trying to reach. I don't know if \$100,000 now
13 and \$205,000 potential liquidated damages is the right ratio.
14 Maybe it should be more or less on the front end. I don't
15 know. But I'm just as concerned as you, Mr. Chairman. When I
16 saw the amount, that it seemed to -- and I understand the
17 history and I understand that staff has been very diligent and
18 patient in regard to this, and I applaud them for their
19 efforts. But my concern is one more of a longer term nature
20 and I'm trying to reach that balance, and so I'm just looking
21 for some input from other Commissioners as to what that balance
22 should be.

23 CHAIRMAN BAEZ: Well, like I said before, I think --
24 I'm, I'm comfortable with that ratio. What I am unclear of and
25 is -- all right, we're taking, we would theoretically be taking

1 the step of suspending a great deal of that proposed fine, and
2 then under what conditions does it get, under what conditions
3 does it get reimposed? At what point in time is there a come
4 to Jesus and say, you know what, you haven't done it and let
5 the chips fall where they may?

6 MS. SALAK: Just a suggestion.

7 CHAIRMAN BAEZ: Please.

8 MS. SALAK: Certainly if you wanted to fine or have
9 liquidated damages of \$100,000 today, certainly you could do
10 that today. And then we obviously are going to continue
11 working with Sprint and monitoring the results and everything
12 else.

13 If, if we have to come back to agenda, and hopefully
14 that won't be the case, at that time we can show you the
15 results we're finding. You can take this decision into
16 account, along with the second, second nonperformance, if you
17 want to call it that, and then we can determine perhaps a
18 greater fine, or if you find at that time that you want to
19 assess greater liquidated damages. So it would be somewhat
20 typical of what we do when we're enforcing others. Yes.

21 CHAIRMAN BAEZ: Commissioner Bradley, go ahead. And
22 I have a question of staff as well.

23 COMMISSIONER BRADLEY: Right. As Commissioner Deason
24 stated, I guess there are many different ways of looking at
25 where we're trying to get to. And this whole issue of firing

1 still is, it still stands out in my mind, and I'll tell you
2 why.

3 One point that Commissioner Deason brought up is, you
4 know, the amount and the concern that the message that we --
5 the amount of the contract, that is, and the message that we
6 might be sending to potential future bidders. If Sprint is in
7 fact firing individuals because they are unable to, to meet the
8 terms of what was agreed to previously, it might be an
9 indication of the fact that, that at some point, if the
10 contract is rebid, it will be rebid at a higher price because
11 it's going to be pretty obvious that they're going to have to
12 hire not beginning typists or intermediate people with
13 intermediate skills with the hope of bringing them up to
14 60 words a minute, but that means that they're going to have to
15 hire folks with a lot of experience in order to be able to meet
16 that 60-word-per-minute number, and which, which probably is
17 going to increase the, the contract number.

18 So I think that what Commissioner Deason has put on
19 the table is probably an excellent compromise and a beginning
20 point so that we can give all, give staff and give Sprint the
21 opportunity to, to really reassess what they have agreed to and
22 just to make sure that everybody clearly understands in fact
23 what the language of the contract means and that the language
24 is acceptable, and also to give them some time to assess what
25 other, what's being achieved by other states.

1 As I said, the gentleman who was on the phone, you
2 know, it's too bad he's not here now because he probably could
3 give us some indication as to -- or make us a recommendation.
4 He very clearly stated that Sprint needs to be, their feet need
5 to be held to the fire, but he --

6 CHAIRMAN BAEZ: Didn't say how.

7 COMMISSIONER BRADLEY: -- he never did commit himself
8 to the fact that the amount, in fact, needs to be the top end.
9 It sounds like this is a work in progress to me.

10 CHAIRMAN BAEZ: Ms. Salak, a question on your, on
11 your suggestion. Do you have, do you have any concept of how
12 this would work going forward? I know that you mentioned, you
13 know, we will talk to the company, everybody is going to, and
14 I'm certain of it, that this is not the last conversation
15 you're going to have on the matter. But at what time would be
16 appropriate to receive another recommendation?

17 MS. SALAK: I don't, I don't have a time frame in
18 mind. It would be that we would only come back to you if we
19 found that we had problems that we couldn't deal with. I mean,
20 that would be -- what my thinking was is that you've all
21 recognized the issue, you've all -- if you think \$100,000 is
22 the appropriate liquidated damages, then you could assess those
23 today and then we would continue working with them. And then
24 we would only be back if we thought we had problems.

25 CHAIRMAN BAEZ: Commissioner Deason, a question to

1 you. You originally alluded to not just the, what I'll call
2 the suspended damages, but also a certain understanding that,
3 that that number could grow. Do you -- is that your way of
4 suggesting that even, even in the ongoing discussions, I mean,
5 assuming we could all get behind some kind of resolution along
6 those lines, that continued noncompliance merely, you know, the
7 meter is running, so to speak, is that your understanding or
8 your intention?

9 COMMISSIONER DEASON: My, I mean, my intention is to
10 continue to give our staff the flexibility and the discretion
11 to come back, and if they feel like that simply reimposing the
12 suspended portion is insufficient given the future performance
13 of the company, I think that they should have the latitude to
14 come back with even a greater amount. But I think that would
15 depend upon the facts at that time.

16 CHAIRMAN BAEZ: Of course. Very well.

17 COMMISSIONER DEASON: One other suggestion, and I
18 know this contract is out there and we need to administer it in
19 the most fair and effective way possible, but it seems to me
20 that when there are requirements in contracts that call for
21 100 percent compliance, that's a difficult thing. And it may
22 be -- and I don't know what the right ratios or numbers would
23 be, but if 60 words per minute is the requirement, maybe some
24 requirement that it has to be met 95 percent of the time or
25 something. I mean, you could have a very proficient

1 communications assistant who has taken the test and has a bad
2 day, has a headache or sneezes or something and gets 59 words,
3 not 60. I mean, when you say 100 percent compliance, that is a
4 very difficult standard to meet, it would seem to me.

5 MS. SALAK: And I agree. And all parties through the
6 RFP do not quibble with the language at all, I mean, that it
7 was 100 percent. And with that said, when we do monitoring for
8 all quality of service, not just this contract, we take that
9 into consideration. We don't come down here if someone, to
10 quote you, sneezes or something like that. We have to see it's
11 a pattern, we have to see that we've tried to work with them.
12 So we're not overly reactive, we don't believe. So we
13 recognize that. And if it was a blip in the scheme of things,
14 we probably would not be down here.

15 COMMISSIONER BRADLEY: Well --

16 CHAIRMAN BAEZ: I myself am only ever at 97 percent
17 and I'm pretty good. Commissioner Bradley.

18 COMMISSIONER BRADLEY: Well, you know, and I need to
19 commend staff for, for doing an excellent job as it relates to
20 this particular issue because, you know, what staff did was to
21 put before us a problem that, that needs to be solved. And
22 they have done an excellent job as it relates to presenting
23 what the, what the problem is and how it might be resolved.
24 And I think that because of staff's presentation we were able
25 to arrive at what at least conceptually Commissioner Deason has

1 put on, has put before us. So, staff, I need to let you know
2 that I do appreciate what you've done today. I think what
3 Commissioner Deason has --

4 COMMISSIONER DEASON: Mr. Chairman, is a motion in
5 order at this point?

6 CHAIRMAN BAEZ: You got ahead of me. I mean, I was
7 actually going to ask for one. I think if we can put, if we
8 can somehow make sense of everything we've said and has been
9 said and put it in the form of a motion, I think we're probably
10 ready for one.

11 COMMISSIONER DEASON: Well, I know that we've talked
12 about this matter for a great length of time, but I think it's
13 been time well spent. And I think that we have given the
14 message that this is a serious matter and that we do intend to
15 enforce the contract, but we also intend to be reasonable in
16 our enforcement, and that that is going to hopefully yield the
17 most long-term benefits in terms of quality of service as well
18 as cost of service.

19 And with, with that being said, I would move that the
20 Commission impose liquidated damages of \$100,000; that we
21 recognize that staff had recommended \$205,000, but that we
22 would choose not to impose that at this time; and that we leave
23 the discretion and flexibility of staff to continue to work
24 with Sprint to monitor the situation; and if at some future
25 time the problem is not corrected sufficiently, that the matter

1 be brought back to the Commission and that we further discuss
2 the reimposition of the \$205,000 liquidated damages and, at
3 staff's discretion, even more if the circumstances dictate that
4 in their opinion.

5 CHAIRMAN BAEZ: Commissioners, we have a motion. Is
6 there a second?

7 COMMISSIONER EDGAR: Second.

8 CHAIRMAN BAEZ: Motion and a second. All those in
9 favor, say aye.

10 (Unanimous affirmative vote.)

11 CHAIRMAN BAEZ: Show the motion carries unanimously.
12 We also have Issue 2 on this, Commissioners.

13 COMMISSIONER DEASON: Move staff on Issue 2.

14 CHAIRMAN BAEZ: And 3 as well?

15 COMMISSIONER DEASON: And 3 as well, yes.

16 CHAIRMAN BAEZ: Very well. Motion. Is there a
17 second?

18 COMMISSIONER EDGAR: Second.

19 CHAIRMAN BAEZ: All those in favor, say aye.

20 (Unanimous affirmative vote.)

21 CHAIRMAN BAEZ: Thank you all.

22 (Agenda Item 3 concluded.)

23

24

25

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 27TH DAY OF SEPTEMBER, 2005.

Linda Boles

LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734