

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: September 8, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Moses, Casey)
Office of the General Counsel (Rojas)

RE: Docket No. 040763-TP – 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.

AGENDA: 09/20/05 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Please place at the beginning of the agenda or at a time certain to reduce interpreter costs.

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040763.RCM.DOC

Case Background

The Telecommunications Access System Act of 1991 (TASA), Section 427.701, Florida Statutes, established a statewide telecommunications relay system. This system provides telecommunications service for hearing impaired persons functionally equivalent to the service provided to hearing persons.

Sprint began providing relay service under contract in Florida beginning June 1, 2000, under Docket Number 991222-TP. That contract expired May 31, 2005, and Sprint was awarded a new contract under Docket Number 040763-TP with service beginning June 1, 2005.

There are many different types of service provided by the relay system. One such service is the relaying of calls from a person using a Telecommunications Device for the Deaf (TDD). A keyboard is used by a hearing-impaired person to type to the relay operator. The relay operator voices the communication to the hearing person. When the hearing person voices back to the relay operator, the operator then types the message to the TDD user. The typing speed of the relay operator is very important for the TDD user to be able to converse with the hearing person.

Pursuant to contract, this Commission requires the relay system provider to comply with certain service standards. One of the service standards is the requirement that the relay operator type at a minimum speed of 60 words per minute (wpm) on live relay calls. Technological aids such as macros used to type commonly used words or phrases with minimal keystrokes are allowed to be used to achieve this typing speed.

Sprint has not been complying with this requirement; therefore, staff is recommending that the Commission collect liquidated damages as provided by Section B-60 of the contract.

Revenue to Sprint for the provision of relay services, including CapTel, was \$563,939 dollars for the month of June 2005.

The Commission has vested authority under Section 427, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission require Sprint to pay liquidated damages by crediting the Florida Telecommunications Relay, Inc.'s (FTRI) account \$305,000 (61 days x \$5,000/day) for failure to meet the typing speed requirement of Section B-7(c) of the contract for the period of June 1, 2005, through July 31, 2005?

Recommendation: Yes. (Moses, Casey)

Staff Analysis:

Historical Events Under Previous Contract Regarding Typing Speed

Section 427.706, Florida Statutes, tasks the Advisory Committee with the responsibility of advising staff on relay matters. Staff was advised in 2003, by the committee, that some relay operators, also known as communications assistants (CA), had very heavy accents which impeded relay conversations. During the meeting, staff suggested to Sprint that it conduct test calls to determine which CAs had accents. However, Sprint was reluctant to conduct the tests and requested that it be provided with the CA's identification number when a user experienced an accent problem and it would take corrective action. Staff continued to encourage sprint to initiate an adequate number of test calls for several months. Because of Sprint's reluctance to conduct test calls, staff began testing in September, 2003. Staff's test calls evaluated the CAs for not only accents or understandability, but for courteous behavior, answer time, and typing speed.

Staff provided CA numbers to Sprint in regard to the accent problem and the problem appears to have been corrected to-date. However, Sprint was unable to achieve an acceptable level of compliance with the required typing speed.

The typing speed standard was set by the Federal Communications Commission (FCC). The FCC certifies each state relay system and Section 427, Florida Statutes, mandates that the PSC follow the FCC rules. As part of the certification process, certain minimum standards must be incorporated into the relay system. One such standard is typing speed as defined in §64.604, Code of Federal Regulations. This requirement, along with others was modified by the FCC in 2000 and was adopted by this Commission as amendment one to the last contract. FTRI paid a lump sum of \$1,773,000 to Sprint for the upgrades necessary to comply with the new FCC minimum requirements, which included the increase of typing speed from 55 wpm to 60 wpm, for the duration of the last contract. The FCC language pertaining to typing speed reads as follows:

§64.604 Mandatory minimum standards

(a)(iii) CAs must provide a typing speed of a minimum of 60 words per minute. Technological aids may be used to reach the required typing speed. Providers must give oral-to-type tests of CA speed.

Sprint indicated to staff that its interpretation of this language was that if the CAs met the 60 wpm during the oral-to-type test that this was compliant with the standard. Staff interprets

the FCC standard to mean that the CAs must provide a minimum of 60 wpm to the users of the relay system, not just on the typing test. Otherwise, the standard would have no meaning. Staff believes the FCC required oral-to-type tests to be sure the providers were at least trying to identify slow typists.

Slow operator typing is frustrating to users, which causes hang-ups leading to higher costs for consumers due to the added length of the calls and the increase in multiple calls. Staff believes adhering to the 60 wpm requirement will reduce the total length of calls saving the state money, reduce the number of hang-ups, and lead to a more functionally equivalent service such as hearing persons experience.

In Order FCC 03-112, released June 17, 2003, the FCC addressed its expectation that new CAs have the capability of typing 60 wpm by stating:

Certainly a new hire without any CA experience is not capable of performing the job without some training, and our requirement does not obviate a training period for CAs. We find, however, that it is reasonable to expect a trained typist, with or without technological assistance, to meet the 60 wpm minimum. We clarify that a CA must test at 60 wpm prior to the time he or she first begins facilitating TRS calls for the public. We conclude that the rule requiring CAs to provide a typing speed of 60 wpm is reasonable and necessary under the functional equivalent mandate. (¶84-85)

In 2003, Staff visited the Miami relay call center and observed Sprint's method of testing its operators prior to placing them on live calls. Sprint was using the same oral-to-type test over and over until the operator achieved 60 wpm. The tester would orally pace the operator in a controlled environment. Staff suggested to Sprint that it use multiple scripts so the operator would not memorize the test script.

Sprint provided its results of its oral-to-type tests for the period of September 2003, through March 2004, and reported 100% achievement of 60 wpm. This was considerably different from the results staff observed during live test calls. In March 2004, Sprint began testing live relay calls using prepared scripts. Sprint reported that only 80% of the operators met 60 wpm that month. Staff's test calls for the same month reflected that 60% of the operators typed at 60 wpm or higher. Each month thereafter, Sprint reported better results than staff's testing. Staff met with Sprint several times to ensure both parties were testing in the same manner. Staff also provided Sprint with scripts that staff was using and Sprint's test results continued to be better than staff's. Sprint and staff were not able to conclusively determine why the test results were so different. Therefore, Sprint suggested that an independent third party should conduct test calls. By this time the contract was in its final stage and the RFP was in the process of being released so independent third party testing was not pursued.

In early 2005, Sprint began to direct Florida relay calls to its fastest typists (many of which were located out of state at other Sprint call centers) to improve the service. The results improved. The overall typing speeds measured by Sprint and staff are shown on Attachment A of this recommendation.

To ensure that the new contract clearly defined the typing speed standard, the Commission incorporated the following language in the Request for Proposals (RFP).

Section B-7(c) A minimum typing speed of 60 words per minute on live relay calls. Technological aids may be used to reach the required typing speed.

Upon award of the new contract, Sprint and staff met in February 2005. Sprint assured staff that the addition of the new relay center located in Jacksonville would resolve the typing speed problem. Staff stressed to Sprint that this was to be the expected outcome or staff would pursue liquidated damages. In addition to the new relay center, Sprint stated that it would hire a third party testing firm to comply with the testing requirements of 150 live relay calls per month as required by Section B-7(c) of the RFP. Sprint hired the Paisley Group, Ltd. for the independent testing. The Paisley Group provided the first report of its testing for June 2005. It reported that it completed 67 test calls through the Miami call center. On 11 of the calls the operator failed to type a minimum of 60 wpm. It also reported that it completed 83 test calls through the new Jacksonville center. On 39 of the calls the operators failed to meet the typing speed. This is a 16.4% and 47% failure rate respectively. The Paisley Group provided its report for test calls made in July, 2005 which showed some improvement in the Miami center which measured 92.4%. The Jacksonville center improved to 72.6%. Copies of the reports are provided as Attachment B.

Current Contract Regarding Typing Speed

Staff is not suggesting collecting liquidated damages for the previous contract period. The previous discussion is provided to demonstrate to the Commission Sprint's awareness of the failure, the length of time staff has worked with Sprint seeking corrective action, and the continued failure to meet the requirement of Section B-7(c) of the new contract that started June 1, 2005. Attachment C is a copy of the liquidated damages section from the RFP.

The liquidated damages amount suggested by staff is consistent with a previous Commission decision. In Docket Number 960598-TP, the Commission assessed liquidated damages against MCI for failure to meet the answer time requirement in the amount of \$5,000 per day.¹ In the same docket, the Commission also levied liquidated damages in the amount of \$5,000 per day for MCI's failure to meet the blockage requirement of the contract.

Staff used the same calculation of \$5,000 per day in this recommendation for Sprint's failure to meet the typing speed. Staff believes typing speed is just as important as answer time or blocking calls. If a CA types too slow, neither the user of the service nor the state has received the services required by contract.

Staff will continue to monitor Sprint's compliance of all services required by the contract and bring additional recommendations to the Commission when appropriate.

¹ **Error! Main Document Only.** Liquidated damages shall accrue in amounts up to the following amounts per day of violation:
(a) For failure to meet answer time, blockage rate or transmission level requirement - \$5,000.

Accordingly, staff recommends that the Commission should require Sprint to pay liquidated damages by crediting the Florida Telecommunications Relay, Inc. (FTRI) account \$305,000 (61 days x \$5,000/day) for failure to meet the typing speed requirement of Section B-7(c) of its contract for the period of June 1, 2005, through July 31, 2005.

Issue 2: Should the Commission approve Mr. Brian Musselwhite from AT&T to replace Mr. Chris McDonald formerly of AT&T as a TASA Advisory Committee member effective immediately?

Recommendation: Yes. (Moses, Casey)

Staff Analysis: Section 427.706(2)(e), Florida Statutes, requires two representatives of telecommunications companies, one representing a local exchange telecommunications company and one representing an interexchange telecommunications company, recommended by the Florida Telecommunications Industry Association (FTIA) to be on the Advisory Committee. Mr. Chris McDonald served as a committee member representing AT&T which is an interexchange telecommunications company. Mr. McDonald is no longer employed by an interexchange telecommunications company and FTIA has recommended Mr. Brian Musselwhite as his replacement.

Staff supports FTIA's recommendation and recommends that the Commission approve Mr. Musselwhite as Mr. Chris McDonald's replacement on the Advisory Committee effective immediately.

Issue 3: Should this docket be closed?

Recommendation: No, this docket should not be closed. (Rojas)

Staff Analysis: This docket should remain open for the duration of the contract period with Sprint as the relay provider. This docket is used to monitor relay and contract issues that arise during the contract term.