

Ruth Nettles

From: Marsha Rule [marsha@reuphlaw.com]
Sent: Tuesday, February 17, 2009 4:28 PM
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Subject: DOCKET NO. 080234-TP
Attachments: 080234 - Sprint Mitus LF Depo Exh and NOS 02 17 2009.pdf

The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing:

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The docket number and title of docket:

DOCKET NO. 080234-TP

In re: Implementation of Florida lifeline program involving bundled service packages and placement of additional enrollment requirements on customers.

The name of the parties on whose behalf the document is filed:

NPCR, Inc. d/b/a Nextel Partners and Sprint Corporation n/k/a Sprint Nextel Corporation d/b/a Sprint PCS (collectively "Sprint Nextel")

The total number of pages in the attached document: 4

A brief but complete description of each attached document:

Sprint Nextel's Late Filed Exhibit to Mitus Deposition and Notice of Service

Marsha Rule, Esq.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of Florida lifeline program involving bundled service packages and placement of additional enrollment requirements on customers.

DOCKET NO. 080234-TP

FILED: February 17, 2009

**SPRINT NEXTEL'S NOTICE OF SERVING
LATE FILED EXHIBIT TO DEPOSITION OF JOHN MITUS**

PLEASE TAKE NOTICE that NPCR, Inc. d/b/a Nextel Partners and Sprint Corporation n/k/a Sprint Nextel Corporation d/b/a Sprint PCS (collectively "Sprint Nextel"), has today served its Late Filed Exhibit to Deposition of John Mitus in the above-styled docket to the parties shown on the attached Certificate of Service in the manner stated therein.

Respectfully submitted this 17th day of February, 2009.

/s/ Marsha E. Rule

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Attorneys for Sprint Nextel

DOCUMENT NUMBER-DATE

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail and email, on February 17, 2009, to the following parties:

Charles W. Murphy, Esq.
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/s/ Marsha E. Rule
Marsha E. Rule

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of Florida lifeline program involving bundled service packages and placement of additional enrollment requirements on customers.

DOCKET NO. 080234-TP

FILED: February 17, 2009

**LATE FILED EXHIBIT TO DEPOSITION OF JOHN MITUS:
SPRINT NEXTEL'S FLORIDA COMMUNICATIONS SERVICES
TAX ALLOCATION**

Although Sprint Nextel asserts that the information requested is not relevant to any issue in this proceeding, Sprint Nextel states as follows:

Pursuant to Section 202.11, Florida Statutes, the Florida Communications Services Tax applies to numerous communications services, including but not necessarily limited to local, long distance, and toll telephone, cable television, direct-to-home satellite, commercial mobile radio service (CMRS) or "mobile communications services", private line services, pager and beeper services, and telephone charges made by a hotel or motel. The tax does not cover information services, Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services. The tax covers all voice communications services associated with commercial mobile radio service as well as other services such as text messaging and does not require allocation of revenues between "basic" and "non-basic" services or between particular functionalities of the service.

Section 202.155(4)(a), Florida Statutes, pertains to allocation by wireless providers such as Sprint Nextel, and specifies that "[i]f a mobile communications service is not subject to the taxes administered pursuant to this chapter, and if the sales price of such service is aggregated with and not separately stated from the sales price of services subject to tax, then the nontaxable mobile communications service shall be treated as being subject to tax unless the home service provider can reasonably identify the sales price of the service not subject to tax from its books and records kept in the regular course of business."

Section 202.155(4), Florida Statutes, does not require allocation of revenues between "basic" and "non-basic" service, nor does it create a prospective sales price for

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CMRS service or a particular rate level or rate structure for CMRS service. It is merely an allocation between what are considered communications services subject to the tax and non-communication services for tax purposes. In order to determine the amount due for the Florida Communications Service Tax for Sprint Nextel service plans that include Internet access and other services not subject to the tax, Sprint Nextel bills, collects, and remits tax on the portion of the charge allocated to taxable services and does not bill, collect, and remit tax on each non-taxable service such as Internet access service. The allocation is based on usage samples, the FCC interstate/intrastate safe harbor, and actual revenue derived from each element of the service plan. In all cases the allocation is based on records kept in the ordinary course of business in accordance with both Florida law cited above and the federal Mobile Telecommunications Sourcing Act 4 USC Section 116-126. Using the same allocation process for determining the sales price subject to the Communications Services Tax to allocate the portion of the service to which the Lifeline discount is to be applied would be inconsistent with federal Lifeline rules because it would require application of Lifeline discount to ALL communications services offered by wireless ETCs, rather than the lowest generally available residential rate as set forth in federal law. Further, requiring CMRS providers to set a particular prospective sales price, rate level or rate structure to define a portion of a service plan that the Public Service Commission considers to be the "basic" portion of the service for purposes of applying the Lifeline discount is prohibited by federal law.