

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition of Robert A. Butterworth, Attorney General, and the Citizens of the State of Florida, by and through the Office of Public Counsel, for Initiation of Formal Proceedings, Pursuant to Section 120.57, F.S., to Investigate the Practice of Slamming and to Determine the Appropriate Remedial Measures

Docket No. 990002-FI

Filed: Oct. 8, 1997

RESPONSE OF SPRINT TO FIRST MOTION TO COMPEL FILED BY THE ATTORNEY GENERAL AND THE CITIZENS OF FLORIDA

Sprint Communications Company Limited Partnership ("Sprint"), by and through its undersigned counsel, and pursuant to Commission Rule 25-22.037(2), Florida Administrative Code, files its response to the first motion to compel served by the Attorney General and The Citizens of Florida ("the Citizens")¹, and states:

1. The Citizens' instructions attempt to impose certain requirements regarding privileged documents which go beyond any applicable provisions of the Florida Rules of Civil Procedure. In the event Sprint determines the existence of any privileged documents which are responsive to the Citizens' Request, Sprint will provide to the Citizens an appropriate privilege log. Should the Citizens conclude that such log is inadequate, they can, at that time, file an appropriate motion to compel or to require further description of the documents for which a privilege is asserted. It is entirely premature for the Commission to address this issue now.

ACK
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¹ The Attorney General, as collaborator, has joined in the Citizens' motion to compel. However, the request for production of documents was served only by the Citizens and, therefore, reference will only be to the Citizens with regard to the request.

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2. Sprint has preserved its ability to assert any applicable privilege or doctrine that may attach to documents otherwise responsive to the Citizens' request. Given the accelerated time for objections to be made pursuant to the Commission's procedural order, Sprint must raise these objections before its attorneys are able to review the pertinent documents to be produced. Therefore, the Commission should defer ruling on Sprint's assertion of privilege or work-product doctrine until specific documents are identified and, as the Citizens suggest, the Citizens decide whether they should seek an in camera inspection of specific documents. Again, it is premature for the Commission to address any of these privileges absent documents to which the privileges may attach.

3. Sprint has, in good faith, noted its inability to state that it has raised all appropriate objections to the Citizens' Request until such time as documents responsive to the Request are assembled and can be reviewed by counsel. It would be foolish and probably constitute malpractice to fail to make such a reservation until such time as the documents can be gathered. In the event the existence of other grounds for objection are discovered in the course of locating or reviewing responsive documents, Sprint will promptly make such grounds known to the Citizens and to the Commission. Again, it is patently premature for the Commission to preclude the assertion of any such objections before any can be or are made. If such objections are made, the Commission can promptly and appropriately consider them at that time.

4. Sprint objects to the Citizens' definition of "you" and "your" only to the extent those definitions seek to impose on Sprint a duty to respond on behalf of its subsidiaries, affiliates or other entities not a party to this docket. The Citizens' motion clarifies that it seeks only documents from "persons or entities acting on behalf of Sprint". (Citizens' Motion, page 3, paragraph 5.) With that clarification, Sprint will withdraw its objection. However, Sprint observes that Request Number 2 seeks production of documents [correspondence] "between people at Sprint or any affiliate regarding slamming". Sprint requests the Commission to apply the Citizens' limiting explanation contained in its motion and limit Request Number 2 to apply only to an "affiliate" acting "on behalf of Sprint".

5. Sprint's objections to the Citizens' Request for being vague, ambiguous, overbroad, voluminous and unduly burdensome arise from the fact that the Request (1) is not limited to Florida-specific incidents of slamming and (2) is not limited in any way to events, circumstances and operations directly related to Florida. The Citizens' motion has addressed the former problem by agreeing that its Request may be deemed to be limited to "specific customer complaints about slamming". (Citizens' Motion, page 4, paragraph 7.) Accordingly, Request Numbers 1a., 3, 7 and 8 will be limited to Florida customer-specific complaints and incidents of slamming. However the Citizens' Request numbers 1, 2, 4 and 10, read literally, would apply to all Sprint operations and Sprint employees throughout the fifty States and, indeed, throughout

Sprint's international operations. For instance, Request Number 10 seeks copies of "all PIC change orders processed by . . . [Sprint in 1996 and 1997] when the reason for the change was due to slamming". That request would require Sprint to review each and every one of the thousands of PIC change orders processed in 1996 and 1997 throughout the United States to determine whether the change order was "due to slamming". Such an endeavor is clearly overbroad, voluminous and unduly burdensome, and would require months and months to accomplish. Similarly, Request Number 2 seeks production of "all memos, correspondence or e-mail . . . regarding slamming". If left as is, the Request would require Sprint to involve virtually every marketing, sales and operational employee throughout the United States to determine the existence of any responsive memo, correspondence or e-mail. Such an undertaking would be overbroad, voluminous, unduly burdensome and oppressive.

6. The Citizens' Request, as to Numbers 1, 2, 4 and 10, should be limited to Florida operations, practices and events. Slamming is certainly not a Florida-specific phenomenon. Yet, Florida's telecommunications market is so broad and far-flung across the miles of Florida's counties, encompassing hundreds of IXCs and all cross sections of market demographics, urban and rural, young and old, working and retired, multicultural and not, that surely this Commission does not need to take on the entire country's slamming problems. Only by limiting the Citizens' Request and subsequent discovery to Florida-specific events, operations and activities will the Commission be able to embrace

the complex problem of slamming in Florida and achieve meaningful progress toward solutions. The Citizens motion should be denied and Numbers 1, 2, 4 and 10 be limited to Florida-related documents.

7. Sprint agrees with the Citizens' motion (page 4, paragraph 8) that urges delay in addressing the subject of documents that may be proprietary confidential under Section 90.506, Florida Statutes, and applicable Commission Rules. When Sprint serves its Response to the Citizens' Request, its privilege log will also identify any such confidential documents.

WHEREFORE, Sprint urges the Commission to deny the Citizens' motion to compel as set forth herein.

DATED this 3rd day of October 1997.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. mail on this 31st day of October 1997, to the following:

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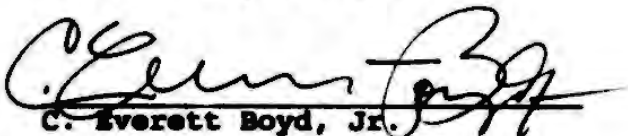
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