



Public Service Commission

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RECEIVED-FPSC
99 DEC 29 PM 1:38
RECORDS AND REPORTING

DATE: DECEMBER 30, 1999

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

FROM: DIVISION OF COMMUNICATIONS (KING, MCDONALD, MOSES, TUDOR)
DIVISION OF APPEALS (BROWN)
DIVISION OF POLICY ANALYSIS & INTERGOVERNMENTAL LIAISON (MILLER)

RE: DOCKET NO. 991222-TP - REQUEST FOR SUBMISSION OF PROPOSALS FOR RELAY SERVICE, BEGINNING IN JUNE 2000, FOR THE HEARING AND SPEECH IMPAIRED, AND OTHER IMPLEMENTATION MATTERS IN COMPLIANCE WITH THE FLORIDA TELECOMMUNICATIONS ACCESS SYSTEM ACT OF 1991.

AGENDA: 01/11/00 - SPECIAL AGENDA - PARTICIPATION IS LIMITED TO COMMISSIONERS AND FPSC STAFF

CRITICAL DATES: CURRENT CONTRACT WITH MCI EXPIRES ON MAY 31, 2000; TIME IS NEEDED FOR THE WINNING BIDDER TO PREPARE ITS SYSTEM

FILE NAME AND LOCATION: S:\PSC\CMU\WP\991222.RCM

CASE BACKGROUND

The Commission's contract with MCI for the provision of relay service expires on May 31, 2000. Accordingly, on October 7, 1999, the Commission issued a Request for Proposals (RFP) for relay service. Each bidder was required to submit a proposal for a three-year contract period. Proposals were due to be filed by November 10, 1999.

The Commission received four proposals from the companies shown in Table I.

DOCUMENT NUMBER-DATE

15840 DEC 29 99

FPSC-RECORDS/REPORTING

TABLE I
LIST OF BIDDERS

Company Name	Began Providing Relay	Current Number of Jurisdictions Served	Current Number of Relay Centers
AT&T Corporation	1/87	15	8
Hamilton Telephone Company	1/91	5	3
Sprint Communications Company, L.P.	9/90	26	11
VISTA Information Technologies, Inc.	5/99	1*	1

*VISTA has also provided day-to-day relay operations for California's Speech-to-Speech relay service since February 1999.

Source: Bidder's Proposals - AT&T-pp.129-130, Hamilton-p.3, Sprint-p.4,87-88, Vista-cover letter.

The Telecommunication Access System Act of 1991 (TASA) requires the Commission to establish a proposals review committee (PRC) that includes Commission staff and members of the TASA Advisory Committee to evaluate the proposals for relay service received by the Commission. The Committee consists of five primary evaluators (three from the Commission staff and two from the Advisory Committee) and three staff accountants that evaluated two pass/fail items in the technical filing. In addition, one staff member contacted the bidders' references and the results of these contacts were used by the Committee in the evaluation process. Evaluation of the proposals began with a pass/fail evaluation of certain aspects of the proposals. This was followed by awarding points to the proposals. A weight of 60% was given to the technical aspect of the proposal and a weight of 40% was given to the price aspect of the proposal. The price proposals were submitted in sealed envelopes separate from the company's technical proposal and were opened on December 13, 1999, after the technical scoring was completed.

Based on failures in the pass/fail portion of the evaluation, two bidders (AT&T and VISTA) should be disqualified and not be considered when selecting a provider, due to major defects in their proposals. Of the two remaining bidders, the one with the highest score is Sprint (see Table II), and staff recommends that the Commission contract with Sprint to provide the Florida Relay Service for the next three years (6/00-5/03) (with the option for two additional one year periods upon mutual agreement).

DISCUSSION OF ISSUES

ISSUE 1: Should the Executive Director: (a) issue the attached (Attachment A, p. 15) letter of intent notifying all bidders of the Commission's decision to award a three-year contract to Sprint to be the provider of the statewide telecommunications relay service in Florida and (b) finalize and sign a contract with Sprint to provide the Florida Relay Service?

RECOMMENDATION: Yes, the Executive Director should issue the letter of intent notifying all bidders that Sprint should be awarded a three-year contract as the provider of the statewide telecommunications relay service in Florida and the Executive Director should finalize and sign a contract with Sprint, as described further below (in the Finalization of Contract section), to provide the Florida Relay Service.

STAFF ANALYSIS:

EVALUATION OF BIDDERS

The PRC evaluated the technical proposals using a pass/fail criterion for some items and using a point rating system for other items. After evaluating the pass/fail items the evaluators began to score the remaining items. The price proposals were not opened until after the technical evaluation took place.

The evaluators received specific forms on which to record their evaluation. The forms included the names of each of the bidders that filed proposals, a place for each evaluator to agree with the conflict of interest requirement contained in Section 427.704(3)(c), Florida Statutes, a place on each page of the evaluation form to score each of the bidders on the item referenced on that page, and a place on each page of the evaluation form for the evaluator to sign, verifying that the score and notes on that page are his or hers.

The evaluators did identify some failures during the pass/fail portion of the evaluation process. Once those failures were identified, the next step was to assess whether those failures would be considered "minor irregularities" and whether the bidder would be allowed to correct them. Minor irregularities are defined in the RFP as:

A variation from the request for proposal terms and conditions which does not affect the price of the proposal, does not give the bidder a significant advantage or benefit not enjoyed by other bidders or does not adversely impact the interests of the agency.

The RFP specifically provides that the Commission reserves the right to waive a minor irregularity in a proposal. Minor irregularities were brought to the attention of the bidders and they were given an opportunity to correct them. Some failures in the pass/fail portion, however, were not considered minor irregularities. As discussed further below, AT&T's proposal contained two major conflicts with the RFP in regard to liquidated damages. Vista's proposal contained major conflicts with the RFP in regard to both the bid bond and the performance bond.

Finally, one point of noncompliance relating to a limitation on forfeiture of the bid bond was common to all three of the bidders that filed a bid bond (Vista failed to file a bid bond.) All three bidders had this brought to their attention and Sprint and Hamilton amended their proposals to remove the problematic language; AT&T refused to amend its proposal. Deficiencies identified in the proposals are described below.

AT&T: Issues were noted in regard to the following items:

- (1A) Item B-47 (pages 124-125 of proposal) relating to liquidated damages - AT&T indicated its agreement to the RFP's liquidated damages provisions relating to blockage, transmission levels, complaint resolution and reporting requirements. However, it specifically disagreed with the liquidated damages provision relating to damages for not providing other contracted services. The RFP calls for the amount of liquidated damages to be in an amount commensurate with the duration and extent of the system deficiencies. Also, AT&T did not indicate its agreement with the specific liquidated damages amount related to: (a) answer time requirements or (b) failing to have the service operating by June 1, 2000. These were not considered "minor irregularities" because AT&T's potential liability would be more limited than the potential liability of other bidders and AT&T would have a significant advantage over the other bidders. Further, the liquidated damages provisions of the RFP are designed to protect both relay customers and telecommunications customers who pay for the relay service against the provider's nonperformance.

- (1B) Item B-47 (pages 124-125 of proposal) also relating to liquidated damages - AT&T proposed a limitation of liability over the life of the contract in the amount of \$1,000,000. Again, this was not considered a "minor irregularity" because AT&T's potential liability would be more limited than the potential liability of other bidders and AT&T would have a significant advantage over the other bidders. Also, the liquidated damages provisions of the RFP are designed to protect both relay customers and telecommunications customers who pay for the relay service against the provider's nonperformance.

AT&T's refusal to comply with the liquidated damages provisions of the RFP places its proposal at risk. AT&T was well aware of the liquidated damages provisions of the RFP and had opportunities to convince the Commission to change this provision of the RFP before submitting its proposal.

- At the August 27, 1999 TASA Advisory Committee meeting, development of the 1999 RFP was discussed and AT&T was represented at that meeting.
- At the October 5, 1999 Commission agenda, the RFP language was discussed and AT&T could have raised its concerns about liquidated damages then. (AT&T received a copy of the draft RFP and staff's recommendation prior to the agenda.)
- The RFP was released on October 7, 1999 and Section A-16 of the RFP states that failure to protest the RFP within the time prescribed in section 120.57(3), Florida Statutes, constitutes a waiver of proceedings under chapter 120, Florida Statutes. AT&T filed no such protest of the RFP within the prescribed time (72 hours).
- At the October 14, 1999 bidders' conference, there was considerable discussion about the liquidated damages section of the RFP and specifically about provisions which AT&T does not now agree to follow.
- The language in the 1999 RFP concerning liquidated damages is very similar to the language in the 1996 RFP and AT&T filed a proposal in 1996. AT&T did not raise an objection to the RFP in 1996 and in its 1996 proposal AT&T responded that it understood and would comply with the liquidated damages provisions of the RFP.

AT&T's refusal to comply with the RFP provisions concerning liquidated damages constitutes a defect that cannot be cured by offering to later "negotiate" changes to the provisions of the RFP if AT&T were to be awarded the contract.

- (2) Item C-6 (pages 131-132 and Appendix E of proposal) relating to the bid bond - The RFP requires that the bid bond be made payable to the Florida Telecommunications Relay, Inc. (FTRI), but AT&T's bid bond was made out to the Public Service Commission. This was considered a "minor irregularity." AT&T amended the bid bond to make it payable to FTRI.
- (3) Item C-6 (pages 131-132 and Appendix E of proposal) relating to bid bond - The RFP states that the bid bond must be in the amount of \$500,000 and that if the successful bidder fails to sign a contract to provide relay or fails to deliver its performance bond, "... the bid security shall be forfeited...." AT&T's bid bond states that it covers not the \$500,000 but the difference between AT&T's bid and the next lower bidder's bid (with a cap of \$500,000). All three of the bidders that filed bid bonds used a standard surety industry bid bond form that contained similar language. This conflict with the RFP was brought to the attention of AT&T and it responded that it "... could not agree to an unqualified forfeiture of the entire bond."

While this refusal by AT&T to comply with the bid bond requirement of the RFP could be considered a defect, the difference between AT&T's bid and the next higher bidder's bid is significant enough that the difference in price of three cents multiplied by the number of minutes of service that would be provided over the three year life of the contract (well over \$1,000,000) far exceeded the RFP requirement of \$500,000. Thus, without realizing it (because AT&T did not know what other bidders bid), AT&T has in fact provided a bid bond for the \$500,000 required by the RFP.

Hamilton: An issue was noted in regard to the following item:

- (1) Item C-6 (page 135 of proposal) relating to bid bond - The RFP states that the bid bond must be in the amount of \$500,000 and that if the successful bidder fails to sign a contract to provide relay or fails to deliver its performance bond, "... the bid security shall be forfeited...." Hamilton's bid bond stated that its liability is not the \$500,000 but the difference between its bid and the next lower bidder's bid.

All three of the bidders that filed bid bonds used a standard surety industry bid bond form that contained similar language. This conflict with the RFP was brought to the attention of Hamilton and Hamilton amended its bid bond to be consistent with the RFP.

Sprint: Issues were noted in regard to the following items:

- (1) Item C-4 (page 86 of proposal) relating to financial information - The RFP states that the bidder must provide audited financial statements and a primary banking source letter of credit. Sprint provided the audited financial statements but only provided the names of bank references. This was considered a "minor irregularity" and Sprint provided an acceptable letter of reference.
- (2) Item C-6 (page 89 and Appendix I of proposal) relating to bid bond - The RFP states that the bid bond must be in the amount of \$500,000 and that if the successful bidder fails to sign a contract to provide relay or fails to deliver its performance bond, "... the bid security shall be forfeited...." Sprint's bid bond stated that its liability is not the \$500,000 but the difference between its bid and the next lower bidder's bid. All three of the bidders that filed bid bonds used a standard surety industry bid bond form that contained similar language. This was considered a minor irregularity and was brought to Sprint's attention. Sprint's surety company provided confirmation that it would be liable for the full amount of the bond without the limitations contained in the standard bid bond form.

Vista: Issues were noted in regard to the following items:

- (1) Item B-43 (transmittal letter) relating to performance bond - The RFP calls for the winning bidder to provide a performance bond, certified or cashier's check, or money order in an amount equal to the estimated total first year price of the contract. In its letter of transmittal accompanying its proposal, Vista takes exception to the amount of the performance bond requested. Unwillingness to provide the performance bond at the level required in the RFP was not considered a "minor irregularity" because to do so would give Vista a significant advantage over the other bidders and increase the risk to relay customers and Florida's telecommunications customers who pay for the system.

- (2) Item C-6 (separate letter dated November 10, 1999) relating to bid bond - Because of its concerns with the performance bond (item B-43), Vista was unwilling to file a bid bond. This was not considered a "minor irregularity" because to do so would give Vista a significant advantage over the other bidders and increase the risk to relay customers and Florida's telecommunications customers who pay for the system.

Based on the major defects in AT&T's and Vista's proposals and because acceptance of those defects would give these bidders a significant advantage over other bidders and increase the risk to relay customers and Florida's telecommunications customers who pay for the system, the Commission should disqualify these proposals and it should not consider them in the final evaluation process. For this reason, staff has not included AT&T or Vista in Table II.

Each technical evaluator independently assigned points to 25 items. The items rated had point values ranging from 25 to 200 points and included such things as experience, staff training, answer time, and end user billing. The total points from each evaluator on the technical proposals were added together to produce the total technical score.

The technical and price proposals were evaluated, as described in Section E of the RFP, using a weighting of 60% for the technical proposal and 40% for the price proposal. Thus, the quality of the proposed system was given a 50% greater weight than was price. The weighted percentage scores for the technical proposal and price proposal were then added together to produce a total score for each bidder.

TABLE II
SUMMARY OF TECHNICAL AND PRICE PROPOSALS

		Hamilton	Sprint
Total Technical Points (Sum of points from each member of the PRC)		7506.9	7984.6
Highest Score	7984.6		
Technical Evaluation (Bidder's score/highest score) X .6		.5641	.6000
Price Per Minute		\$.95	\$.72
Lowest Price	\$.72		
Price Evaluation (Lowest Price/Bidder's Price) x .4		.3032	.4000
Total Score (Technical evaluation + Price evaluation)		.8673	1.000

Based on the evaluation by the PRC of the technical proposals and the results of the price proposals, staff recommends that a letter of intent be issued notifying all bidders that Sprint should be awarded the contract of Provider for the Florida Telecommunications Relay System. The staff will meet with Sprint to finalize a contract, including any standardized contract language needed, for the Executive Director's signature.

Highlights of Sprint's Proposal

- By September 2000, Sprint will operate at least one relay center in Florida to handle at least 80% of the State's relay traffic. During the months of June, July, and August 2000, Sprint may handle the FRS traffic at its existing centers.
- Sprint's Florida Relay Center will be equipped with Sprint's Intelligent Call Router, which instantly recognizes a problem anywhere in the Sprint Relay system and routes calls to other operating centers.
- Because Sprint currently operates eleven (11) TRS centers, it should be able to provide substantially uninterrupted service in case of a disaster or emergency.
- While the RFP did not require the provider to serve languages other than English, Spanish, and ASL, the RFP allowed for additional evaluation points to be awarded for proposals that included how a provider would handle relay calls using additional languages. Sprint, through its subcontractor PRC, will provide one primary communications assistant (CA) position to handle French and Creole calls. The service will be available between 8:00 am and 2:00 am eastern time, seven days per week. In addition, this service will have its own separate 800 access numbers.
- Sprint's proposal included an explanation of how its CAs will interact with answering machines and voice response units. According to its proposal, Sprint's recording technology allows the CA to record the messages and plays back the message to the CA at a pace that is possible to obtain the entire message. This technology decreases the number of times the CA would need to redial to retrieve the messages. In addition, Sprint's Answering Machine Retrieval (AMR) feature

allows hearing impaired customers to have access to voice line answering machine messages.

- Although the RFP only requires that the provider make checks from time to time to ensure that courteous service is being rendered, Sprint's communications assistants (CA) are given a monthly evaluation on call processing skills.

**Optional Services Not Included in Basic Relay Service
but Available to Provide at Additional Cost**

Bidders were asked to propose optional services (for which a separate price is proposed), that were not part of their basic relay service, and for which additional points will not be awarded. Sprint's proposal discussed several features including: three-way calling, call trace, access to 900/976 services, video relay, enhanced transmission speed and interrupt capability, and speech-to-speech.

It has not yet been determined which of the optional services, if any, staff would recommend be added to the basic relay service. Staff would like to meet with the Advisory Committee to solicit its input on these optional feature, as well as meet with Sprint to discuss the conditions under which these optional services might be offered. If, after meeting with Sprint and the Advisory Committee, staff believes that any of the optional features should be offered, staff will return to the Commission for approval.

FINALIZATION OF CONTRACT

Prior to finalizing a contract with Sprint, there are three issues which must be addressed by the Commission. These issues and staff's recommendations are outlined below in Section I- Sprint's Proposed Contract Clauses, Section II-Spanish to English Translation, and Section III-Roaming Service.

Section I- Sprint's Proposed Contract Clauses

In its proposal Sprint suggested four contract clauses for the State's consideration. The RFP requirements associated with

Sprint's suggested clauses and Sprint's proposed contract clauses are summarized below.

A) FCC Mandates - The RFP did not specifically address relay service requirements that might be mandated by the FCC in the future. Sprint has proposed including a contract clause which states: "Any new Relay service requirements mandated by the FCC will be grounds for both parties to enter into negotiations concerning changes in the cost of providing Relay service as impacted by the new requirements." Staff believes that this is an appropriate amendment to include in the contract. Since inclusion of this amendment does not appear to constitute a rewrite of the RFP, other bidders would not be harmed.

B) Customer Database - Providing a customer database was not a mandatory provision in the RFP. Sprint is offering to provide a customer database and has requested that a clause be added regarding the proprietary nature of the database. Specifically, Sprint would like a clause that states, in pertinent part, "Sprint shall not be required to submit the information contained in this database to the State of Florida or to any other designee with the exception of the Relay service provider succeeding this contract." Staff believes this clause is appropriate except in regard to investigating customer complaints. If the information is necessary to resolve any customer complaint issues, staff should have access to such data. Therefore, staff would recommend that this clause be accepted with this caveat.

C) Liquidated Damages - The RFP addresses liquidated damages and liability in Section B-47. The RFP specifically lists five requirements which if not met may accrue fines (accrual is daily in some cases, and monthly in others) between \$500-\$25,000. In addition, the RFP states that for failure to provide contracted services, the FPSC reserves the right to require the payment of liquidated damages in an amount commensurate with the duration and extent of the system deficiencies. Sprint's specific response to this item was "Sprint understands and will comply."

However, if Sprint's suggested contract clause were incorporated in the contract, it would, among other things, limit Sprint's liability for damages of any kind to the lesser of \$100,000 or the total amount paid to Sprint under this contract during the twelve months immediately preceding the accrual of the claim or cause of action resulting in such damages. Section B-47 of the RFP does not allow for negotiations of liquidated damages. Accordingly, staff

recommends that the Commission reject Sprint's suggested clause because it constitutes a rewrite of the RFP.

D) Cancellation of Contract - Section A-24 of the RFP addresses, among other things, cancellation of the contract if a breach of the contract by the Provider occurs. Specifically, the FPSC may terminate the contract upon 24 hours notice.

Although Sprint stated that it understands and is willing to comply with the requirements of the RFP on this issue, it requested that the State consider a 60-day termination period in the event of breach of contract. Staff recommends that the Commission not amend the RFP to this extent and reject Sprint's suggestion to include this notice period in the RFP.

According to its proposal Sprint is willing to provide, as part of its basic relay package, two features which are new to the State of Florida. These feature are Spanish to English translation and roaming service. Each feature is addressed below.

Section II-Spanish to English Translation

Spanish to English translation allows relay calls to be translated from Spanish to English and English to Spanish by Sprint's bilingual CAs. **Translation services** are not required by the RFP. However, Sprint's proposal offers translation service as part of its basic relay service, which means that this service, if included in the contract, will be available at no additional charge to the State or customer.

Staff believes that this service would be beneficial to the telephone users throughout the state. Furthermore, since it is being offered at no additional charge, staff would recommend that it be included as part of our contract with Sprint. However, staff would caution that allowing Sprint to provide this service to FRS users will set a precedent and customers may come to expect translation service from future relay providers. Because translation is beyond "functional equivalence" and may be costly to provide by a future relay service provider and the State, staff likely would not recommend that translation service be a mandatory offering in the next RFP.

Section III-Roaming Service

Roaming service allows FRS calls to both originate and terminate outside the State of Florida. For example, Jane, a FRS user, travels to North Carolina to purchase furniture. While in North Carolina Jane needs to call several different furniture stores. Jane does not know the North Carolina number for its relay service and so dials the Florida 800 number for relay and, if Florida allows roaming services, Jane can complete calls within the state of North Carolina using FRS and the North Carolina intrastate call relay minutes will be billed to Florida. While roaming is not required by the RFP, Sprint has proposed to include it as a feature of its basic relay service. Since roaming service is included as part of Sprint's basic relay service, there could be a cost to the State of Florida by way of additional billable minutes for such intrastate calls in other states. However, staff does not have any idea of the calling volume for roaming traffic.

It appears to staff that roaming service could benefit the FRS customer. FRS customers who travel would not have to learn the toll-free numbers of other state relay providers. In addition, the FRS customer who uses FRS regularly would have an established caller profile which would include such things as billing information and frequently called numbers; therefore, by using FRS when traveling, the relay users would not have to provide this type of information to different relay providers. Accordingly, staff recommends that this feature be included in the contract with Sprint, with the caveat that if the Commission finds that roaming volumes are excessive it could terminate this service at no cost to the state. Staff will monitor roaming traffic volumes and, if the need arises, will bring a recommendation before the Commission to terminate this service.

DOCKET NO. 991222-TP
DATE: December 30, 1999

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No.

STAFF ANALYSIS: This docket should remain open for the life of the contract.

DOCKET NO. 991222-TP
DATE: December 30, 1999

Attachment A

January XX, 2000

**DELIVERED VIA FAX AND
CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

(Addressee)

Dear Sir or Madam:

It is the intent of the Florida Public Service Commission to award a 3 year contract as provider of the statewide telecommunications relay system in Florida to Sprint. Please accept our sincere thanks for participating in the RFP process.

You are reminded that pursuant to Commission Rule 25-25.021 any party choosing to do so must file protests of this decision within the time prescribed in Section 120.57(3), Florida Statutes.

Any person choosing to protest the agency's intended decision must file with the Florida Public Service Commission a notice of protest in writing within 72 hours after receipt of the notice of agency decision and shall file a formal written protest within 10 days after filing the initial protest. Such formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a protest within the prescribed time shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

All documents should be filed in Docket No. 991222-TP and addressed to Blanca Bayo at Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oaks Blvd., Tallahassee, Florida 32399-0850, Attention: Richard Tudor.

Sincerely,

William D. Talbott
Executive Director