

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: November 20, 2017

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

FROM: Pamela H. Page, Senior Attorney, Office of the General Counsel *PNP*

RE: Docket No. 20170039-TP Request for submission of proposals for relay service, beginning March 2018, for the deaf, hard of hearing, deaf/blind or speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

Please file the attached Contract to Provide Telecommunications Relay Service (TRS) and Caption Telecommunications Service (Captel) to Florida in Docket No. 20170039-TP, Request for submission of proposals for relay service, beginning March 2018, for the deaf, hard of hearing, deaf/blind or speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

Please contact me at x36214 should there be any questions. Thank you.

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COMMISSION
CLERK

CONTRACT TO PROVIDE TELECOMMUNICATIONS RELAY SERVICE (TRS) AND CAPTION TELECOMMUNICATIONS SERVICE (CAPTEL) TO FLORIDA

CONTRACT

This Contract is made between Sprint Communications Company, L.P. (hereinafter referred to as "Sprint"), and the Florida Public Service Commission (hereinafter referred to as the "Commission" or "FPSC"). Sprint shall provide telecommunications relay service (hereinafter referred to as "TRS"), also referred to as the Florida Relay Service (hereinafter referred to as "FRS") and Caption Telecommunications Service (hereinafter referred to as "CapTel") as more specifically set forth below.

Sprint and the Commission agree as follows:

SECTION 1: Definitions

- 1) "Administrator" shall mean Florida Telecommunications Relay, Inc. (hereinafter referred to as "FTRI") as defined in Section 427.703(1), Florida Statutes, (F.S.).
- 2) "Contract" shall mean the terms and conditions contained herein and in the following documents:
 - a. Florida Public Service Commission Request for Proposals for Telecommunications Relay Service, filed in Docket No. 20170039-TP [Document No. 047764-2017] on May 10, 2017, (hereinafter referred to as the "RFP").
 - b. Sprint's Response to the RFP submitted by Sprint on June 16, 2017, and filed in Docket No. 201700039-TP [Document No. 07406-2017] on August 30, 2017, (hereinafter referred to as "Sprint's Response to the RFP").
- 3) "Parties" shall mean Sprint and the FPSC.
- 4) "Sprint" shall mean Sprint Communications Company L.P., and shall include any successor entity now existing or in the future created.
- 5) "Subcontractor" shall mean CapTel, Inc., Communication Services for the Deaf, VITAC Corporation – Caption Colorado Division, Outreach Experts, Inc., and Cositics, LLC.

The documents referred to in 2) a. and b. of this section are incorporated herein by reference and made a part hereof as if fully set forth herein.

SECTION 2: Contract Term

The term of the contract will be an initial three (3) year period. Upon mutual agreement between the FPSC and Sprint, the Contract may be extended for up to four (4) additional one (1) year periods subject to the same terms and conditions set forth in the initial Contract and any written amendments signed by the parties. Any extension is subject to the availability of funds and contingent upon satisfactory performance by Sprint. Sprint shall notify the FPSC of its desire to, or not to, extend service by March 1 the year before the current service period expires. For example, if the Contract service period is due to expire on February 28, 2021, Sprint should notify the FPSC by March 1, 2020, that it desires a one year extension of service.

SECTION 3: Records

As authorized by Florida law, the Commission, the Administrator, and the State of Florida Auditor General shall have reasonable access to the records of Sprint and its Subcontractor(s), except as provided below, directly relating to the FRS in order to verify charges, credits, and other standards of performance to be rendered pursuant to the provisions of the contract. If an audit of Sprint's or its Subcontractor(s)' records relating to this contract is requested by the Commission or by any other third party, the party requesting the audit will be responsible for the costs of that audit. Audit costs as defined in the RFP, shall not include costs incurred by Sprint to comply with the audit.

Unless otherwise required by law, Sprint shall not be required to submit the information contained in its customer database to the State of Florida or to any other designee except for:

- 1) resolving any consumer complaint by the Commission staff; and
- 2) providing such information to the relay service succeeding this contract.

For Sprint's CapTel service Subcontractor CapTel, Inc., the following access to records shall apply:

These records are claimed to be proprietary confidential business information pursuant to Section 364.183, Florida Statutes, and except as required by law, any disclosure of these records by the Commission to unauthorized third parties is prohibited. Subject to the foregoing, the following are the only records that may be reviewed or copied by authorized representatives of the State of Florida or personnel of the Commission:

- 1) CapTel Subcontractor customer service records for CapTel users under this Contract.
- 2) Call Detail Records (CDRs) that have been supplied to Sprint under this Contract for the CapTel traffic.
- 3) CapTel Subcontractor's reports on the average monthly speed and accuracy testing scores for CapTel Subcontractor CapTel CAs (not including individual detailed scores or any other related documents).
- 4) Such other records as CapTel Subcontractor and Sprint may mutually agree in writing.

Subject to the foregoing, the records that may be reviewed or copied by authorized representatives of the State of Florida or personnel of the Commission do not include any information that is, in whole or in part, the property of any other CapTel Subcontractor customer including any other state CapTel relay program, any other Sprint customer, any CapTel user not under this Contract, or any of CapTel Subcontractor's or any of its affiliates' financial, operational, internal or other information, or any other documents, methods, procedures, technical, confidential, proprietary, or trade secret information.

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SECTION 4: Billing Rates

- 1) Standard TRS – Sprint will bill the FPSC at the rate of \$1.35 per session minute for intrastate relay calls processed for the State of Florida.
- 2) CapTel - CapTel service, which includes the Two-Line CapTel enhancement, will be billed to the FPSC at the rate of \$1.69 per session minute.

SECTION 5: Invoices

By the 14th calendar day of the month (or the subsequent business day if the 14th falls on a Saturday, Sunday, or holiday), Sprint shall submit a detailed invoice (showing billable minutes and rates) to the Administrator at the contracted price for the previous month's activity. The accounting period used to prepare monthly invoices shall be the calendar month. Payment shall not exceed the prices contained in the contract. The invoice and supporting documentation shall be prepared in such a way as to allow the Administrator or the FPSC to audit the invoice. A copy of the monthly invoice shall be submitted to the contract manager at the same time it is submitted to the Administrator.

Payment is due within thirty (30) days of receipt of a proper invoice. If payment is not received within the thirty-day (30) due date, the FPSC will be liable for interest charges at prime lending rates that will be incurred against the unpaid balance until such time as payment is received.

The invoices provided by Sprint for the FRS shall specify to whom payment shall be made and the address to which such remittance shall be mailed. If the FPSC or its assigned Administrator disputes any portion of a monthly invoice, the disputing party shall provide to Sprint a detailed explanation of and manner of calculations of the disputed amounts. Sprint will promptly address the claim with the FPSC or its Administrator and attempt to resolve the problem within thirty (30) days. If the dispute is between the Administrator and Sprint and these two parties cannot resolve the issue within thirty (30) days of the due date of the bill, Sprint shall so advise the FPSC. The FPSC will address the dispute as soon as possible. If Sprint overcharges the FPSC on any monthly invoice and the overage is paid, Sprint shall issue a credit in the amount of the overage plus interest charges at prime lending rates. Interest shall be calculated from the date such payment is received by Sprint, until the date such credit is issued.

SECTION 6: Contract Managers and Notices

Any notices, requests, demands or other communications which may be required hereunder shall be in writing and shall be by either first-class United States mail or email to the below recipients. The Contract Manager for this contract on behalf of the FPSC is the person serving as the Contract Manager or such individual's designee.

As of the date of this Contract, the FPSC Contract Manager is:

Curtis J. Williams
Public Utilities Analyst
Florida Public Service Commission

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2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
cjwillia@psc.state.fl.us
Telephone Number: (850) 413-6924
Fax: (850) 413-6925

As of the date of this Contract, the Sprint Contract Manager is:

Michaela Clairmonte
Manager, Contract Negotiations
Sprint Communications Company, L.P.
12502 Sunrise Valley Drive
MS: VARESA0208
Reston, VA 20196
Michaela.Clairmonte@sprint.com
Telephone Number: (703) 433-8581
eFax: (866) 515-0932

All communications regarding the work performed under this contract shall be made between the Contract Managers when feasible and reasonable. Any notice required or permitted to be given or made in the contract shall be served upon the Contract Managers at the above addresses. Changes in the person serving as Contract Manager will be made in writing.

SECTION 7: Implementation

Sprint will begin providing FRS over its relay system and CapTel service through its subcontractor for the State of Florida by March 1, 2018.

SECTION 8: Languages Served

Sprint will provide relay service to users who use English, Spanish, French, or written American Sign Language.

SECTION 9: Transfer to New Provider

At the end of the service term of this Contract, including any renewals thereof, Sprint will reasonably assist in the transfer of the FRS to the new provider when the same is selected by the Commission.

Furthermore, Sprint shall make every effort to ensure service is transferred to the new provider so that relay users do not experience an interruption in service. The relay service and consumer service 800 or other telephone numbers shall be made available to the new provider, with the exception of the interstate toll free numbers and 900 number that belong to Sprint and cannot be transferred to the new provider, with the new provider paying any costs associated with transferring the numbers to the new provider. Provision of customer profile data to the incoming

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provider shall be completed at least sixty (60) days prior to Sprint's last day of service. The following actions will also be taken by Sprint:

Efforts will be made to accomplish the transfer of service by means of toll-free number portability so that a toll-free number change for FRS is not needed. If a toll-free number change for FRS is necessary, intercept referral service to the new provider will be made available by Sprint as of the date of the transfer and continuing for a period of three (3) consecutive months thereafter.

Sprint will designate a person to coordinate the transfer and communicate with the Commission and the incoming provider concerning the transfer.

Complaints in process on the effective date of the transfer of service to the new provider shall be responded to by Sprint within fifteen (15) days of such effective date.

If there are any other published administrative lines, service will be maintained for a period of sixty (60) days after date of transfer of service to the new provider, and callers will be referred to the new provider during such period.

SECTION 10: Independent Contractor

The Parties acknowledge that they are independent entities. Neither Party shall represent itself as agent or employee of the other, nor bind itself as agent or employee of the other, nor shall either Party bind or represent that it has the ability to bind the other to any financial or legal obligation. The Parties acknowledge that neither this nor any provision hereof shall be deemed to create a partnership or joint venture between the Parties. Sprint and its agents shall be deemed to be independent contractors in the performance of this contract and shall be wholly responsible for the work to be performed and for their employees.

SECTION 11: Order of Precedence

In the event of an inconsistency between provisions of this Contract, the RFP and Sprint's Response, the inconsistency shall be resolved by giving precedence in the following order:

- 1) The terms and conditions contained in this Contract.
- 2) The RFP.
- 3) Sprint's response to the RFP.

SECTION 12: Headings

The title of this Contract and the Section headings used herein are for the convenience of reference only, and shall not be construed as part of this Contract nor as an indication of the Section meaning or intent.

SECTION 13: Examination and Entirety

This Contract shall become binding when executed by both parties. This Contract, as defined in paragraph 2) of Section 1 hereof, constitutes the complete understanding and agreement of the parties with respect to the subject matter thereof and supersedes all prior or contemporaneous agreements, understandings, or offers, whether written or oral. This Contract may not be changed or modified except by a formal amendment hereto executed by the authorized representatives of both Sprint and the Commission.

SECTION 14: Waiver of Rights

The waiver of one Party of any breach of this Contract by the other party shall not be deemed to be a waiver of any succeeding breach. The delay or failure by the FPSC to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of FPSC's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

SECTION 15: Interpretation

The parties agree that this Contract shall be interpreted without application of any rules of construction which require a stricter interpretation against the drafter of the document.

SECTION 16: Force Majeure, Notice of Delay, and No Damages for Delay

Sprint shall not be responsible for delay resulting from failure to perform if neither the fault nor the negligence of Sprint and its employees or agents, contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Sprint's control, or for any of the foregoing that affect Sprint's subcontractors or suppliers if no alternate source of supply is available to Sprint. In case of any delay Sprint believes is excusable, Sprint shall notify the FPSC in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if Sprint could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date Sprint first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE SPRINT'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the FPSC. Sprint shall not be entitled to an increase in the contract price or payment of any kind from the FPSC for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this section, after the causes have ceased to exist Sprint shall perform at no increased cost, unless the FPSC determines, in its sole discretion, that the delay will significantly impair the value of the contract to the State or to Customers, in which case the FPSC may (1) accept allocated performance or deliveries from Sprint, or (2) purchase from other sources (without recourse to and by Sprint for the related costs

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and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the contract quantity, or (3) terminate the contract in whole or in part.

SECTION 17: Liquidated Damages for Failure to Initiate Services on Time or to Provide Contracted Services for the Life of the Contract

It is expressly understood by the FPSC and Sprint that this provision for liquidated damages is reasonable and necessary for the protection of the FPSC. The parties further agree that because actual damages cannot be calculated, it is reasonable and necessary to assess liquidated damages from Sprint for failure to provide contracted services for the life of the Contract.

Implementation of the FRS in a timely manner is essential. Failure by Sprint to implement the service by March 1, 2018, shall be considered a significant and material breach of this Contract. For every day the service is delayed, Sprint shall pay to the Administrator, for deposit in its operating fund, the sum of \$25,000.

Liquidated damages may accrue up to the following amounts for each breach. Liquidated damages for any particular month may not exceed the actual monthly revenue from the provision of services pursuant to the contract.

- 1) For failure to meet answer time requirements - \$5,000/day.
- 2) For failure to meet blockage rate or transmission level requirement - \$5,000/day.
- 3) For failure to meet complaint resolution requirement - \$1,000/complaint.
- 1) For failure to provide timely reports - \$500/day.
- 2) For failure to meet minimum typing speed of 60 words per minute on live traditional relay calls - \$5,000/day.

For failure to provide contracted services for the life of the contract, the FPSC reserves the right to require the payment by Sprint of liquidated damages in the amount commensurate with the duration and extent of the system deficiencies.

Any liquidated damages may be paid by means of the Administrator deducting the amount of the liquidated damage from a monthly payment to Sprint. Such action shall only occur upon order of the FPSC. The Liquidated Damage provisions stated above in this Section 17 are subject to the Force Majeure provisions in Section 16.

SECTION 18: Dispute Resolution

Any dispute concerning performance of the contract shall be decided by the FPSC or the FPSC's designated contract manager, who shall reduce the decision to writing and serve a copy on Sprint. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, Sprint files with the FPSC a petition for administrative hearing. The FPSC's

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decision on the petition shall be final, subject to Sprint's right to review pursuant to Chapter 120, Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to Sprint's ability to pursue any other form of dispute resolution provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120, F.S. Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

SECTION 19: Severability

If a court deems any provision of the contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

SECTION 20: Public Records

Unless otherwise exempt from disclosure under Chapter 119, F.S., or Section 24(a) of Article I of the State of Florida Constitution, all documents qualifying as public records shall be made available by Sprint to the requestor, for public inspection. The FPSC may unilaterally cancel the contract for refusal by Sprint to allow such public access. Sprint must:

- 1) Keep and maintain public records required by the FPSC in order to perform the service.
- 2) Upon request from the FPSC's custodian of records, provide the FPSC with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in the Public Records Law or as otherwise provided by law. If Sprint fails to provide public records to the FPSC, Sprint may be subject to penalties under Section 119.10, F.S. If Sprint does not comply with the FPSC's request for records, the FPSC shall enforce the provisions of this Contract in accordance with Section 119.0701, F.S., and shall assess reasonable costs from Sprint associated with the enforcement of this Contract.
- 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Sprint does not transfer the records to the FPSC.
- 4) Upon completion of the contract, transfer, at no cost, to the FPSC all public records in possession of Sprint or keep and maintain public records required by the FPSC to perform the contract. If Sprint transfers all public records to the FPSC upon completion of the contract, Sprint shall destroy any duplicate records that are exempt or confidential and exempt from public records disclosure requirements. If Sprint keeps and maintains public records upon completion of the contract, Sprint shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the FPSC in an Adobe PDF format.

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IF SPRINT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (850) 413-6770, clerk@psc.state.fl.us, 2540 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-0850.

If Sprint has a specific question arising out of any public records request, such contact to the FPSC shall be made immediately, and no later than 2 business days of such request.


The FPSC and Sprint acknowledge that this Contract, including all elements identified in Section A. 20 of the RFP, is a public record, is available to the public for inspection, and may be posted on a web site by the State of Florida.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the latter date written below ("effective date").

SPRINT COMMUNICATIONS COMPANY, L.P.

FLORIDA PUBLIC SERVICE COMMISSION

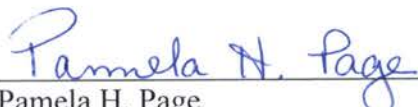
By: 
Printed Name: Michaela Clairmonte
Title: Manager, Contract Negotiations
Sprint Communications Company, L.P.
12502 Sunrise Valley Drive
MS: VARESA0208
Reston, VA 20196
Telephone: (703) 433-8581
Michaela.Clairmonte@Sptint.com

By: 
Printed Name: Braulio L. Baez
Title: Executive Director
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2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Telephone: (850) 413-6463
bbaez@psc.state.fl.us

Date: 11/16/2017

Date: 11/20/17

Approved as to form and legality:


Pamela H. Page
Senior Attorney
Office of the General Counsel
Florida Public Service Commission

Date: 11/20/17

Approved by
Public Sector Legal
as to legal form
