Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers	)	**CC Docket No. 00-257**
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	**CC Docket No. 94-129**
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers	)	
	)	
Emergency Petition Of Sprint-Florida For Waiver of Section 64.1120(e) of the Commission's Rules	)	

EMERGENCY PETITION FOR WAIVER -- EXPEDITED ACTION REQUESTED

Sprint-Florida, Incorporated ("Sprint-Florida"), pursuant to Sections 1.3 and 1.925 of the Commission's Rules, 47 CFR §1.3 and §1.925, hereby respectfully requests that the Commission immediately grant a waiver of Section 64.1120(e) of the Rules, 47 CFR §64.1120, to permit Sprint-Florida to begin to provide local exchange services to the remaining customers of Adelphia Business Solutions Investment, LLC, Adelphia Business Solutions Investment East, LLC and Adelphia Business Solutions of Jacksonville, Inc. (collectively "Adelphia") located in Sprint-Florida's local territories, on less than 30-days' notice to such customers as required by

this Rule.[1] "Good cause" exists for granting Sprint-Florida the requested waiver, 47 C.F.R. §1.3, since "the particular facts" involved in Adelphia's discontinuance of service "make strict compliance" with the requirements of Section 64.1120(e) "inconsistent with the public interest." *Northeast Cellular Telephone Co. v. FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972). In support thereof, Sprint-Florida states as follows

BACKGROUND

On or about August 26, 2002, Adelphia informed Sprint-Florida that it was exiting the local exchange market in Florida no later than September 23, 2002, and that Sprint-Florida was to discontinue its provision of resold local exchange service to Adelphia's customers -- all of whom are business customers -- no later than that date. Adelphia has also represented to Sprint-Florida that it had provided notice to its customers informing them that Adelphia was discontinuing its service to them as of September 23 and that they had to select another local service provider by September 1, 2002. However, as of August 30, 2002, Sprint-Florida's records show that a number of Adelphia's customers with a total of approximately 2,500 access lines have not requested a change to other local service providers.

Sprint-Florida has informed Adelphia that it would be willing to transition to its local exchange service the remaining Adelphia customers that satisfy Sprint-Florida's credit-worthiness criteria. But Adelphia has been unwilling or unable to provide Sprint-Florida with the necessary information to enable Sprint-Florida to contact these customers about such

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[1] It is Sprint-Florida's understanding that Adelphia's parent company, Adelphia Business Solutions Operations, Inc. has filed for bankruptcy protection. It is also Sprint-Florida's understanding that Adelphia local exchange subsidiaries in other States -- including the States of New Jersey, North Carolina, Tennessee, Ohio and Virginia where Sprint- Florida's affiliates provide local exchange service -- are also exiting the local resale market.

transition. Thus, these customers are in jeopardy of losing their local service as of the date that Sprint-Florida discontinues service to Adelphia.[2]

To prevent such an untoward result, on September 3, 2002, Sprint-Florida filed an emergency petition with the Florida Public Service Commission ("FPSC") for a waiver of certain of the FPSC's rules so that Sprint-Florida would be able to transition Adelphia's remaining customers to Sprint-Florida's services on or before September 23. A copy of the petition is attached. The FPSC granted Sprint-Florida's petition on September 6, 2002 and has required Adelphia to provide Sprint-Florida with the necessary customer-contact information by September 10 so that Sprint-Florida can notify such customers that they will be transitioned to Sprint-Florida's local service as of September 23 if they do not select another local service provider before that date. A draft copy of the letter that Sprint-Florida intends to send to Adelphia's remaining customers is also attached.[3]

GRANT OF THE INSTANT WAIVER PETITION ON AN EXPEDITED BASIS IS IN THE PUBLIC INTEREST.

Section 1.925(b)(3)(ii) of the Rules specifies that the Commission may grant a request for waiver if it is shown that "[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative." Such circumstances clearly apply to Sprint-Florida's request for expedited waiver of Section 64.1120(e).

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[2] Adelphia informed Sprint-Florida of its preference that Sprint-Florida begin the process of discontinuing service to any remaining Adelphia end users on September 2. Sprint has not done so.

[3] Although not included in the draft, the letter that will be sent to the remaining Adelphia customers will also include a specific reference to the section of Sprint-Florida's local exchange tariffs on file with the FPSC which sets forth the rates, terms and conditions of the service that Sprint will provide such customers.

That section provides that "[a] telecommunications carrier may acquire, through a sale or transfer, either part or all of another telecommunications carrier's subscriber base without obtaining each subscriber's authorization and verification ... provided that the acquiring carrier complies with ...[certain] procedures." Specifically, the acquiring carriers must file a letter with the Commission "[n]o later than 30 days before the planned transfer" in which such carrier is to set forth "the names of the parties to the transaction, the types of telecommunications services to be provided to the affected subscribers, and the date of the transfer of the subscriber base to the acquiring carrier." In addition, "[n]ot later than 30 days before the transfer of the affected subscribers...the acquiring carrier shall provide written notice to each affected subscriber" informing them of the transfer and providing such basic information as (1) the date of the transfer; (2) the rates, terms and conditions of the service the subscriber will receive from the acquiring carrier; (3) the fact that the customer will not be charged for the transfer to the acquiring carrier; (4) the fact that the subscriber has the right to select another preferred carrier or carriers; (5) the fact that any PIC freezes the customer had in place will not survive the transfer and that the subscriber would have to arrange for the imposition of a new PIC freeze with the subscriber's local carrier; and (6) whether the acquiring carrier or the transferring carrier would handle complaints raised prior to the transfer. The acquiring carrier also has to provide a toll-free number for affected customers to call if they had questions about the transfer.

The Commission has recognized that, in certain instances, a carrier may not be able to comply with all of the requirements of the Section 64.1120(e), especially in cases where a CLEC is exiting the market on short notice and the ILEC is either required by State law to assume the responsibility of providing local service to the affected customers, or has agreed to do so with the support of the State. The Commission, therefore, has stated that it will "resolve on a case-by-

case basis" a situation "where it is impossible to comply precisely with the requirements [of Section 64.1120(e). *Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers,* 16 FCC Rcd 11218, 11226, ¶20 (2001).

Given Adelphia's intention to exit the market as of September 23, "it is impossible" for Sprint-Florida "to comply precisely" with the 30-day advance notification requirement of Section 64.1120(e). Sprint-Florida will not receive all of the necessary customer-contact information from Adelphia until September 10, and even under the best of circumstances it will take Sprint-Florida a few days to print and mail the required notices to such customers. Yet, Adelphia will cease taking service from Sprint-Florida and therefore discontinue its provision of local service to its end users just 13 days later on September 23. Thus, strict compliance with the 30-day notice provision of Section 64.1120(e) could leave Adelphia's customers without local service well into October. Grant of Sprint-Florida's waiver request will prevent such an adverse outcome.

Finally, Sprint-Florida's asks that the Commission not place the instant petition for waiver on public notice or solicit public comment. There is plainly a need for expedited action by the Commission in this matter.

Respectfully submitted,

SPRINT-FLORIDA INCORPORATED .

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Its Attorneys

September 6, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Emergency Petition for Waiver of Sprint Florida, Inc. was delivered by electronic mail, on this 6th day of September, 2002, to the parties listed below.

Sharon Kirby

Sharon Kirby

Michele Walters
Consumer and Governmental Affairs Bureau
Federal Communications Commission
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency Petition by Sprint-Florida, Incorporated For waiver of Rule 25-4.118, F.A.C. (carrier selection requirements), Rule 25-4.113, F.A.C. (refusal or discontinuance of service) and to become the conditional carrier for certain local business customers due to termination of service by Adelphia Business Solutions Investment, LLC, Adelphia Business Solutions Investment East, LLC and Adelphia Business Solutions of Jacksonville, Inc.	)	Docket No.
	)	Filed: September 3, 2002

SPRINT-FLORIDA, INCORPORATED'S EMERGENCY PETITION FOR WAIVER OF RULES 25-4.118 AND 25-4.113, F.A.C.

Sprint-Florida, Incorporated ("Sprint") pursuant to Section 120.542, Florida Statutes, and Rule 28-104.004, Florida Administrative Code, hereby petitions the Commission for an emergency waiver of Rule 25-4.118, F. A.C., regarding the requirements for carrier selection and Rule 25-4.113, F.A.C., regarding parameters for the refusal of discontinuance of service by incumbent local exchange companies. Sprint requests that this emergency petition be placed as an item on the Commission's September 6, 2002, Special Agenda Conference. Sprint seeks this emergency waiver to enable Sprint to transition, under the circumstances described below, certain customers of Adelphia Business Solutions Investment, LLC, Adelphia Business Solutions Investment East, LLC and Adelphia Business Solutions of Jacksonville, Inc. (collectively

"Adelphia") to Sprint upon Sprint's discontinuance of service to Adelphia at Adelphia's request.

In addition, Sprint seeks confirmation from the Commission that section 364.24, F.S., does not prohibit Adelphia from providing Sprint with customer contact information so that Sprint may notify Adelphia customers that pursuant to the waiver Sprint will, subject to the terms of its General Exchange Tariff, under the unique circumstances of this situation transition Adelphia's resale local service customers to Sprint service if they fail to choose an alternative provider prior to the date Adelphia discontinues their service. Specifically, Sprint seeks the following:

1. Petitioner is:

   Sprint-Florida, Incorporated
   555 Lake Border Drive
   Apopka, Florida 33702

   Petitioner's representative in this matter is:

   Susan S. Masterton
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   P.O. Box 2214
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2. Rule 25-4.118, Florida Administrative Code, states that, before submitting a preferred carrier change, carriers must verify the subscriber's authorization of the change via one of the methods prescribed in the rule.

3. Adelphia is a certificated ALEC[1] in Florida who purchases resale telecommunications services from Sprint pursuant to an interconnection and resale agreement between the parties.
4. Adelphia has requested that Sprint discontinue the services it provides to Adelphia in Florida no later than September 23, 2002. Prior to Adelphia's decision to discontinue services, Sprint provided resale services to Adelphia for approximately 4,012 business lines in Florida.
5. Adelphia has represented to Sprint that it has provided notice to its customers that Adelphia is discontinuing its service to them and that they must select another local service provider by September 1, 2002. However, as of August 30, 2002, Sprint's records show that customers with a total of approximately 2,500 access lines have not requested a change to another local service provider. These customers will be disconnected from service on the date that Sprint discontinues service to Adelphia.
6. Adelphia is discontinuing service to thousands of business customers in multiple states in which Sprint is the incumbent local service provider. Given the number of customers that have not yet requested to change their local service provider, disconnection of Adelphia on the date requested potentially will result in an inundation of calls to Sprint from customers who have lost their local service.This substantial increase in workload will not only impede Sprint's ability to respond to the affected customers, but will also affect Sprint's ability to respond to normal

[1] It is Sprint's understanding that Adelphia's parent company, Adelphia Business Solutions Operations, Inc. has filed for bankruptcy in federal bankruptcy court. In Florida, Adelphia operates under several ALEC certificates. Each of the Adelphia entities named in this petition holds a current ALEC certificate in Florida. However, in connection with the bankruptcy filing, Adelphia Business Solutions Investments East, LLC has asked the Commission for voluntary cancellation of its ALEC certificate. (Docket No. 020880-TI.) Sprint's interconnection agreement with Adelphia covers all three entities named in this petition.

customer demands unrelated to disconnection and then reconnection of service to soon-to-be former Adelphia customers.

7. If Sprint is not granted the exemption from Rule 28-4.118, F.A.C., requested in this proposal, allowing it to prevent the disruption of service to customers that have not chosen another provider by the default date, each customer will most likely apply to Sprint for service. In doing so they will be required to complete the normal application and service provisioning process. Given the volume of customer contacts with the Sprint business office that Adelphia's planned disconnection will generate and Sprint's normal new service application and provisioning procedures, it could take as much as 5 to 7 days per customer for Sprint to establish service.

8. If Sprint's waiver request is granted, the customers who have not selected another provider will, under most circumstances, not lose service but will be transitioned to Sprint.

9. Sprint's procedures and conditions for handling the transition as the new local service provider entail provisioning in accordance with Sprint's terms and conditions for service as set forth in Sprint's General Exchange Tariff on file with the Florida Commission. Sprint will assess the customers based on normal creditworthiness guidelines. Any customer who would not have been allowed to subscribe without providing security will be disconnected upon failure to do so within a reasonable timeframe. In addition, any customer who Sprint verifies was -- as a previous retail customer of Sprint -- disconnected for non-payment and who has not completely satisfied such obligation will be disconnected immediately.

10. Sprint is also filing a notice with the Federal Communications Commission and will request a waiver in compliance with FCC Rule 64.1120. In accordance with that rule, Sprint will not assess any carrier change charges on the customers transitioning to Sprint.

11. Sprint will provide notice to Adelphia's customers that, if they do not select another local provider prior to the date Adelphia's service is discontinued, Sprint will become their local service provider. In addition, when notifying customers that Sprint will be the carrier if they fail to affirmatively select another carrier, Sprint will make clear to each customer that they are not required to automatically return to or take service from Sprint but have the option of selecting another local service provider either before their service from Adelphia is discontinued or after the transition to Sprint. Additionally, customers will be informed that if Sprint becomes their local service provider, service continuation will be subject to credit worthiness, deposits as necessary, and payment of any prior unpaid balance owed to Sprint. Noncompliance may result in immediate discontinuance of service in a manner that is not inconsistent with the exception allowed in Rule 25-4.113, F.A.C., for termination of service without 5 working days written notice in "extreme cases". A copy of the draft customer notice is appended hereto as Attachment A.

12. Although Adelphia has stated that it notified its customers of the impending disconnection, no notice has yet been provided regarding transitioning of these customers to Sprint. Sprint needs from Adelphia its customer contact list in order to provide the requisite notice to the customers. To the best of Sprint's knowledge,

Adelphia does not object to providing this information or object to Sprint's intent to serve as the conditional local service provider.

13. Section 364.24, F.S., prohibits a telecommunications company from disclosing customer account information except under certain conditions. The Commission has previously determined that the provision of customer contact information pursuant to a protective order in the context of an ALEC discontinuing service and the ILEC who is the underlying carrier participating in ensuring that no customers are left without phone service does not violate s. 364.24, F.S. See, Order No. PSC-01-0812-PAA-TP, *In re: Petition by Verizon Florida Inc. and Verizon Select Services Inc. for limited waiver of Rule 25-4.118, F.A.C.*, issued March 28, 2001.

14. Sprint's waiver request meets the requirements of section 120.542, F.S. The purpose of the underlying statutes, 364.01(4), 364.03 and 364.19, Florida Statutes, is in part to ensure that basic local telecommunications services are available to all consumers on a competitive basis, consistent with an incumbent local exchange company's continuing obligation as the provider of last resort for such services pursuant to s. 364.025, F.S.

15. Sprint believes that its request for a waiver is in the public interest and that such a waiver will serve the same purpose in this instance as the Commission's primary local carrier change verification rules.

16. The Commission's verification rules and the purposes of the relevant statutes would not be served by obtaining prior authorization and verification in order to switch the affected customers of Adelphia to Sprint. As is demonstrated by the number of customers who have not yet switched their service provider, despite the notice of

impending termination by Adelphia, many customers may not understand the need to authorize the change in this their local service provider, and will therefore lose their service on the Adelphia disconnection date, unless Sprint's request for a waiver is granted.

17. Rule 25-4.113, F.A.C., provides the conditions under which a telecommunications company may refuse or discontinue service to a customer, including timeframes for providing customer notice. To the extent that a waiver of Rule 25-4.113, F.A.C., is necessary for Sprint to immediately disconnect any of the customers transferred from Adelphia who do not comply with Sprint's credit, deposit or payment requirements, Sprint requests the Commission to grant Sprint's request for emergency waiver of this rule. Such a waiver is necessary to preserve the "principles of fairness" embodied in Rule 25-4.113, F.A.C. The purpose of the rule is to balance the interests of customers and carriers, by setting forth the conditions under which a carrier may discontinue or deny service to customers. Arguably, the rule is inapplicable to the transfer of former Adelphia customers to Sprint, since it predates retail competition and was not designed to address the type of mass transfer situation involved when an ALEC exits the market. Sprint's proposal to conditionally take the customers back but then disconnect any customers who fail to comply with Sprint's credit, deposit and payment policies serves the purposes of the statutes underlying Rule 25-4.113, F.A.C, that is, s. 364.03, 364.19, and s 364.604, F.S., in that it strikes the same balance between customer and carrier interests that are embodied in Rule 25-4.113, F.A.C.

18. Sprint requests that this petition be addressed on an emergency basis, because the disconnection of Adelphia's customers has been requested for September 23, 2002.

If the Commission does not consider and rule on Sprint's request for a waiver at the prior to September 23, 2002, Sprint will be unable to act as the new local service carrier for Adelphia's customers and any customers who have not selected another provider prior to that date will be disconnected with the consequences described above.

19. Sprint emphasizes that the circumstances of this case are unusual due to the large number of business customers who will be potentially applying for service simultaneously. Depending on the (currently unknown) character of the businesses involved, a potential negative impact on the public safety, health and welfare could exist if prolonged disruption of customers occurs. Under normal circumstances, Sprint does not believe that the ultimate best interests of competition are served if one company automatically serves as the default carrier when a competitive provider fails. Nevertheless, Sprint believes that pragmatism should prevail over principle in this particular situation. For these reasons we seek this emergency waiver.

WHEREFORE, having demonstrated good cause for its request, Sprint asks that the Commission grant Sprint's request for an emergency waiver of Rule 25-4.118, F.A.C., and Rule 25-4.113, F.A.C. and confirm that Adelphia may provide Sprint with the necessary customer contact information to notify such customers that Sprint will become their conditional local service provider should they fail to select another carrier by the date upon which Adelphia's service is discontinued.

Respectfully submitted this 3rd day of September 2002.

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ATTORNEYS FOR SPRINT

DRAFT

September 3, 2002

Dear Business Customer,

Adelphia Business Solutions Operations, Inc. ("Adelphia") currently provides your local telephone service. However, Adelphia will be discontinuing provision of your telephone services effective September 23, 2002. Unless you select another local service provider prior to this date, Sprint, subject to the terms and conditions of its tariff and appropriate regulatory approvals, will transition your current local service line(s) to Sprint in order to mitigate any problems that may occur if service is disconnected by Adelphia prior to your selection of an alternative local service provider. Whether you are transitioned to Sprint or select an alternative local service carrier, you will be able to retain your current telephone number. Additionally, you will not be billed Sprint's customary carrier change charge if your service is transitioned to Sprint. The transition to Sprint will not impact your long distance carrier selection.

You have the right to subscribe to service from any local service provider. This decision is entirely up to you, and you may switch to another local service provider before the September 23, 2002 Adelphia disconnect date. In the event you are transitioned to Sprint, you will still be able to transfer service to another local service provider subsequent to the transfer to Sprint.

If you request that your local access lines be transitioned to Sprint or if you have not made arrangements to continue your service with another local service provider, Sprint will transition your local service to Sprint billing effective September 23, 2002. However, continuation of service as a Sprint customer is contingent on any appropriate credit and/or deposit requirements. This may include payment for any previous unpaid balances due Sprint. Failure to comply with the credit requirements may result in immediate discontinuation of service. You will be notified of any deposit and/or previous unpaid balance amounts that may be due.

If you have arranged preferred carrier freeze through Adelphia on the service(s) involved in this transfer, the freeze will be removed in order to transition your service to Sprint unless you have selected a different carrier before the transfer date. Thus, after the transfer, you may contact Sprint if you want to reestablish a preferred carrier freeze.

Adelphia is responsible for handling any outstanding complaints or disputes that may exist between you and Adelphia or another carrier. You will be responsible for any account balances due Adelphia through the date of transition to Sprint or the local service provider of your choice. You will also need to address any questions pertaining to existing deposits or pending credits with Adelphia.

If you desire to switch your local service to Sprint prior to September 23, 2002 please contact us at 1 XXX XXX ZZZZ to confirm your decision. This will help us to ensure that you have continuous uninterrupted service. Additionally, we will be able to answer any questions you may have and provide you with information regarding Sprint's rates, terms and conditions.

Sincerely,