



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Purchase Order

PURCHASE ORDER NO.
 PPHONE05

PAGE
 1

BLANKET RELEASE
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CORRECT PURCHASE ORDER NUMBER MUST APPEAR ON ALL PACKAGES INVOICES, AND SHIPPING PAPERS. QUESTIONS CONCERNING THIS PURCHASE ORDER SHOULD BE DIRECTED TO THE BUYER AS NOTED BELOW.

CHANGE ORDER

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

ALL STATE AGENCIES AND POLITICAL SUBDIVISIONS VARIOUS LOCALES AS INDICATED BY ORDER

AGENCY COPY

ALL STATE AGENCIES AND POLITICAL SUBDIVISIONS VARIOUS LOCALES AS INDICATED BY ORDER

*926103914 913 315 7910
 SPRINT PAYPHONE SERVICES INC
 6480 SPRINT PARKWAY
 OVERLAND PARK KS 66251

DATE PRINTED	TERMS OF SALE	FEIN/SSN	FUND
01/12/2005	NET 30	593268090	
SHIP VIA	F.O.B.	FREIGHT TERMS	ACCOUNT NUMBER
BEST WAY	DESTINATION	PREPAID	MUL-MUL

LINE	QUANTITY	UOP	VENDOR ITEM NO.	UNIT PRICE	AMOUNT
	DELIVERY DATE	CAT. NO.	ITEM NUMBER		
0001	12/31/2005		725-53		
<p>OPEN-END CONTRACT</p> <p>TO PROVIDE PAYPHONES TO ALL WEST VIRGINIA STATE AGENCIES AND PARTICIPATING POLITICAL SUBDIVISIONS PER THE ATTACHED AGREEMENT.</p> <p>EFFECTIVE: 01/01/05 THROUGH 12/31/05</p> <p>ORDERING PROCEDURE: SPENDING UNIT(S) SHALL ISSUE A WRITTEN STATE CONTRACT ORDER (FORM NUMBER WV-39) TO THE VENDOR FOR COMMODITIES COVERED BY THIS CONTRACT. THE ORIGINAL COPY OF THE WV-39 SHALL BE MAILED TO THE VENDOR AS AUTHORIZATION FOR SHIPMENT AND A SECOND COPY RETAINED BY THE SPENDING UNIT.</p> <p>PLEASE SEE ATTACHED</p> <p>PER ATTACHED SCHEDULE B COMMISSION STRUCTURE</p>					

WV State Purchasing Division
 Administration Unit
 Certified Encumbered
 FEB 02 2005
[Signature]

IF APPROVAL AS TO FORM IS REQUIRED BY ATTORNEY GENERAL, CHECK HERE

APPROVED FOR ONE FISCAL YEAR
[Signature]
 APPROVED AS TO FORM BY ASSISTANT ATTORNEY GENERAL

BY *[Signature]* CHARLYN MILLER 304-558-2596
 PURCHASING DIVISION AUTHORIZED SIGNATURE

OPEN END
TOTAL

**GENERAL TERMS & CONDITIONS
PURCHASE ORDER/CONTRACT**

1. **ACCEPTANCE:** Seller shall be bound by this order and its terms and conditions upon receipt of acceptance of this order.
2. **APPLICABLE LAW:** The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
3. **NON-FUNDING:** All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the terms of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
4. **COMPLIANCE:** Seller shall comply with all Federal, State and local laws, regulations and ordinances including, but not limited to, the prevailing wage rates of the WV Division of Labor.
5. **MODIFICATIONS:** This writing is the parties final expression of intent. No modification of this order shall be binding unless agreed to in writing by the Buyer.
6. **ASSIGNMENT:** Neither this Order nor any monies due, or to become due hereunder may be assigned by the Seller without the Buyer's consent.
7. **WARRANTY:** The Seller expressly warrants that the goods and/or services covered by this Order will: [a] conform to the specifications, drawings, samples or other description furnished or specified by the Buyer; [b] be merchantable and fit for the purpose intended; and/or [c] be free from defect in material and workmanship.
8. **CANCELLATION:** The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the Seller.
9. **SHIPPING, BILLING & PRICES:** Prices are those stated in this order. No price increase will be accepted without written authority from the Buyer. All goods or services shall be shipped on or before the date specified in this Order.
10. **LATE PAYMENTS:** Payments may only be made after the delivery of goods or services. Interest may be paid on late payments in accordance with the *West Virginia Code*.
11. **TAXES:** The State of West Virginia is exempt from Federal and State taxes and will not pay or reimburse such taxes.
12. **RENEWAL:** Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this Contract is automatically null and void, and is terminated without further order.
14. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.



Sprint Payphone Services, Inc. Flex-Lease Agreement

This agreement is made by and between: State of West Virginia

Primary office located at 2019 Washington Street, East

(Hereinafter referred to as "Owner") and Sprint Payphone Service, Inc. (hereinafter referred to as "SPSI").

Recitals

a. Owner desires pay telephone service at the location(s) listed in this Agreement and is willing to devote space at the location(s) to SPSI for the provisions of such service for reasonable compensation.

b. SPSI desires to provide pay telephone service at the location(s) listed in this Agreement if it is provided space for such service, and SPSI is willing to pay reasonable compensation to Owner based on the business generated by use of the space for the provision of pay telephone service, pursuant to the terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Pay Telephone Service Agreement: Owner hereby grants SPSI the right to install and operate all coin and/or credit card operated or other pay telephones at the premises listed herein and/or on the attached Schedule A ("Property or Properties"). Properties may be added or deleted from this Agreement from time to time by written Amendment. SPSI shall provide maintenance and repair service of the pay telephone(s) at Properties described herein.

2. Properties Subject to the Terms of This Agreement:
See attached Schedule A.

3. Lease Rate and Commission Payment: In consideration of Owner granting SPSI the right to provide pay telephone service at each of the Properties, and of SPSI granting Owner's request to place a pay telephone at each of the Properties, the parties agree to the following Lease Rate and Commission Payment:

a. SPSI shall pay monthly to the Owner a commission based on the previous month's total coin, operator assisted (0+) and dial-around revenue received by SPSI ("Total Revenue") in excess of the monthly Lease Rate of \$135.00 per phone. The commission rate shall be arrived at pursuant to the table in attached Schedule B ("Commission Structure").

b. Calculation of the monthly commission to be paid to the Owner first requires computation of the Average Revenue per Phone for the month in question. The Average Revenue per Phone will be computed by dividing the Total Revenue for all phones by the total number of phones in service under this Agreement in the applicable month. The resulting Average Revenue per Phone shall be applied to the Commission Structure to determine the monthly commission to be paid to the Owner. Only phones installed for fifteen or more days in a month shall be included in the calculation of the Average Revenue per Phone. The Owner shall be responsible for payment of any and all Local, State and Federal taxes on the above stated amounts received as commissions as part of this Agreement.

c. In the event the Average Revenue per Phone is less than \$135 in a given month, the Owner shall pay to SPSI for that month the difference between the monthly Lease Rate of \$135.00 per phone and the Average Revenue per Phone times the number of phones used to calculate the Average Revenue per Phone. An accounting shall be made by SPSI of the difference, which will be contained in or with an invoice sent to the Owner within 60 days after the end of each applicable month. The difference shall be paid in accordance with all applicable terms and conditions included with the invoice.

4. Terms: This Agreement and any Schedules attached hereto shall run for a period of Twelve (12) months ("Initial Term") and thereafter, shall automatically renew for another like term at SPSI's then current pricing, unless Owner gives SPSI

written notice of termination during a period of at least thirty (30) prior to the expiration of the Initial Term or any subsequent renewal thereof. Upon termination, Owner shall allow SPSI access to the Properties for removal of the pay telephone(s) and associated equipment.

5. Special Provisions:

a. Owner shall be responsible for any reasonable and customary installation charges associated with this contract including, but not limited to, a charge for additional payphones installed. Owner may request estimates of such charges in writing from SPSI prior to actual installation.

b. Owner shall be responsible for any and all charges associated with the reconnection of an account previously disconnected by SPSI due to non-payment of any charges not currently in dispute.

6. Owner's Representations: Owner hereby agrees as follows:

a. Owner shall allow SPSI access to the pay telephones and associated equipment during normal business hours of Owner for repair, maintenance, collections and to perform other associated functions.

b. Owner shall exercise due diligence in preventing damage, destruction, vandalism or theft to the pay telephones installed pursuant to this Agreement, but shall not be liable or responsible for such loss or destruction unless it is due to the negligent or willful actions of Owner, its agent(s) or employee(s). Owner shall promptly notify of SPSI of any malfunction, loss of service, theft, vandalism or other damage to any pay telephone or associated equipment provided under this Agreement.

c. Owner shall permit SPSI to connect electrical lines required for telephone booth and sign lighting to an appropriate connection as provided by Owner. Owner shall supply electrical power on a 24-hour per day basis for telephone booth and sign lighting as each pay telephone covered by this Agreement is placed in service.

d. Owner represents and warrants that he or she is the Owner or an authorized representative of the Owner and that he, she or it owns, leases or controls the Properties and has full authority to agree to the provisions of this Agreement or has obtained written consent that may be necessary from a landlord, mortgagee or any other party with interest in the premises with respect to the installation or maintenance of the equipment, and/or the receipt of any commissions.

e. Owner agrees that should the Owner sell, lease or otherwise transfer control of any or all of the Properties that such sale, lease or other transfer shall be made subject to the terms of this Agreement. Owner shall be subject to pay SPSI damages to compensate for the failure to comply with this provision.

f. Owner and SPSI shall comply with all regulatory requirements of the State and the federal government concerning pay telephone service including without limitation access requirements of the Americans with Disabilities Act; however, nothing herein shall require SPSI to make modifications to Owner's premises to comply with the Americans with Disabilities Act.

g. Owner shall allow the display of all signs and instructions as affixed to the equipment by SPSI and shall not affix or permit a third party to affix any other signs or instructions to the equipment.

h. Owner shall provide suitable Location(s) on the Property for SPSI's payphones and equipment which shall be readily accessible and clearly visible to customers.

7. **SPSI's Representations:** SPSI hereby agrees as follows:
- a. SPSI shall be solely liable and responsible for the costs and expenses of purchase, installation, repair maintenance and rental of telephone lines for the pay telephones installed at the Properties.
 - b. SPSI shall make all commission payments due to Owner within sixty (60) days of the end of the applicable month and shall provide an accounting of the commissions paid. Commission payments due to the Owner for less than \$10 00 in any given month will be paid on a quarterly basis.
 - c. SPSI shall install and maintain the pay telephones and associated equipment provided under this Agreement in a professional manner. Upon the removal or relocation of SPSI's equipment, reasonable effort will be made by SPSI to restore the Owner's site of the installation to its condition at the time of installation, normal wear and tear considered. Any deficiencies noted by the Owner shall be brought to the SPSI's attention within thirty (30) days of date work was last performed.
 - d. SPSI may, upon thirty (30) days written notice to Owner, remove any pay telephone and associated equipment from service and that pay telephone shall no longer be subject to this Agreement in the event any of the following occur: (i) the cost of providing pay telephone service exceeds revenue received by SPSI; (ii) SPSI experiences excessive vandalism of its equipment.

8. **SPSI's Property:** All pay telephones, fixtures, supplies and ancillary equipment furnished or installed pursuant to this Agreement shall at all times remain the sole and exclusive property of the SPSI and nothing contained herein shall be construed as granting Owner any right or interest in said pay telephones, fixtures, supplies or ancillary equipment. Owner shall take no action that is inconsistent with SPSI's ownership interest and shall indemnify and hold SPSI harmless from same. Upon expiration or termination of this Agreement, SPSI shall have the right to cease installing the equipment, disconnect the equipment or otherwise render the equipment inoperable and enter the Owner's premises during normal business hours of Owner with or without notice and take possession of and remove the equipment. If necessary, Owner shall assist and cooperate with SPSI in the execution of any documents required to demonstrate SPSI's sole ownership of the pay telephones.

9. **Liability and Indemnity:** Each party shall be liable for intentional harm caused by its employees or agents. Each party shall be responsible for the consequences of its own negligence and will defend, indemnify and hold the other harmless for same.

10. **Force Majeure:** Neither party shall be liable in any way for delay, failure in performance, loss or damage due to any of the following force majeure conditions: fire, strike, embargo, explosion, power failure, flood, lightning, war, water, electrical storms, labor disputes, civil disturbances, governmental requirements, acts of civil or military authority, acts of God, acts of terrorism, acts of public enemies, inability to secure replacement parts or materials, or other causes beyond its reasonable control, whether or not similar to the foregoing.

11. **Attorneys' Fees:** In the event either party to this Agreement is required to take action to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs, including reasonable attorneys' fees and costs for any appeals thereof, as well as any collection costs incurred.

12. **Gratuities:** It is the written policy of SPSI to decline acceptance of gratuities offered by purchasers or vendors of products or services. During the negotiation and term of this Agreement and any extension thereof, Owner shall not offer and shall not give a gratuity of any sort to any employee of SPSI. Owner shall report the solicitation of a gratuity of any sort by an employee of SPSI to an officer of SPSI. Failure by Owner to comply with this provision may result in termination of this Agreement and Amendments hereto, or in such other action as SPSI deems appropriate, regardless of whether Owner initiated the offer of a gratuity, or an employee of SPSI solicited the gratuity.

13. **General Provision:**

a. The obligations and rights under this Agreement shall be binding upon and inure to the benefit of the parties, their heirs, personal representatives, successors and assigns and may not be assigned or transferred by Owner without prior written consent of SPSI.

b. Failure or delay by either party to exercise any right, power, or privilege, under this Agreement, shall not operate as a waiver thereof.

c. This agreement constitutes the entire Agreement between the parties and supersedes all prior offers, negotiations and Agreements and may only be modified by written Addendum executed by authorized representatives of the parties.

d. This Agreement shall be governed by and construed in accordance with the applicable state and federal laws.

e. Schedule C attached hereto is incorporated into this agreement.

This Agreement consists of two pages, plus two schedules (Schedule A and Schedule B), and it is subject to the terms and conditions contained herein. Owner acknowledges, by his/her signature, that he/she has read and understands and will comply with all terms and conditions set forth in this Agreement and certifies that he/she is Owner or an authorized representative thereof.

IN WITNESS WHEREOF, SPSI and Owner have executed this Agreement or each has caused it to be executed on their behalf on the dates set forth below. This Agreement is not binding until signed by an authorized representative of SPSI.

Sprint Payphone Services, Inc.

By: Margaret Lopez 12/29/04
 Authorized representative Date

Margaret Lopez Director SPSI
 Type or Print Name and Title

OWNER
 By: Heather A. Connolly 5 Jan 05
 Authorized representative Date

Heather A. Connolly, Deputy Cab Sec.
 Type or Print Name and Title

SPSI Required Information:

Customer CBR#: _____ Mkt. Seg. # (Assigned by office): _____

FID or SSN#: _____ (9 digits)

Name of SSN Provider (if applicable): _____

Bus. Type: Charitable, Gov., Sole Prop., Ltd. Partnership, Incorp., Non-profit, Partnership

SCHEDULE A
Property or Properties

Equipment: Millennium Terminals or Protel 9000

Commission Payment: All phones that generate \$135.00 per month will warrant a commission based on the commission plan attached (see schedule B). The commission payment is based on the term of the agreement and the revenue generated. Commission will be paid on total revenue received by SPSI gross revenues.

Installation: There is a \$200.00 per phone installation fee that will be waived with a one year commitment.

Monthly fee: The monthly fee is \$135.00 per phone less the revenues generated from that phone per month. The charge of \$135.00 will be collected prior to installation and monthly thereafter. There will not be a charge for any phone that generates revenues of \$135.00 in that month.

Dial-Around Compensation

The process of paying dial-around compensation to the owners is as follows:

At the end of each quarter (March 31/June 30/September 30/December 31), the payphone owner submits to an industry clearing house the actual 10-digit phone numbers of all payphones active on the last day of the quarter. At the same time, the long distance carriers submit to the clearing house the completed calls that they handled, along with the dial-around compensation revenue for those completed calls. The clearing house then matches the phone numbers submitted by the owners with the compensation revenues submitted by the carriers, and pays the owners the dial-around compensation earned by their phone. This latter process takes three months.

For example, the payphone owner did not receive actual dial-around revenues from the clearing house for calls made during January/February/March 2004 until the middle of July 2004. Payment for a dial-around call made on January 1, 2004 was not received by the owner until over six months later, in July 2004.

Additionally, the payphone cannot detect whether or not a dial-around call was completed by the carrier. The payphone does detect that the call was completed to the long distance carrier's platform, and considers that a "completed" call, but it does not know whether or not the call was answered by the intended party.

Sprint uses algorithms to estimate the number of dial-around calls made from a payphone in a given month. While fairly accurate, the actual payments will vary from the estimates. True-ups are done on a quarterly basis to adjust the estimated revenues to the actual revenues.

SCHEDULE B

Commission Structure

If the average revenue per phone (as defined by section 3b) is at least...	...but not more than...	...the commission rate is: month-to-month <u>term</u>	...the commission rate is: 12 month <u>term</u>	...the commission rate is: 24 month <u>term</u>	...the commission rate is: 36+ month <u>term</u>
\$ 0.00	\$ 135.00	0%	0%	0%	0%
\$ 135.01	\$ 150.00	10%	25%	35%	45%
\$ 150.01	\$ 175.00	20%	35%	45%	55%
\$ 175.01	\$ 200.00	30%	45%	55%	65%
\$ 200.01	\$ 250.00	40%	55%	65%	70%
\$ 250.01	Infinite	45%	60%	70%	75%

Schedule C

Life of Contract: This contract becomes effective on January 1, 2005 and extends for a period of one (1) year or until such "reasonable time" thereafter as is necessary to obtain a new contract or renew the original contract. The "reasonable time" period shall not exceed twelve (12) months. During this "reasonable time" the vendor may terminate this contract for any reason upon giving the Director of Purchasing 30 days written notice.

Unless specific provisions are stipulated elsewhere in this contract document, the terms, conditions, and pricing set herein are firm for the life of the contract.

Renewal: This contract may be renewed upon the mutual written consent of the spending unit and vendor, submitted to the Director of Purchasing thirty (30) days prior to the expiration date. Such renewal shall be in accordance with the terms and conditions of the original contract and shall be limited to two (2) one (1) year periods.

Open Market Clause: The Director of Purchasing may authorize a Spending Unit to purchase on the open market, without the filing of a requisition or cost estimate, items specified on this contract for immediate delivery in emergencies due to unforeseen causes (including but not limited to delays in transportation or an unanticipated increase in the volume of work).

Quantities: Quantities listed in the requisition are approximations only, based on estimates supplied by the State Spending Unit. It is understood and agreed that the contract shall cover the quantities actually ordered for deliver during the term of the contract, whether more or less than the quantities shown.

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Rev. 5/94

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **ARBITRATION** - Any references to arbitration contained in the agreement are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages or limiting the Vendor's liability under a warranty to a certain dollar amount or to the amount of the agreement is hereby deleted. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

STATE OF WEST VIRGINIA

Spending Unit:

WV Dept. of Admin.

Signed:

Leatherick Connolly

Title:

Deputy Cab. Secty

Date:

5 Jan 05

VENDOR

Company Name:

Sprint

Signed:

Margaret Lopez

Title:

Director, SPSI

Date:

12/29/04