

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for waiver of) DOCKET NO. 930972-TL
Rule 25-4.076(9), F.A.C., to) ORDER NO. PSC-94-0020-FOF-TL
allow for minor height) ISSUED: January 5, 1994
variations for certain pay)
telephone installations, by GTE)
FLORIDA INCORPORATED.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING PETITION FOR VARIANCE FROM HEIGHT REQUIREMENTS
FOR CERTAIN PAY TELEPHONE LOCATIONS

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

On October 4, 1993, GTE Florida Incorporated (GTEFL or Company) filed a petition seeking a "variance" from Rule 25-4.076(9), Florida Administrative Code, (the Rule) to allow for minor height variations for certain pay telephone locations. GTEFL is a local exchange telephone company which also provides pay telephone service. The company currently operates approximately 14,640 pay telephones in Florida. The requested waiver involves approximately 430 pay stations.

DOCUMENT NUMBER-DATE

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II. WAIVER REQUEST

GTEFL's petition requests up to a 1/2 inch flexibility range for pay telephone installations not meeting the Rule. GTEFL's petition explains that the approximately 430 pay telephone stations do not meet the requirements of the Rule because there was no way to adjust the pedestals for problems related to installations on unlevel surfaces which require an increase in height to be level and operate properly. This has resulted in numerous pay telephones being 1/8 to 1/2 inch in excess of the 54-inch height. GTEFL further states that if the Commission were to grant its request to allow a variance in the height requirement for these pay stations that "the effect will be nominal on pay telephone users while the cost savings to the Company and the ratepayers will be enormous." GTEFL has estimated the cost of refurbishing the 430 pedestals to be \$170,000.

The Company's request may seem reasonable at first blush; however, it must be considered in a broader context. First, in adopting wheelchair access standards in 1986 for pay telephones, the Commission required all instruments installed after January 5, 1987 to meet its requirements. Instruments installed prior to 1987 were grandfathered. This provision is set forth in Rule 25-24.076(9), Florida Administrative Code. This was a low cost solution and was supported by GTEFL and other providers. As a result they were not required to retrofit any instruments. Rule 25-24.076, clearly gave notice that all instruments installed thereafter had to meet the requirement. Testimony from the rule hearing indicated that there is no difference in the cost of installing new instruments at the accessible level versus a higher level. Since instruments installed prior to 1987 are grandfathered, it appears GTEFL's petition is only for instruments installed since January 5, 1987.

Second, effective June 1, 1992, Rule 25-24.076 was amended to require that only single instruments and one for each ten instruments in a bank need to be accessible. Pursuant to this amendment, the grandfathered exemption expires January 1, 1995. The expiration of the grandfathered instruments is consistent with LEC testimony in 1986 that booths and pedestals have an average life of ten years; therefore, through normal replacements, the industry would come into compliance with the wheelchair standard within ten years. Thus, if GTEFL's Petition is approved, it would appear that GTEFL would be granted a grandfathered status, beyond the original grandfathered cutoff, for instruments installed after the Commission determined that each instrument should meet the wheelchair access standards.

In addition to the above, we also note that two years ago the Commission rejected a recommendation by our staff to require GTEFL to show cause why it should not be penalized for failing to correct a wheelchair access violation. The Commission determined, based on GTEFL's representations at agenda, that this was an isolated incident that GTEFL corrected immediately upon learning that the show cause docket was opened. See Order No. 25408. In addition, we further note that settlements are currently pending with several other pay telephone providers for failing to meet the standard in dockets that were opened just prior to receipt of GTEFL's Petition.

The ANSI standards referenced in the Rule are very clear and specific about the height requirements and our enforcement of this provision has been consistent. Since 1989, we have addressed allegations against more than 21 pay telephone providers for violations of the handicapped accessibility rule. In some cases, companies have protested that their pay stations were within inches or less of compliance with the rule or that achieving compliance was difficult or costly or both. In every case the Commission has required these companies to make the necessary adjustments for height and in many cases have imposed a penalty as well.

Upon consideration, we find it appropriate to deny GTEFL's petition for waiver. GTEFL has long been on notice of the requirement. It is not fair to the wheelchair disabled public or to the other pay phone companies to waive the rule for these locations as GTEFL has suggested. The company is capable of making the corrections to the pay stations and should do so. Furthermore, the company could have and should have initially installed all of these instruments to meet the Rule.

III. CORRECTIVE ACTION

Initially we note that our staff's random service evaluations have not identified a problem with handicapped access at GTEFL's payphones and that the Company has voluntarily brought the noncomplying paystations to the Commission's attention. Therefore, we do not believe that, under these circumstances, an action to impose a penalty is appropriate. However, we are concerned because the company's petition mentions that not only are 430 of its payphones at least 1/2 inch out of compliance but that there are apparently others which are more than 1/2 inch too high.

Upon consideration, we find it appropriate to require GTEFL to correct each of the pay stations which are not in compliance with the Rule within six months from the date of the issuance of this Order. So that we may verify compliance after the six months, we

also find it appropriate to require that GTEFL provide our staff with a list of the noncomplying paystations within six months from the date of the issuance of this Order. If any of the noncomplying paystations were installed prior to January 5, 1987, they are grandfathered according to the Rule and GTEFL has until January 1, 1995 to correct them. These paystations may be excluded from the list. In addition, since GTEFL could have and should have installed these instruments to meet the standard initially, GTEFL shall absorb the cost of corrective action below the line.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that GTE Florida Incorporated's Petition For a Variance From Rule 25-4.076(9), Florida Administrative Code, is denied as set forth in the body of this Order. It is further

ORDERED that GTEFL shall bring into compliance each of the pay stations which are not in compliance with the Rule within six months from the date of the issuance of this Order. It is further

ORDERED that GTEFL shall file a list of noncomplying paystations within six months of the date of issuance of this Order as set forth in the body of this Order. It is further

ORDERED that GTEFL shall absorb the cost of corrective action below the line. It is further

ORDERED that if no timely protest is filed pursuant to the requirements set forth below, then this docket shall be closed at the end of the protest period.

By ORDER of the Florida Public Service Commission this 5th day of January, 1994.



STEVE TRIBBLE, Director
Division of Records and Reporting

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Commissioner Lauredo dissented from the Commission's decisions in this case.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 26, 1994.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.