

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to Initiate) DOCKET NO. 940142-TP
Rulemaking to Amend Rule 25-) ORDER NO. PSC-95-0078A-FOF-TP
4.076, F.A.C., Pay Telephone) ISSUED: March 29, 1995
Service Provided by Local)
Exchange Companies, and 25-)
24.515, F.A.C., Pay Telephone)
Service, by Dignity for the)
Disabled, Inc., A Non-Profit)
Corporation, and Denny R. Wood,)
MSW, Individually)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, CHAIRMAN
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

AMENDED ORDER DENYING AMENDMENTS TO RULE 25-4.076 AND
RULE 25-24.515, F.A.C.

BY THE COMMISSION:

On February 7, 1994, the Division of Records and Reporting received a Petition to Initiate Rulemaking from Dignity for the Disabled, Inc., a non-profit corporation (Dignity), and Denny R. Wood, MSW, president of Dignity, requesting that the Commission initiate rulemaking concerning provision of pay telephone service by local exchange companies and by non-local exchange companies. Dignity's petition sought to amend those sections of the rules which concern how pay telephone are to be made accessible to physically handicapped persons.

On March 28, 1994, Order No. PSC-94-0353-FOF-TP was issued granting the petition to initiate rulemaking proceedings to consider amending Rule 25-4.076 and Rule 25-24.515, Florida Administrative Code. As stated in Order 0353, our decision did not

¹ This order was previously issued on January 17, 1995 as proposed agency action (PAA). On March 21, 1995, the Commission decided that the PAA format was incorrect and that the order should be reissued as final agency action.

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adopt the amendments proposed by the Petitioner but directed staff to return with a recommendation after fully considering the arguments of the Petitioner and other interested parties.

In April and May of 1994, staff sent data requests to all parties listed on this docket as well as to other agencies and organizations we believed would be interested in the proposed rule. On June, 1994, staff held a workshop to discuss issues raised by the petition and the responses to the data requests.

DISCUSSION

Upon consideration, we decline to adopt the amendments to Rule 25-4.076 and Rule 25-24.515, F.A.C., proposed by Dignity for the Disabled, Inc., a non-profit corporation, and Denny R. Wood, MSW, individually because the Commission's access standards already exceed federal requirements.

FEDERAL REQUIREMENTS

The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990 (Public Law 101-336). The ADA specifies minimum requirements for making newly constructed and modified buildings and structures accessible and usable by handicapped persons. Public telephones are just one of the 21 different items for which specifications are offered ranging from doors and signage to drinking fountains and ATM machines.

Section 4.1.3 (17) of the ADA states that when public telephones are provided (in newly constructed buildings) they shall comply with 4.31.2 through 4.31.8 according to the following table:

<u>Phones installed (per floor)</u>	<u>Accessible Phones</u>
1 or more single unit	1 per floor
1 bank	1 per floor
2 or more banks	1 per bank.

Accessible unit may be installed as a single unit in proximity (either visible or with signage) to the bank.

The ADA defines a bank as "two or more adjacent public telephones, often installed as a unit." The ADA further states that additional public telephones in newly constructed buildings may be installed at any height. The ADA uses the illustrations of the American National Standards Institute (ANSI 117.1-1980) for technical specifications. ANSI standards may be revised periodically by the Accredited Standards Committee on Architectural

Features and Site Design of Public Buildings and Residential Structures for Persons with Handicaps (A117). The 1961 edition of ANSI standards was the first to include criteria for accessibility and revisions have occurred in 1971, 1980, and 1986 and, most recently, in 1992.

FPSC'S EXISTING RULES 25-4.076 & 25-24.515, F.A.C.

Our rules require that any single pay telephone installation must be accessible to physically handicapped persons (except for pay telephones installed prior to January 5, 1987, which must conform by January 1, 1995). Existing rules also require that banks of phones (phones installed as a group) with up to ten pay phones in the group must have at least one pay telephone that is accessible to physically handicapped persons. Thereafter, according to our present rules, each bank of ten must have at least one accessible pay phone. For example:

<u>Phones installed</u>	<u>Accessible persons</u>
1	1
10	1
20	2
30	3

Though amendments have been made to the pay telephone rules which changed the rules' paragraph numbering, the text of the rules dealing with handicapped access [25-24.515(14) & 24-4.076(9), F.A.C.] has not been modified since April 14, 1992.

We note that the handicapped access requirements of our existing rules are already more stringent than the federal standards discussed above. For example, the ADA only requires one payphone in any bank over two to be accessible, whereas our existing rules require one payphone per group of ten to be accessible. Furthermore, our existing rules mandate all single unit pay stations installed after January 5, 1987, must be accessible whereas the ADA only requires that where multiple single installations are present, that at least one single unit pay station be accessible.

With respect to enforcement, since 1989, staff has initiated at least 19 show cause actions against pay telephone providers for apparent violations of the handicapped accessibility requirements. We have imposed fines or accepted settlements ranging from \$500 to \$15,000. These actions demonstrate that we share the concerns of Mr. Wood and Dignity for the Disabled that physically handicapped persons should be able to access pay telephones and that the rule has been aggressively enforced.

DIGNITY'S PROPOSAL TO AMEND RULES 25-4.076 & 25-24.515, F.A.C.

Dignity's petition proposed that the existing rules be amended to increase the number of pay telephones which are accessible to physically handicapped persons. The rule language Dignity has proposed would achieve this by increasing the ratio of accessible to non-accessible pay phones in banks of phones according to the following formula.

<u>Phones installed</u>	<u>Accessible phones</u>
1	1
2	2
3	3
4	3
5	3
6	3
7	3
8	4
9	4
10	5
11	5
12	6
13	6
14	7
15+	7

Dignity's petition would also change the requirements for phones "in buildings not serviced by a ramp or elevator" to require that if there are payphones placed on inaccessible levels then the same number of payphones must be placed on at least one accessible level of the building. We note that Dignity's proposal is much more stringent than the ADA's requirements which only requires that one pay phone per floor be accessible for single installations and that one pay phone in each bank of telephones per floor must be accessible. Our existing rules simply require that stations shall be placed in areas accessible to the physically handicapped on the entry level of buildings not serviced by a ramp or elevator.

RATIONALE

Comments by those attending the workshop held on June 29, 1994, lead us to believe that if we were to require an equal number of accessible pay phones for each pay phone installed (as Dignity's petition requested) then some payphones providers may remove existing phones rather than add an equal number on an accessible floor. We have concerns about enacting a rule that would require a certain number of pay telephones to be installed at a given location. The pay telephone industry is a competitive one and

providers do not install pay telephones where they are not revenue producing.

Other considerations relevant to Dignity's petition are the costs associated with making additional pay stations accessible. These costs were estimated to range from \$85 to \$860 per pay station according to the responses to staff's data request filed by LECs and associations representing non-LEC pay telephone providers.

With respect to whether there is need for additional accessible instruments, the number of disabled persons in Florida can be defined in many ways depending upon: the type of disability, whether the disability is temporary or permanent, whether one considers visitors or permanent residents of the state, etc. Staff asked Florida State Data Center how many persons in Florida were confined to wheelchairs. Although the Data Center did not know the number of Floridians who were confined to wheelchairs, staff was told that 187,256 people were classified as having "mobility disorders" among a total population of 12,937,926 according to the 1990 census. This equates to 1.5% of the persons in Florida. However, correspondence received from Mr. Wood, President of Dignity for the Disabled, stated that Florida has a "10 - 20% population of persons with total and permanent disabilities."

Dignity's petition stated that an amendment to the pay telephone rules is being sought because the present rules permit providers of pay telephones to install pay telephones that are inaccessible to physically handicapped persons and that this in turn creates a prejudicial burden to physically handicapped persons. We agree that the present rules allow some pay telephones to be installed in locations or at heights that may not be accessible to persons in wheelchairs. However, we do not believe that the present rules create a prejudicial burden to physically handicapped persons. For example, the present rules require all single pay telephones installed after January 5, 1987 to conform to ANSI standards. There can only be nonconforming installations when there are two or more pay telephones located in a group and there must always be at least one per group of ten pay telephones that is accessible.

Another reason we do not consider the present rule prejudicial is that responses to data requests and comments at the workshop from other parties expressed the opinion that persons of average height or taller had difficulty using pay phones installed at the lower heights necessary for handicapped access. Although no studies were cited, several providers stated their belief that when two pay stations were mounted side by side and one was installed at the lower, accessible height (48-54"), the taller standard height

(65") phone was used anywhere from 11-39% more often (based on observation and revenue collection).

Mr. Wood provided staff with a copy of a 1974 survey conducted by George Fine Research Incorporated for AT&T. The survey was a field trial pre-test of a new (in 1974) type of pay telephone unit called the Century Unit, built to accommodate handicapped persons. The survey compared the Century Unit to the standard (in 1974) booth style pay telephone and was conducted by interviewing and observing 90 handicapped persons and 59 non-handicapped persons. The summary of the study's findings concluded, among other things, that the Century Unit was preferred to the booth unit by handicapped users. Observations of non-handicapped users showed some had difficulty using the unit at the lower height, such as difficulty dialing; most reported that if pay phones were installed at 54" it would not affect their usage of pay phones. At staff's workshop, Mr. Wood cited that study as proof that pay telephones installed at a 54" height could accommodate all users. However, AT&T stated at the workshop that it did not currently rely upon the study and instead followed the guidelines of the ADA and the Florida Public Service Commission rules.

We would also point out that nothing in our present rules prevents any pay telephone provider from going beyond the requirements to meet any particular needs expressed by a property owner, such as installing all pay stations at the lowest height possible for wheelchair access (i.e. hospitals, retirement communities).

CONCLUSION

We wish neither to weaken our existing rule nor to make it so excessively complex and burdensome that it becomes difficult to enforce or results in the removal of substantial numbers of instruments. Therefore, since our rules already exceed the requirements of the ADA with regard to wheelchair access, we decline the amendments requested in the petition.

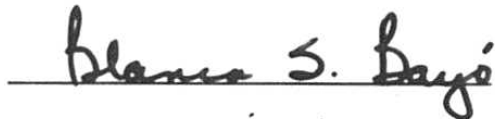
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the amendments to Rule 25-4.076 and Rule 25-24.515, F.A.C., proposed by Dignity for the Disabled, Inc., a non-profit corporation, and Denny R. Wood, MSW, individually, are denied. It is further

ORDERED that this docket is closed.

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BY ORDER of the Florida Public Service Commission this 29th
day of March, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer 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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.