

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by residents of Polo Park requesting extended area service (EAS) between the Haines City exchange and the Orlando, West Kissimmee, Lake Buena Vista, Windermere, Reedy Creek, Winter Park, Clermont, Winter Garden and St. Cloud exchanges.

DOCKET NO. 930173-TL
ORDER NO: PSC-97-0619-FOF-TL
ISSUED: May 30, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
JOE GARCIA
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER ON INTERLATA EXTENDED AREA SERVICE

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 a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

We have suspended action in this docket, as well as several other dockets, in various procedural stages, pending our determination of the impact of the Telecommunications Act of 1996 (the Act) on pending requests for interLATA extended area service (EAS) on BellSouth Telecommunications, Inc. (BellSouth) routes. We suspended action in these dockets due to our concern that under Section 271 of the Act, Bell operating companies (BOCs) are clearly prohibited from originating interLATA traffic until the BOCs meet certain conditions, including completion of a "competitive checklist." Under Section 272 of the Act, even after it meets the requirements of Section 271, a BOC may only originate interLATA telecommunications services through a separate and independent

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affiliate. For BellSouth, this would presumably be either its interexchange carrier (IXC) or alternative local exchange company (ALEC) affiliate.

By Order No. PSC-96-1033-PCO-TL, issued in Docket No. 941281-TL, on August 8, 1996, we directed the parties to file briefs on whether it is feasible to implement either extended area service (EAS) or extended calling service (ECS) on the Groveland to Orlando interLATA route under Sections 271 and 272 of the Telecommunications Act of 1996 (Act) or Chapter 364, Florida Statutes. Thereafter, by Order No. PSC-96-1335-FOF-TL, issued November 5, 1996, we ordered staff to conduct a staff workshop in order to gather additional information and to allow the parties in all affected dockets the opportunity to participate. Our staff conducted the workshop on November 18, 1996, and the participants were asked to file post-workshop comments.

Party Comments

The issues and the positions of the parties and respondents, as addressed in the briefs and the post-workshop comments, are as follows:

- 1. Does the Telecommunications Act of 1996 prohibit BellSouth from originating EAS or ECS traffic from the routes in question?**

BellSouth Telecommunications, Inc.

BellSouth asserts that the Act does, in fact, prohibit BellSouth from originating interLATA traffic until it has met the requirements of §271 of the Act. Once BellSouth has met those requirements, BellSouth asserts that it could then originate traffic, but only through a separate affiliate, in accordance with Section 272 of the Act. Such an affiliate would have to operate independently of BellSouth, would have to maintain separate books, records and accounts, would have to have separate officers and directors, and deal with BellSouth only on an arms-length basis. Thus, BellSouth itself still could not originate EAS or ECS traffic. BellSouth adds, however, that it could originate this traffic if the FCC were to approve moving a LATA boundary to include the exchange seeking EAS or ECS, thereby converting the traffic to intraLATA traffic.

Sprint

Sprint argues that all Bell operating companies appear to be prohibited by the Act from originating interLATA traffic until they meet certain conditions. Any solution for implementing an option to toll rates on interLATA routes should be presented as a non-basic calling option.

Florida Interexchange Carriers Association (FIXCA)

FIXCA believes that the Act clearly prohibits BellSouth from originating interLATA service. FIXCA states that BellSouth is prohibited from originating such traffic until BellSouth meets numerous conditions set forth in the Act, and the FCC grants BellSouth the authority to originate interLATA service. At this time, FIXCA notes that BellSouth has not been granted this authority.

FIXCA further asserts that the exceptions for providing interLATA service set forth in Section 271 of the Act do not apply to EAS/ECS situations. FIXCA also states that even when BellSouth is granted interLATA authority, it will only be able to provide service through a separate affiliate. FIXCA argues that such a separate structure is not in place; thus, BellSouth could not originate the traffic.

2. **Does the Telecommunications Act of 1996 allow BellSouth to terminate EAS or ECS traffic from the Groveland exchange?**

BellSouth Telecommunications, Inc.

BellSouth does believe that it can terminate interLATA EAS or ECS traffic. BellSouth states, however, that while the Act does not affect its ability to terminate the interLATA traffic, the Act might require BellSouth to charge terminating access charges to the LEC originating the call. BellSouth states that Section 202 of the Act prohibits BellSouth from unjustly or unreasonably discriminating in charges. BellSouth argues that since an IXC can compete on an EAS or ECS route, if BellSouth were to charge the IXC a terminating charge, but not the originating LEC, an argument

could be made that BellSouth was unreasonably discriminating in the application of its access charges. BellSouth states, however, that the Commission has historically allowed EAS even though customers ultimately are treated differently; as a result, BellSouth questions whether the same rationale could sustain charging different terminating access rates. BellSouth adds that terminating access rates would likely apply to one-way ECS as well.

FIXCA

FIXCA argues that BellSouth can terminate interLATA EAS and ECS traffic. FIXCA asserts, however, that the question remains as to what BellSouth must charge the originating LEC for terminating the call. FIXCA argues that BellSouth should not be permitted to discriminate in the application of its termination charge; thus, BellSouth must charge the originating LEC the same amount BellSouth would charge an IXC to terminate a call.

- 3. Can BellSouth's IXC affiliate carry EAS or ECS traffic without violating Sections 364.08, 364.09, and/or 364.10, Florida Statutes, or the Telecommunications Act of 1996?**

BellSouth Telecommunications, Inc.

BellSouth also believes that its IXC could carry the EAS or ECS traffic without violating Sections 364.08, 364.09, or 364.10, Florida Statutes. BellSouth explains that allowing EAS for one person but not another is not a violation of the cited statutes. To illustrate, BellSouth states that when the Commission approves an EAS or ECS route, similarly situated persons are treated differently. The Commission can, however, order EAS if it finds that the requirements for approval set forth in Rule 25-4.058, Florida Administrative Code, have been met. Although there are no Commission rules governing ECS routes, BellSouth states that the Commission has developed standards for determining the propriety of ECS routes, as set forth in Order PSC-95-1391-FOF-TL, issued in Docket No. 920260, on November 8, 1995. The standards set forth in that Order apply equally to any community seeking EAS or ECS. BellSouth further explains that if one person lives in a community with EAS to a certain city and a second person lives in a community that requests EAS to the same city, then the two people are similarly situated if the second person's community meets the

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standards for EAS. If, however, the second community does not meet the standards for EAS, then the two people are not similarly situated. Thus, allowing EAS for one customer but not another does not violate the requirements of Sections 364.08 and 364.09 that subscribers in substantially the same circumstances be treated the same. Similarly, BellSouth argues that the implementation of EAS does not violate Section 364.10, Florida Statutes, because EAS does not give any person or community undue or unreasonable advantage over another. BellSouth adds that either it or its IXC affiliate can carry traffic for EAS or ECS routes, as long as similarly situated customers are treated alike.

BellSouth further asserts that while its IXC affiliate can carry the EAS or ECS traffic, only BellSouth as the LEC, is subject to carrier of last resort obligations pertaining to that traffic. BellSouth explains that pursuant to Section 364.385, Florida Statutes, an EAS or ECS route pending before March 1, 1995, shall be considered a basic service upon approval. Pursuant to Section 364.025(1), Florida Statutes, a LEC, as carrier of last resort, must offer basic local service to customers requesting it. BellSouth argues, however, that since an IXC does not have such obligations to serve, the Commission could not require it to provide EAS or ECS, although the affiliate could elect to do so. Regardless, BellSouth states that the Act does not prohibit a BellSouth IXC affiliate from carrying EAS or ECS traffic.

FIXCA

FIXCA states that the cited statutory provisions relate to nondiscrimination and were enacted to ensure that similarly situated persons are treated the same way. FIXCA argues that the only way for a BellSouth IXC affiliate to provide EAS or ECS on routes in compliance with these provisions is for BellSouth to charge its affiliate the same price for originating and terminating access that BellSouth charges any other provider. Otherwise, FIXCA asserts that the nondiscrimination provisions would be violated.

4. Can the Commission require BellSouth's ALEC affiliate to carry EAS or ECS traffic?

BellSouth Telecommunications, Inc.

BellSouth does not believe that the Commission can require BellSouth's ALEC affiliate to carry EAS or ECS traffic because the Commission has no specific authority to treat BellSouth's ALEC affiliate differently than other ALECs. Moreover, BellSouth states that it does not believe that it would even be required to form a separate affiliate in order to operate as an ALEC since BellSouth currently holds an ALEC certificate. BellSouth asserts that nothing in the Florida Statutes or the Commission's rules requires it to form a separate affiliate to act as an ALEC. Furthermore, BellSouth states that this issue assumes that a separate BellSouth affiliate ALEC would compete within BellSouth's territory when the certificate allows BellSouth to compete outside its franchise territory.

Notwithstanding its argument that it need not form a separate ALEC affiliate, BellSouth asserts that even if it did, the Commission could not require that affiliate to carry EAS and ECS traffic. BellSouth argues that it has carrier of last resort obligations until January 1, 2000, in accordance with Section 364.025(5), Florida Statutes. After that date, any ALEC could choose to be the carrier of last resort in a particular area. BellSouth argues, however, that nothing in Chapter 364 allows the Commission to require any ALEC, even a BellSouth affiliate, to be the carrier of last resort. BellSouth argues that the Commission's limited regulatory oversight over ALECs is not expanded simply because the ALEC is a BellSouth affiliate.

FIXCA

FIXCA does not believe that the Commission can order BellSouth's ALEC affiliate to carry EAS or ECS service. FIXCA argues that both the Act and the 1995 revision to Chapter 364 envision a new market in which competition will replace regulation. In this new market, FIXCA argues that the Commission's role will not be to require carriers to provide particular services; rather it will be the carrier's role to determine what services and packages of services it should provide in order to remain competitive. FIXCA notes that the one exception to the Commission's inability to require carriers to provide certain

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services may be found in Section 364.337, Florida Statutes. Therein, ALECs may be required to provide operator services, 911 services, and relay services for the hearing impaired. FIXCA argues that these are the only services the Commission can require an ALEC to provide. Thus, the Commission cannot order an ALEC to carry EAS or ECS traffic.

5. **How can EAS or ECS be implemented without violating either the Telecommunications Act of 1996 or Chapter 364, Florida Statutes?**

BellSouth Telecommunications, Inc.

BellSouth does not believe that Chapter 364, Florida Statutes, prohibits them from implementing interLATA EAS or ECS. BellSouth argues, however, that it cannot implement EAS or ECS without violating the Act unless the FCC approves a LATA boundary modification, thereby bringing the entire route into the same LATA. BellSouth states, however, that it can find no procedure in the Act for requesting a modification of a LATA boundary. Furthermore, BellSouth states that changing a LATA boundary would change the calling scope for the entire area which could deprive the community of ECS benefits.

Sprint

Sprint believes that one-way calling, implemented by the LEC with the exchange requesting toll relief, is an available calling option. Sprint states that the customers could be offered a flat or measured/message rate calling option and the originating LEC would continue to pay terminating access on the calls. Sprint notes that GTE Florida has offered similar plans in other EAS cases.

Sprint further argues that changing a LATA boundary would only create problems in the future. Sprint states that the boundary must rest somewhere; moving it would only raise the same issues in a future case.

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FIXCA

FIXCA asserts that the only way that interLATA EAS or ECS can be implemented on BellSouth routes is if access charges are equal so that incumbents and their affiliates are not able to squeeze competitors out of the market.

FIXCA further states that one proposed solution, one-way EAS or ECS, presents some problems. First, it is confusing for customers because two people on the same call will pay different charges. Also, one-way EAS requires that BellSouth charge all carriers the same amount to terminate a call.

FIXCA notes that the true problem exhibited in these dockets is not BellSouth's inability to carry interLATA calls. FIXCA argues that the problem is, in fact, BellSouth's high access charges.

General Comments

In addition to the comments on the issues recited above, ALLTEL filed the following general comments.

ALLTEL states that while interLATA toll relief is technically feasible on the routes in question, none of the routes meet the Commission's requirements for toll relief, nor do they exhibit the necessary community of interest.

ALLTEL also argues that implementing EAS or ECS will possibly result in decreased earnings for the company. This potential loss, along with revenue losses likely to result from changes in the law, introduction of intraLATA presubscription, reductions in access charges, etc., may ultimately lead ALLTEL to seek rate relief.

ALLTEL also suggests that any plan to implement EAS or ECS should be based on minutes of use. ALLTEL asserts that currently its network is being tied up by Internet users for little or no compensation. ALLTEL believes that this trend should be taken into account so that ALLTEL's regulated ratepayers do not bear an unnecessary burden.

ALLTEL also asserts that it would have to build facilities, at great expense, to provide EAS or ECS on the routes in question. Furthermore, ALLTEL will lose revenue from access charges. In

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addition, for one-way service, ALLTEL will have to pay BellSouth terminating access charges resulting in further losses for ALLTEL. Finally, ALLTEL asserts that it will have to restructure its billing system for these routes at an additional cost to ALLTEL.

Determination

While BellSouth appears to be allowed to terminate interLATA traffic, it is clearly prohibited from originating interLATA traffic. Furthermore, if BellSouth terminates interLATA traffic, it appears that BellSouth will have to charge the same terminating fee that it charges IXCs. As such, the originating carrier would lose the toll revenue and would have to pay a terminating charge.

Although BellSouth's IXC affiliate could carry either EAS or ECS traffic, we would not require BellSouth's IXC affiliate to carry the traffic because if EAS or ECS were implemented on these routes, the service would be considered a basic service. Pursuant to Section 364.385(2), Florida Statutes, only LECs are required, as the carrier of last resort, to provide basic service to all customers. In addition, the IXC affiliate would have to pay originating and terminating access charges, as would any other IXC.

Based on the briefs, the comments filed following the workshop, and our interpretation of the Telecommunications Act, it appears that BellSouth cannot originate interLATA traffic.

Post-Hearing Decision

This docket is in the post-hearing stage. Since the interLATA routes at issue involve BellSouth, we shall postpone any final decision in this docket until we have determined if one-way EAS or ECS is feasible. Once we have made that determination, we shall revisit the issues raised in this docket.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that action in Docket No. 930173-TL shall be postponed until we have determined the feasibility of one-way interLATA extended area service and extended calling service. It is further

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall remain open pending the outcome of our investigation into the feasibility of one-way interLATA toll relief and our final decision in this Docket.

By ORDER of the Florida Public Service Commission, this 30th day of May, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting.

(S E A L)

BC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

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Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 20, 1997.

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 substantially 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.