

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Adoption of Rule 25-22.0021, ) DOCKET NO. 920840-OT  
Amendment of Rules 25-22.056 and )  
25-22.058, and Repeal of Rule )  
25-22.057, F.A.C. ) Filed: November 10, 1992  
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**COMMENTS OF UNITED TELEPHONE COMPANY OF FLORIDA**

United Telephone Company of Florida (United) files these comments on proposed Rule 25-22.0021, Agenda Conference Participation.

1. The proposed Rule provides that as to a matter that has been to hearing, "no person other than staff who did not testify at the hearing and the Commissioners may participate at the agenda conference."

United's comments upon this provision, which codifies existing practice, are these:

- a. No means exists by which to correct errors at the agenda conference which may appear in the staff recommendation or are spoken by the staff.
- b. No means exist by which to ensure that parties' positions are adequately represented in the staff recommendation. Substantive evidence and related argument may never be brought to the Commission's attention at the agenda conference.
- c. It is not reasonable to believe that the preclusion of staff who testified at the hearing as agenda participants will assure objective treatment of their testimony.

2. As to errors that are in the recommendation or spoken at the agenda conference, no opportunity exists for parties to bring these to the

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Commissioners' attention. Certainly neither the Commissioners nor their staff wish to act upon errors of fact or law, but the existing process, which the proposed rule seeks to formalize, facilitates such a result. Ironically, matters of lesser import do not generally go to hearing and parties are allowed to participate at the agenda conference, thereby minimizing inadvertent errors, while matters of greater import go to hearing and that safeguard is lost. In other words, the process is skewed such that errors are most likely to exist in circumstances where it is most likely to matter.

A close analogy exists between the Commission's decision-making process and the business processes that private industry have been adopting to improve quality. The quality improvement process begins with the fundamental premise that errors can and must be eliminated. Just as business firms such as United have adopted practices designed to improve quality, the Commission should adopt rules that facilitate elimination of errors. The proposed rule prohibiting participation of parties at agenda conferences in which very substantial interests are at stake can only encourage and perpetuate conditions where errors cannot be eliminated.

If the Commission is concerned that agenda conferences will become clogged with spurious attempts to reargue issues under the guise of correcting errors, strict limitations can be imposed relative to time allowed and persons who abuse the privilege can be cut off.

Lest it be argued that errors can be corrected on reconsideration, United would point out that errors can be made on reconsideration and that it is always been preferable to avoid errors rather than correct them. Further, where such errors involve rate changes subsequent to a rate change based on the initial decision, customer confusion and additional cost are increased.

Insofar as correcting errors is concerned, there is no fundamental difference between an error made on a matter that went to hearing and one that did not. Errors should be eliminated and Commission rules should promote that goal rather than frustrate it.

3. As to matters that are not adequately presented to the Commission in the staff recommendation, the proposed rule would formalize the existing practice of preventing parties from ensuring that their positions are placed before the Commission. Under the current practice, which the rule would continue, if the staff recommendation does not adequately address the evidence and argument upon an issue, the party who suffers as a result of this shortcoming has no avenue of redress. This is especially true as to matters of a complex or technical nature where the omissions or inadequacies are not readily apparent. No principle of administrative law authorizes the staff to gloss over controverted issues but the current practice of not allowing parties to comment at the agenda conference enables such a practice to exist. To illustrate this point, in United's recent depreciation represcription, the core issue of a proceeding that took eleven months and thousands of hours to complete was presented and voted upon at the agenda conference in less than one minute. The significance of the issue was not apparent in its presentation in the recommendation and at the agenda conference nor was the Commission made aware that United believed significant factual errors had been made in the staff's calculations. United believes that both the Public Counsel and Florida Cable TV Association, intervenors in the proceeding, were equally dismayed that their positions were not adequately represented.

If one accepts as a basic premise that a party is entitled to have its position adequately presented in the staff recommendation and at the agenda conference, the only question to answer is how can that entitlement be realized.

The only way all parties' rights can be assured is to allow the parties to speak at the agenda conference. United believes that the number of occasions it would feel compelled to speak will be small but very significant.

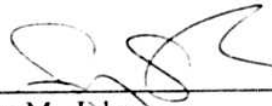
4. The proposed rule provides that staff who testifies in a proceeding may not speak at the agenda conference; they shall also not participate in writing the recommendation. What happens instead is that either a peer, subordinate or supervisor of the person who testifies writes the recommendation and speaks at the agenda conference. Someone who works for or with a witness will naturally favor that person's testimony over countervailing views and will be less inclined to fairly and fully represent that latter. The only way to objectively consider a party's position that differs from a position taken by the staff is to allow all parties to speak at the agenda conference upon any matter which is the subject of staff testimony.

5. United believes that the staff endeavors to fairly and accurately represent all parties' positions. The fact that they do not always succeed in that endeavor is not a reflection on their intentions, nor does it indicate animus toward any party. Regardless, however, of good intentions and efforts, all parties' substantial interests are entitled to be fully and fairly represented at all times, regardless of whether a hearing has been held. One way to partially address errors and oversights in the recommendation would be to allow written responses by the parties, limited to errors and omissions, to the Staff's recommendation. This would not, however, address errors made at the agenda conference or the other problems United has addressed in these comments. United believes the only way to ensure full and fair representation is to allow parties to speak at the agenda conferences to correct errors and omissions, to present important facts that have been glossed over in the staff recommendation

and to respond to staff's recommendation upon matters testified to by fellow staff persons.

Proposed Rule 25-22.0021 should be modified to permit parties to participate at agenda conferences in dockets upon which hearings have been held. Reasonable restrictions upon the right to participate may be warranted.

Respectfully submitted,



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Jerry M. Johns  
Vice President-General Counsel  
United Telephone Company of Florida  
Post Office Box 5000  
Altamonte Springs, FL 32716-5000  
(407) 889-6016

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Comments of United Telephone Company of Florida has been served by United States Mail or hand delivery to the following parties this 10th day of November, 1992:

Jack Shreve  
Public Counsel  
Office of Public Counsel  
111 W. Madison Street  
Tallahassee, FL 32399-1400

Harriet Eudy  
Alltel Florida, Inc.  
Post Office Box 550  
Live Oak, FL 32060

C. Dean Kurtz  
Central Telephone Company  
Post Office Box 2214  
Tallahassee, FL 32316-2214

The Florida Telephone Company  
Post Office Box 186  
Floral, AL 36442

Thomas R. Parker  
GTE Florida, Inc.  
Post Office Box 110 (MC 7)  
Tampa, FL 33601

Gulf Telephone Company  
Post Office Box 1120  
Perry, FL 32347

Charles L. Dennis  
Indiantown Telephone System  
Post Office Box 277  
Indiantown, FL 34956

John A. Carroll, Jr.  
Northeast Florida Telephone Co.  
Post Office Box 485  
Macclenny, FL 32063-0485


Quincy Telephone Company  
Post Office Box 189  
Quincy, FL 32353-0189

John H. Vaughan  
St. Joseph Telephone  
Post Office Box 220  
Port St. Joe, FL 32456

J. Phillip Carver  
c/o Marshall M. Criser III  
Southern Bell Telephone  
150 S. Monroe St., #400  
Tallahassee, FL 32301

Jeff L. McGehee  
Southland Telephone Co.  
Post Office Box 37  
Atmore, AL 36504

James W. Tyler  
Vista-United Telecommunications  
Post Office Box 10180  
Lake Buena Vista, FL 32830-0180

  
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Jerry M. Johns  
United Telephone Company of Florida  
P. O. Box 5000  
Altamonte Springs, FL 32716-5000  
(407) 889-6016