

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

July 2, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (SHELPER) *SLG*
DIVISION OF LEGAL SERVICES (PIERSON) *fo MCB*

RE: DOCKET NO. ~~941281~~-TL- PETITION BY SUBSCRIBERS OF THE GROVELAND EXCHANGE FOR EXTENDED AREA SERVICE (EAS) TO THE ORLANDO, WINTER GARDEN AND WINDERMERE EXCHANGES.

AGENDA: JULY 16, 1996 - REGULAR AGENDA - POST HEARING DECISION - PARTIES SHOULD BE ALLOWED TO PARTICIPATE SINCE THE ISSUES INVOLVED WERE NOT CONSIDERED AT THE HEARING

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\941281TL.BCM \

CASE BACKGROUND

On November 11, 1994, the subscribers of the Groveland exchange filed a petition requesting extended area service (EAS) to the Orlando exchange. The Winter Garden and Windermere exchanges were included to prevent leapfrogging. The Groveland, Windermere, and Winter Garden exchanges are served by United Telephone Company of Florida (United), and the Orlando exchange is served by BellSouth Telecommunications, Inc. (BellSouth). The Groveland exchange is located in the Gainesville local access and transport area (LATA) and the Windermere, Winter Garden and Orlando exchanges are located in the Orlando LATA.

By Order No. PSC-95-0080-PCO-TL, issued January 17, 1995, the Commission ordered United and BellSouth to conduct traffic studies on the proposed EAS routes in this docket. On March 10, 1995, BellSouth filed a motion for modification of Order No. PSC-95-0080-PCO-TL. According to BellSouth, since AT&T Communications of the Southern States, Inc. performs much of the rating and recording associated with the interLATA routes at issue, BellSouth did not possess all of the data necessary to comply with Order No. PSC-95-0080-PCO-TL. It, therefore, requested to be relieved of the requirement to conduct traffic studies on these routes. We granted

DOCUMENT NUMBER DATE

07081 JUL-29

FPSC-RECORDS/REPORTING

DOCKET NO. 941281-TL
DATE: July 2, 1996

BellSouth's motion by Order No. PSC-95-0596-FOF-TL, issued May 11, 1995.

Under Rule 25-4.060(3), Florida Administrative Code, a calling rate of at least three messages per access line per month (MAMs) is required in cases where the petitioning exchange contains less than half the number of access lines as the exchange to which EAS is desired. The rule further requires that at least 50 percent of the subscribers in the petitioning exchange make two or more calls per month to the larger exchange to qualify for flat-rate, two-way, nonoptional EAS.

The routes in this docket did not meet the requirements set forth in Rule 25-4.060(3), Florida Administrative Code, for flat rate, two-way, nonoptional EAS. The Groveland/Orlando route did meet the MAM requirement, however, it failed to meet the distribution requirement. Since the distribution was close to qualifying, United conducted a traffic study for a different period. The results were essentially the same.

Because the routes were close to qualifying for EAS, by Order No. PSC-95-0875-FOF-TL, issued July 19, 1995, the Commission set this matter for a hearing in order to consider community of interest criteria other than traffic data. The hearing was held in Groveland on April 18, 1996.

Since the hearing, staff has become concerned about several provisions of the federal Telecommunications Act of 1996 (Act). Under Section 271 of the Act, Bell operating companies (BOCs) are prohibited from at least originating interLATA traffic, until they meet certain conditions including a "competitive checklist." Their ability to terminate such traffic is also less than clear.

Under Section 272 of the Act, even after it meets the requirements of Section 271, a Bell operating company may only originate interLATA telecommunications services through a separate and independent affiliate. For BellSouth, this would presumably be either its interexchange carrier (IXC) or alternative local exchange company (ALEC) affiliate.

DOCKET NO. 941281-TL
DATE: July 2, 1996

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission require the parties to brief the legal issues identified in the staff analysis regarding the feasibility of implementing either EAS or ECS on the Groveland to Orlando interLATA route?

RECOMMENDATION: Yes, the Commission should have the parties brief the legal issues regarding the feasibility of implementing either EAS or ECS on the Groveland to Orlando interLATA route.

STAFF ANALYSIS: As noted in the case background, under Section 271 of the Act, Bell operating companies are prohibited from at least originating interLATA traffic, until they meet certain conditions including a "competitive checklist." Their ability to terminate such traffic is also less than clear. Under Section 272 of the Act, even after it meets the requirements of Section 271, a Bell operating company may only originate interLATA telecommunications services through a separate and independent affiliate. For BellSouth, this could be either its IXC or ALEC affiliate, although it could be some other affiliate entirely.

It does not appear that BellSouth's IXC affiliate could carry either EAS or ECS traffic without running afoul of Sections 364.08, 364.09, and/or 364.10, Florida Statutes. As for BellSouth's ALEC affiliate, staff questions whether the Commission has the statutory authority to order it to implement an EAS or ECS plan.

Based upon the discussion above, staff recommends that the Commission order the parties to brief the following issues:

1. Does the Act prohibit BellSouth from originating EAS or ECS traffic from the routes in question?
2. Does the Act allow BellSouth to terminate EAS or ECS traffic from the Groveland exchange?
3. Can BellSouth's IXC affiliate carry EAS or ECS traffic without violating Sections 364.08, 364.09, and/or 364.10, Florida Statutes?
4. Can the Commission require BellSouth's ALEC affiliate to carry EAS or ECS traffic?
5. How can EAS or ECS be implemented without violating either the Act or Chapter 364, Florida Statutes?

DOCKET NO. 941281-TL
DATE: July 2, 1996

Staff recommends that the parties should file their briefs within twenty-one days of the date of the order requiring such briefs.

ISSUE 2: Should the docket be closed?

RECOMMENDATION: No, the docket should remain open.

STAFF ANALYSIS: This docket should remain open in order for the parties to file briefs, and for staff to review the briefs and prepare such other recommendations as may be necessary and appropriate.