

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: PETITION FOR REVIEW OF RATES AND) DOCKET NO. 860723-TP
 CHARGES PAID BY PATS PROVIDERS TO LECS) ORDER NO. 21614
) ISSUED: 7-27-89
)

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER DENYING MOTION FOR CLARIFICATION AND/OR
 RECONSIDERATION OF ORDER NO. 20610

AND

NOTICE OF PROPOSED AGENCY ACTION

ORDER REQUIRING BILLING AND COLLECTION
 AND CHANGING CERTAIN RATES

BY THE COMMISSION:

I. BACKGROUND

On August 26, 1988, the following parties entered into a Stipulation to resolve the issues in this docket: Florida Pay Telephone Association, Inc. (FPTA), Southern Bell Telephone and Telegraph Company (Southern Bell), Central Telephone Company of Florida (Centel), GTE Florida Incorporated (GTEFL), United Telephone Company of Florida (United) and AT&T Communications of the Southern States, Inc. (ATT-C). Upon review of the Stipulation, we voted to defer our consideration of the issues addressed in the Stipulation until the September 6, 1988, Agenda Conference.

During the September 6, 1988, Agenda Conference, we voted to reject the Stipulation and continue with the hearing scheduled for September 8 and 9, 1988. However, at that

DOCUMENT NUMBER-DATE
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 REPORTING

ORDER NO. 21614
DOCKET NO. 860723-TP
PAGE 2

hearing, upon further review of the Stipulation and the issues set forth in the Prehearing Order we reconsidered our decision to reject the Stipulation. Upon reconsideration we voted to adopt all portions of the Stipulation as resolution of all pending issues except as to those issues identified in paragraphs 3 and 4 of the Stipulation. Accordingly, we issued Order No. 20129 accepting certain portions of the Stipulation. The Order established that the terms of the Stipulation shall remain in effect for a period of two years from September 8, 1988, or until September 8, 1990.

As to those issues identified in paragraphs 3 and 4 of the Stipulation we received evidence and testimony upon which we made a final determination reflected in Order No. 20610, issued January 17, 1989. On February 1, 1989, FPTA filed a Motion for Clarification and/or Reconsideration of Order No. 20610. Timely responses to FPTA's motion were filed by GTEFL, Southern Bell and United.

II. FPTA'S MOTION

FPTA's motion asks us to reconsider or clarify the following portions of Order No. 20610: (1) the historical basis of the \$1.00 surcharge; and (2) our requirement that all 0- and 0+ intraLATA traffic be routed to the applicable LEC from nonLEC pay telephones. All three responses to FPTA's motion urge that it be denied.

Initially, we note that our rules do not expressly address a party's right to seek clarification of an order. However, Rule 25-22.060, Florida Administrative Code, outlines the procedures applicable to a party seeking reconsideration. A review of FPTA's motion as a whole reveals that regardless of how it is titled, what it seeks amounts to no more than reconsideration. Thus, our decision on FPTA's motion will be based upon the standards for judging a motion for reconsideration; that is, whether in making our decision, we overlooked or failed to consider some matter. In other words, to justify granting reconsideration, FPTA must show that our decision is based on a mistake of fact or law. FPTA has failed to make such a showing.

ORDER NO. 21614
DOCKET NO. 860723-TP
PAGE 3

FPTA has asked us to reconsider our findings in Order No. 20610 as to the historical basis of the \$1.00 surcharge. In particular, FPTA complains of the following language from page 5 of our Order:

Initially, we established the \$1.00 surcharge to compensate nonLEC PATS providers for their inability to collect revenues on coinless calls. This situation has been alleviated somewhat by the development of the alternative operator service (AOS) industry. AOS providers have the technical ability to bill for coinless calls (i.e. calling card, third party billed, or collect). Additionally, AOS providers offer nonLEC PATS providers another source of revenue in the form of commission payments on the revenues generated by the pay telephone providers['] phones.

In reviewing the arguments advanced by FPTA, we have found no evidence that the above statements are factually incorrect. Our statements regarding the historical basis of the \$1.00 surcharge do not preclude the possibility that other factors could also have been involved nor do we find them to be conclusory or prejudicial as alleged by FPTA. These are matters upon which we received testimony at the hearing. FPTA has not demonstrated a mistake of fact or a matter we overlooked or failed to consider; thus, we stand behind our decision in Order No. 20610 on this issue.

FPTA has also asked us to reconsider our requirement that all 0- and 0+ intraLATA traffic be routed to the LECs from nonLEC pay telephones. As grounds for its request, FPTA contends that Order No. 20610 "apparently approved paragraph 4 of the Stipulation". From this "apparent approval," FPTA then reasons that we meant to link a LEC billing and collection requirement to our disposition of this traffic. We are disturbed by FPTA's attempt to advance such an argument. Our reservation of 0- and 0+ intraLATA traffic to the LECs is a matter of long standing policy of this Commission. This has

ORDER NO. 21614
DOCKET NO. 860723-TP
PAGE 4

not been a conditional requirement in the past and was not meant to be one in Order No. 20610. We did not overlook or fail to consider anything when we stated this policy in Order No. 20610.

Upon consideration, we find that FPTA's Motion for Clarification and/or Reconsideration of Order No. 20610 should be denied. FPTA has failed to disclose anything we overlooked or did not consider in reaching our decision. Moreover, we can find nothing in FPTA's motion that was not also presented and considered during the hearing which preceded Order No. 20610. FPTA merely attempts to reargue its case yet another time. For these reasons we find that FPTA's motion shall be denied.

III. PROPOSED AGENCY ACTION

Notice is hereby given by the Florida Public Service Commission that the action discussed in Section III, A and B, 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.

A. LEC Bill, Collect, and Remit

As we stated in Section II above, our requirement that all 0- and 0+ intraLATA traffic be routed to the applicable LEC from nonLEC pay telephones was not tied to whether the LECs billed and collected the capped rate on behalf of the nonLEC PATS providers. The unconditional reservation of this traffic to the LECs represents long standing Commission policy. Our proposed action that follows should not be interpreted to represent any subsequent retraction of that policy.

Upon consideration, we now propose requiring all LECs to bill, collect, and remit to nonLEC PATS providers up to the \$1.00 surcharge on intraLATA 0- and 0+ LEC-handled calls placed from nonLEC pay telephones. As part of the LECs' billing and collection function, the LECs should separately identify nonLEC pay telephone calls on customer bills and also include these charges in their tariffs. This should be done by the LECs as soon as possible, but no later than January 1, 1990.

ORDER NO. 21614
DOCKET NO. 860723-TP
PAGE 5

B. Rates

In conjunction with our proposed action in Section A above, we are also proposing a change in the rate cap for intraLATA calls from the ATT-C daytime rate, plus applicable operator/calling card charges, plus \$1.00, to the applicable LEC time-of-day rate, plus applicable operator/calling card charges, plus \$1.00. We believe that when the LECs begin to bill and collect for the nonLEC intraLATA 0- and 0+ traffic routed to them by the nonLEC PATS providers, they should be able to bill and collect these calls at their own rates rather than the ATT-C daytime rate. Additionally, we believe the LECs should at the same time be required to bill and collect up to the \$1.00 surcharge on behalf of the PATS providers for this traffic. By changing from the ATT-C daytime rate to the applicable LEC time-of-day rate, some of the difficulties of implementing billing and collection for these calls will be eased. Additionally, we believe the end user will benefit by receiving lower rates in many cases.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Pay Telephone Association, Inc.'s Motion for Clarification and/or Reconsideration of Order No. 20610 is denied as set forth in the body of this Order. It is further

ORDERED that all local exchange companies shall be required to bill, collect, and remit to nonLEC pay telephone providers at the capped rate for intraLATA 0- and 0+ LEC-handled calls routed to them from nonLEC pay telephones, as soon as possible, but no later than January 1, 1990. It is further

ORDERED that the rate cap for 0- and 0+ intraLATA traffic routed to the local exchange companies by nonLEC pay telephone providers shall be changed from the ATT-C daytime rate, plus applicable operator/calling card charges, plus \$1.00, to the applicable local exchange company time-of-day rate, plus applicable operator/calling card charges, plus \$1.00. It is further

ORDER NO. 21614
DOCKET NO. 860723-TP
PAGE 6

ORDERED that the effective date of our action described in Section III is August 18, 1989, if no protest to the Proposed Agency Action is filed within the time frames set forth below. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission,
this 27th day of JULY, 1989.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ABG

Commissioner Easley did not participate in the decision on the issues in Section II because she did not participate in the original decision on the issues in Section II.

Commissioner Herndon dissented without written comment from the Commission decision in Section III.

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

ORDER NO. 21614
DOCKET NO. 860723-TP
PAGE 7

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.

As identified in the body of this order, our action in Section III of this Order 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 August 17, 1989. In the absence of such a petition, this order shall become effective August 18, 1989, as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

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 the relevant portion of this order becomes final and effective on August 18, 1989, 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 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 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.

ORDER NO. 21614
DOCKET NO. 860723-TP
PAGE 8

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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.