

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for review of rates)	DOCKET NO. 860723-TP
and charges paid by PATS providers)	ORDER NO. 23046
to LECs)	ISSUED: 6-7-90
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 BETTY EASLEY
 GERALD L. GUNTER

ORDER CLARIFYING ORDER NO. 21614

BY THE COMMISSION:

By Order No. 21614, issued July 27, 1989, we proposed requiring all local exchange companies (LECs) to bill, collect, and remit to nonLEC pay telephone (PATS) providers the up to \$1.00 surcharge (the surcharge) on 0- and 0+ intraLATA LEC-handled calls placed from nonLEC pay telephones. Additionally, we stated that the LECs should separately identify nonLEC pay telephone calls on customer bills as part of their billing and collection service. Finally, we required the LECs to file the necessary tariffs to implement these new requirements as soon as possible, but no later than January 1, 1990. No protest was filed to our proposal, so Order No. 21614 became final on August 18, 1989, as reflected in Order No. 21761, issued August 21, 1989.

By Order No. 22022, issued October 9, 1989, we denied the Motion to Reconsider, Clarify, or Stay Portions of Order No. 21614 filed by the Florida Pay Telephone Association, Inc. (FPTA).

On November 1, 1989, the LECs began filing tariff proposals in response to Order No. 21614. By Order No. 22385, issued January 9, 1990, we approved the LECs' tariff proposals but ordered that all nonrecurring charges imposed for initiation of the service be held subject to refund by the LECs, pending our further investigation into the matter of the nonrecurring charges.

Subsequently, it came to our attention that there was some confusion amongst members of the industry concerning whether or

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not the surcharge applied to local calls. In a recommendation filed for our April 3, 1990, Agenda Conference, our staff informed us that some LECs were applying the surcharge to non-sent-paid local calls originating from nonLEC pay telephones, while other LECs were not. After a lengthy discussion at our April 3rd Agenda, we deferred this issue and directed FPTA to submit written comments to us to further explain and substantiate its position and its suggested alternatives. FPTA filed the requested information on April 16, 1990.

We again considered this matter at our May 15, 1990, Agenda Conference. Based upon our review of the existing orders in this docket, the discussion at our Agenda Conference, and the written comments of FPTA, we find it appropriate, on our own motion, to clarify Order No. 21614 to state that the surcharge does not apply to local calls originating at nonLEC pay telephones. We note that even while FPTA has argued that its members should receive some type of compensation for non-sent-paid local calls, it has conceded that it cannot, in good faith, advocate for imposition of the surcharge in this scenario.

FPTA has suggested that we now authorize nonLEC PATS providers to utilize store and forward technology, sometimes referred to as "operator in a box," to handle non-sent-paid local calls directly out of the nonLEC payphone instrument. Additionally, FPTA has suggested that for those nonLEC PATS providers who do not deploy such technology, the LEC should be required to give the PATS provider a commission payment for non-sent-paid local calls.

We have several responses to the suggestions made by FPTA. First, we wish to make it abundantly clear that by our action herein, we are not issuing any opinion relative to the merits of the suggestions made by FPTA. The issue before us is the narrow question of whether or not, by our action in Order No. 21614, we meant to imply that the surcharge was to be applied to local calls. We have addressed this specific question by issuing our clarification of Order No. 21614 above. We believe that any action beyond that clarification exceeds the scope of the limited issue before us. We recognize, however, that we could address the merits of FPTA's suggestions through issuing a notice of proposed agency action. We have carefully considered whether taking such a course of action would be prudent and we have concluded that it

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would not. The propriety of the suggestions made by FPTA falls squarely within the issues that will be examined in the upcoming hearing in this docket, scheduled for August, 1990. That hearing, we believe, is the proper forum for evaluating FPTA's suggestions. Through such an evidentiary proceeding, we will have before us the information we need to assess the impact of FPTA's suggested changes to our existing traffic routing requirements.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. 21614 is hereby clarified as set forth herein. It is further

ORDERED that Order No. 21614 is affirmed in all other respects. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission,
this 7th day of JUNE, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ABG

by: Kay Flynn
Chief, Bureau of Records

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

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