

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by subscribers) DOCKET NO. 940419-TL
of Indiantown exchange) ORDER NO. PSC-94-1143-FOF-TL
requesting Extended Area Service) ISSUED: September 16, 1994
(EAS) to Port St. Lucie, Jensen)
Beach, and Fort Pierce)
exchanges.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING MOTION TO DISMISS
AND GRANTING MOTION FOR EXTENSION OF TIME

BY THE COMMISSION:

This docket was initiated pursuant to a petition filed by certain subscribers of the Indiantown exchange requesting extended area service (EAS) from the Indiantown exchange to the Port St. Lucie, Jensen Beach and Fort Pierce exchanges. The Indiantown exchange is served by Indiantown Telephone System, Inc. (Company). The Port St. Lucie, Jensen Beach and Fort Pierce exchanges are provided telephone service by BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell). These exchanges are located in the Southeast LATA (local access transport area).

Upon receipt of the petition, the Commission staff determined that the petition had met the requirements of Rule 25-4.059, Florida Administrative Code. By Order No. PSC-94-0606-FOF-TL, issued May 23, 1994, we required Indiantown Telephone System and Southern Bell to conduct traffic studies between the Indiantown exchange and the Port St. Lucie, Jensen Beach and Fort Pierce exchanges.

I. Motion to Dismiss

On June 21, 1994, Indiantown Telephone System filed a Motion to Dismiss the Petition. On July 5, 1994, the Company filed a Substitute Motion to Dismiss Petition, because it did not obtain

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all copies of the petition as believed when it filed its original Motion to Dismiss. Therefore, Indiantown filed a revised Motion that includes all of the petitions.

On July 5, 1994, the petitioners sent a letter to the Commission requesting that no action be taken on Indiantown Telephone System's Motion to Dismiss until they could review the Motion and file a response.

Indiantown Telephone System contends that, pursuant to Rule 25-4.059(1)(a), Florida Administrative Code, the petition fails to contain a sufficient number of required subscribers and a statement informing the subscriber that higher local service rates may result if EAS is approved on these routes.

As applied to this case, the rule provides that five percent of the subscribers in the telephone exchange but no fewer than fifty sign the petition. The Company states that the number of signatures on the petition should be reduced by 33 for the following reasons: 1) ten signatures are duplicate or triplicate signatures; 2) five numbers are not in-service; 3) two numbers are no-service listed; 4) two numbers are pay telephone numbers; and 5) sixteen signatures are from persons who are not listed as the subscriber of the number for which the petitioner signed. By reducing the number of signatures by 33, Indiantown Telephone System contends that there are only 107 possible valid signatures. The Company states that since the petition did not have 147 valid signatures, the petition does not meet Rule 25-4.059(1)(a).

Indiantown Telephone further contends that the petition does not make it clear that subscribers are willing to pay higher local service rates, if necessary, as required by Rule 25-4.05(1)(a). Therefore, in addition to an insufficient number of signatures, the petition does not contain the required information.

On July 21, 1994, the petitioners filed a Reply to Indiantown Telephone System's Motion to Dismiss and Substitute Motion to Dismiss Petition for Extended Area Service. The petitioners state that the petition contains at least the minimum number of signatures required by the rule. In addition, they contend that the petition contains the required statement to inform subscribers that higher local service rates may result if EAS is approved on these routes.

In their reply, the petitioners specifically address the assertions in Indiantown Telephone System's Motion regarding the number of signatures on the petition. Seven duplicate or triplicate numbers were submitted, not ten as alleged by Indiantown

Telephone System. Petitioners agree that signatures were submitted for five numbers that are not in-service and two no-service listed. Petitioners agree that two signatures were for pay telephones. However, they allege that those pay phones are located on the property of Cobblestone Country Club and the person responsible for the telephone bill has the right to submit consent forms for these lines. Petitioners also contend that of the sixteen signatures from persons who are not listed as the subscriber of the number as alleged by Indiantown Telephone System, five were signed by the spouse and the remaining are valid. The petitioners provided detailed support of these assertions. Thus, the petitioners allege that, even with these adjustments, they have submitted at least 147 valid consent forms with the petition, which meets the requirements of Rule 25-4.059.

Historically, we have not validated signatures on a petition. Signatures are reviewed for duplicates and, based on Rule 25-4.059(1)(a), at least five percent of the subscribers in the telephone exchange from which the petition originates has signed the petition. However, because of the controversy involved with this petition, each consent form was reviewed. Based on the information provided both by Indiantown Telephone System and the petitioners, we find that 155 valid signatures were provided with the petition. In order to meet the requirements of Rule 25-4.059(1)(a), only 147 signatures were required for the petition.

The petitioners also respond to Indiantown Telephone System's assertion that the petition does not contain a statement informing the subscriber that higher rates may result if the petition were approved. The petitioners state that Rule 25-4.059(1)(a) requires each petition to contain a statement that such subscribers are willing to pay higher local service rates, if necessary, for the desired EAS; however, they argue that the rule does not specify where this statement must be within the petition. The petition does contain the required statement, but the statement is not written on the signature consent forms, which are filed with the Florida Public Service Commission (FPSC) as a matter of judicial economy. The petitioners contend that a copy of the petition was provided to all petitioners along with the consent forms. Therefore, the petitioners allege that the petition filed with the FPSC, as well as all the consent forms, are legally sufficient pursuant to Rule 25-4.059.

Further, in response to the petitioner's reply, Indiantown Telephone System stated in its Motion for Extension of Time, filed on August 23, 1994, that

. . . the subscribers apparently corrected certain obvious deficiencies in the petition, and Indiantown Telephone System, Inc. began preparation of the traffic studies. . .

Thus, it appears by Indiantown Telephone System's statement that the Company agrees that the petition is valid.

In consideration of the foregoing, we find that the five percent signature requirement and the statement of a possible increase in rates has been met as required by our rules. Therefore, we deny Indiantown Telephone System's Substitute Motion to Dismiss the petition for EAS from the Indiantown exchange to the Port St. Lucie, Jensen Beach and Fort Pierce.

II. Motion for Extension of Time

Pursuant to Order No. PSC-94-0606-PCO-TL, issued May 23, 1994, Indiantown Telephone System was required to conduct traffic studies on specific routes. On August 23, 1994, Indiantown Telephone System filed a Motion for Extension of Time to file these traffic studies. The Company states that the traffic study it performed combined two exchanges, and it needs an additional thirty days to complete a traffic study reflecting traffic from each separate exchange.

Upon review, we hold that Indiantown Telephone System's Motion for Extension of Time to file the traffic study is hereby granted, and the Company shall have an additional thirty days in which to file the traffic study.

Based on the foregoing, it is

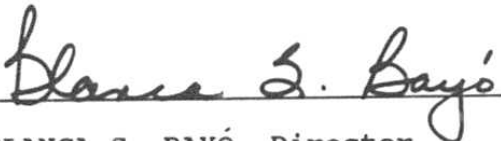
ORDERED by the Florida Public Service Commission that Indiantown Telephone System, Inc.'s Substitute Motion to Dismiss the petition for extended area service from the Indiantown exchange to the Port St. Lucie, Jensen Beach and Fort Pierce exchanges is hereby denied for the reasons set forth in the text of this Order. It is further

ORDERED that Indiantown Telephone System, Inc.'s Motion for Extension of Time to file the traffic study is hereby granted, and the Company shall have an additional thirty days in which to file the traffic study. It is further

ORDERED that this docket shall remain open for the Commission to review whether any routes qualify for extended area service.

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By ORDER of the Florida Public Service Commission, this 16th
day of September, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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 requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.