

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into ) DOCKET NO. 920837-TL  
proper tariffing of telephone ) ORDER NO. PSC-94-1617-FOF-TL  
service for elevators and common ) ISSUED: December 28, 1994  
areas within residential )  
facilities. )  
\_\_\_\_\_ )

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 FOR RECONSIDERATION

BY THE COMMISSION:

I. BACKGROUND

On February 19, 1992, Clipper Bay Condominium Association, Inc. and several other condominium associations (Clipper Bay) filed a complaint against United Telephone Company of Florida (United) regarding the rates charged for elevator telephones. By Order Number PSC-92-0625-FOF-TL, issued on July 7, 1992, we found that under United's current tariff the elevator telephones at issue were appropriately charged business rates. However, the Order acknowledged that for electric service, the common areas of condominiums are billed as residential. Thus an issue concerning the appropriate rates to charge for telephone service in condominium elevators was included in the United Telephone rate case (Docket Number 910980-TL).

On July 20, 1992, Office of Public Counsel (OPC) filed a protest to Order PSC 92-0625-FOF-TL. Since all LEC tariffs at that time contained essentially the same criteria for the application of rates, and any decision made in the United rate case would affect all LECs, we determined it was most appropriate to address the issue in a generic proceeding and this docket was opened. Consequently, OPC withdrew its protest to Order PSC 92-0625-FOF-TL, and that docket was closed.

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FPSC-RECORDS/REPORTING

By Order Number PSC-93-1127-FOF-TL, issued August 3, 1993, we found that local exchange companies appropriately apply business rates for telephone service located in elevators and common areas of condominiums and cooperative apartments as provided in each of their respective tariffs. On August 19, 1993, Clipper Bay filed a protest to the Order and requested a formal hearing under Section 120.57, Florida Statutes.

Parties intervening in this docket included Sunrise Lakes Phase 3, Inc. 2 (Sunrise), Clipper Bay, Cinnamon Cove Terrace Condominium I Association (Cinnamon Cove), Estero Sands Condominium Association (Estero), OPC, the Office of the Attorney General, Central Telephone Company of Florida, United, GTE Florida Incorporated, and Southern Bell Telephone and Telegraph Company. A prehearing conference was held on May 6, 1994, and a hearing was held on May 25, 1994. Sunrise, Clipper Bay, Cinnamon Cove, and Estero did not file pre-hearing statements, participate in the hearing, nor file post-hearing statements. Per Section 25-22.056(3)(a), (b) of the Commission's rules, since Sunrise, Clipper Bay, Cinnamon Cove, and Estero did not file post-hearing statements those parties waived their positions.

On September 27, 1994, we issued Order Number PSC-94-1180-FOF-TL which allowed the local exchange companies (LECs) to continue to charge business rates to telephones located in condominium elevators. On October 12, 1994, Sunrise filed a Motion for Reconsideration. We deny Sunrise's motion.

## II. MOTION FOR RECONSIDERATION

The purpose of a motion for reconsideration is to bring to the Commission's attention some point it failed to consider when it issued its order. Diamond Cab Co. of Miami v. King 146 So.2d 889 (Fla. 1962); Pingree v. Ouaintance 394 So.2d 161 (Fla. 1st DCA, 1981). As set forth below, Sunrise's motion is merely a rehash of arguments made, by other parties, at the hearing.

Sunrise argues that Florida Power and Light charges residential rates in condominium common areas. We heard evidence on the policy used in the electric industry and still choose to apply business rates to elevator telephone lines. We have fully considered this policy. Reconsideration on this issue is not warranted.

Sunrise describes a "gadget" which sounds similar to devices that witness Thompson referred to in his testimony at the hearing. We did not specifically consider the device Sunrise describes because Sunrise did not file testimony, file a prehearing

statement, or participate in the hearing in any way. We heard testimony on various methods of communications with elevators and found that there are many ways to provide two-way communications with elevators. Telephones are not the only way to comply with Florida law. Sunrise offers no reason for us to reconsider that issue.

Sunrise seems to argue that elevators in its building are exempt from the laws requiring two-way communications devices in elevators. We cannot determine that issue. Communications devices in elevators are governed by Florida Statutes and the Florida Administrative Code. Even if Sunrise is not required to have communications devices in its elevators, it does not affect the rates applied to elevator telephone lines where communications devices are required. Whether or not a specific building is required to have communications devices in its elevators is not determined by us.

We note initially that, although Sunrise was granted permission to intervene in this docket on November 9, 1993, Sunrise did not participate in the hearing process. It did not file testimony, file a prehearing statement, attend the prehearing conference, participate in the hearing, or file a post-hearing statement. By failing to participate, Sunrise waived all issues and positions. See Rules 25-22.038 and 25-22.056, Florida Administrative Code.

In addition to the procedural failures of Sunrise's motion, the motion also suffers certain substantive flaws. We have considered all the matters raised in Sunrise's Motion. The purpose for a motion for reconsideration is to bring to the attention of the Commission some point which it failed to consider when it issued its order. Sunrise's motion does not meet the standard of reconsideration review set forth in Diamond Cab and is denied. The motion sets forth arguments that we have previously considered and rejected. Reconsideration should be granted if there is some factual or legal error, or some other matter overlooked by the Commission when it issued its order. We previously fully considered all the matters raised in Sunrise's motion. Accordingly, for both procedural and substantive reasons, the Motion for Reconsideration is denied.

It is, therefore,

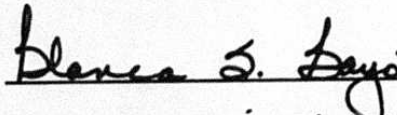
ORDERED BY the Florida Public Service Commission that Sunrise Lakes Phase 3, Inc. 2's Motion for Reconsideration is denied. It is further

ORDER NO. PSC-94-1617-FOF-TL  
DOCKET NO. 920837-TL  
PAGE 4

ORDERED that Order Number PSC-94-1180-FOF-TL, issued September 27, 1994, is affirmed. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission, this 28th day of December, 1994.



BLANCA S. BAYO, Director  
Division of Records and Reporting

( S E A L )

LMB

NOTICE OF 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 the Commission's final action in this matter may request 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 by filing a notice of appeal with the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, 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.