

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Declaratory ) DOCKET NO. 941293-TL  
Statement Concerning Potential ) ORDER NO. PSC-95-0375-FOF-TL  
Service to Dog Island by St. ) ISSUED: March 15, 1995  
Joseph Telephone & Telegraph )  
Company )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING PETITION FOR DECLARATORY STATEMENT

BACKGROUND

BY THE COMMISSION:

On December 13, 1994, St. Joseph Telephone & Telegraph Company (St. Joseph) filed a Petition for Declaratory Statement (Petition) concerning the prospective provision of telephone service to Dog Island. Dog Island is described in the petition as an unbridged barrier island in Franklin County, Florida, within St. Joseph's certificated service territory.

The petition notes that some residents of the island are opposed to conventional telephone service because of adverse environmental impacts, but at least one resident is opposed to cellular service. In the petition, St. Joseph describes conventional telephone service to Dog Island to encompass:

switched telephone service provided by wire (either buried or overhead) and/or submerged cable or microwave or some combination thereof.

Petition, p. 2.

St. Joseph believes that more residents would support wireless (e.g., cellular) service than conventional wireline service. St. Joseph also notes that cellular service is currently available to island residents, but not through St. Joseph or at rates comparable

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to local exchange service provided in the rest of St. Joseph's service territory.

St. Joseph asks us to answer five questions concerning facts described as unique to St. Joseph concerning the provision of telephone service to Dog Island.

#### DISCUSSION

St. Joseph first asks whether §364.03(3), Florida Statutes, requires St. Joseph to provide conventional wireline telephone service to Dog Island, if one or more residents of Dog Island make a formal request for such conventional service. We conclude the petition lacks sufficient information for us to issue a declaratory statement as to this issue.

§364.03(3), Florida Statutes, provides:

Every telecommunications company shall, upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto suitable and proper telecommunications facilities and connections for telecommunications services... [e.s.]

The implication of the petition is that wireless, e.g., cellular, service may be both perceived to be by residents and in fact more suitable than conventional wireline service for the peculiar circumstances of Dog Island. However, without any facts establishing a comparison of either costs or other factors as between wireless and the various listed conventional service modalities, there is an insufficient basis on which to characterize either wireline or wireless service as more "suitable and proper" for Dog Island than the other.

St. Joseph next inquires whether §364.08(1), Florida Statutes, requires St. Joseph to extend wireless facilities, e.g., cellular, to one or more persons on Dog Island when such facilities are not regularly made available and uniformly extended to all persons in St. Joseph's territory. Also, St. Joseph inquires whether §364.08(2), Florida Statutes, allows St. Joseph to provide wireless, e.g., cellular, service to residents of Dog Island at less than the cost of such service to St. Joseph. We conclude that we lack sufficient information to issue a declaratory statement as to these issues.

As to part one of the question, §364.08(1) states, in pertinent part,

A telecommunications company may not...extend to any person...the benefit of any...facility not regularly or uniformly extended to all persons under like circumstances for like or substantially similar service.

Though further facts might well establish that the difficulties of providing conventional wireline service on Dog Island are such that no other customers of St. Joseph are in "like circumstances", the absence of any actual cost comparison leaves such a conclusion unsupported at this point.

As to part two of the question, §364.08(2) prevents any telecommunications company from giving

any free or reduced [rate] service between points within this state.

In other words, St. Joseph may not deviate from scheduled rates. However, that still begs the question of whether St. Joseph's prospective Dog Island customers are in "like circumstances" with the rest of St. Joseph's subscribers. Absent any cost or other comparisons for wireless and wireline service, that question cannot be answered, or scheduled rates determined. See Issue 3, infra.

St. Joseph next inquires whether §364.09, Florida Statutes, and 364.14(1)(a), Florida Statutes, allow St. Joseph to impose a surcharge on Dog Island subscribers for service, even though the calling scope for such subscribers would be identical to Carrabelle subscribers who are not charged a surcharge. Finally, St. Joseph asks how the Commission would calculate an appropriate surcharge pursuant to §364.14(1), Florida Statutes, in the event that a surcharge is found lawful and deemed to be appropriate. We conclude that we lack sufficient facts to issue a declaratory statement as to these issues.

Again, the cited statutes, §364.09 and 364.14(1)(a), Florida Statutes, prohibit charging greater or lesser compensation for telecommunications services rendered as between persons

under the same or substantially the same circumstances and conditions.

§364.09. The circumstances of St. Joseph's Dog Island customers and others might not be the same or substantially the same when a comparison of costs, construction difficulties and other impacts of wireless as compared to wireline service are considered. However,

that information has to be supplied so as to provide a basis for that conclusion, if that conclusion is, in fact, correct.

Similarly, those comparative factors would be relevant to whether any difference in charges would be unjust, unreasonable, unjustly discriminatory, unduly preferential or violative of Chapter 364.

St. Joseph next inquires whether the provision of wireless, e.g., cellular, service to Dog Island by St. Joseph would constitute an unreasonable or undue preference or advantage to any person or locality contrary to the requirements of §364.10, Florida Statutes. We conclude that we lack sufficient facts to issue a declaratory statement as to this issue.

Again, the answer would depend on a comparison between the costs, construction difficulties and other impacts of wireless as compared to wireline service in the particular circumstances of Dog Island. Those have not been supplied in any detail by St. Joseph.

Finally, St. Joseph asks whether the Commission could decide under Chapter 364, Florida Statutes, that the most reasonable method of providing telephone service to Dog Island is to provide a wireless, e.g., cellular, telephone service. We conclude that we lack sufficient facts to issue a declaratory statement as to this issue.

Going back to §364.03(3), the statute only requires that "suitable and proper" telecommunications service be supplied, not a specific service modality. Therefore, we could decide, if we had a factual basis on which to do so, that cellular was suitable and proper service for Dog Island and that conventional wireline service was either less so or not so at all. However, though we could make that determination upon a proper factual showing -- if indeed that conclusion followed from those facts -- we cannot do so in the absence of those facts. In effect, the statutes do not prohibit all discrimination in charges, but only discrimination that is undue or unjust. A factual basis is required to differentiate undue or unjust discrimination from differences which may be justified by the unique circumstances of Dog Island.

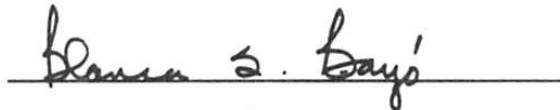
In view of the above, it is

ORDERED by the Florida Public Service Commission that the Petition For Declaratory Statement of St. Joseph Telephone & Telegraph Company is denied. It is further

ORDERED that this docket is closed.

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BY ORDER of the Florida Public Service Commission this 15th  
day of March, 1995.



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

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