

MEMORANDUM

AUGUST 6, 1996

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FPSC-RECORDS/REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CANZANO) *ZACB*

RE: DOCKET NO. 941281-TL - PETITION BY SUBSCRIBERS OF THE GROVELAND EXCHANGE FOR EXTENDED AREA SERVICE (EAS) TO THE ORLANDO, WINTER GARDEN AND WINDERMERE EXCHANGES

PSC-96-1033-PCO-TL

Attached is an ORDER REQUIRING PARTIS TO FILE LEGAL BRIEFS to be issued in the above-referenced docket. (Number of pages in Order - 4)

30 minutes

DC/clp
Attachment
cc: Division of Communications
I: 941281r.dc

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by subscribers) DOCKET NO. 941281-TL
of the Groveland exchange for) ORDER NO. PSC-96-1033-PCO-TL
extended area service (EAS) to) ISSUED: August 8, 1996
the Orlando, Winter Garden, and)
Windermere exchanges.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER REQUIRING PARTIES TO FILE LEGAL BRIEFS

BY THE COMMISSION:

On November 11, 1994, the subscribers of the Groveland exchange filed a petition requesting extended area service (EAS) to the Orlando exchange. The Winter Garden and Windermere exchanges were included to prevent leapfrogging. The Groveland, Windermere, and Winter Garden exchanges are served by United Telephone Company of Florida (United), and the Orlando exchange is served by BellSouth Telecommunications, Inc. (BellSouth). The Groveland exchange is located in the Gainesville local access and transport area (LATA) and the Windermere, Winter Garden and Orlando exchanges are located in the Orlando LATA.

By Order No. PSC-95-0080-PCO-TL, issued January 17, 1995, we ordered United and BellSouth to conduct traffic studies on the proposed EAS routes in this docket. On March 10, 1995, BellSouth filed a motion for modification of Order No. PSC-95-0080-PCO-TL. According to BellSouth, since AT&T Communications of the Southern States, Inc. performs much of the rating and recording associated with the interLATA routes at issue, BellSouth did not possess all of the data necessary to comply with Order No. PSC-95-0080-PCO-TL. It, therefore, requested to be relieved of the requirement to conduct traffic studies on these routes. We granted BellSouth's motion by Order No. PSC-95-0596-FOF-TL, issued May 11, 1995.

Under Rule 25-4.060(3), Florida Administrative Code, a calling rate of at least three messages per access line per month (MAMs) is required in cases where the petitioning exchange contains less than half the number of access lines as the exchange to which EAS is

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desired. The rule further requires that at least 50 percent of the subscribers in the petitioning exchange make two or more calls per month to the larger exchange to qualify for flat-rate, two-way, nonoptional EAS.

The routes in this docket did not meet the requirements set forth in Rule 25-4.060(3), Florida Administrative Code, for flat rate, two-way, nonoptional EAS. The Groveland/Orlando route did meet the MAM requirement; however, it failed to meet the distribution requirement. Since the distribution was close to qualifying, United conducted a traffic study for a different period. The results were essentially the same.

Because the routes were close to qualifying for EAS, by Order No. PSC-95-0875-FOF-TL, issued July 19, 1995, we set this matter for a hearing in order to consider community of interest criteria other than traffic data. The hearing was held in Groveland on April 18, 1996.

Since the hearing, we are concerned about several provisions of the federal Telecommunications Act of 1996 (Act). Under Section 271 of the Act, Bell operating companies (BOCs) are prohibited from at least originating interLATA traffic, until they meet certain conditions including a "competitive checklist." Their ability to terminate such traffic is also less than clear.

Under Section 272 of the Act, even after it meets the requirements of Section 271, a Bell operating company may only originate interLATA telecommunications services through a separate and independent affiliate. For BellSouth, this would presumably be either its interexchange carrier (IXC) or alternative local exchange company (ALEC) affiliate.

It does not appear that BellSouth's IXC affiliate could carry either EAS or ECS traffic without running afoul of Sections 364.08, 364.09, and/or 364.10, Florida Statutes. As for BellSouth's ALEC affiliate, we question whether we have the statutory authority to order it to implement an EAS or ECS plan.

Accordingly, we order the parties to brief the following issues:

1. Does the Act prohibit BellSouth from originating EAS or ECS traffic from the routes in question?
2. Does the Act allow BellSouth to terminate EAS or ECS traffic from the Groveland exchange?

3. Can BellSouth's IXC affiliate carry EAS or ECS traffic without violating Sections 364.08, 364.09, and/or 364.10, Florida Statutes, or the Telecommunications Act of 1996?
4. Can the Commission require BellSouth's ALEC affiliate to carry EAS or ECS traffic?
5. How can EAS or ECS be implemented without violating either the Act or Chapter 364, Florida Statutes?

The parties shall file their briefs within twenty-one days of the date of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the parties shall brief the issue of the feasibility of implementing either extended area service or extended calling service on the Groveland to Orlando interLATA route as discussed in the body of this Order. It is further

ORDERED that the parties shall file their briefs within twenty-one days of the date of this Order. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 8th day of August, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DC

Commissioner Diane K. Kiesling dissented from the Commission's decision.

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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 25-22.0376, 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.