

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution by the City of Plant City for Extended Area Service Between Plant City and Tampa) DOCKET NO. 850152-TL
)
)

In re: Petition fo General Telephone Company of Florida to Modify Its Optional Two-way Calling Plan Between Plant City and Tampa) DOCKET NO. 861383-TL
) ORDER NO. 20949
) ISSUED: 3-28-89

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
 JOHN T. HERNDON

ORDER DISMISSING PROTEST OF PROPOSED AGENCY ACTION
AND
ACCEPTING OFFER OF GTEFL FOR RESURVEY OF
25/25 PLAN UPON CERTAIN CONDITIONS

BY THE COMMISSION:

I. BACKGROUND

The City Commission of Plant City filed a resolution asking for nonoptional two-way EAS between Plant City and Tampa on April 23, 1985. This route is served by GTE Florida Incorporated (GTEFL). On May 30, 1985, the Commission directed GTEFL to perform a two-way traffic study between the Plant City and Tampa-Central exchanges in order to determine whether a community of interest existed between these two exchanges. Based on the study, neither route met the threshold for traditional nonoptional EAS. However, the study did indicate a relatively strong community of interest on the Plant City to Tampa Central route.

Because of the community of interest on the Plant City to Tampa Central route, the Commission issued a Proposed Agency Action (PAA), Order No. 14992, on September 23, 1985, directing General to implement the individual option Local Exchange Pricing (LEP) plan within twelve months of the effective date of the Order. The LEP plan was conceived during the Commission's investigation into local exchange pricing in Docket No. 810415-TP as an alternative to traditional nonoptional EAS. The plan allows each subscriber in an exchange to select an expanded local flat-rate calling scope. Order No. 14992 became final on October 16, 1985. As directed by the Order, GTEFL filed the individual option plan tariff revisions on September 23, 1986. However, the individual option plan was not implemented.

On October 22, 1986, General filed a petition to modify Order No. 14992. The petition asked the Commission to allow GTEFL to offer the Plant City customers the "threshold plan" rather than the LEP plan. The threshold plan is a nonoptional calling plan which allows each subscriber a specific number of calls for a flat-rate fee with a per message charge for each

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call in excess of the "threshold" call allowance. The threshold plan was approved by the Commission as an alternative to the LEP plan during a hearing requested by Southern Bell Telephone and Telegraph Company, ALLTEL Florida, Inc., and St. Joseph Telephone and Telegraph Company in Dockets Nos. 820467-TP, 830064-TP, 830365-TP and 850153-TL to address the companies' concerns with the LEP plan. The Commission adopted the threshold plan in those dockets in lieu of the LEP plan at the September 30, 1986 Agenda Conference. See Order No. 16752, issued October 20, 1986. GTEFL's petition was based on its allegations of changed circumstances resulting from the Commission's rejection of the LEP plan and its adoption of the threshold plan.

On August 26, 1987, the Commission issued Order No. 18049 proposing to grant GTEFL's Petition for Modification of Order No. 14992 and to require GTEFL to offer the threshold plan to the subscribers of the Plant City exchange in lieu of the LEP plan. On September 15, 1987, the City of Plant City timely filed a protest of the actions proposed in Order No. 18049. Plant City's protest raised the legal issues of whether GTEFL's petition should be denied on the grounds that it is tantamount to an untimely motion for reconsideration, that the issues raised by GTEFL were previously litigated and therefore, pursuant to the doctrine of administrative res judicata, GTEFL is precluded from raising them again and that the Commission is without the authority to modify Order No. 14992 now that it has become final.

At the Prehearing Conference the parties agreed that a resolution of the legal issues in Plant City's favor would eliminate the need for a hearing. Accordingly, the Prehearing Officer bifurcated the legal and factual issues in order to seek resolution of the legal issues before proceeding with the hearing. The parties were directed to brief the legal issues by December 4, 1987. Both parties filed briefs.

By Order No. 18626, issued January 4, 1988, we rejected the legal arguments raised in support of Plant City's request to deny a hearing on GTEFL's Petition. The Order also directed that a service hearing be held in Plant City.

The City of Plant City then filed a Motion for Reconsideration of Order No. 18626, and requested oral argument on the motion for reconsideration. Oral Argument was heard at the conclusion of the hearing held in Plant City on February 17-18, 1988. In addition to the motion for reconsideration, Plant City moved at the hearing to strike the testimony and exhibits of GTEFL's witness Glassburn. The Commission's decisions on Plant City's motions as well as the substantive and legal issues argued by each party are reflected in Order No. 19732.

By Order No. 19732, issued July 27, 1988, the Commission approved implementation of the 25/25 EAS plan on the Plant City to Tampa toll route subject to approval by a majority of Plant City's subscribers eligible to vote. On July 20, 1988, Plant City moved for the Commission to modify the approval standard to permit a majority of the subscribers actually voting to approve implementation of the 25/25 plan. GTEFL responded in

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opposition on July 28, 1988. By Order No. 20061 we denied Plant City's request.

On August 25, 1988, Plant City moved the Commission to strike the ballots sent out by GTEFL in response to the Commission's decision and to order GTEFL to resurvey the Plant City customers subject to certain conditions set forth in Plant City's motion. GTEFL responded in opposition to the motion on September 6, 1988. By Order No. 20299 the Commission denied Plant City's Motion to Strike and Resurvey. In accordance with Order No. 19732, GTEFL mailed 18,822 ballots to the subscribers in the Plant City exchange. The subscribers returned only 9,576 ballots. Plant City's subscribers rejected the mandatory nonoptional 25/25 plan by a vote of 4854 against and 4560 in favor with 162 nonindicative ballots also returned. Based on the results of the balloting, the Commission determined in Order No. 20299 that the 25/25 plan should not be implemented.

In addition to the above actions, the Commission, on its own motion, proposed to implement an OEAS plan in an attempt to provide some relief from existing toll rates for the subscribers of Plant City. On November 30, 1988, Plant City filed a Petition on Proposed Agency Action on the "agency action proposed by Order No. 20299."

II. DISMISSAL OF PLANT CITY'S PROTEST

On November 30, 1988, Plant City filed a protest of Order No. 20299 asking that the Commission conduct a hearing in Plant City and that GTEFL be compelled to comply with Order No. 14992. Plant City's arguments in support of its petition are summarized as follows:

1. The OEAS plan does not provide a feasible extended area service to the Tampa Central exchange for the Plant City subscribers.
2. The OEAS plan unreasonably and arbitrarily isolates approximately 19,000 Plant City telephones from the remainder of Hillsborough County solely to provide approximately \$2,000,000 annually in toll revenue to GTEFL.
3. The discounted toll inward calling option using nonpublished numbers in the Tampa Central exchange cannot eliminate the problem of unwanted and unsolicited calls made by solicitors using computer sequential dialing.
4. The discounted toll inward calling option using nonpublished numbers in the Tampa Central exchange is not a feasible EAS option for most residential customers and virtually all business customers who depend on having their numbers published.
5. The discounted toll option for outward calling cannot eliminate unnecessary added customer costs caused by dialing wrong numbers, answering devices and delays in calls to Tampa Central.

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Plant City continues to maintain that it is entitled to the implementation of the LEP plan as set forth in Order No. 14992. Plant City also "reavers, realleges and renews each and every allegation within its Motion to Strike Ballot and Direct Customer Survey Consistent with Order No. 19732" filed August 25, 1988.

Initially it must be noted that Plant City's claim of entitlement to the LEP plan set forth in Order No. 14992 is incorrect. Order No. 19732, issued July 27, 1988, rejected the LEP plan in favor of the flat-rate nonoptional 25/25 plan. Order No. 19732 is a final order based on the record compiled at the public hearing held in these dockets on February 17 and 18, 1988. Plant City did not seek reconsideration or appeal of that Order. Any claim of entitlement to the LEP plan ended when Order No. 19732 was issued and the time for appeal expired. Furthermore, Plant City's original request for EAS was disposed of by Order No. 19732. The only issue left unresolved by that Order was whether the subscribers of Plant City would vote to approve or reject the 25/25 plan. The subscribers' rejection of the 25/25 plan and the Commission's resulting decision in Order No. 20299 to not implement that plan was the final disposition of Plant City's request for EAS. Plant City did not seek reconsideration or appeal of the Commission's final decision in that portion of Order No. 20299.

As described in Order 20299, despite the subscribers' rejection of the 25/25 plan, we believed that some form of relief from toll rates was appropriate for Plant City. On our own motion we proposed to implement the OEAS plan set forth in the Order in the form of a Proposed Agency Action. The OEAS plan is the only portion of Order No. 20299 that can be subject to Plant City's protest.

Rule 25-22.029(4), Florida Administrative Code provides that:

- (4) One whose substantial interests may or will be affected by the Commission's proposed action may file a petition for a \$120.57 hearing, in the form provided by Rule 25-22.036....

Rule 25-22.036(9)(b)(1), Florida Administrative Code, provides that:

- (b) Where a petition of proposed agency action has been filed the Commission may:
 - 1. Deny the petition if it does not adequately state a substantial interest in the Commission determination or if it is untimely.

The nature of the OEAS plan is that it provides each customer with choices as to the option that best suits a particular customer's needs. The most important feature of the plan is that no customer is forced to change to a different service or to pay a higher rate than he currently pays. Any change is at the customer's behest. Accordingly, any impact on a substantial interest will be voluntary on the customer's part. Because no customer is forced to change service or pay a higher rate, no Plant City subscriber's substantial interest

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may or will be affected solely by the implementation of the OEAS plan.

With respect to Plant City's allegations as to the deficiencies in the various OEAS options, no subscriber is required to take an option; selection of an option is voluntary. Any such "deficiencies" are voluntarily assumed as a part of the service. Further, while the OEAS plan is not a perfect panacea for each customer's specific desires, implementation of the plan does not affect a subscriber's substantial interests simply because a customer does not get his heart's desire.

Based on the foregoing discussion, we find that Plant City's Petition on Proposed Agency Action directed to Order No. 20299 should be dismissed because it fails to adequately state a substantial interest that may or will be affected and declare that the portion of that Order that proposed the implementation of the OEAS plan on the Plant City to Tampa Central toll route be declared final. GTEFL is directed to implement the OEAS plan consistent with Order No. 20299.

III. POTENTIAL RE-EXAMINATION OF EAS FOR PLANT CITY TO TAMPA

Pursuant to Rule 25-4.059., Florida Administrative Code, the Commission will not consider a request for EAS within three years of a previous EAS request for the same routes. At the Agenda Conference on February 21, 1989, in response to certain concerns raised by Plant City, we agreed that, after an eight-month period has elapsed from the implementation of the OEAS plan, we would consider a request for a waiver of the three-year limit in Rule 25-4.059, if the City of Plant City makes a sufficient showing that the OEAS plan has not adequately met the needs of the subscribers of Plant City. In conjunction, GTEFL offered to resurvey the Plant City subscribers on the 25/25 plan at the appropriate time after the eight-month period. We accept GTEFL's offer for a resurvey and potential implementation of the 25/25/ plan. If a new request for EAS is granted to Plant City, GTEFL, with input from the City of Plant City and our Staff, shall be directed to draft a new survey ballot and submit it for our approval prior to being mailed to Plant City subscribers.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the City of Plant City's protest of the Commission's action proposed in Order No. 20299 is dismissed as set forth in the body of this Order. It is further

ORDERED that if the City of Plant City makes a sufficient showing that the OEAS plan has not adequately met the needs of the subscribers of Plant City after an eight-month period following implementation, the Commission may consider a waiver of Rule 25-4.059., Florida Administrative Code. It is further

ORDERED that GTE Florida, Inc.'s offer to resurvey and potentially implement the 25/25 plan is accepted as set forth in the body of this Order.

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By ORDER of the Florida Public Service Commission,
this 28th day of MARCH, 1989.


STEVE TRIBBLE, 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 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.