

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :  
Resolution by Holmes County :  
Board of County Commissioners : DOCKET NO. 870248-TL  
for Extended Area Service in :  
Holmes County, Florida. :

Request by Gilchrist County :  
Commissioners for Extended Area : DOCKET NO. 870790-TL  
Service Throughout Gilchrist :  
County. :

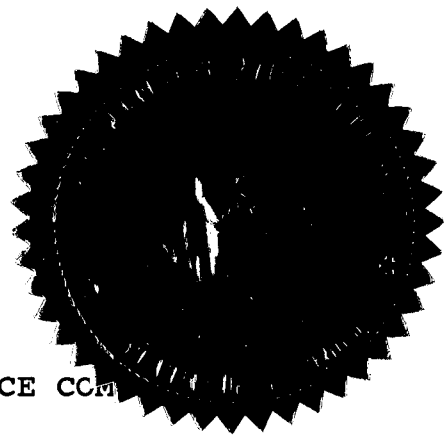
Resolution by the Orange County :  
Board of County Commissioners :  
for Extended Area Service :  
Between the Mount Dora Exchange : DOCKET NO. 900039-TL  
and the Apopka, Orlando, Winter :  
Garden, Winter Park, East :  
Orange, Reedy Creek, Windermere :  
and Lake Buena Vista Exchanges. :

Resolution by Bradford County :  
Commission Requesting Extended :  
Area Service Within Bradford : DOCKET NO. 910022-TL  
County and Between Bradford :  
County, Union County and :  
Gainesville. :

Request by Volusia County :  
Council for Extended Area :  
Service Between the Sanford : DOCKET NO. 910029-TL  
Exchange (Osteen and Deltona) :  
and the Orange City and Deland :  
Exchanges. :

Request by Putnam County Board :  
of County Commissioners for :  
Extended Area Service Between : DOCKET NO. 910528-TL  
the Crescent City, Hawthorne, :  
Orange Springs and Melrose :  
Exchanges and the Palatka :  
Exchange. :

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Request by Pasco County Board :  
of County Commissioners for : DOCKET NO. 910529-TL  
Extended Area Service Between :  
All Pasco County Exchanges. :  
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PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 13

BEFORE: CHAIRMAN J. TERRY DEASON  
COMMISSIONER LUIS J. LAUREDO  
COMMISSIONER SUSAN F. CLARK  
COMMISSIONER JULIA L. JOHNSON

DATE: Tuesday, July 20th, 1993

PLACE: FPSC Hearing Room 106  
Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida

1 PARTICIPATING:

2 ANGELA GREEN, FPSC Division of Legal  
3 Services.

4 ANN SHELFER, FPSC Division of Communications.

5 ROB VANDIVER, General Counsel.

6 MARSHALL CRISER, III, on Behalf of Southern  
7 Bell.

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P R O C E E D I N G S

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CHAIRMAN DEASON: Item 13.

COMMISSIONER LAUREDO: I think we've discussed in the past whether one should bring this to a crisis stage. Wouldn't one way to do that is to leave the orders in place so that in essence the companies would be in violation of our orders and in conflict with the federal judge? We're not automatically preempted, are we, by the federal judge?

MS. GREEN: You could leave the orders in place. You would have no basis to enforce them. You're the only body that can enforce the orders.

COMMISSIONER LAUREDO: Are we preempted by the decision under --

MS. GREEN: "Preemption" is a legal term of art and I'm not sure if that's the actual one that applies here but the effect is no different. The court's ruling has tied your hands.

COMMISSIONER CLARK: I guess it boils down to who does the Company wish to defy and what are the consequences of that? I mean, they'll have to make a choice: Are they going to obey our order and risk fine, or will they risk the consequences of violating the approved judgment in the federal court? I can tell you what I think they're likely to do. And if we move to

1 enforce it, they'll take us to the Florida Supreme  
2 Court; and I'm fairly certain that the Florida Supreme  
3 Court would find that we have no basis to enforce our  
4 order.

5 CHAIRMAN DEASON: Let me ask a question.  
6 Assuming we were to approve Staff's recommendation, how  
7 is this going to be communicated to the affected  
8 customers?

9 MS. GREEN: The existing recommendation does  
10 not contemplate any type of specific notification to  
11 the customers.

12 CHAIRMAN DEASON: It would require bill  
13 stuffers to every affected customer explaining the  
14 circumstances and who's responsible for this decision  
15 and what the public policy of this Commission is and  
16 how that's been overruled by a Federal judge in  
17 Washington?

18 MS. GREEN: Was your question could you do  
19 that?

20 CHAIRMAN DEASON: Yes.

21 MS. GREEN: Yes, sir, you could.

22 CHAIRMAN DEASON: Would the Company be  
23 amenable to doing that?

24 MR. CRISER: Commissioners, I'm Marshall  
25 Criser on behalf of Southern Bell. We would be

1 agreeable to doing that.

2           COMMISSIONER LAUREDO: Well, I know that the  
3 people I know don't read bill stuffers. And I think we  
4 need to make some sort of stand that our public policy  
5 has been stated as per our previous decision is we are  
6 in the best position to now what's best for the people  
7 of the State of Florida. And I have a problem with  
8 personally with what 15 -- what year are we in, 1993?  
9 This case was opened in, what, 1979 or thereabouts, the  
10 AT&T divestiture, requested depending on however far  
11 back you want to go. And I think it's high time that  
12 somebody starts saying why are we relinquishing in  
13 jurisdiction?

14           I'm not a lawyer, I'm just a public servant;  
15 and I voted for these things for the Citizens of this  
16 area, and I think we're going to get the blame for  
17 something that is very technical and it may be legally  
18 correct, but I think we -- and we discussed this about  
19 a year ago.

20           I mean, we have got to do something about  
21 this encroachment on state's rights' going on for a lot  
22 of years. And I may be completely wrong on the law,  
23 but I'm know I'm not wrong on public policy.

24           And so I would vote against it and let it  
25 create a crisis, whether it's the Supreme Court -- let

1 the newspapers report that we stood for our decision.  
2 That's the way the information gets out, Mr. Chairman,  
3 through the press, and let the chips fall where they  
4 may. If they take it to the Supreme Court, let that be  
5 -- maybe, who knows, they may agree with us. But I  
6 think we need to -- precisely because I think we have a  
7 bad perception in the public, the message is not  
8 getting across that we have taken a stand. And this  
9 relieves everybody's problems expect ourselves. And I  
10 think I'm tired of taking it constantly and I think  
11 this maybe a way.

12 I don't mean to be disruptive, I just think  
13 it has to be done. And this may be a way to do it. I  
14 don't know.

15 I would vote against it. I would move denial  
16 of this and let the order stand.

17 MS. GREEN: Well, Commissioner, I think that  
18 Staff has an obligation to bring a recommendation to  
19 you that they believe is supported by the applicable  
20 law and that's what we've attempted to do. And there  
21 is a complete recognition throughout the Communications  
22 Division of these customers' needs that have not been  
23 satisfied.

24 We have other dockets that are open where  
25 we're attempting to address the underlying rules. It

1 is part of problem is that these routes just flat do  
2 not meet the community-of-interest requirements that  
3 are in the Commission's rules. So we are looking at to  
4 what extent those rules can be modified to accommodate  
5 the changing needs in Florida.

6 COMMISSIONER LAUREDO: Well, my view as a  
7 layman of the law is very much reflective of Judge  
8 Ginsburg's views we've been reading lately on her, and  
9 that is that they are pretty much evolutionary  
10 interpretation of the laws and they need to be flexible  
11 as to circumstances. I think in the whole area of  
12 telecommunications -- again, I could be wrong -- there  
13 is certainly a confusion as to who rules. We have  
14 certain obligations that go beyond the narrow legal --  
15 we have an obligation to represent what in our best  
16 judgment is the best interest of the ratepayers of the  
17 state. We made that judgment on these cases and  
18 somebody's come in with my view of a questionable  
19 jurisdiction -- certainly from a public policy point of  
20 view, may be from a legal, correct -- and I think we  
21 need to make a stand. That's all.

22 I may be 100% wrong and we'll loss all the  
23 appeals; but when are we going to take a stand.  
24 There's a federal judge who was a civil rights lawyer  
25 prior to 1979 ruling over the Federal Communications



1 Commission in the fourth largest state in the nation  
2 and the other 49 now for 20-some years. I think we  
3 have an obligation in the very limited ways that we can  
4 to make a statement. This is the only way this  
5 Commission can make a statement that we need these  
6 relationships to change.

7 It is 1993. The very definitions of the  
8 technologies and industry is changing and we're still  
9 under this jurisdictional log jam. I really think that  
10 it is an opportunity to make a statement; and that is  
11 why I would deny Staff and let the crisis, as the  
12 Greeks say, time of decision to move on to wherever  
13 that may be, whether it be the Supreme Court or  
14 otherwise.

15 Otherwise, we just in essence are -- and I  
16 can guarantee you that from the public perception we're  
17 going to be perceived as those rescinded that decision,  
18 and not the federal judge in the District of Columbia.

19 And, you know, sometimes in this Commission  
20 we make some good decisions that we never get credit  
21 for, we have a problem with projecting our own imagine  
22 and our views of what the public good is. This is an  
23 opportunity to make that statement.

24 MS. GREEN: Well, this Commission did take an  
25 unprecedented action in these dockets, I believe, and

1 that is in intervening and appearing before the federal  
2 court and making its views known. And your concerns, I  
3 would not want to be viewed as dismissing them in any  
4 way because I think they're very valid. But I would  
5 urge you to recognize that you have very limited  
6 resources before and you have to balance in there how  
7 those resources are going to be used. And we can spend  
8 a lot of time pursuing legal avenues that will probably  
9 not be productive, or we can take the same Staff and  
10 put them into something that very well bear fruit.

11 COMMISSIONER LAUREDO: All of those things,  
12 Joe Citizen does not understand and our efforts to even  
13 get -- I believe this is where the Chairman has written  
14 without a reply now for over nine months from the  
15 justice department; is that correct?

16 MR. VANDIVER: No, sir. I believe we wrote  
17 on April 23 to January 9.

18 COMMISSIONER LAUREDO: Well, I'm exaggerating  
19 a little bit, okay.

20 MR. VANDIVER: We received no reply, we have  
21 written another letter. That is where we are now  
22 directing our resources.

23 And I, too, agree with much of what you said.  
24 But the fact is we need to pick our fights. In our  
25 legal judgment, this is not the proper fight to pick.

1 You, of course, may have overrule that and say, "No,  
2 this is the one." But we're pursuing it in other ways  
3 with our resources and --

4 COMMISSIONER LAUREDO: Rob, didn't I have  
5 this same argument about a year ago when I had just  
6 come to this Commission and I was told the same thing,  
7 "You're picking the wrong fight, let's give the process  
8 a chance." Here we are in 1993. Well, when are we  
9 going to pick a fight? When are we going to bring this  
10 to a definition? Just in the courts? Or isn't this a  
11 matter for public --

12 MR. VANDIVER: We've lost in the courts.

13 COMMISSIONER LAUREDO: Yeah, but in the  
14 courts, except for us who are involved in the minute  
15 details of these things, it does not get to the  
16 12-plus-million other people that we represent at this  
17 Commission. That's my point. We're losing the battle  
18 in the public opinion podium, and that is part of our  
19 responsibilities, to educate the public. They need to  
20 know what is going on.

21 And I respect all the legal arguments. I  
22 respect, "Stop bringing it to us," I'm just making an  
23 argument from a nonlegal point, from a public policy  
24 point of view. From someone who is put here to make  
25 public policy. We have got to bring it to a head. And

1 if it worked the first time, I wouldn't have a problem  
2 with it; but we discussed this in my tenure at least  
3 once or twice and it's always, "This is not the right  
4 fight." Well, when is the right fight is my question.

5 COMMISSIONER CLARK: I think Rob is about to  
6 tell you where we're taking the fight next in the sense  
7 that we have requested a meeting with the Justice  
8 Department including attorney (tape turned) Congress.  
9 And it seems to me it's Congress that has allowed the  
10 situation you find appalling to remain. And the fact  
11 of the matter is we do have a federal court that's  
12 regulating the way at least two large telephone  
13 companies do business. And for whatever reason,  
14 Congress has been unsuccessful in passing a law that  
15 makes it clear that it's the FCC and the states that  
16 ought to regulate it.

17 And that is where the battle should be taken  
18 next. If we fail to persuade the Justice Department  
19 that some method that we come up with for addressing  
20 the needs of these customers should be approved and  
21 should be recommended by the Justice Department in the  
22 next go around. I guess what I'm suggesting is the  
23 battle, the fight -- the course of the fight you are  
24 suggesting will be unproductive.

25 COMMISSIONER LAUREDO: All I'm suggesting is

1 that from my experience I agree with you 100%, the  
2 battle is in the Congress and the only way the Congress  
3 gets the feedback is not through a memo from the  
4 Attorney General, it's not from a memo from the Staff  
5 or the Chairman of the public service --

6 COMMISSIONER CLARK: That's not what I was  
7 suggesting.

8 COMMISSIONER LAUREDO: It is when they start  
9 getting mail from the people who elect them when it  
10 becomes an issue that moves forth to the public forum.  
11 We're keeping this issue on a technical, under  
12 technical cover. It needs to be moved up into the  
13 public agenda in a nonlegal sense so that in fact we  
14 can begin the process of raising conscienceness through  
15 the people to their elected officials to do exactly  
16 what you're suggesting.

17 I agree with the end result. To continue to  
18 do business as usual is not the way to change this, in  
19 my humble opinion -- although I respect that I am wrong  
20 probably legally and completely, I'm just taking that  
21 hat over and saying sometimes you have got to seize the  
22 moment or opportunities, intangible as it may be, to  
23 try to do a better job of an intangible responsibility  
24 which we have which is to pursue a certain public good.

25 We've already made the decision in these

1 areas. We're pretty much probably in agreement that we  
2 view this encroachment on our authority with not the  
3 best lies. We have persuade it legally; we have tried  
4 to get the Justice Department, that has other  
5 priorities, probably, to act on it; but the people that  
6 we're leaving out is the public, which are the people  
7 who we constantly hear from when we go out into the  
8 public hearings. And I respectfully urge you all to  
9 try to bring this up to a little bit level of  
10 controversy so that may be we can get some action.  
11 That's all I'm suggesting.

12 CHAIRMAN DEASON: Commissioner, I share your  
13 sentiments. I don't necessarily agree with the  
14 tactics, though. We had this debate a several months  
15 ago and I think we were having a problem then about  
16 inaction. And I think we were trying to get some  
17 action, and we contemplated creating a crisis so that  
18 we can get some action.

19 We've got a decision now. The court has made  
20 its decision. I think that, speaking as a layman and  
21 not as an attorney, that it would probably be fruitless  
22 other than the benefit of perhaps creating publicity  
23 and thereby educating the public in that way; but I  
24 regard that as an expensive, time-consuming way to  
25 educate the public. That's why I suggested or asked

1 the question as to whether we could include bill  
2 stuffers.

3 Now, I realize that a bill stuffer does not  
4 have the impact of mass media coverage with the State  
5 of Florida versus the federal government in some  
6 Supreme Court somewhere. But I don't think that that  
7 is the avenue that we need to take at this point.

8 I think that this entire issue needs to be  
9 communicated to the public in some way. I think we  
10 perhaps need to enlist the efforts of the mass media in  
11 this state -- not on persuade them that we're right,  
12 but just to enlist them to give the message, to give  
13 the facts, and let the public make a decision as to  
14 whether they're getting the type of telephone service  
15 that they deserve and whether the policy should come  
16 from the state or whether the policy should be made in  
17 Washington. And I think that perhaps, if we go down  
18 that path, that there will be enough public sentiment  
19 and enough action on the public's part that it may  
20 catch the attention of the elected representatives in  
21 Washington; and perhaps, with our efforts, that we can  
22 get something done about this. But I don't think that  
23 having a confrontation in the courts is going to be the  
24 best way to do that.

25 But I share your sentiment 100% about the

1 frustration that is being experienced, about what  
2 appears to be a stifling effect upon what this  
3 Commission is trying to do to address what we consider  
4 to be a public need. I know that it's created some  
5 frustration for me personally, and I'm sure it that it  
6 has for the Commission as a whole. But, while I share  
7 your sentiment and your views, I would disagree with  
8 the suggested tactics.

9 I do agree with Rob that we need to be a  
10 little more selective in choosing our battles. I think  
11 we're ready, willing and able to debate this issue in  
12 an appropriate way, but this particular route or this  
13 particular forum is not the way to do that and perhaps  
14 get the results that we want.

15 We do have a motion to deny Staff's  
16 recommendation. Do we have a second? (Pause) I have  
17 no second. Do we have an alternative motion?

18 COMMISSIONER CLARK: I move Staff.

19 COMMISSIONER JOHNSON: Second.

20 CHAIRMAN DEASON: Is that motion with the  
21 understanding that there is going to be a bill staffer  
22 to each affected customer, and that information will be  
23 provided to Staff and that will be approved by Staff  
24 before it's issued?

25 COMMISSIONER CLARK: Yes, Mr. Chairman. And



1 likewise, I think that it ought to be provided to the  
2 Commissioners so that we could review it, too, to see  
3 that it addresses the points that we think should be  
4 made. And that can just be by sending it, you know,  
5 sending a copy of what Staff believes is appropriate to  
6 everyone's office and saying, "We're going to approve  
7 this if we don't hear back from you."

8 MS. SHELFER: Staff would also suggest that  
9 we do a press release. Thank you.

10 COMMISSIONER CLARK: I think that's entirely  
11 appropriate.

12 COMMISSIONER LAUREDO: We've already done a  
13 press release, didn't we, when we first got the order?

14 MS. SHELFER: Yes.

15 COMMISSIONER LAUREDO: Do you all happen to  
16 know where it played? Do we have an idea?

17 MR. VANDIVER: I got a call from the Daytona  
18 Beach News Journal. I don't know what they did with it.

19 COMMISSIONER LAUREDO: Did they write  
20 something about it?

21 MR. VANDIVER: I don't know, Commissioners.  
22 I don't even know if that's included in our clips.

23 COMMISSIONER LAUREDO: I don't think it was.

24 MS. SHELFER: I know that in the Volusia  
25 County they've carried it several times in the Daytona

1 area because of the Volusia County residents are in  
2 part of Sanford and Deland and Orange City.

3 CHAIRMAN DEASON: Motion and a second. All  
4 in favor say aye.

5 COMMISSIONER CLARK: Aye.

6 COMMISSIONER JOHNSON: Aye.

7 CHAIRMAN DEASON: Aye. All opposed?

8 COMMISSIONER LAUREDO: Nay.

9 CHAIRMAN DEASON: The motion carries 3 to 1.

10 MS. GREEN: I think we need one other thing  
11 with that is a time period for the Company to supply  
12 its draft bill stuffer. I suggest maybe ten days.

13 CHAIRMAN DEASON: Is ten days sufficient time  
14 to provide that to Staff?

15 MR. CRISER: Ten days from the date of the  
16 order?

17 MS. GREEN: Yes.

18 CHAIRMAN DEASON: Ten days from date of the  
19 order. Very well.

20 MS. GREEN: Thank you.

21 (Agenda Item No. 13 concluded.)

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1 F L O R I D A )  
:  
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3

4 I, PAMELA A. CANELL, Official Commission  
Reporter,

5 DO HEREBY CERTIFY that the Agenda Conference  
6 Item No. 13 in this cause, Docket Nos. 870248-TL,  
7 870790-TL, 900093-TL, 910022-TL, 910029-TL, 910528-TL  
and 910529-TL, was heard by the Florida Public Service  
Commission at the time and place herein stated; it is  
further

8 CERTIFIED that I transcribed the said  
9 tape-recorded proceedings, and that this transcript,  
consisting of 18 pages, constitutes a true  
transcription of said tape recording.

10 DATED this 21st day of July, A. D., 1993.

11 *Paula A. Canell*  
12 PAMELA A. CANELL  
13 Official Commission Reporter  
14 (904) 488-5981

15 STATE OF FLORIDA)  
16 :  
17 COUNTY OF LEON )

18 The foregoing certificate was acknowledged  
19 before me this 21st day of July, 1993, by PAMELA A.  
CANELL, who is personally known to me.

20

21

*Sydney C. Silva*  
22 SYDNEY C. SILVA  
23 Notary Public - State of Florida

24

25

