

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint and petition) DOCKET NO. 940925-TL
by Rolm Company regarding the) ORDER NO. PSC-95-0879-FOF-TL
practice of local exchange) ISSUED: July 19, 1995
companies offering multiple)
demarcation points in connection)
with Centrex/ESSX service.)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER DIRECTING INITIATION OF RULEMAKING
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING COMPLAINT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed in Sections II and III herein are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Background

On September 1, 1994, Siemens Rolm Communications Inc. (Rolm) filed a petition and complaint for an expedited proceeding for the immediate termination of the local exchange company (LEC) practice of placing multiple demarcation points, and as necessary, a request for a Section 120.57(1) hearing.

This docket is concerned with the appropriate location of the demarcation point or points in what has become known among the parties as a campus situation. The demarcation point is the point of physical interconnection between the telephone network and the customer's premises wiring. The demarcation point establishes the point at which the LEC network terminates and the customer's

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responsibility for wire and equipment begins. It also identifies the dividing line between plant that is in the LEC's regulated rate base and that which is not. A campus situation refers to a single customer using multiple buildings on a single tract of land that requires telephone service throughout the property. An example of a campus situation, which prompted this petition, is a state prison.

Rolm alleges that BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell) and ALLTEL Florida, Inc. (ALLTEL) have been violating Rule 25-4.0345, Florida Administrative Code, by offering to install or installing Centrex/ESSX service using multiple demarcation points in a campus situation.

Rolm sells private branch exchange (PBX) equipment to private businesses and governmental agencies. A PBX provides call routing and management functions that enable end-users to make calls to others on the public switched network or to make calls directly to others who receive service through the PBX. PBX customers require equipment on site and rely upon a LEC to provide trunks to connect the PBX system to the public switched network. A PBX is connected to the LEC network at a single demarcation point.

Southern Bell and ALLTEL offer ESSX/Centrex service which provides call routing and management functions similar to the features provided by a PBX. A PBX and ESSX/Centrex-type services meet the same basic customer need; however, they are provisioned differently. PBX vendors are not regulated by this Commission. PBX switching equipment is classified as customer premises equipment (CPE) and is located on the customer's side of the demarcation point. In contrast, ESSX/Centrex service is provided from the LEC's central office. All calls between customer stations, as well as calls to stations off the premises, are routed through the central office switch. Adding or upgrading service capabilities is much simpler for ESSX/Centrex customers. The fact the PBX systems are purchased and maintained by the customer, while ESSX/Centrex service is billed on a recurring, monthly basis, means that the customer must weigh the advantages and disadvantages of two relatively disparate means of pricing and provisioning.

In a campus situation, a customer who purchases a PBX connects to the LEC network at a single demarcation point. The LEC is responsible for providing service to the demarcation point, and the customer is responsible for the wiring beyond that demarcation point, including the wiring between buildings for new buildings.

In the campus situation using ESSX/Centrex service, Southern Bell and ALLTEL are designating multiple demarcation points and treating the interbuilding wire on campus property as network wire.

The parties could not agree to proceed with a 120.57(2) hearing. In an effort to avoid a 120.57(1) administrative hearing, the parties agreed to brief the legal issue of whether customer premises equipment and inside wire rule or orders of the Commission prohibit the LECs' practice of using multiple demarcation points in a campus situation for the provision of Centrex/ESSX service, and then to proceed with a proposed agency action. Rolm filed an initial brief to which Southern Bell and ALLTEL filed answers. Rolm then filed a reply brief. We note that Southern Bell states in its brief that it has only agreed that the issue should be whether Southern Bell has violated Rule 25-4.0345.

II. Current Rule

Rolm contends that Southern Bell and ALLTEL have violated the demarcation rule by their practices of establishing multiple demarcation points for a single customer using ESSX/Centrex in a campus situation. Rule 25-4.0345(1), Florida Administrative Code, provides that:

- (b) 'Demarcation point' is the point of physical interconnection (connecting block, terminal strip, jack, protector, optical network interface, or remote isolation device) between the telephone network and the customer's premises wiring. Unless otherwise ordered by the Commission for good cause shown the location of this point is:
1. Single Line/Single Customer Building - Either at the point of physical entry to the building or a junction point as close as practicable to the point of entry.
 2. Single Line/Multi Customer Building - Within the customer's premises at a point easily accessed by the customer.
 3. Multi Line Systems/Single or Multi Customer Building - At a point within the same room and within 25 feet of the FCC registered terminal equipment or cross connect field.

4. Temporary Accommodations Subscriber Premises with Inadequate Grounding . . .

Rolm contends that a plain reading of Rule 25-4.0345 makes it clear that the LEC is required to place a single demarcation point to serve all the buildings on the property of a campus customer. Rolm notes that the demarcation rule identifies three situations, not counting temporary accommodations: single line/single customer; single line/multi customer; and multi line/single or multi customer.

Rolm notes that the rule discusses demarcation point in the singular rather than the plural, except in the multiline/multicustomer building, each of whom is entitled to an individual demarcation point. Rolm states that permitting multiple demarcation points within a multiunit building addresses the need of individual customers having direct access to their serving LEC without having to go through the building owner or landlord. Rolm asserts that the fundamental fact is that each customer within the building is allowed only one demarcation point. Rolm believes that this is consistent with the one customer-one demarcation point policy of Rule 25-4.0345 and is consistent with the FCC's demarcation point policy.

Rolm asserts that it must be acknowledged that under the plain language of Florida's rule and of the FCC's rule there is no special exception for ESSX/Centrex service that would allow a LEC to establish a demarcation point differently than for any other customer. Rolm argues that there cannot be one demarcation point policy for a PBX customer and a different demarcation point policy for an ESSX/Centrex customer. Therefore, Rolm asserts that the only possible conclusion to draw from the rule is that an ESSX/Centrex customer is subject to the same demarcation point requirements as any other customer, which is one demarcation point per location. Rolm states that it is impermissible to read into the rule an exception that is not present. Martin v. Johnston 79 So. 2d 419 (Fla. 1955).

Southern Bell argues that the sole issue is whether it has violated Rule 25-4.0345. Southern Bell asserts that this question must be answered based upon the plain, unambiguous language of the rule. Further, Southern Bell states that a review of the language makes it obvious that the special rule for campus situations postulated by Rolm simply does not exist. It is Southern Bell's contention that the rule clearly states the appropriate demarcation point configuration is on a building-by-building basis, which is consistent with Southern Bell's policy.

Specifically, Southern Bell states that the Commission's task is to determine whether the plain language of the rule prohibits more than a single point of demarcation in a campus situation. Southern Bell contends that in paraphrasing the rule, Rolm has neglected to include the operative word "building." Southern Bell states that when this word is included, the rule sets demarcation points on a building-by-building basis. In this campus situation, Southern Bell states that Rule 25-4.0345(1)(b)(3) applies and that each building is defined as multi line/single customer building. Southern Bell also contends that the rule does not make specific provisions for campus situations and that the word "campus" does not even appear in the rule.

ALLTEL asserts that the plain language of the rule does not clearly require a LEC providing ESSX/Centrex service to establish a single demarcation point to serve all of the buildings on the property of a campus customer. ALLTEL states that the rule simply expresses the Commission's policy that the installation and maintenance of CPE and inside wire is deregulated for intrastate purposes and defines certain terms.

ALLTEL's position is that the rule does not contain any language specifically requiring only one demarcation point or prohibiting more than one demarcation point for ESSX/Centrex service. ALLTEL states that the rule does not define demarcation points for a multi-line system for a single customer with multiple buildings, nor does it explain how the demarcation point concept applies in a Centrex environment.

ALLTEL argues that Rolm's position is based on a strained interpretation of the rule and should be rejected. ALLTEL contends that Rolm has improperly attempted to convert definitional language, which on its face does not apply, into a substantive requirement or prohibition into the rule that does not exist. This, ALLTEL asserts, violates the well-recognized principle of construction that prohibits reading words into a statute or rule. Brooks v. Anastasia Mosquito Control Dist., 148 So. 2d 64 (Fla. 1st DCA 1963). In addition, ALLTEL asserts that Rolm's strained interpretation is inconsistent with the intent of the rule at the time the rule was adopted.

Based on a plain language reading, we find that the rule does not address the placement of the demarcation point for a campus situation. As a result, the three parties have three different interpretations regarding whether the rule applies. Essentially, Rolm views the rule as applying to a single customer; Southern Bell views it as applying to a single building; and ALLTEL views it as not applying to a campus situation. Although it is true that

ESSX/Centrex existed at the time the rule was promulgated, this campus situation is an unusual scenario that was not contemplated at the time the rule was adopted. Essentially, the rule does not prescribe the location of the demarcation point or points in this situation, nor does it specifically prohibit the use of multiple demarcation points.

Accordingly, we find that the rule does not prescribe the location of the demarcation point or points in this situation, nor does it specifically prohibit the use of multiple demarcation points. Thus, we also find that neither ALLTEL nor Southern Bell violated Rule 25-4.0345(1), Florida Administrative Code.

III. Commission Orders

Rolm argues that Rule 25-4.0345, Florida Administrative Code, was not adopted in a vacuum. The rule was first adopted in 1982 and has since been revised several times. Rolm asserts that the basic single demarcation point policy has not changed over time. Rolm notes that the FCC concluded that the CPE should be offered on a competitive and unregulated basis, and that this Commission described such actions as follows:

[w]e would point out that the purpose behind the detariffing of inside wire and CPE was to promote competition through the introduction of market forces. Docket No. 860077-TL, Order No. 16146, p. 2, issued May 23, 1986.

Rolm further points out that previous Commission orders have recognized that wiring between buildings is to be classified as inside wire. Order No. 13680, issued September 14, 1986. Rolm notes that in the generic investigation of the proper regulatory treatment of inside wire, the Commission cited with approval the FCC's definition that inside wire includes wiring between a customer's buildings that are located on the same or contiguous property not separated by a public thoroughfare. Order No. PSC-95-0035-FOF-TL, p. 4, issued January 9, 1995. Rolm asserts that since interbuilding wiring is deregulated, it cannot be provided as network wire by the LEC in connection with ESSX/Centrex service.

Rolm also states the manner in which the inside wire was deregulated by the Commission and the FCC further supports the one customer-one demarcation point policy, and the clarification of interbuilding cabling as inside wire that cannot be provided as part of the LEC's regulated operations. Rolm asserts that the transition from an operation fully regulated from end to end to one

in which some previously regulated LEC services would be provided on a competitive basis presented real issues for consumers as well as accounting and separations issues for the LECs. Rolm argues that the Commission took the approach of transferring CPE and inside wiring to the customer and removing that investment from each LEC's books. Rolm states that in undertaking the deregulation of CPE and inside wire, the establishment of a demarcation point between the customer's point of connection and the LEC network was critical to this objective.

Rolm states that this Commission has determined that when purchasing a PBX, the customer becomes responsible for the investment and expenses associated with installation, including wiring between buildings, if necessary. Order No. 11375, Docket No. 820161-TP. Rolm asserts that for an ESSX/Centrex scenario for a campus situation, a demarcation point at each building is contrary to the intent of that order; and, therefore, the general body of ratepayers would be responsible for the wiring between buildings as well as the maintenance and expense. Rolm argues that if interbuilding wiring is not inside wire, a LEC could change its rate base up or down simply by redefining a demarcation point or implementing multiple demarcation points. Rolm argues that this counters the objective of fostering competition, and forces unwilling ratepayers to subsidize the efforts of Southern Bell and ALLTEL to compete with CPE and inside wire vendors.

ALLTEL states that Rolm's interpretation of the rule is inconsistent with the intent of the rule at the time the rule was adopted. Before the rule was adopted, CPE and inside wire was owned and maintained by the LECs. ALLTEL asserts that the rule was adopted to memorialize our decision to deregulate the installation and maintenance of CPE and inside wire on an intrastate basis and to designate a dividing line or lines between the company-owned and customer-owned equipment in preparation for the deregulation of CPE. ALLTEL argues that the purpose of the dividing lines was to facilitate the transfer of ownership of CPE and inside wire from the LECs to the customers over a period of time, not to restrict how services not contemplated by the rule would be provided in the future.

Rolm agrees with ALLTEL that before the rule was adopted, CPE and inside wire were owned and maintained by the LEC. The rule memorialized the decision to deregulate the installation and maintenance of CPE and inside wire, and the rule designates a dividing line between LEC responsibility and customer

responsibility. Rolm contends that ALLTEL ignores the fact that the demarcation point also establishes a dividing line between investment and expenses supported by the general body of ratepayers and those borne by individual customers.

Also, ALLTEL states that Rolm's interpretation of the rule is not supported by the orders it cited involving direct access. Orders No. 17345, 18936, and 17111. ALLTEL contends that these orders deal with the provision of shared tenant services where a non-LEC entity provided local exchange services to multiple customers on a single piece of property through a PBX, and do not deal with the provision of Centrex service by a LEC to a single customer with multiple buildings on a single piece of property.

Orders predating the adoption of the rule are persuasive but not controlling as to the interpretation of the rule. First, even if the orders are directly on point, which we believe they are not, the rule still must be interpreted on its face. If the rule failed to incorporate a portion of existing policy into the very rule regarding demarcation points, then it could be argued that we specifically intended to omit that policy from the rule. However, we do not believe that this is the case.

The demarcation point establishes the point at which the LEC network terminates and the customer's responsibility for wire and equipment begins. Although Rolm argues that interbuilding wiring is deregulated, that is true when the demarcation point is only a single point located at or before the first building, such as in the provision of PBX service or ESSX/Centrex for a single line, single tenant. As discussed in the previous section, the rule does not mandate a single demarcation point for a campus situation.

We believe that one of the underlying issues in Rolm's complaint is how the initial cost of installation of the premises wiring in a campus scenario is accounted for on the books of the company. It appears that Southern Bell's and ALLTEL's establishment of multiple demarcation points in a campus situation raises the following issue: whether the cost of installation is being recovered from the general body of ratepayers under the theory that because the wire is on the network side of the demarcation point, it is treated as general network expense. Whether the installation expense should be treated as a network expense recovered from ratepayers or should be directly attributed to and recovered from the premises owner is the core of Rolm's problem. The demarcation rule is silent on the use of the

demarcation in this fashion. Thus, we do not believe that there is any violation of the demarcation rule. This policy question of the recovery of the installation of premise wiring on a campus will be addressed in rulemaking as discussed in the next section.

Further, Rolm has referred to certain orders regarding PBX service rather than ESSX/Centrex service. Although the services are similar from a customer's standpoint, the technical provision of these services differ. Because the LEC controls the provision of ESSX/Centrex service from a central office, the LEC is responsible for the equipment, maintenance and expense of the wiring until the demarcation point at the customer's premises. However, with the provision of PBX service, the customer is responsible for the installation and maintenance of such wiring after the demarcation point. Thus, the orders to which Rolm refers are distinguished from the ESSX/Centrex context because the demarcation points technically are different.

Since Rule 25-4.0345, Florida Administrative Code, does not prescribe the location of the demarcation point in the context of a single customer using multiple buildings on a single tract of land, we find that ALLTEL and Southern Bell did not violate Rule 25-4.0345, Florida Administrative Code. We also find that ALLTEL and Southern Bell did not violate any Commission orders regarding placement of the demarcation point in the context of a single customer using multiple buildings on a single tract of land for the provision of ESSX/Centrex service. Accordingly, that portion of Rolm's complaint regarding violation of Rule 25-4.0345, Florida Administrative Code, is denied.

IV. Further Action

An argument can be made that flexibility is appropriate in the placement of the demarcation point(s) in a campus situation. While the technical nature of the PBX solution may typically call for a single demarcation point, the ESSX/Centrex solution is not similarly constrained. Both solutions involve a switch. With ESSX/Centrex, the switch is in the LEC central office. With a PBX, the switch is on the customer's premises. Since this customer premises switch is terminal equipment, the demarcation point would be at that switch, since it constitutes the minimum point of entry to the property. In the case of ESSX/Centrex, the first appearance of terminal equipment may occur in several buildings on the same continuous property. Thus, from a technical standpoint, placement of the demarcation point(s) could logically vary depending on whether the customer purchases ESSX/Centrex or a PBX.

In the case of ESSX/Centrex, while there is no technical reason precluding placement of demarcation points well past the minimum point of entry to the property, this creates a situation where ESSX/Centrex loops are longer than PBX loops in campus situations. While this differential in loop length is not necessarily a problem, we are concerned that this dichotomy may not be reflected in the pricing of ESSX/Centrex loops and PBX loops. In addition, a campus situation can be thought of as a spread out version of a multi-line, single customer building which must have a single demarcation point under the rule. The issue of LEC pricing of ESSX/Centrex service should include consideration of installation of the wiring on the campus property as well as the balance of the loop to the central office and ongoing maintenance and expense of facilities from the switch to the point(s) of demarcation.

Upon consideration of the foregoing, we shall initiate a rulemaking docket to specify what, if any, additional regulations should be imposed on the local exchange companies in pricing campus wiring, including the location of the demarcation point(s), associated with the provision of ESSX/Centrex.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that neither BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company nor ALLTEL Florida, Inc. violated Rule 25-4.0345, Florida Administrative Code, or Commission orders by establishing multiple demarcation points in the context of a single customer using multiple buildings on a single tract of land for the provision of ESSX/Centrex service. It is further

ORDERED that the portion of Rolm's complaint regarding violation of Rule 25-4.0345, Florida Administrative Code, is hereby denied. It is further

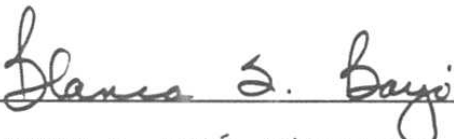
ORDERED that a rulemaking docket shall be initiated to specify what, if any, additional regulations should be imposed on the local exchange companies in pricing campus wiring, including the location of the demarcation point(s), associated with the provision of ESSX/Centrex. It is further

ORDERED that Sections II and III of this Order shall become final and effective unless an appropriate petition is filed in accordance with the requirements set forth below. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 19th
day of July, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DLC

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.

The action proposed in Sections II and III herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by Sections II and III of this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 9, 1995.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If Sections II and III of this order become final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.

Any party adversely affected by Section IV of this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), 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.