

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendments to Rules 25-24.600, F.A.C., Application and Scope; 25-24.610, F.A.C., Terms and Definitions; Rule Incorporated; 25-24.620, F.A.C., Service Requirements for Companies Providing Operator Services; and proposed Rules 25-24.640, F.A.C., Service Requirements for Call Aggregators; and 25-24.650, F.A.C., Rate and Billing Requirements for Call Aggregators.

DOCKET NO. 950561-TP
ORDER NO. PSC-97-0895-FOF-TP
ISSUED: July 30, 1997

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING MOTION FOR CLARIFICATION OF
ORDER NO. PSC-97-0614-FOF-TP

On April 14, 1997, the Commission voted to adopt proposed rules and rule amendments relating to operator service providers and call aggregators. As part of the rulemaking process, Edgewater Communications, Edgewater Beach Resort, and Edgewater Beach Resort Management, Inc. (hereinafter "Edgewater"), requested a hearing which was held October 28, 1996. After post-hearing comments were filed, the staff hearing officer filed her recommendation and recommended final version of rules on April 2, 1997. The recommendation discussed comments from the industry and staff on various issues, then made recommended changes to the proposed rule based upon the evidence of record.

In addition to the proceedings before the Commission, on November 6, 1996, Edgewater also filed at the State Division of Administrative Hearings a Petition for Administrative Determination

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of Invalidity of Proposed Rules under Section 120.56, Florida Statutes (1996). Before the rules adopted by the Commission can be filed for adoption, Section 120.54(3)(e), Florida Statutes, requires the administrative determination be concluded.

On June 5, 1997, Edgewater filed a motion for clarification of Commission Order PSC-97-0614-FOF-TP. The Order was a notice of Adoption of Rules that stated the rules relating to call aggregators and operator service providers would be adopted with changes and the rules would become effective after dismissal of the DOAH proceeding and 20 days after filing with the Secretary of State. In its motion, Edgewater raises the issue "whether the Commission order is based upon several comments in the recommendation relating to Alternative Local Exchange Carriers (ALECs)."

The general rule of law for statutory construction applies to rule interpretation. Jordan v. Department of Professional Regulation, 522 So. 2d 450, 453 (Fla. 1st DCA 1988). The general rule of construction is:

When the language of a statute is clear and unambiguous and conveys a clear meaning, the statute must be given its plain and ordinary meaning.

Aetna Casualty & Surety Co. v. Huntington National Bank, 609 So. 2d 1315, 1317 (Fla. 1992); citing Streeter v. Sullivan, 509 So. 2d 268 (Fla. 1987); Holly v. Auld, 450 So. 2d 217 (Fla. 1984). Aetna further states that:

[L]egislative intent must be determined primarily from the language of the statute. It must be assumed that the legislature knows the meaning of the words and has expressed its intent by the use of the words found in the statute.

Aetna at 1317; citing S.R.G. Corp. v. Department of Revenue, 365 So. 2d 687 (Fla. 1978). "The legislative history of a statute is irrelevant where the wording of statute is clear." Aetna at 1317; citing Maryland Casualty Co. v. Sutherland, 125 Fla. 282, 169 So. 679 (1936).

The adopted rules state the Commission's policy as it relates to operator service providers and call aggregators. The wording of the rules is clear, as is the Commission Order PSC-97-0617-FOF-TP. The Commission does not need to look beyond the rules or its order for clarity of its statement.

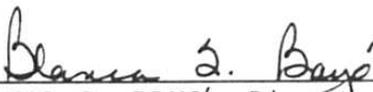
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Finally, it would be inappropriate for this Commission to issue an interpretation of the rules without specific facts before it. Edgewater requests a statement of the hearing officer made in the recommendation be clarified by the Commission. The example was not made as a finding of fact nor a conclusion of law. A hypothetical example used for illustration by the hearing officer does not constitute sufficient facts for this Commission to rule upon. Upon consideration of this matter at the July 15, 1997, agenda conference, Edgewater's motion is denied.

It is, therefore,

ORDERED by the Florida Public Service Commission that Edgewater Communications', Edgewater Beach Resort's, and Edgewater Beach Resort Management, Inc.'s Motion for Clarification of Order PSC-97-0614-FOF-TP be denied.

By Order of the Florida Public Service Commission, this 30th day of July, 1997.



BLANCA S. BAYO', Director
Director of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.