

MEMORANDUM

October 20, 1997

RECEIVED

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3:05
FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CULPEPPER) ^{bc} MCB

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-97-1309-FOF-TL

Attached is an ORDER REQUIRING SURVEY FOR EXTENDED AREA SERVICE, to be issued in the above referenced docket. (Number of pages in order - 12)

BC/anr
Attachment
cc: Division of Communications
1: 941281o.bc

forwarded to
actioned -

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by subscribers of the Groveland exchange for extended area service (EAS) to the Orlando, Winter Garden, and Windermere exchanges.

DOCKET NO. 941281-TL
ORDER NO. PSC-97-1309-FOF-TL
ISSUED: October 22, 1997

The following Commissioners participated in the disposition of this matter:

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

ORDER REQUIRING SURVEY FOR EXTENDED AREA SERVICE

BY THE COMMISSION:

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

By Order No. PSC-95-0875-FOF-TL, issued in Docket No. 941281-TL, on July 19, 1995, we set this matter for hearing to consider community of interest criteria other than traffic data.

On April 18, 1996, we held public and technical hearings in Groveland.

By Order No. PSC-96-1033-PCO-TL, issued August 8, 1996, in this docket, we ordered the parties to file briefs regarding the issue of the feasibility of implementing either extended area

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FILED AT GAINESVILLE FLORIDA

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service (EAS) or extended calling service (ECS) on the Groveland to Orlando interLATA route based on Sections 271 and 272 of the Telecommunications Act of 1996 (Act). Thereafter, by Order No. PSC-96-1335-FOF-TL, issued November 5, 1996, we directed Commission staff to conduct a staff workshop in order to gather additional information and to allow the parties in this docket, as well as numerous other affected toll relief dockets, an opportunity to participate. Our staff conducted the workshop on November 18, 1996, and the participants were asked to file post-workshop comments.

By Order No. PSC-97-0620-FOF-TL, we decided to postpone a post-hearing decision in this docket pending our determination of whether one-way interLATA toll relief was feasible. We determined that it was appropriate to suspend further action in this docket because of the Act's provisions prohibiting Bell Operating Companies (BOCs) from originating interLATA traffic until the BOCs have met the requirements of Section 271 of the Act. In a separate order, Order No. PSC-97-0622-FOF-TL, issued May 30, 1997, we ordered that the issue of the feasibility of one-way ECS be set for hearing.

On July 15, 1997, the FCC issued Order 97-244. That order addressed several petitions for modification of LATA boundaries to allow Ameritech, Bell Atlantic, BellSouth, Southwestern Bell, and US West to provide expanded local calling service. Therein, the FCC determined that the need for certain expanded local calling routes outweighed any anticompetitive risks, and therefore, it approved 23 of the requests to modify LATA boundaries. In approving these requests, the FCC emphasized that the LATAs were being modified solely to allow the BOCs to offer non-optional, flat rate local calling service. Any other types of service offered between the identified exchanges would still be considered interLATA. See FCC Order 97-244 at ¶ 19. In addition, in Section V of Order 97-244, Future LATA Modification Requests, the FCC set forth specific guidelines to assist BOCs in filing future LATA modification petitions.

In view of the FCC's apparent willingness to continue to consider requests for modification of LATA boundaries to allow BOCs to provide expanded local calling, we find it appropriate to proceed with consideration of the record evidence in this docket.

I. Survey

The Subscribers contended that there is a sufficient community of interest in the Groveland exchange to warrant balloting for nonoptional EAS to the Orlando, Winter Garden, and Windermere exchanges. Of the 55 citizens who testified during the public hearings about the community of interest factors, all but three supported the request for nonoptional EAS. Witnesses Timmons, Smith, Fulmer, and Savage stated that EAS was supported with full knowledge that it would require a rate increase. The subscribers further asserted in their brief that the Groveland exchange depends on the Orlando, Winter Garden, and Windermere exchanges for their medical services, business services, and personal needs.

The subscribers also argued in their brief that, as demonstrated during the public hearing, there is a sufficient community of interest to grant nonoptional EAS. In their brief, the Subscribers asserted that witnesses testified about numerous factors that reasonably demonstrated a community of interest between the Groveland exchange and the Orlando, Winter Garden, and Windermere exchanges.

Witnesses Hall, Harrell, and Wolf contended that many of the Groveland residents use doctors, dentists and hospitals in the Orlando, Winter Garden, and Windermere exchanges. In addition, witness Reid noted that many Groveland subscribers who work in Orlando are required by their health insurance (HMOs) to use doctors who are located in the Orlando area. Witnesses Anderson and Kurfiss also testified regarding the cost and inconvenience when patients must be put on "hold" while trying to reach their doctors in Orlando. Witnesses Anderson and Woods further contended that some people in the Groveland exchange see medical specialists located in Orlando, either because the specialist was recommended by their family physician or because the specialists in Orlando are the only ones associated with their HMOs in Orlando.

The Subscribers argued in their brief that the community of interest is not only from Groveland to the Orlando area, but also from Orlando to Groveland. Witness Stephens asserted that many Orlando, Winter Garden, and Windermere residents work in the Groveland exchange area. The witnesses stated that these people also pay toll charges to communicate between the Orlando area and the Groveland exchange. In their brief, the subscribers also stated that several Groveland businesses indicated that their employees from the Orlando area need to call into the Orlando,

Winter Garden, and Windermere exchanges on a daily basis. Witness Fulmer stated in his testimony that 34 percent of his employees reside in the Orlando, Winter Garden, and Windermere exchange areas. For various reasons ranging from children in school to medical emergencies, witness Fulmer asserted that his employees have a need to call from work to those exchanges from the Groveland area. In his testimony, witness Peters's stated that nine out of ten of his employees live in the Orlando, Winter Garden, and Windermere exchanges and have similar calling needs as those of witness Fulmer's employees.

Witness Reid, as well as others, also testified that he has modified his telephone behavior to avoid the toll charges to the Orlando area. Witnesses Reid, Losey, and McKinney testified that they use cellular phones, the public telephones in Clermont, the phones of family and friends in the Clermont exchange, or a form of call forwarding to avoid toll charges. In their brief, the subscribers argued that all of these witnesses are, to some degree, frustrated with the present situation, because their ability to communicate with people in the Orlando, Winter Garden and Windermere exchange is necessary for many essential elements of their lives. In addition, witness Ferrell noted that since it is a toll call between the Groveland and Orlando exchanges, he, along with other Groveland subscribers, feel isolated from their friends and family who work or live in the Orlando area.

The subscribers further asserted in their brief that it is obvious that businesses in the Groveland exchange have a regular and recurring need to maintain contact with businesses, suppliers, and customers in the other exchanges. Witnesses Fulmer, Hayden, Peters, Tighe, Wright, Whitaker, Hamilton, Kurfiss, and Moore asserted that large and small businesses need to maintain regular contact for the benefit of their customers and businesses. The owners of various businesses stated that they depend on professionals and suppliers within the Orlando, Winter Garden, and Windermere exchanges for services and supplies. Witness Turner, speaking for the People's State Bank of Groveland, noted in his testimony that the bank's professionals, computer company, correspondent and participating banks, loan customers, and employees living in the Groveland area all indicated a strong and varied community of interest with the Orlando, Winter Garden, and Windermere exchanges. Witness Turner also noted, as other businesses did, that the bank's anticipated expansion would continue to enlarge the community of interest between the exchanges. Witness Williams of Sumter Electric indicated in his

testimony that his company makes and receives numerous calls from developers of new projects between the Orlando, Winter Garden, and Windermere exchanges, demonstrating further contact between the areas and additional community of interest that the Commission should consider.

Government officials from the Groveland exchange, witnesses Sherbourne, Thompson, and Sloan, also agreed that there is a sufficient community of interest. In addition, the Board of County Commissioners for Lake County supported the subscriber's petition for EAS by also passing a resolution requesting EAS from the Groveland exchange to the Orlando exchange. Furthermore, witness Cadwell, who is coordinator of Lake County Economic Development, stated in his testimony that EAS would greatly assist in bringing new businesses to the Groveland exchange area. The witness stated that Lake County markets itself as part of the Metro-Orlando region. He further indicated that granting EAS would allow both businesses and individuals to have freer access to services, goods and markets in the area comprising the Orlando, Winter Garden, and Windermere exchanges.

In addition, the subscribers indicated in their brief that they do not believe an alternative toll plan would be appropriate. BellSouth witness Stanley also stated that an alternative toll plan would not be a reasonable option because of federal prohibitions. Counsel for BellSouth further indicated that specific criteria had to be met before BellSouth could compete in the interLATA market, and it is not clear when BellSouth will meet these criteria. Because of the federal requirements for BellSouth, the Subscribers argued in their brief that the failure to grant balloting to determine the support of the people in the Groveland exchange would apparently result in no relief at all.

BellSouth has taken no position on this issue because the only route at issue in this docket that involves a BellSouth exchange is the Groveland to Orlando route (Orlando is a BellSouth exchange). Because the Groveland to Orlando route is interLATA, BellSouth has no data regarding traffic over this route. Witness Stanley stated that without traffic data, BellSouth is unable to determine whether a sufficient community of interest exists on this route to justify nonoptional, flat rate EAS. Accordingly, BellSouth stated that it does not take a position regarding whether EAS is appropriate.

United's witness Harrell argued that based on Rule 25-4.060(3), Florida Administrative Code, the routes in this docket do

not warrant balloting for flat rate EAS. Two traffic studies were conducted on the routes at issue in this docket, one in October 1994, and the other in March 1995. Witness Harrell stated that both traffic studies reflected sufficient messages per access line per month (M/A/Ms) on the Groveland to Orlando route. However, the frequency distribution, or number of subscribers making 2 or more calls per month fell short of the minimum requirements. The witness also asserted that the remaining routes, Groveland to Winter Garden and Windermere, failed to meet either of the minimum requirements.

United contended in its brief that the routes' failure to pass the distribution requirement shows that while a few large users make multiple calls, the majority of callers do not make enough calls to justify EAS. Witness Harrell further stated that the March 1995 traffic study showed that 41% of residential customers did not make any calls, and that 52% of residential customers make fewer than 2 calls per month. United argued in its brief that these statistics are important, because under nonoptional EAS, all customers must pay an additive and regrouping charges, even though less than a majority of the customers actually make enough calls to support a strong community of interest. Witness Harrell asserted that the implementation of nonoptional EAS allows high volume users to benefit at the expense of low volume users.

In its brief, United also pointed out that historically the mathematical requirements in the rule have been used to determine community of interest standards and traffic studies as the basis for defining whether a community of interest exists. United asserted that the advantage of this approach is that it allows the Commission to base its decision on empirical evidence and reduces the risk of inconsistencies that can arise when subjective factors are considered. United further asserted in its brief that in past cases routes that did not pass the numerical criteria in the rule were found to have no community of interest. Thus, United's witness Harrell contended that calling patterns on these routes do not support EAS. Instead, the witness argued that extended calling service (ECS) should be implemented. Witness Harrell stated that ECS would place the burden of paying for calls on those customers who are placing the calls.

United's witness Harrell also disagreed that the Windermere exchange should be included because of leapfrogging. Witness Harrell stated that since the Windermere exchange would be involved only when calls from the southernmost point of the Groveland

exchange were placed to the Orlando exchange, the Windermere exchange should be excluded.

Based on the evidence and testimony presented in this docket, we find that there is a sufficient community of interest between the Groveland exchange and the Orlando, Winter Haven and Windermere exchanges to warrant balloting for non-optional EAS. We find persuasive the testimony of Groveland residents Stephens, Fulmer, and Peters, who stated that they depended on the Orlando, Winter Haven and Windermere areas for employment. We also find important the testimony of residents Hall, Wolf, Reid, and Woods regarding the need for toll free access to medical facilities such as doctors, dentists and hospitals. The testimony of witnesses Fulmer, Tighe, Wright, Whitaker, Hamilton, Kurfiss, Moore, Hayden, Turner, and Williams regarding the need for area businesses to make "regular" and "recurring" calls to the Orlando, Winter Haven, and Windermere areas for suppliers, customers, and other service related business, and the testimony presented by witnesses Hayden and Fulmer that the Orlando area was the closest supplier for many of the goods and services required to conduct business in Groveland also assisted us in our decision.

In addition, the testimony of witnesses Reid, McKinney, and Losey brought into question the accuracy of the traffic data presented in this docket. The witnesses stated that because of the toll charges into the Orlando, Winter Haven and Windermere exchanges, they have modified their calling behavior. Witness Reid stated that she uses her cellular phone instead of calling long distance. Witness McKinney stated he subscribed to call forwarding, but it was an expensive alternative. Witness Losey stated he waited until he went to Clermont (a nearby exchange with toll-free calling to Orlando) so that he could make calls from friends' homes or from payphones.

We also find it appropriate to include the Windermere exchange and the Winter Haven exchange in order to avoid leapfrogging. Evidence was presented that more than 50% of the area in the Windermere exchange would be leapfrogged if it were omitted, as illustrated in document 2 of witness Harrell's composite exhibit.

Since we will include the Winter Haven and Windermere routes to avoid leapfrogging, it is appropriate to have only one ballot including all three exchanges (Orlando, Winter Haven, and Windermere).

II. Community of Interest Factors

The subscribers stated that there are numerous factors that demonstrate a significant community of interest between the Groveland exchange and the Orlando, Winter Haven, and Windermere exchanges, including the location of medical facilities, workplace, goods and services.

BellSouth took no position on this issue. However, Witness Stanley stated in his testimony that he was not aware of any other significant community of interest consideration that would justify flat rate EAS.

United disagreed with the subscribers. United contended that the basic community of interest factors such as schools, fire/police departments, medical/emergency facilities and county governments are already accessible toll-free within Lake County. Therefore, these traditional community of interest factors do not support the implementation of flat rate, nonoptional EAS on the Groveland to Orlando route.

United noted in its brief that witnesses Wolf, Hodges, and Schmidt expressed opposition to the EAS plan. United argued that, as noted by Witnesses Wolf and Schmidt, there is a large retiree population that neither needs nor wants nonoptional EAS, and that businesses that relocated to Groveland did not have EAS when they decided to move to Groveland. United stated that 800 numbers and other calling plans are available for those who choose to take advantage of them.

United also argued in its brief that the experience of the Carroll Fulmer Group, Inc., which received a Clermont number in error, should not be used as evidence in favor of a nonoptional plan. While Mr. Fulmer may have been given erroneous information about his phone number and local calling scope, United's witness Harrell argued that the information Mr. Fulmer was apparently given was not given to him by an employee of United, but by an employee of a long distance company. While the experience of the Fulmer Company was unfortunate, United argued in its brief, it is not relevant to the issues in this case.

Upon consideration, we agree that the location of schools, fire and police departments, medical and emergency facilities, and access to local government are not the only community of interest factors that should be considered. Many witnesses indicated that

their place of employment, and doctors, dentists and hospitals were located in the Orlando, Winter Haven, and Windermere areas. Witnesses Fulmer, Tighe, Wright, Whitaker, Hamilton, Kurfiss, Moore, Hayden, Turner, and Williams also testified they need to have regular access to these areas to contact suppliers, customers, and other businesses for goods and services.

We also believe that the large number of customers that attended the public hearing and the number of customers that testified in favor of EAS (55 in favor/3 against) is an indication that the majority of the customers are in favor of EAS.

In addition, we are also concerned about the incorrect information that Witness Fulmer received when purchasing property in Groveland for his trucking business. While United contended that this was the error of a long distance company and not United, since United assigns all local telephone numbers, such as the 394-0000, we find it unusual that a long distance company would have provided this telephone number without the involvement of the local exchange company.

Based on the foregoing, we find that community of interest factors include location of schools, fire and police departments, medical and emergency facilities, access to local government, location of workplace, access to goods and services, such as shopping centers, and location of social activities.

III. Economic Impact

In its brief, the subscribers acknowledged that United should recover the costs of any ordered change. However, United's witness Harrell has acknowledged that normally we do not allow full cost recovery.

BellSouth stated in its brief that each plan would have an economic impact on BellSouth because the company would have to incur costs to provide facilities to implement any given plan. BellSouth states that it does not, however, have the data necessary to quantify these costs.

United's witness Harrell stated that if we determine that a sufficient community of interest exists, ECS would be the best solution. Witness Harrell further stated that the second alternative would be that subscribers should be surveyed for EAS with the 25/25 plan and regrouping. The witness asserted that

using this plan, the residential and business customers in Groveland would be charged a total additive (including regrouping) of \$3.87 and \$9.13, respectively, to their basic monthly rate. Witness Harrell asserted that without stimulation, the estimated annual revenue impact to United would be \$30,64^P, which does not reflect the additional costs incurred by United to implement the plan.

Upon consideration, we find that the Groveland subscribers shall be balloted for nonoptional EAS under the 25/25 plan with regrouping to the Orlando, Winter Garden, and Windermere exchanges. As stated by Witness Harrell, the 25/25 plan is calculated based on the additional calling scope gained. There are approximately 370,000 access lines in the combined exchanges, which would place the Groveland exchange in rate group 5. The additive for each type of line is computed by multiplying 25 percent by the various access line rates in rate group 5. This amount is then added to the existing Groveland rate. In addition, if enlarging the local calling area causes the requesting exchange to regroup, the rate for the new rate group will also apply. In this case, the addition of the Orlando exchange to the Groveland exchange would result in a regrouping of the Groveland exchange to rate group 6. In addition, we note that if the ballot passes, the 25/25 additive shall remain in effect no longer than four years after which time this additive shall be removed. Groveland subscribers shall be balloted for EAS at the rates list in Table A, which were determined under the 25/25 plan with regrouping:

TABLE A

	PRESENT RATE	25/25 ADDITIVE	REGROUPING	TOTAL ADDITIVE	NEW RATE
R-1	\$ 8.37	\$ 2.37	\$ 1.50	\$ 3.87	\$12.60
B-1	\$20.47	\$ 5.57	\$ 3.56	\$ 9.13	\$29.60
PBX	\$40.98	\$11.13	\$ 7.08	\$18.21	\$59.19

The survey shall be conducted in accordance with Rule 25-4.063, Florida Administrative Code, and within 45 days of the date issuance of this Order. United shall submit the newspaper advertisement for Commission staff's review prior to publication. The survey letter and ballot shall also be submitted to Commission

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staff for review prior to distribution to United customers. In addition, United shall provide Commission staff with a copy of the published newspaper advertisement.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that, in accordance with Rule 25-4.063, Florida Administrative Code, United Telephone Company of Florida shall survey the subscribers of the Groveland exchange for extended area service under the 25/25 plan with regrouping to the Orlando, Winter Haven, and Windermere exchanges with the terms and conditions set forth herein within 45 days of the issuance of this Order. It is further

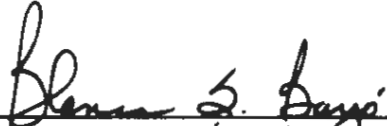
ORDERED that United Telephone Company of Florida shall submit a copy of the survey letter and ballot to Commission staff prior to distribution to customers. It is further

ORDERED that United Telephone Company of Florida shall submit the newspaper advertisement explaining the survey to Commission staff for review prior to publication and shall also provide Commission staff with a copy of the published advertisement. It is further

ORDERED that this docket shall remain open pending the outcome of the survey.

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By ORDER of the Florida Public Service Commission this 22nd
day of October, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

BC

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.