

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of Florida
Telecommunications Access System
Act of 1991.

DOCKET NO. 960598-TP
ORDER NO. PSC-98-1521-FOF-TP
ISSUED: November 18, 1998

Request for submission of
proposals for provision of relay
service, beginning in June 1997,
for the hearing and speech
impaired, in compliance with the
Florida Telecommunications
Access System Act of 1991.

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING DISTRIBUTION OF ELECTROLARYNX DEVICES BY FLORIDA
TELECOMMUNICATIONS RELAY, INC.

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is 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.

BACKGROUND

The Telecommunications Access System Act of 1991 (TASA)
became effective May 24, 1991, and is found in Chapter 427, Part
II of the Florida Statutes. TASA provides funding for the
distribution of specialized telecommunications devices and
provision of intrastate relay service. Florida

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FPSC-RECORDS/REPORTING

Telecommunications Relay, Inc. (FTRI), a non-profit corporation formed by the local exchange telephone companies, was named by the Commission to serve as the TASA administrator. Among its other duties, Section 427.705(1(a), Florida Statutes, directs the administrator (FTRI) to "purchase, store, distribute and maintain specialized telecommunications devices. . . ."

At the May 5, 1998, TASA Advisory Committee meeting, Committee Member Mr. Joseph Schad made a presentation regarding the need for an electrolarynx device to be distributed by FTRI. An electrolarynx is a portable mechanical device which sends vibrations to the throat and words are formed by manipulation of the tongue and cheeks. An electrolarynx is generally used by individuals who have had their vocal cords removed (laryngectomy). A motion was made to have the Florida Public Service Commission (FPSC) staff investigate the appropriateness of including an electrolarynx device as part of FTRI's equipment distribution program.

Advisory Committee members were asked to submit comments on the issue for staff to consider in its analysis. Two Committee members (Mr. Schad and Ms. Slater) and FTRI provided comments. Further, as part of staff's investigation, a data request was sent to the Florida Laryngectomee Association.

Mr. Schad's comments supported FTRI distributing an electrolarynx. Ms. Slater's comments suggested that FTRI only distribute an electrolarynx device to those "who cannot get electrolarynxes (the people not under Medicare or Medicaid and with no health insurance or whose health insurance refuses the aid)."

According to information provided by the Florida Laryngectomee Association, Medicare and most insurance companies cover 80% of the cost for an electrolarynx (the cost is between \$495.00 and \$675.00); Medicaid also covers the instrument for those qualified individuals under age 21. Ms. Slater also stated that she believes if FTRI were to supply an electrolarynx to all laryngectomees, Medicare and health insurance providers possibly would encourage laryngectomees to seek the device from FTRI, thus passing the expense over to FTRI.

The comments provided by FTRI oppose the distribution of the electrolarynx. FTRI makes it clear in its comments that it is aware of the value of the electrolarynx and recognizes that the

device has benefitted a number of individuals. However, FTRI does not believe that the electrolarynx falls within the statutory definition of "specialized telecommunications devices" as that definition is currently written. FTRI believes that it would exceed its current statutory authority if it were to offer the electrolarynx as a basic telecommunications device.

At the November 3, 1998, Agenda we addressed whether an electrolarynx device should become part of FTRI's equipment distribution program. We determined that an electrolarynx should not be included as part of the equipment currently distributed by FTRI. However, the FPSC staff should do a further cost analysis of adding the electrolarynxes to the distribution program, which would be provided to the legislature. The Commission can then further consider whether we should recommend adding the electrolarynx device to the distribution program.

The following statutory provisions relate to this issue.

F.S.427.702 Findings, purpose, and legislative intent.

(1) The Legislature finds and declares that

. . .

(e) Persons who do not have a hearing impairment or speech impairment are generally excluded from access to the basic telecommunications system to communicate with persons who have a hearing impairment or speech impairment without the use of specialized telecommunications devices.

(2) It is the declared purpose of this part to establish a system whereby the citizens of Florida who are hearing impaired, speech impaired, or dual sensory impaired have access to basic telecommunications services at a cost no greater than that paid by other telecommunications services customers, and whereby the cost of specialized telecommunications equipment necessary to ensure that citizens who are hearing impaired, speech impaired, or dual sensory impaired have access to basic telecommunications services and the provision of telecommunications relay service is borne by all the telecommunications customers of the state.

(3) It is the intent of the Legislature:

. . .

(d) That the telecommunications access system includes the distribution of specialized telecommunications devices necessary for hearing impaired, speech impaired, or dual sensory impaired persons to access basic telecommunications services. (emphasis added)

(g) That the telecommunications access system uses state-of-the-art technology for specialized telecommunications devices and the telecommunications relay service and encourages the incorporation of new developments in technology, to the extent that it has demonstrated benefits consistent with the intent of this act and is in the best interest of the citizens of the state. (emphasis added)

F.S. 427.703 Definitions

(11) "Specialized telecommunications device" means a TDD, a volume control handset, a ring signaling device, or any other customer premises telecommunications equipment specifically designed or used to provide basic access to telecommunications services for a hearing impaired, speech impaired, or dual sensory impaired person. (emphasis added)

F.S. 427.704 Powers and duties of the commission.

(1) The commission shall establish, implement, promote, and oversee the administration of a statewide telecommunications access system to provide access to telecommunications relay services by persons who are hearing impaired or speech impaired, or others who communicate with them. The telecommunications access system shall provide for the purchase and distribution of specialized telecommunications devices and the establishment of statewide single provider telecommunications relay service system which operates continuously. To provide telecommunications relay services and distribute specialized telecommunication devices to persons who are hearing impaired or speech

impaired, at a reasonable cost the commission shall:
(emphasis added)

(a) Investigate, conduct public hearings, and solicit the advice and counsel of the advisory committee established pursuant to s.427.706 to determine the most cost-effective method for providing telecommunications relay service and distributing specialized telecommunications devices. (emphasis added)

F.S. 427.705 Administration of the telecommunications access system.

(1) Consistent with the provisions of this act and rules and regulations established by the commission, the administrator shall:

(a) Purchase store, distribute, and maintain specialized telecommunications devices either directly or through contract with third parties, or a combination thereof.

. . . .

(5) The administrator shall provide for the distribution of specialized telecommunications devices to persons qualified to receive such equipment in accordance with the provisions of this act. The administrator shall establish procedures for the distribution of specialized telecommunications devices and shall solicit the advice and counsel and consider the recommendations of the advisory committee in establishing such procedures. The procedures shall:

(b) Establish characteristics and performance standards for specialized telecommunications devices determined to be necessary, and for the selection of equipment to be purchased for distribution to qualified recipients. The characteristics and standards shall be modified as advances in equipment technology render such standards inapplicable.

Resolution of this issue revolves largely around the definition of "Specialized Telecommunications Device." Traditionally, in Florida, an electrolarynx has not been

considered customer premises equipment. It has not been used principally for telecommunications. Also, we do not know what the legislature meant when it included the phrase: "specifically designed or used to provide basic access to telecommunications services." The phrase includes a modifier, the meaning of which is unclear. Grammatically, the modifier, "specifically," can be correctly used once and still apply to both the term "designed" and the term "used".

Starting with the issues of the meaning of the term "specifically," the dictionary definition of "specific" is "something peculiarly adapted to a purpose or use". An electrolarynx is not "specifically designed" for telecommunications purposes. It is for all kinds of verbal communications including face to face communications as well as telephone communications. Thus, since an electrolarynx's design is not specifically for telecommunications access, it does not meet this part of the definition.

The next issue is whether the adjective "specifically" applies to the word "used". If it does, then the same argument as applies to "specifically designed for" would likewise apply to "specifically used for", i.e., telecommunications use is not the specific use of an electrolarynx. However, if "specifically" only modifies the term "designed", then the question would be whether an electrolarynx is simply "used to provide basic access to telecommunications" and the answer would be affirmative because an electrolarynx is certainly used to talk on the telephone. We do not know what the legislature intended when it established the definition of "specialized telecommunications device." Certainly the legislature could have repeated the word "specifically" if it had intended it to apply to the word "used" and eliminated the question. However, grammatically, the modifier can be correctly used once and still apply to both terms "designed" and "used". We see no reason why the legislature would have used the word "specifically" when referencing the term "designed" but then intended that anything that is "used" in any general way for access to telecommunications would also qualify for funding and distribution by the administrator FTRI. If an electrolarynx were considered to be "specialized telecommunications equipment" and thus should be funded by the TASA fund, then a similar argument could be made for funding hearing aids for hearing impaired individuals because hearing aids allow a hearing impaired person to use a telephone. The recommended interpretation of the definition is in keeping with a

straight-forward reading of the definition. We believe that an electrolarynx does not fall within the definition of a specialized telecommunications device.

We do not think that the 1991 legislation was aimed at requiring telecommunications customers to pay for persons to obtain electrolarynxes through TASA. However, we have found no legislative history that addresses this issue. There could be policy reasons for the legislature to consider inclusion of the electrolarynx in the FTRI distribution program. A person who has had a laryngectomy cannot use the telephone without the device (other than the less efficient way of obtaining a TDD and making calls through an intermediary communications assistant over the relay system).

While an electrolarynx is more expensive than a TDD, it does allow the user more natural conversation and easier call set-up since a relay Communications Assistant is not involved. However, it is not likely that a person would settle for just using a TDD and only communicate via telephone calls rather than obtain an electrolarynx if the electrolarynx were not distributed by FTRI. In most cases a person would obtain an electrolarynx anyway for everyday life uses since the electrolarynx can be used for multiple purposes. For a person who is unable to hear, the current technology for using the telecommunications system is a TDD. However, for a person who cannot speak because of a laryngectomy, an electrolarynx is the best method for using telecommunications services and there is no specific piece of telecommunications equipment that meets the need. However, an electrolarynx does not appear to fit the definition of "specialized telecommunications devices". Distribution of the device would make it possible for a person who has had a laryngectomy to make the best possible use of the telecommunications system and receive support from all other ratepayers to pay for the cost of the electrolarynx.

We are asking our staff to do a further cost analysis for presentation to the legislature. If further cost analysis indicates provision of the electrolarynx is cost efficient, the FPSC could recommend it to the legislature for inclusion in the statute.

Based on the foregoing, it is

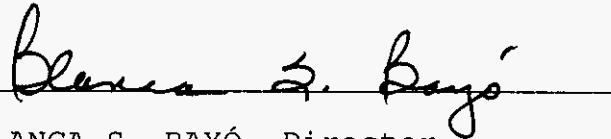
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ORDERED by the Florida Public Service Commission that the Florida Telecommunications Relay, Inc., not be currently required to distribute electrolarynxes. It is further

ORDERED that the staff will prepare a cost analysis on the issue. It is further

ORDERED that Docket No. 960598-TP shall remain open for the duration of the current contract with MCI.

By ORDER of the Florida Public Service Commission, this 18th day of November, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CBM

DISSENT BY CHAIRMAN JOHNSON AND COMMISSIONER GARCIA

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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The action proposed 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 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 December 9, 1998.

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 this order becomes 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.