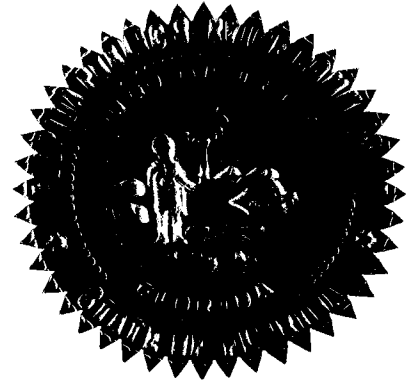


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060663-TP

In the Matter of:

IMPLEMENTATION OF 811 NXX CODE AS
NATIONAL ABBREVIATED DIALING CODE TO
BE USED BY STATE ONE CALL NOTIFICATION
SYSTEMS FOR PROVIDING ADVANCE NOTICE OF
EXCAVATION ACTIVITIES TO UNDERGROUND
FACILITY OPERATORS IN COMPLIANCE WITH
PIPELINE SAFETY IMPROVEMENT ACT OF 2002.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 7

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER J. TERRY DEASON
COMMISSIONER ISILIO ARRIAGA
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. TEW

DATE: Tuesday, December 5, 2006

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

1 PARTICIPATING:

2 DAVID ERWIN, ESQUIRE, representing Sunshine State One
3 Call.

4 MANUEL GURDIAN, ESQUIRE, representing BellSouth.

5 DULANEY L. O'ROARK, III, representing Verizon Florida
6 Inc.

7 SUSAN MASTERTON, ESQUIRE, representing Embarq.

8 MICHAEL COOKE, GENERAL COUNSEL; PATRICK WIGGINS,
9 ESQUIRE; JASON FUDGE, ESQUIRE, and CATHERINE BEARD,

10 representing the Florida Public Service Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: Okay. We are back on the record and
3 we are on Item 7.

4 MS. BEARD: Good morning, Commissioners, Catherine
5 Beard on behalf of Commission staff. Item Number 7 addresses
6 the implementation of the 811 NXX code as the new "Call Before
7 You Dig" notification number. Staff recommends that the
8 Commission order all ILECs, CLECs and pay telephone providers
9 in Florida to make the 811 NXX code available by February 15th,
10 2007.

11 Staff is available to answer any questions. There
12 are parties present who would like to speak on this item.

13 CHAIRMAN EDGAR: Thank you. You're recognized.

14 MR. ERWIN: My name is David Erwin. I'm the General
15 Counsel for Sunshine State One Call in Florida. I thought
16 having occupied that position I might never come before the
17 Commission again. But as fate has it, here I am again for one
18 of many times in the last 40 years.

19 So anyway, Sunshine State, as you know, handles a
20 great volume of calls from those who want to dig in the ground,
21 and then conveys information to the utilities. And the
22 utilities then are obligated by statute to go out and mark
23 their lines. It's a safety matter largely. And that's
24 basically what we do. We sent out last year some 14 million
25 notifications to utilities to go mark their lines. It's a very

1 labor intensive operation. We have a call center in Debary,
2 Florida, that has maybe 60 operators there. And we get about
3 40 percent of our calls in through the operators and the
4 balance come in over the Internet. We have a very intensive
5 program to train excavators to input their own tickets over the
6 Internet. It's a cost savings to us and a time savings and
7 various other things. So it was something of, of a shock when
8 we'd been attempting to get people weaned from the telephone
9 input of tickets to find that the FCC wanted to encourage
10 calling rather than encourage use of the Internet, which is
11 what we're trying to do. So we have ambivalent feelings about
12 this, although I do believe that 811 would be quite helpful to
13 some people, particularly homeowners and small contractors and
14 others, and it would be easy for us to advertise that
15 availability.

16 Nevertheless, we have not been able at this point to
17 come to any sort of accommodation with the telephone companies,
18 which are, among other things, members of our organization.
19 It's put us in a very awkward position. We have a 21-member
20 board, a number of them are telephone company employees on the
21 board, but we're all at odds now. So it's very uncomfortable
22 for us as an organization, and I'm sure it's uncomfortable for
23 the people who are telephone company employees who are on our
24 board, but we're doing the best we can to try to work things
25 out.

1 Initially the board took the position that it didn't
2 want to pay phone companies anything for the translation costs
3 of the 811. That was, among other things, because it looked to
4 us initially like the cost would be extremely high. For
5 example, Verizon initially thought it might cost some \$200,000,
6 and that was one of many telephone companies in the State of
7 Florida, in fact, some 1,700 if you take the list of regulated
8 entities here, and then we've got the wireless carriers on top
9 of that. But at any rate, after months of discussion, Verizon
10 is down to about \$15,460 from the \$200,000. So it's not as bad
11 as it was at one time. But that was one of the reasons for our
12 initial position that we didn't want to pay anything.

13 And then we adopted the position that we would pay
14 any carrier that needed to translate a switch up to \$250 per
15 switch to do the translation. We still aren't able to come to
16 any accommodation with a number of the companies, although I
17 continue to try and have developed various contracts.

18 We would like to proceed through the contract route
19 rather than the tariff route because, as you know, tariffs
20 filed in Florida are presumptively valid. And that's one of
21 the reasons I'm here today, because when your staff
22 recommendation has indicated that the tariffs should be filed,
23 that basically failed to resolve any of the issues in this
24 docket, one of which was cost. Because when the companies file
25 their tariffs, it could contain any cost, and whatever that

1 cost is, that is presumptively valid. So we're in a spot
2 there. I would rather have some control over what we pay and
3 what the conditions might be that are imposed upon us as a
4 result of providing 811 translation in their switches.

5 So I guess the bottom line is I'm just sort of
6 disappointed that the Commission couldn't help resolve one of
7 the admittedly primary issues in the case which is cost.
8 There's no attempt even to resolve it. And probably that's
9 because even though it isn't expressly stated in the staff
10 recommendation, the Commission probably believes that it really
11 has no authority to, to do anything with regard to cost because
12 the 811 service is not a basic service and the Commission just
13 has jurisdiction over telephone companies with regard to rates
14 for basic service at this point.

15 So what's happened is the federal government issued,
16 passed some legislation, ordered the FCC to do something with
17 its three-digit dialing code. They chose 811. Then they
18 passed on down to the Public Service Commissions of the various
19 states the obligation to resolve any implementation issues,
20 among which would be the implementation issue of cost and
21 conditions imposed upon the One Call. But even though that's
22 happened, we've kind of come to a dead-end because it would
23 appear the Commission really doesn't have any jurisdiction to
24 do what the FCC has asked them to do. So that was my kind of
25 disappointment. I had hoped that somebody could step in and

1 help us resolve all these issues that are hanging out there
2 right now.

3 That's really basically all I have to say. We're
4 going to continue to try to resolve this and hopefully we can
5 do so.

6 MR. GURDIAN: Good morning, Commissioners. Manny
7 Gurdian on behalf of BellSouth. In general, BellSouth supports
8 staff's recommendation. Obviously the design implementation
9 and maintenance of this system, 811 system creates costs for
10 telecommunications carriers.

11 BellSouth submits that it and other carriers should
12 be permitted to recover their cost of implementing 811 as your
13 staff has indicated in its recommendation. The only change
14 that BellSouth requests that the Commission make to the
15 recommendation is with regard to the date on which it should be
16 required to make its switches available and operational.
17 Instead of February 15th, Bellsouth proposes the date be
18 March 15th, which is still almost a month before the FCC's
19 deadline of April 15th. Thank you, Commissioners.

20 CHAIRMAN EDGAR: Thank you.

21 Mr. O'Roark.

22 MR. O'ROARK: Thank you, Madam Chairman,
23 Commissioners. De O'Roark again on behalf of Verizon. Verizon
24 also generally supports the staff recommendation.

25 To give you some quick background, Verizon sent a

1 draft contract to Sunshine State One Call mid-November. I
2 understand that we received a counterproposal back this
3 morning. I discussed it briefly this morning with counsel, but
4 have not yet reviewed it.

5 The good news is that there is not an issue between
6 the parties as to cost. That is resolved. I understand though
7 that there have been some significant rewrites as to terms and
8 conditions, and we'll simply have to review those and negotiate
9 on that.

10 Once we have the final contract in place, it will
11 take us some time then to implement the changes in our
12 switches, perhaps on the order of 30 to 45 days. Like
13 BellSouth, our only concern about the recommendation is timing.
14 Frankly, it would be our preference that the Commission simply
15 adopt the FCC deadline of April 13th, 2007. A couple of
16 reasons: One is we do still have to work out the terms and
17 conditions and there will be some time required to implement
18 the contract. And the other thing is Verizon is a national
19 company. We operate -- we have local facilities in 24 states,
20 and it's easier for us to deal with one national deadline than
21 potentially several different state deadlines. So our first
22 preference would simply be to have the April 13th deadline.
23 Failing that, we would support BellSouth's proposal for roughly
24 a one-month extension. Thank you.

25 CHAIRMAN EDGAR: Thank you.

1 MS. MASTERTON: Thank you, Madam Chairman.
2 Susan Masterton on behalf of Embarq. Embarq also supports the
3 staff recommendation. And although we don't have an objection
4 to extending the timeframe as BellSouth and Verizon have
5 suggested, for point of information, Embarq has already filed a
6 tariff implementing 811, we've made the necessary translations
7 in our switches, we've arranged to have the one use of the
8 number which was internal terminated so that it's available,
9 and we would be ready to fulfill an order for 811 whenever we
10 receive it. Thank you.

11 CHAIRMAN EDGAR: Thank you.

12 Commissioners, any questions?

13 Commissioner Deason.

14 COMMISSIONER DEASON: Mr. Erwin, I have a question.
15 I take it from your comments that this 811 service is something
16 you really don't desire. Is that true or not?

17 MR. ERWIN: Well, we're ambivalent about it. I think
18 we can see that it could have usefulness. On the other hand,
19 it's counterproductive to some of the efforts that we're trying
20 to make to streamline things and direct people towards the
21 Internet and stuff.

22 COMMISSIONER DEASON: But that issue is not in front
23 of us. It's already been mandated by the FCC.

24 MR. ERWIN: No. No. That's already been decided.
25 We will continue to try to work something out. But I guess I

1 could say the incentive isn't terribly great at this point.
2 Which -- let me add one thing while I'm, while I'm here. I
3 heard the BellSouth attorney indicate that they want to recover
4 costs. I had hoped that maybe we could get a better handle on
5 what these costs are. They vary -- for example, throughout the
6 western part of the U.S. Qwest is charging \$30 per switch to
7 translate the 811 into the toll free number. And other --
8 Embarq wants \$250, I believe, Bell would like \$350 something in
9 Florida. I think Bell charged the North Carolina people
10 \$174.50 per switch. I have absolutely no idea whether any of
11 the numbers that are being bandied about relate to cost in any
12 way. They may or they may not. And I know that this
13 Commission has expertise to determine those sorts of things but
14 perhaps not the jurisdiction to do so.

15 And then the other thing, even more important than
16 cost, is the problem that we see with some of the tariffs and
17 why I don't really want to get into agreeing to anybody's
18 tariff, because then I have no basis to disagree with somebody
19 else's tariff. And some of these tariffs have some quite, to
20 me at least, objectionable, and to my company, objectionable
21 provisions in them such as our requirement to indemnify the
22 telephone company against any suits, actions, claims, demands,
23 judgments incurred by the company, made by anybody for any
24 personal injury to or death of any person or persons or for any
25 loss and so forth and so on. I don't know why we are being

1 imposed upon to indemnify the telephone companies for something
2 that they may or may not do correctly. I don't even have any
3 idea what, what they have in mind with provisions like this
4 other than the possible fact that somebody might dial 811 when
5 they intended to dial 911 and would thereby, you know, fail in
6 their endeavor and suffer some consequences and sue somebody
7 for it. I don't know how that could really be the phone
8 company's fault or our fault, but they might very well sue
9 anyhow. We get sued all the time for, or we did until this
10 most recent legislative session, for failing to mark lines when
11 we have no responsibility to mark lines at all. It's a
12 telephone company responsibility, but we get sued all the time
13 for failing to do that. We haven't attempted to ask the phone
14 companies to indemnify us. And I don't think they should ask
15 us to indemnify them regardless of what happens. But that's
16 the kind of thing that's in these tariffs that is objectionable
17 to our board.

18 COMMISSIONER DEASON: I have a question for staff.

19 If the tariffs are filed, and even though they're
20 presumptively valid, if there is a legitimate objection to that
21 tariff, what recourse does Mr. Erwin's, in this case,
22 Mr. Erwin's client have?

23 MR. FUDGE: Well, it would seem that the provision
24 that he has a disagreement about is a contractual dispute
25 between him and the phone company. The limited jurisdiction

1 that the Commission has over nonbasic tariffs is basically
2 cross-subsidization and insuring that all providers are treated
3 equally. So he has -- the only recourse would be through his
4 contract negotiations and through his authority over the phone
5 company as a member of his organization.

6 COMMISSIONER DEASON: So when you say
7 cross-subsidization, does that open questions of the, as to
8 whether the charges imposed cover costs or greatly exceed cost
9 recovery or not?

10 MR. FUDGE: It goes to the issue of subsidization
11 between the nonbasic charges and basic charges and the effect
12 that has on competition.

13 COMMISSIONER DEASON: So if Mr. Erwin believes that
14 he's being overcharged by a certain tariff, he has no recourse?

15 MR. FUDGE: I don't believe so, sir, because in this
16 instance his recourse is that the person that's charging him is
17 also a member of his, his organization, whereby he would spread
18 those costs among the remaining members of that organization.
19 So it's kind of a, kind of a circular charge that goes around
20 among all the members.

21 COMMISSIONER DEASON: Well, let's just, let's assume
22 that the telephone companies were not members. We know they
23 are, but just hypothetically if they were not members, and,
24 say, there was a tariff being filed for an entity that felt
25 like that the charges were excessive, they have no recourse?

1 MR. FUDGE: I don't believe so under the statute,
2 sir.

3 COMMISSIONER DEASON: Mr. Cooke, do you agree with
4 that?

5 MR. COOKE: I'm going to ask Patrick, if you could --

6 MR. WIGGINS: Commissioner, it's an anomaly because
7 the 811 service would be provided in a sense as a monopoly
8 service, and that's exactly the kind of situation where you
9 think we'd have cost review. On the other hand, we don't have
10 that on nonbasic services. So it's a glitch.

11 And the thing I'm not actually clear about is whether
12 the statute requires One Call to order the service. It
13 requires One Call, I believe, to provide the translation data
14 for the phone number, for the 800 number. It requires them to
15 do the translation. But I think it gets everybody to this
16 point where there's this little gap and no one seems to have
17 the authority, the jurisdiction or the ability, the negotiating
18 ability to close that gap. And I gather what Mr. Erwin is
19 saying is that he would like us to step in and try to exercise
20 some jurisdiction to make that happen and to see if we could
21 find some sort of creative way where the statute suggests that
22 we cooperate with federal programs, the liaison and the like,
23 to do that. But it's one thing to do that, and I believe staff
24 has worked hard to try to encourage that, but it's another
25 thing for us as a creature of statute to step in and assert our

1 jurisdiction in an area where the Legislature has taken
2 away from us to promote competition. So to reiterate, we've
3 got, I think, a monopoly service as a result of a federal
4 legislation, and we're being asked to help and we don't appear
5 to have the jurisdiction. I've looked at it. You know I'm not
6 without some creativity in trying to interpret these things,
7 but I haven't been able to find it yet, sir.

8 COMMISSIONER DEASON: Does staff have the ability to
9 review supporting cost information for these tariffs and make
10 an assessment even though we may not have direct jurisdiction,
11 or is that, or is there no requirement for there to be any
12 supporting cost information when a tariff is filed?

13 MR. WIGGINS: You know, my better instinct is to
14 defer to Mr. Casey, but when have I used my better instincts on
15 this?

16 You know, I think under the provision that says that
17 we're expected to cooperate and act as a liaison with federal
18 programs to make sure they work, even though we may not have
19 the jurisdiction to assert cost controls and the like, I
20 believe we would have the ability to look at cost data. I
21 believe we could -- it would be an interesting -- I think
22 that's a reasonable interpretation sitting up here at this
23 moment.

24 COMMISSIONER DEASON: So it would be incumbent upon
25 everyone involved to reach an accommodation as to what is a

1 reasonable tariff so as to avoid the possibility of us asking
2 for cost support and review of that.

3 MR. WIGGINS: Yes, sir. I'm not sure there's
4 unanimous agreement up here among the attorneys with my
5 position, but.

6 CHAIRMAN EDGAR: Commissioner Arriaga.

7 COMMISSIONER ARRIAGA: Let me try to understand. Is
8 this program, is this program --

9 MR. WIGGINS: Can I get where Mr. Casey or somebody
10 can kick me if I'm wrong? I'm sorry, sir.

11 COMMISSIONER ARRIAGA: Is this program a federal
12 mandate?

13 MR. WIGGINS: Yes, sir. It's a federal -- the
14 federal legislation required this, when was it, two or three
15 years ago, and then the FCC implemented it. And so in a sense
16 it was probably a good idea four years ago. But as Mr. Erwin
17 has said, they've made great progress in making the process
18 more efficient over the Internet and the like. But, yes, sir,
19 it is required.

20 COMMISSIONER ARRIAGA: Mr. Erwin, where do you get
21 your funds from?

22 MR. ERWIN: The funds come from the membership,
23 strictly that. We charge each member, which is required to be
24 everybody in the State of Florida that has an underground
25 facility, and we charge them so much per ticket. It's now

1 currently 50 cents per notification, so.

2 COMMISSIONER ARRIAGA: And your own members are some
3 of the companies that are here today presenting an objection.

4 MR. ERWIN: That's correct.

5 COMMISSIONER ARRIAGA: How come you cannot come to an
6 agreement within your own board?

7 MR. ERWIN: Well, because the board has more people
8 on it that are not phone company than it has that are phone
9 company people. And we just, we have gas members, cities,
10 counties, water and sewer utilities, electric utilities,
11 municipal, everything.

12 COMMISSIONER ARRIAGA: But do you think, do you think
13 that this Commission should interfere in a matter that should
14 belong in a board of directors of an organization, civil law or
15 something else, mercantile law?

16 MR. ERWIN: Well, you have some unique opportunities
17 to develop cost information. We have no idea -- when you see
18 costs ranging from zero to hundreds of dollars per central
19 office for a translation that ostensibly takes a minute or two,
20 we have no idea how, how companies have determined that cost,
21 and we're reluctant to pay it in view of the -- we have decided
22 that the number that Embarq came up with was a reasonable
23 number and we would pay up to that number. But we are
24 disinclined to pay any more than that unless someone would tell
25 us and convince our board that that is a cost-related number.

1 I don't know whether you're going to do this with total
2 long-run incremental costs or a time and materials thing for
3 translating the switch or how, but there must be some way to
4 assure our board that what they are paying is, is a reasonable
5 cost dollar figure and that the requirements imposed on us are
6 reasonable.

7 COMMISSIONER ARRIAGA: One last question. It's just
8 a comment, Mr. Erwin, but I really do have problems trying to
9 understand because I have been in the private sector and I know
10 what being a board member is. But I just have a lot of
11 problems trying to understand why your own members, your own
12 board of directors cannot resolve this with the companies that
13 are members of your board. I don't think it's our position to
14 be involved in that.

15 MR. ERWIN: That's fine.

16 CHAIRMAN EDGAR: Commissioners, any further
17 questions? Then I'm ready for a motion.

18 COMMISSIONER DEASON: I move staff's recommendation.

19 COMMISSIONER CARTER: Second.

20 MS. BEARD: I'm sorry. Excuse me. We would like to
21 make the change that was suggested by BellSouth and Verizon for
22 March 15th, 2006.

23 COMMISSIONER DEASON: Staff has no objection to that?

24 MS. BEARD: We do not have an objection.

25 COMMISSIONER DEASON: All right. I would amend my

1 motion to include that change, Madam Chairman.

2 CHAIRMAN EDGAR: Thank you. Commissioners, any
3 further discussion? All those in favor of the motion, say aye.

4 (Unanimous affirmative vote.)

5 Opposed? Show it adopted. Thank you.

6 (Agenda Item 7 concluded.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

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I, LINDA BOLES, CRR, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 12th DAY OF DECEMBER, 2006.

Linda Boles
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