

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** August 31, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of Industry Development and Market Analysis (Williams, Fogleman) *CFW*  
Office of the General Counsel (Page) *JHP SML* *JF* *CH*

**RE:** Docket No. 20140029-TP – Request for submission of proposals for relay service, beginning in June 2015, for the deaf, hard of hearing, deaf/blind, or speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

**AGENDA:** 09/07/17 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** October 1, 2017 – Effective date of Florida Telecommunications Relay, Inc., budget. Notification of any change in the Telecommunications Access System surcharge must be made to carriers prior to October 1, 2017 under staff's recommendation.

**SPECIAL INSTRUCTIONS:** Anticipate the need for sign language interpreters and assisted listening devices. Please place near beginning of agenda to reduce interpreter costs.

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### Case Background

Section 427.701(1), Florida Statutes (F.S.), provides that the Commission shall establish, implement, and oversee the administration of the statewide telecommunications access system for the deaf, hard of hearing, deaf/blind or speech impaired. Pursuant to Section 427.704(2), F.S., Florida Telecommunications Relay Inc. (FTRI), a nonprofit corporation formed by the local

exchange telephone companies, was designated by the Commission to serve as the Telecommunications Access System Administrator.

The Commission has an oversight role for FTRI pursuant to Section 427.704(1), F.S. On July 26, 2017, the Commission issued Proposed Agency Action Order No. PSC-2017-0292-PAA-TP establishing the 2017/2018 budget for FTRI. The Commission adjusted certain line items in FTRI's proposed budget, filed March 1, 2017, and reduced the Florida Relay System (FRS) surcharge from \$0.11 to \$0.10. Any person whose substantial interests were affected by the proposed action could file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code (F.A.C.).

On August 16, 2017, Mr. Chris Littlewood submitted a customer contact petitioning the Commission to reconsider the Notice of Proposed Agency Action Order No. PSC-2017-0292-PAA-TP. Pursuant to Rules 25-22.029(4) and 25-22.0376(5), F.A.C., the Commission will not entertain a motion for reconsideration of a notice of proposed agency action. On August 18, 2017, staff sent a letter to Mr. Littlewood asking that he inform the Commission whether the August 16, 2017 customer contact should be considered as a petition for formal proceedings. On August 23, 2017, Mr. Littlewood re-filed the August 16, 2017 customer contact with an electronic message stating that he wished the Commission to consider his August 16, 2017 customer contact as a petition for formal proceedings.

This recommendation addresses Mr. Littlewood's petition for formal proceedings and the appropriate disposition of Order No. PSC-2017-0292-PAA-TP. The Commission has jurisdiction pursuant to Chapter 427, F.S.

## Discussion of Issues

**Issue 1:** Should the Commission dismiss Mr. Littlewood's petition for formal proceedings?

**Recommendation:** Yes. The Commission should dismiss Mr. Littlewood's petition for formal proceedings with prejudice for failure to meet the pleading requirements outlined in Rule 28-106.201, F.A.C., and for failure to state a cause of action over which the Commission has jurisdiction. PAA Order PSC-2017-0292-PAA-TP should be made final and effective and companies should be directed to begin charging the \$0.10 surcharge by October 1, 2017. (Page)

**Staff Analysis:** When the Commission issues an order as proposed agency action, any person whose substantial interests are affected by the action proposed in the order may file a petition within 21 days. The petition must meet the requirements outlined in Rule 28-106.201, F.A.C.

Mr. Littlewood's petition for formal proceedings, although timely, fails to meet the requirements outlined in Rule 28-106.201, F.A.C., on filing a petition for formal proceedings and fails to state a cause of action over which the Commission has jurisdiction. Thus, staff recommends that Mr. Littlewood's request for formal proceedings should be dismissed with prejudice and Order No. PSC-2017-0292-PAA-TP should be made final.

### Pleading Requirements for Formal Proceedings

Rule 25-22.029(3), F.A.C., states that one whose substantial interests may or will be affected by the Commission's proposed action may file a petition for a Section 120.569 or 120.57, F.S., hearing, in the form provided by Rule 28-106.201, F.A.C. Order No. PSC-2017-0292-PAA-TP contains a notice of further proceedings or judicial review that states that a petition for formal proceeding must be filed in the form provided by Rule 28-1-6.201. F.A.C.

Uniform Rule 28-106.201, F.A.C., Initiation of Proceedings, requires that all petitions for a formal hearing must contain the following:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name and address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or qualified representative, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all the disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

Mr. Littlewood's petition, styled as a motion for reconsideration,<sup>1</sup> is a request that the Commission consider the expansion of services provided by FTRI to the deaf, hard of hearing, deaf/blind or speech impaired. Mr. Littlewood does not seek any relief related to the FTRI 2017/2018 budget, but only submits a general request that the Commission consider expanding the services provided by the Florida relay system. He asserts that the Commission should consider the "appropriate expanded services of telecommunications relay as appropriate for current technologies under Florida Statute 427.701(1)."

The petition does not contain a concise statement of the ultimate facts alleged, including the specific facts Mr. Littlewood contends warrant reversal or modification of Order No. PSC-2017-0292-PAA-TP. He makes no claim that any rule, order or statute has been violated. No specific facts were alleged by Mr. Littlewood to support his request for expanded services provided by the Florida relay system.

There is no statement of the specific rules or statutes that he contends require reversal or modification of Order No. PSC-2017-0292-PAA-TP. There is no explanation of how any alleged facts relate to specific rules or statutes relevant to the FTRI budget. Mr. Littlewood fails to identify, cite, or reference with specificity any rule, order, or statute which would require the reversal or modification of the PAA Order establishing FTRI's annual budget and reducing the surcharge from \$0.11 to \$0.10.

Mr. Littlewood appears to accept the budget and surcharge decrease established by the Commission. He states in his petition that "My concern is not so much the reduction in surcharge to \$0.10 whereas fiscally appropriate as it is the lack of attention to the changing needs of services." There is no claim that the Commission should in any manner change the FTRI budget or take any action with regard to the amount of the surcharge, only a request that it should be suspended while further investigation into the expansion of relay services is complete.

Section 120.569 (c), F.S., mandates that the Commission dismiss a petition if it is not in substantial compliance with the requirements of Rule 28-106.201, F.A.C. When Mr. Littlewood submitted his August 16, 2017 customer contact, he did not satisfy the requirements of Rule 28-106.201, F.A.C.

### **Dismissal With Prejudice**

Section 120.569(2)(c) F.S., states that dismissal of a petition shall, at least once, be without prejudice to the filing of a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. Even if Mr. Littlewood's

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<sup>1</sup> Rules 25-22.029 and 25-22.0376(5), F.A.C., state that the Commission will not entertain a motion for reconsideration of a notice of proposed agency action.

petition were to comply with the Uniform rule on initiating formal proceedings, the nature of the action he requests would not state a cause under the Commission's jurisdiction and therefore this defect cannot be cured. Normally, pro se litigants are given some latitude when seeking to litigate before an agency, but because staff does not believe his request can be cured, staff believes dismissal is the correct result.

Mr. Littlewood's filing asks the Commission to suspend the surcharge for consideration of services to digital and Internet Protocol (IP) equipment that is otherwise prohibited by existing Florida Statutes. He also mentions more "current wireless technologies" and video relay services. Chapter 364, F.S., grants the Commission's jurisdiction to regulate telecommunications service. The authority of the Commission to regulate telecommunications service is limited by Section 364.011, F.S., which exempts telecommunication services such as wireless telecommunications, and Voice Over Internet Protocol from the Commission's regulatory jurisdiction. Mr. Littlewood seeks services through the relay program for which the Commission has no jurisdiction. Thus, his petition for formal proceedings should be dismissed with prejudice because it fails to state a cause of action under the Commission's jurisdiction.

### **Conclusion**

The Commission should dismiss Mr. Littlewood's petition for formal proceedings with prejudice for failure to meet the pleading requirements outlined in Rule 28-106.201, F.A.C., and for failure to state a cause of action over which the Commission has jurisdiction. PAA Order 2017-0292-PAA-TP should be made final and effective and companies should be directed to begin charging the \$0.10 surcharge by October 1, 2017.

**Issue 2:** Should this docket be closed?

**Recommendation:** No. The docket should remain open to address all matters related to relay service throughout the life of the current relay contract. (Page)

**Staff Analysis:** The docket should remain open to address all matters related to relay service throughout the life of the current relay contract.