

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 20140029-TP
ORDER NO. PSC-2017-0347-FOF-TP
ISSUED: September 7, 2017

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN, Chairman
ART GRAHAM
RONALD A. BRISÉ
DONALD J. POLMANN

ORDER DISMISSING PETITION FOR FORMAL PROCEEDINGS WITH PREJUDICE,
MAKING PROPOSED AGENCY ACTION ORDER NO. 2017-0292-PAA-TP FINAL
AND EFFECTIVE, AND DIRECTING THE LOCAL EXCHANGE COMPANIES,
COMPETITIVE LOCAL EXCHANGE COMPANIES, AND SHARED TENANT PROVIDERS
TO BEGIN CHARGING THE \$0.10 SURCHARGE BY OCTOBER 1, 2017

BY THE COMMISSION:

I. 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., we designated Florida Telecommunications Relay Inc. (FTRI), a nonprofit corporation formed by the local exchange telephone companies, to serve as the Telecommunications Access System Administrator.

We have an oversight role for FTRI pursuant to Section 427.704(1), F.S. On July 26, 2017, we issued Proposed Agency Action Order No. PSC-2017-0292-PAA-TP establishing the 2017/2018 budget for FTRI. We 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 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., we will not entertain motions for reconsideration of a notice of proposed agency action.

On August 18, 2017, our 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.

We have jurisdiction pursuant to Chapter 427, F.S.

II. 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 28-106.201, F.A.C.

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,¹ is a request that we 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 we consider expanding the services provided by the Florida relay system. He asserts that we 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 we 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(2)(c), F.S., mandates that we dismiss a petition if it is not in substantial compliance with the requirements of Rule 28-106.201, F.A.C. Mr. Littlewood's filing does not satisfy the requirements of Rule 28-106.201, F.A.C. Therefore, his petition is hereby dismissed.

III. Dismissal With Prejudice

Mr. Littlewood's filing asks us 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 us jurisdiction to regulate telecommunications service. Our authority to regulate telecommunications service is limited by Section 364.011, F.S., which exempts wireless telecommunications and Voice over Internet Protocol from our jurisdiction. Mr. Littlewood seeks services through the relay program for which we have no jurisdiction.

¹ 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.

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 petition were to comply with the rules on initiating formal proceedings, the nature of the action he requests does not state a cause of action under our jurisdiction. Therefore, this defect cannot be cured, and Mr. Littlewood's petition is hereby dismissed with prejudice.

IV. Conclusion

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 we have jurisdiction. Thus, Mr. Littlewood's request for formal proceedings is dismissed with prejudice and Proposed Agency Action Order No. PSC-2017-0292-PAA-TP is hereby made final and effective. The incumbent local exchange companies, competitive local exchange companies, and shared tenant providers shall begin charging the \$0.10 surcharge by October 1, 2017.

Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that Mr. Littlewood's petition for formal proceedings is dismissed with prejudice as set forth in the body of this Order. It is further

ORDERED that Proposed Agency Action Order 2017-0292-PAA-TP is hereby made final and effective. It is further

ORDERED that the incumbent local exchange companies, competitive local exchange companies, and shared tenant providers shall begin charging the \$0.10 surcharge by October 1, 2017. It is further

ORDERED that this docket shall remain open to address all matters related to relay service throughout the life of the current relay contract.

By ORDER of the Florida Public Service Commission this 7th day of September, 2017.



HONG WANG

Chief Deputy Commission Clerk
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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 Office of Commission Clerk, 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 Office of Commission Clerk, 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.