

MEMORANDUM

October 20, 1997

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FPSC - Records

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CULPEPPER) *AC MEB*

RE: DOCKET NO. 950699-TL - RESOLUTION BY CITY COMMISSION OF HAINES CITY REQUESTING EXTENDED AREA SERVICE (EAS) FROM HAINES CITY EXCHANGE TO ALL EXCHANGES WITHIN POLK COUNTY

PSC-97-1308-FOE-TL
~~PSC-99-1905~~

Attached is a ORDER REQUIRING SURVEY FOR EXTENDED AREA SERVICE, to be issued in the above referenced docket. (Number of pages in order - 13)

BC/anr
Attachment
cc: Division of Communications
I: 950699o.bc

Handed - 2/10
10/21/97

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution by City
Commission of Haines City
requesting extended area service
(EAS) from Haines City exchange
to all exchanges within Polk
County.

DOCKET NO. 950699-TL
ORDER NO. PSC-97-1308-FOF-TL
ISSUED: October 22, 1997

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING

ORDER REQUIRING SURVEY FOR EXTENDED AREA SERVICE

BY THE COMMISSION:

In response to Resolution No. 627 filed by the City Commission of Haines City (Haines City) on May 18, 1995, we opened this docket to investigate Haines City's request for extended area service (EAS) from the Haines City exchange to all exchanges located within Polk County. GTE Florida Incorporated (GTEFL or the Company) provides service to the Haines City, Lakeland, Bartow, Polk City, Mulberry, and Indian Lakes exchanges. Sprint-Florida, Inc. (Sprint) serves the Fort Meade exchange. The Haines City, Lakeland, Bartow, Polk City, Mulberry, and Indian Lakes exchanges are located in the Tampa LATA, whereas the Fort Meade exchange is located in the Fort Myers LATA. Pursuant to Section 364.785(2), Florida Statutes, the parties agreed that this proceeding should be governed by Chapter 364, Florida Statutes, as it existed prior to July 1, 1995.

By Order No. PSC-95-1429-PCO-TL, issued November 27, 1995, we required GTEFL to perform and file traffic studies on the intraLATA routes at issue in this docket. We did not require GTEFL to conduct traffic studies on the interLATA routes, because it no longer performs billing for AT&T.

DOCUMENT NUMBER DATE

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STATE OF FLORIDA PUBLIC SERVICE COMMISSION

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By Order No. PSC-96-0620-FOF-TL, issued May 8, 1996, we denied the request for EAS from the Haines City exchange to all exchanges located within Polk County. We determined that none of the routes qualified for non-optional, flat rate, two-way EAS or an alternative toll relief plan. Since the traffic data on the intraLATA routes did not indicate a community of interest, we concluded that additional interLATA traffic information would not change the result.

On May 28, 1996, the City Commission of Haines City protested Order No. PSC-96-0620-FOF-TL, and requested a formal hearing.

By Order No. PSC-96-1034-PCO-TL, issued August 8, 1996, we set this matter for hearing to consider community of interest factors other than traffic data. On April 22, 1997, the Commission held a public and technical hearing in Haines City, Florida.

At our July 15, 1997, Agenda Conference, we deferred consideration of this matter, at the request of the Office of Public Counsel (OPC), in order to allow the parties time to try to negotiate a settlement. We rescheduled consideration of the case for October 7, 1997.

On September 5, 1997, OPC and Haines City filed a Request to Address the Commission at the Agenda Conference. By its request, OPC sought our approval to allow each party five minutes to address us regarding Commission staff's recommendation at the October 7, 1997, agenda conference. On September 8, 1997, GTEFL responded in opposition to OPC's request.

OPC'S REQUEST TO ADDRESS THE COMMISSION

By its request, OPC and Haines City asked that each party be allowed 5 minutes to address us regarding our staff's post-hearing recommendation. OPC and Haines City asserted that because Commission staff sponsored no witnesses at the hearing, they had not had an opportunity to respond to the recommendation. OPC and Haines City argued that we would be better able to make a decision in this case if we heard further argument from OPC, Haines City officials, and others expected to attend the Agenda Conference.

In its September 8, 1997, response to OPC's request, GTEFL argued that OPC's request should be rejected. GTEFL stated that the record in this case is closed; thus, if OPC or Haines City

tried to introduce new information or evidence at the Agenda Conference, GTEFL's due process rights would be compromised. GTEFL asserted that post-hearing argument does not allow for cross-examination and is impermissible unless all parties to the docket agree to it. GTEFL also asserted that we would not benefit from additional argument on staff's recommendation. In addition, GTEFL noted that under OPC's argument that it has not had an opportunity to address staff's recommendation, post-hearing argument would have to be granted in every case. GTEFL argued that this is not a logical approach, and that OPC has already had the opportunity to argue its views at the hearing and in post-hearing briefs.

Rule 25-22.0021(2), Florida Administrative Code, states

When a recommendation is presented and considered in a proceeding where a hearing has been held, no person other than staff who did not testify at the hearing and the Commissioners may participate at the agenda conference. Oral or written presentation by any other person, whether by way of objection, comment, or otherwise, is not permitted, unless the Commission is considering new matters related to but not addressed at the hearing.

OPC and Haines City stated in their request that Haines City citizens were surprised at certain recommendations made by our staff. The issues were, however, addressed extensively by OPC and Haines City at hearing and in the post-hearing briefs. Our staff addressed these arguments in the staff recommendation. Thus, the issue that OPC and Haines City seek to further address cannot be considered a new matter "related to but not addressed at the hearing." Rule 25-22.0021, Florida Administrative Code. OPC and Haines City merely disagree with Commission staff's recommendation.

Furthermore, the issue of whether responses or exceptions to staff's recommendations should be allowed has been addressed by the 1st District Court of Appeal. The court's decision in Legal Environmental Assistance Foundation, Inc. v. Florida Public Service Commission, 641 So. 2d 1349 (Fla 1st DCA 1994) upheld the Division of Administrative Hearings hearing officer's determination in Legal Environmental Assistance Foundation, Inc., v. Florida Public Service Commission, Case No. 93-2956RX, at ¶62, where the hearing officer determined that

The advisory memoranda prepared by Commission staff who do not testify at hearing are not documents which constitute proposed orders or recommended orders. They are contemplated by and consistent with Section 120.66(1)(b), Florida Statutes. The advisory memoranda are not matters about which exception may be taken.

In view of the fact that Rule 25-22.0021(2), Florida Administrative Code, prohibits participation by anyone other than Commissioners and staff at agenda when a post-hearing recommendation is presented for consideration, because the issue upon which OPC and Haines City seek to further address us was thoroughly addressed at the hearing, in briefs, and in staff's recommendation, and in view of the court's holding in Legal Environmental Assistance Foundation, Inc. v. Florida Public Service Commission, OPC's and Haines City's Request to Address Commission at Agenda Conference is denied.

SURVEY

At our April 22, 1997, hearing, we heard testimony regarding whether there is a sufficient community of interest to justify implementing EAS, or an alternative toll proposal, on the following routes:

Haines City/Lakeland
Haines City/Polk City
Haines City/Bartow
Haines City/Mulberry
Haines City/Frostproof
Haines City/Indian Lakes
Haines City/Fort Meade

In particular, we heard a significant amount of testimony regarding the need for toll relief on the routes to Bartow, the county seat, and to Lakeland, where many state and federal offices are located.

Haines City contended that there is a sufficient community of interest on the routes at issue to warrant balloting for non-optional EAS to all exchanges within Polk County. Of the 51 citizens that testified at the public hearing concerning community

of interest factors, all of them supported the request for non-optional EAS or some alternative form of toll relief. Residents Tucker, McGlashon, Carefoot, and Toney-Deal indicated that they support EAS with the full knowledge that it would require a rate increase. Additionally, witnesses Brantley, Saag, and Carefoot asserted that they depend on the Lakeland and Bartow exchanges for their medical services, business services, governmental services, and personal needs.

Haines City's witness Toney-Deal argued that the traffic studies provided by GTEFL were incomplete and failed to reflect the true volume of traffic being generated between Haines City and the other intra-county locations at issue in this docket. Also, Haines City witnesses Carefoot, Fie, Hannon, Toney-Deal, and Fortin testified that they bypass GTEFL's toll services by using other means to complete intra-county toll calls. For instance, witness Fie indicated that she and Mr. Fie let toll calls that they need to make "stock pile." Then, when Mr. Fie goes to Winter Haven, he makes the necessary calls all at once. Haines City witness McCall stated that he avoids toll charges by driving to a pay telephone located in the Winter Haven exchange about 1 mile from his home, which has toll-free calling to Lakeland and Bartow. He also asserted that he uses his cellular phone on the weekend and late night to avoid making toll calls. Witness Brown stated that she makes calls from her job located in Winter Haven to avoid incurring toll charges at home in Haines City. Additionally, a number of witnesses, Hannon, Poe, and Toney-Deal, indicated that they dial around to other long distance carriers when making intra-county toll calls. Consequently, Haines City argued that the traffic studies are not a true measure of the volume of traffic on the routes at issue. Haines City asserted in its brief that more emphasis should be placed on other community of interest factors, including the fact that the Haines City area is the fastest growing area in Polk County.

Witnesses Snyder, Toney-Deal, Fortune, and Reilly asserted that they use doctors and the major regional medical center located in Lakeland (Lakeland Regional Medical Center). Witness Toney-Deal stated that Haines City does have its own medical facilities, hospital, and doctors. The witness did, however, indicate that some of the doctors have dual practices in which they practice in Lakeland a certain number of days and Haines City a certain number of days. The witness further explained that the doctors make appointments from their Lakeland offices. She also asserted that Haines City residents depend on Lakeland medical facilities for

special medical treatments, such as kidney dialysis and open heart surgery. Witness Snyder testified that many of Haines City residents' health care providers are based in Lakeland at Watson Clinic or Lakeland Regional Medical Center. The witness stated that as a pharmacist he calls doctors for approval of prescriptions or any health care related matters for patients. These calls are long distance. He noted that he does not want to pass the extra charge on to his customers. Witness Brantley contended that a large number of retired Haines City residents make toll calls to physicians and clinics in Lakeland, which can be costly when living on a fixed income.

Witnesses Burchfield, Savant, Carter, and Poe asserted that it is very costly and time consuming to conduct business in the Haines City area because of long distance calling. Witness Burchfield, the owner of an engineering firm, contended that his firm incurred long distance charges of \$71.52 for the month of March. He stated that this is an additional cost of doing business in the Haines City area. Witness Savant noted that Ytong Florida, a \$32 million manufacturing business located in Haines City, spends an extra \$150 per month on toll calls within Polk County. Also, witness Mengeling indicated that his funeral business made 443 toll calls within Polk County in March of 1997, which cost approximately \$448. Witnesses Toney-Deal, Saag, and Carefoot stated that the Lakeland area is a major distribution center for Polk County. They testified that businesses in Haines City depend on these companies for services and supplies. They assert that, currently, if these businesses want to contact their distributors, they are forced to make a long distance call. Thus, witness DeGennaro contended, long distance charges impede Haines City's economic development and create a competitive disadvantage for businesses in the community.

In further support of Haines City's position, local government officials Toney-Deal, Storm, and Wheeler agreed that there should be toll-free calling from Haines City to all exchanges within Polk County. Witness Wheeler, who is the Chief of Police for Haines City, stated that communication between law enforcement agencies within Polk is a necessity. He asserted that relaying intelligence information from agency to agency sometimes requires lengthy conversations between investigators; not having EAS often hampers the communication of pertinent information. For instance, if a victim or a witness lives in another part of the county, police investigators do not have the capability of picking up the telephone and contacting them. Witness Toney-Deal stated that various county and government agencies, such as the Sheriff's main

office, the County Courthouse, the County Administration Building, and the County School Board Offices are located in Bartow, the county seat of Polk County. The witness stated that Haines City residents cannot call Bartow toll-free, which isolates the Haines City area from the governmental nucleus of Polk County. Although witnesses Toney-Deal, Saag, and Lasseigne all indicated that there are 800 numbers available to call some government agencies toll-free, witness Toney-Deal contended that the majority of the time these 800 numbers are busy. Additionally, witness Fortune stated that often, when citizens call the county offices they are put on hold for as long as 30 minutes.

Haines City also contended in its brief that the economic impact would be more favorable to GTEFL to receive regrouping income from the Haines City area customers, rather than to invite competition from cellular phones, e-mail, and other long distance providers. Haines City asserts that it may be years, if not decades, before there will be another local franchised provider. Haines City stated that countywide calling would benefit GTEFL by giving it the lion's share of calls within the county, with payment being made monthly for that countywide access.

In its brief, the Public Counsel (OPC) argued that the traffic studies submitted by GTEFL do not provide an accurate or reliable data base for us to use in determining whether a sufficient community of interest exists to justify EAS on the routes at issue in this docket. OPC contended that GTEFL maintains that the traffic data does not warrant either a ballot for flat rate EAS or consideration of an alternative plan. OPC further asserted that the public testimony at the hearing suggests that the traffic studies are insufficient and fail to capture the relevant traffic information.

At hearing, OPC's witness Poucher argued that within the past 12 months AT&T has taken back its billing from GTEFL. The witness pointed out that AT&T's billing for traffic from Haines City to other locations within Polk County is, therefore, not shown on GTEFL's billing records. He stated that there are several other ways in which the studies submitted by GTEFL may be incomplete. As an example, witness Poucher indicated that throughout the course of the hearing, numerous public witnesses, including witnesses Hannon, Fie, and McCall, explained specific methods that they used to avoid going through GTEFL's switching system, which would be a source for the traffic studies. Witness Poucher also asserted that the studies omit traffic from alternative access vendors, FX lines, 800

calling, and private or data lines. We note that GTEFL's witness Robinson also indicated that the studies may not be accurate because there is calling which GTEFL no longer captures. Consequently, witness Poucher stated, the traffic volumes, along with the community of interest testimony presented by Haines City residents, are sufficient to warrant some form of toll relief.

OPC's witness Poucher also contended that while the traffic volumes and distribution of messages on the routes between Haines City and its sister cities in Polk County are insufficient to justify flat rate EAS balloting from Haines City to all exchanges in Polk County, the Commission has in the past ordered toll relief in other cases where the traffic volume was consistent with the traffic from Haines City to the other exchanges in Polk County. As an example, witness Poucher explained that balloting for flat rate EAS was ordered for all routes in Franklin County in January of 1991, when the traffic volumes on the routes at issue ranged from .02 to 2.12 and the distribution fell short of the required standard. The witness stated that ultimately, the ballot failed, and we ordered the \$.25 plan for all routes in the county. Furthermore, in November of 1992, witness Poucher asserted that we ordered the \$.25 calling plan between Chiefland and Cedar Key and Cedar Key and Bronson in view of the fact that the calling volumes on these routes failed to meet the threshold specified by the rule. The witness added that we made note there of the fact that the decision "[was] consistent with our actions in similar EAS dockets with rural areas where we have ordered the \$.25 plan." Witness Poucher asserted that there is a good correlation between the Commission's philosophy in those specific cases and the situation in Haines City.

Sprint's witness Harrell contended that the traffic study results on the Ft. Meade to Haines City route reflect calling rates that are not sufficient to meet the M/A/M or frequency distribution requirements to qualify for flat rate, non-optional EAS or to justify implementation of any form of toll relief. Sprint argued in its brief that the testimony at the hearing did not show a sufficient community of interest between Haines City and Ft. Meade to justify any alternative toll relief.

GTEFL noted in its brief that under the Commission's EAS rules, community of interest is measured through calling data, specifically M/A/M and calling distribution. The company contended that the calling data allow the Commission to make objective and uniform decisions in EAS cases. GTEFL asserted that in accordance

with Rules 25-4.057 and 25-4.060, Florida Administrative Code, we have already found that the traffic studies on the routes at issue demonstrate that the community of interest is not sufficient to order an EAS survey, much less implementation of EAS. GTEFL argued that none of the routes under consideration in this docket meet the M/A/M requirements to qualify for non-optional, two-way, flat rate EAS.

Additionally, GTEFL's witness Robinson stated that the traffic volume on these routes does not satisfy Commission guidelines for a mandatory alternative toll plan, such as ECS. The witness pointed out that in Order No. PSC-96-0620-FOF-TL, issued May 8, 1996, we found that the calling rates on the intraLATA routes do not have sufficient calling volumes or distribution to warrant an alternative toll plan. The witness also noted that in that Order we stated that the traffic data on the routes did not indicate a community of interest. Witness Robinson asserted that the traffic statistics rule out any form of extended calling on these routes. In its brief, GTEFL asserted that our ruling confirmed that objective calling data is the critical factor in evaluating EAS requests under its long-standing precedent. Witness Robinson contended that the only reason this matter is again before us is because Haines City protested our prior Order.

GTEFL further argued in its brief that Haines City and OPC would have us order expanded local calling in this case, even though the traffic statistics fall far short of the requirements set forth in Commission rules. GTEFL also contended in its brief that OPC appears to focus on the last subsection of our rule on community of interest considerations, Rule 25-4.060(5), Florida Administrative Code, which states

In the event that interexchange traffic patterns over any given route do not meet presubscribed community of interest qualifications, the Commission may consider other community of interest factors to warrant further proceedings.

GTEFL's witness Robinson asserted that the Commission's ability to consider non-numerical community of interest factors does not mean we can focus solely on those factors and simply ignore the traffic statistics. Witness Robinson contended that we should be extremely cautious in departing from our rules and customs of relying heavily on traffic statistics in extended calling cases. The witness explained that we should not ignore the

fact that the local market is now open to competition. He further argued that changed market conditions cast doubt on the need for any mandatory extended calling plans. Furthermore, the witness asserted that mandatory regrouping with an additive, which effectively increases existing local rates, will give GTEFL's competitors further room to undercut the Company and take its customers. Also, the Company noted that it will lose its existing toll revenues.

In addition, witness Robinson contended that GTEFL does not believe that there has been an extraordinary showing of non-numerical community of interest factors to justify waiving Commission rules or past policies in considering extended calling requests. The witness asserted that we should reject OPC witness Poucher's invitation to expand the logic from a handful of unique cases to grant mandatory toll relief in this case. He argued that nothing has changed from the issuance of our May 8, 1996, Order to warrant a reversal of the conclusion. Witness Robinson stated that we should stand by our previous finding that no EAS or ECS is justified in this case.

GTEFL's witness Robinson stated, however, that in response to the residents' needs and concerns, GTEFL is willing to offer fully optional local calling plans (LCP). The witness indicated that GTEFL's optional plan could be implemented without regard to the Commission-established community of interest factors. He stated that with GTEFL's LCP, no customer is forced to pay an extra monthly fee, as all customers would under EAS. Witness Robinson noted that LCP has four options, including an option for the customer to stay exactly as they are today.

Upon review of the evidence and testimony presented in this docket, we find that the public witnesses presented sufficient arguments to conclude that the traffic studies submitted by GTEFL do not adequately measure the true volume and distribution of traffic generated on the routes at issue in this docket. We note that of the 51 public witnesses that testified at the hearing, over 75% of them expressed concerns about calling only to Bartow and Lakeland. We find this percentage significant. Furthermore, we find persuasive the testimony of the numerous witnesses who indicated a need to call government offices, located in Bartow, the county seat. Therefore, we hereby order that the Haines City/Lakeland, Haines City/Bartow, and Haines City/Polk City routes be surveyed for non-optional, two-way EAS. We include the Haines City/Polk City route in this survey in order to avoid

"leapfrogging." We believe that only these routes exhibit sufficient community of interest to warrant balloting.

The Haines City customers shall be surveyed for the 25/25 plan with regrouping, which shall be calculated by adding 25% of the rate group schedule for the number of access lines to be newly included in the exchange's calling scope. The regrouping additive is the difference in rates between the exchange's original rate group and the new rate group into which the exchange will fall with its expanded calling scope, as noted by witness Harrel and by GTEFL in its brief. If the survey meets the criteria of Rule 25-4.063, Florida Administrative Code, and EAS is implemented, the additive should remain in effect for no more than 4 years, as suggested by Haines City in its brief. In addition, the rates determined under the 25/25 plan with regrouping and set forth in Tables A and B shall apply.

TABLE A

HAINES CITY (RG-3)	PRESENT RATE	25/25 ADDITIVE	REGROUPING	TOTAL ADDITIVE	NEW RATE
R-1	\$10.86	\$2.72	\$.50	\$3.22	\$14.08
B-1	\$27.45	\$6.86	\$1.25	\$8.11	\$35.56
PBX	\$49.60	\$12.40	\$1.25	\$13.65	\$63.25

TABLE B

HAINES CITY (POINC 427) (RG-2)	PRESENT RATE	25/25 ADDITIVE	REGROUPING	TOTAL ADDITIVE	NEW RATE
R-1	\$10.41	\$2.72	\$.95	\$3.67	\$14.08
B-1	\$26.45	\$6.86	\$2.45	\$9.31	\$35.76
PBX	\$48.40	\$12.40	\$2.45	\$14.85	\$63.25

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GTEFL shall survey the Haines City subscribers within 45 days of the issuance of this Order. GTEFL shall submit the newspaper advertisement for review by Commission staff prior to publication. The survey letter and ballot shall also be submitted to our staff for review prior to distribution to customers. Additionally, GTEFL must provide Commission staff with a copy of the published newspaper advertisement and the dates run.

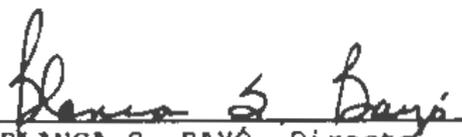
Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that GTE Florida Incorporated shall survey, in accordance with Rule 25-4.063, Florida Administrative Code, its Haines City subscribers for implementation of a non-optional, two-way extended area service plan that complies with the terms and conditions set forth herein, within 45 days from the date this Order is issued. It is further

ORDERED that GTE Florida Incorporated shall submit its survey letter, ballot, and proposed newspaper advertisement to our staff for approval prior to their distribution. It is further

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

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



BLANCA S. BAYO, Director
Division of Records and Reporting

(S E A L)

BC

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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 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.