

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution by) DOCKET NO. 940337-TL
Jacksonville City Council for) ORDER NO. PSC-95-0168-FOF-TL
extended area service (EAS)) ISSUED: February 7, 1995
between the Fort George and)
Jacksonville Beach exchanges.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER REGARDING PROTEST

BY THE COMMISSION:

This docket was initiated pursuant to Resolution No. 94-102-24 filed by the Jacksonville City Council requesting extended area service (EAS) between the Ft. George exchange and the Jacksonville Beach exchange. BellSouth Communications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell) provides service to both the Ft. George and Jacksonville Beach exchanges. These exchanges are located within the Jacksonville LATA (local access transport area). By Order No. PSC-94-0528-PCO-TL, issued May 4, 1994, we required Southern Bell to conduct traffic studies on the Ft. George/Jacksonville Beach route.

Discounted toll plans, such as Enhanced Optional Extended Area Service (EOEAS) are currently available to subscribers. EOEAS offers a premium option which allows unlimited calling for a monthly flat rate.

By Proposed Agency Action (PAA) Order No. PSC-94-1380-FOF-TL, issued November 14, 1994, we denied the request for EAS and the offering of alternative toll plans on the Ft. George/Jacksonville Beach route. The calling rates for the Ft. George/Jacksonville Beach route met the 3 M/A/M requirement of Rule 25-4.060(3), Florida Administrative Code; however, the distribution requirement fell significantly below the 50% threshold. Thus, based upon the requirements of Rule 25-4.060(3), we found that the Ft. George/Jacksonville Beach route did not qualify for nonoptional, flat rate, two-way EAS. We also found that the calling patterns on

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the route did not exhibit a sufficient community of interest to warrant any form of toll relief and held that no alternative toll plans should be implemented on this route.

On November 3, 1994, Mr. Harry Reagan, Councilman-at-Large for the City of Jacksonville, filed a letter as an official protest of our action taken during the October 18, 1994 agenda conference.

On November 14, 1994, we issued PAA Order No. PSC-94-1380-FOF-TL denying the request for EAS and the offering of alternative toll plans on the Ft. George/Jacksonville Beach route.

On December 5, 1994, the last day to file an official protest to the PAA order, Commission staff realized that the protest was filed prematurely and contacted Mr. Reagan's office. At that time, a copy of the PAA Order was sent by fax to his office.

On December 12, 1994, Councilman Reagan filed a letter stating that he never received a copy of PAA Order No. PSC-94-1380-FOF-TL. He requested that his letter be accepted as an official protest and that he have 21 days to review the matter. Although Councilman Reagan was on the list of interested persons with the Office of Records and Reporting, the address for the Jacksonville City Council was listed incorrectly by administrative error.

On December 21, 1994, Councilman Reagan filed a letter stating his reasons for protesting the PAA Order.

Councilman Reagan's November 3, 1994 letter of protest of our October 18, 1994 vote was filed prior to the issuance of Notice of Proposed Agency Action Order No. PSC-94-1380-FOF-TL on November 14, 1994. On pages 5 and 6 of the PAA Order, the Notice of Further Proceedings or Judicial Review provides that any person whose substantial interests are affected by the action proposed by the 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. It also provides that any objection or protest filed before the issuance date of the order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

In this instance, however, the address for Councilman Reagan was incorrectly listed with the Office of Records and Reporting through inadvertent administrative error. Consequently, he failed to receive a copy of the Notice of Proposed Agency Action Order No. PSC-94-1380-FOF-TL, issued November 14, 1994. Accordingly, he did not have notice of the language requiring him to renew his protest

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nor of the other requirements for filing a protest set forth in the Notice of Further Proceeding or Judicial Review. Also, he did not have the opportunity to respond to the specific findings set forth in the PAA Order.

Because there was an administrative error which caused Councilman Reagan to fail to receive Notice of Proposed Agency Action Order No. PSC-94-1380-FOF-TL, we find that all of the letters filed by Councilman Reagan constitute a valid, timely protest of the PAA Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we find that all of the letters filed by Councilman Reagan constitute a valid, timely protest to Proposed Agency Action Order No. PSC-94-1380-FOF-TL. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 7th day of February, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.