

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In Re: Petition for extension of time to comply with Rule 25- 4.076(9), F.A.C., by BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company. |) | DOCKET NO. 950109-TL |
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| In Re: Resolution of outstanding violations of Rule 25-4.076(9), F.A.C., Handicapped Access Standards, by Vista- United Telecommunications. |) | DOCKET NO. 950553-TL |
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| In Re: Resolution of outstanding violations of Rule 25-4.076(9), F.A.C., Handicapped Access Standards, by GTE Florida Incorporated. |) | DOCKET NO. 950554-TL |
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| In Re: Resolution of outstanding violations of Rule 25-4.076(9), F.A.C., Handicapped Access Standards, by United Telephone Company of Florida. |) | DOCKET NO. 950555-TL |
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| In Re: Resolution of outstanding violations of Rule 25-4.076(9), F.A.C., Handicapped Access Standards, by Central Telephone Company of Florida. |) | DOCKET NO. 950556-TL ORDER NO. PSC-95-0810-FOF-TL ISSUED: July 3, 1995 |

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 ACCEPTING SETTLEMENTS AND DENYING PETITION AND
NOTICE OF PROPOSED AGENCY ACTION ORDER
REJECTING SETTLEMENTS AND IMPOSING FINES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed in Sections II, VI, and VII of this Order are preliminary in nature and will become final unless a person whose interests are substantially affected files a

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petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Background

Rule 25-24.076(9), Florida Administrative Code, sets standards for making pay telephones accessible to handicapped persons. Pursuant to the Rule, pay stations installed prior to January 5, 1987 were exempt from the Rule's requirements until the exemption expired on January 1, 1995.

Between January 2, 1995 and January 19, 1995, our staff evaluated approximately 100 pay telephones owned and operated by Vista-United Telecommunications (Vista-United). Evaluations showed that more than half of these pay telephones were not accessible to handicapped persons as required by Rule 25-4.076(9), Florida Administrative Code. We notified Vista-United of the apparent violations and the company responded that corrective action was under way.

On January 25, 1995, BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell) filed a Petition for Extension of Time to Comply with Rule 25-4.076(9), Florida Administrative Code. In its Petition, Southern Bell explained that although 97% of its pay telephones were in compliance with the Rule, there were still 1,208 pay telephones for which corrective action had not been completed due to the uncooperative location owners.

Both Southern Bell and Vista-United's lack of compliance with handicapped access standards caused our staff to question whether other local exchange companies (LECs) were in compliance. In February, our staff started investigations of each of the thirteen LECs to determine whether all pay telephones were in compliance with Rule 25-4.076(9), Florida Administrative Code. Each LEC reported that its pay telephones were in compliance with the exception of Vista-United, Southern Bell, GTE Florida Incorporated (GTEFL), United Telephone Company of Florida (United) and Central Telephone Company of Florida (Centel).

On March 30, 1995, the companies met with our staff to discuss the investigation and propose methods to resolve the outstanding violations. According to the self-reported figures of each LEC, all but 4% of LEC pay telephones are in compliance. Therefore, there are still almost 3,000 pay telephones that do not comply with the Rule. In the past six years, we have initiated show cause proceedings against at least nineteen non-LEC pay telephone providers for violations of the handicapped access standards. LEC providers have known for over two years that the grandfather exemption for its pay telephones installed prior to January 5, 1987 would end on January 1, 1995, yet only Southern Bell filed a

request for an extension of time to comply. Even Southern Bell's petition was filed after the date for compliance had passed. Each company proposed a method for dealing with the violations. This Order deals with each company's settlement proposal and disposes of Southern Bell's Motion for Extension of Time.

II. Southern Bell's Settlement Proposal

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed in this Section is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

We accept Southern Bell's settlement proposal in part and reject it in part. Southern Bell proposed that it pay no more than a \$25 penalty for each pay telephone not in compliance with Rule 25-4.076(9), Florida Administrative Code, on March 2, 1995. Southern Bell reported 798 pay telephones not in compliance on that date. Southern Bell offered to disconnect any pay telephones not in compliance which are not in compliance within 90 days of our approval of the settlement or request an exemption from the Rule for the appropriate pay telephones.

We believe that Southern Bell should pay a penalty based on the number of pay telephones not in compliance with Rule 25-4.076(9), Florida Administrative Code, as of January 1, 1995. We accept Southern Bell's assertion that 1,208 telephones were not in compliance on that date. We reject Southern Bell's proposal that it should only be penalized for the pay telephones in violation of the Rule on March 2, 1995. The Rule stated that pay telephones must be accessible to the physically handicapped on January 1, 1995. Southern Bell calculated that 1,208 pay telephones did not comply with Rule 25-4.076(9), Florida Administrative Code, and should be penalized for each non-compliant pay telephone.

We believe the penalty amount should be greater than \$25 per pay telephone that Southern Bell proposes. Southern Bell has known for at least two years that the exemptions for its pay telephones would expire on January 1, 1995. Even so, it filed its request for extension of time after the date for compliance had passed. We order Southern Bell to pay \$50 per pay telephone, for a total of \$60,400. We note that we have imposed other penalties in other situations and any future violations will be dealt with on a case by case basis.

Notwithstanding the penalty provisions, the other portions of Southern Bell's settlement are appropriate. We find that if the pay telephones in question are not in compliance within 90 days of the date this section of this Order becomes final, then those pay telephones will be disconnected or Southern Bell will request an

exemption from the handicapped access requirements for each affected pay telephone.

III. Southern Bell's Petition for Extension of Time

As noted above, Southern Bell's Petition for Extension of Time was filed after the date specified in the Rule for compliance, despite being on notice for approximately two years. We deny Southern Bell's Petition for Extension of Time to the extent it differs from the provisions outlined above.

IV. Vista-United's Settlement Proposal

In settlement of the violations of Rule 25-4.076(9), Florida Administrative Code, Vista-United proposed to bring all of its pay telephones into compliance within 90 days and pay a \$5,000 penalty. We accept Vista-United's proposal and close Docket No. 950553-TL.

V. GTEFL's Settlement Proposal

In settlement of the violations of Rule 25-4.076(9), Florida Administrative Code, GTEFL proposed to bring all of its pay telephones into compliance within 90 days and pay a \$10,550 penalty for the 211 pay telephones that were not in compliance with Rule 25-4.076(9), Florida Administrative Code. If the phones are not in compliance within 90 days, GTEFL will request an exemption from the Rule or remove the instruments. We accept GTEFL's proposal and close Docket No. 950554-TL.

VI. United's Settlement Proposal

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed in this Section is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

In settlement of the violations of Rule 25-4.076(9), Florida Administrative Code, United offers to pay a penalty of \$3,840 for its 384 pay telephones not in compliance and bring all of its pay telephones into compliance with the Rule within 90 days. If the phones are not in compliance within 90 days, United will request an exemption from the Rule or remove the instruments.

For the same reasons we rejected Southern Bell's proposal, we reject United's. United has known for two years that these pay telephones must comply with handicapped access requirements but has not made the necessary modifications. Accordingly, United shall pay a penalty of \$19,200. In addition, United shall bring all of its pay telephones into compliance with the Rule or request an

exemption within 90 days of the date this section of this Order becomes final.

VII. Centel's Settlement Proposal

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed in this Section is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

In settlement of the violations of Rule 25-4.076(9), Florida Administrative Code, Centel offers to pay a penalty of \$2,360 for its 237 pay telephones not in compliance and bring all of its pay telephones into compliance with the Rule within 90 days. If the phones are not in compliance within 90 days, Centel will request an exemption from the Rule or remove the instruments.

For the same reasons we rejected Southern Bell's proposal, we reject Centel's. Centel has known for two years that these pay telephones must comply with handicapped access requirements but has not made the necessary modifications. Accordingly, Centel shall pay a penalty of \$11,850. In addition, Centel shall bring all of its pay telephones into compliance with the Rule or request an exemption within 90 days of the date this section of this Order becomes final.

It is, therefore,

ORDERED by the Florida Public Service Commission that the settlement proposal by BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company is rejected as stated in Section II of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company shall pay a penalty of \$60,400 and bring all of its pay telephones into compliance with Rule 25-4.076(9), Florida Administrative Code, within 90 days of the date Section II of this Order becomes final. It is further

ORDERED that BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company's Petition for Extension of Time to Comply with Rule 25-4.076(9), Florida Administrative Code, is denied as set forth in Section III of this Order. It is further

ORDERED that unless a person whose substantial interests are affected by the action proposed in Section II of this Order files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, below, Section II of this Order shall become final and Docket No. 950109-TL shall be closed. It is further

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ORDERED that Vista-United Telecommunications shall pay a penalty of \$5,000 and bring all of its pay telephones into compliance with Rule 25-4.076(9), Florida Administrative Code, within 90 days in accordance with the settlement described in Section IV of this Order. It is further

ORDERED that Docket No. 950553-TL is hereby closed. It is further

ORDERED that GTE Florida Incorporated shall pay a penalty of \$10,550 and bring all of its pay telephones into compliance with Rule 25-4.076(9), Florida Administrative Code, within 90 days in accordance with the settlement described in Section V of this Order. It is further

ORDERED that Docket No. 950554-TL is hereby closed. It is further

ORDERED that the settlement proposal by United Telephone Company of Florida is rejected as stated in Section VI of this Order. It is further

ORDERED that United Telephone Company of Florida shall pay a penalty of \$19,200 and bring all of its pay telephones into compliance with Rule 25-4.076(9), Florida Administrative Code, within 90 days of the date Section VI of this Order becomes final. It is further

ORDERED that unless a person whose substantial interests are affected by the action proposed in Section VI of this Order files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, below, Section VI of this Order shall become final and Docket No. 950555-TL shall be closed. It is further

ORDERED that the settlement proposal by Central Telephone Company of Florida is rejected as stated in Section VII of this Order. It is further

ORDERED that Central Telephone Company of Florida shall pay a penalty of \$11,850 and bring all of its pay telephones into compliance with Rule 25-4.076(9), Florida Administrative Code, within 90 days of the date Section VII of this Order becomes final. It is further

ORDERED that unless a person whose substantial interests are affected by the action proposed in Section VII of this Order files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, below, Section VII of this Order shall become final and Docket No. 950556-TL shall be closed. It is further

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ORDERED that any petition protesting our actions in Sections II, VI, or VII shall not prevent the actions proposed herein from becoming final as to any other Section of this Order.

By ORDER of the Florida Public Service Commission, this 3rd day of July, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

LMB

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.

As identified in the body of this order, our actions in Sections II, VI, and VII of this Order are preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this 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. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 24, 1995. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.

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 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 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.