

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of appropriate method of collecting and remitting 911 fees to the appropriate counties and providing accurate customer record information to the 911 coordinators.

DOCKET NO. 990342-TP
ORDER NO. PSC-99-1992-PAA-TP
ISSUED: October 12, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING COLLECTION AND REMISSION OF
911 FEES AND PROVISION OF ACCURATE CUSTOMER
RECORD INFORMATION TO 911 COORDINATORS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein 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.

On March 12, 1999, at the request of the Department of Management Services (DMS) Commission Staff met with 911 personnel from DMS to discuss the problems that have arisen with the implementation of Chapter 365.171, Florida Statutes, as a result of failure by some Alternative Local Exchange Companies (ALECs) to collect and remit the 911 fees and to update the 911 database with customer account information. On April 5, 1999, Staff met with several representatives from Local Exchange Companies (LECs), as well as 911 personnel from both DMS and various counties. As a

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result of this meeting, Staff received a summary from each of the LECs regarding their present procedures for collecting 911 fees on behalf of ALECs and updating and maintaining the 911 database. On July 28, 1999, staff held a workshop for all ALECs, LECs and 911 personnel having an interest in this matter.

Each county relies on the funds collected from local telephone subscribers in order to operate and maintain its 911 system. Some counties are unable to collect the appropriate 911 fees from the ALECs because the ALECs cannot be identified. Due to the fact that the fees are calculated on a per access line basis, and ALECs have not been reporting the number of access lines they serve in a particular county, the appropriate 911 fees have not been remitted by the ALECs. Therefore, we are told that the 911 system is significantly under funded.

Although a letter was sent to the certificated ALECs by Commission staff on January 26, 1999, informing them of their responsibilities mandated in Section 365.171, Florida Statutes, regarding the provision of emergency services, some ALECs have not complied with the statutory requirement to collect and remit the fees. Therefore, DMS has requested, and it is appropriate under Section 360.01, Florida Statutes, that the Commission should intercede.

Section 365.171(13), Florida Statutes, states in pertinent part:

(a) Following approval by referendum as set forth in paragraph (b), or following approval by a majority vote of its board of county commissioners, a county may impose a "911" fee to be paid by the local exchange subscribers within its boundaries served by the "911" service.

(1) At the request of the county subscribing to "911" service, the telephone company shall, insofar as is practicable, bill the "911" fee to the local exchange subscribers served by the "911" service, on an individual access line basis, at a rate not to exceed 50 cents per

month per line (up to a maximum of 25 access lines per account bill rendered).

"Telephone company" is defined in Section 365.171(13)(a)5, Florida Statutes, as an exchange telephone service provider of "911" service or equipment. Section 364.02, Florida Statutes, states in pertinent part:

(1) "Alternative local exchange telecommunications company" means any company certificated by the commission to provide local exchange telecommunications services in this state on or after July 1, 1995.

(6) "Local exchange telecommunications company" means any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995.

(12) "Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility.

Therefore, "telephone company" as stated in Section 365.171, Florida Statutes, refers to any company that is providing local service to end users. Considering the definition of ALECs in Section 364.02, Florida Statutes, we find that an ALEC is clearly a telephone company for purposes of Section 365.171, Florida Statutes. Therefore, all ALECs should be responsible for collecting and remitting the 911 fee, pursuant to Section 365.171, Florida Statutes.

The Commission's authority to enforce the provisions of Section 365.171, Florida Statutes, derives from both Chapters 365 and 364, Florida Statutes.

Section 365.171(10), Florida Statutes, provides:

365.171(10) COMPLIANCE.-All public agencies shall assist the division in their efforts to carry out the intent of this section, and such agencies shall comply with the developed plan.

We note the use of the word "shall", as opposed to "may", in establishing mechanisms for the implementation of the intent of the Act.

Further, Section 364.01, Florida Statutes, states in pertinent part:

(4) The Commission shall exercise its exclusive jurisdiction in order to:

(a) Protect the public health, safety and welfare by ensuring that basic local telecommunications services are available to all consumers in the State at reasonable and affordable prices.

The definition of "basic local telecommunications services" is defined in Section 364.02(2), Florida Statutes and specifically requires access to "emergency services, such as '911'."

Based on the cited provisions of Chapters 365 and 364, Florida Statutes, we believe the Commission is clearly within its jurisdiction to assist the Department of Management Services in the implementation and enforcement of Chapter 365, Florida Statutes, by requiring ALECs to comply with the provisions of this Chapter.

Accordingly, we find that ALECs are ultimately responsible for payment of the 911 fee on its access lines, and they should collect and remit the fees to the appropriate county authorities, including any past due fees. However, ALECs are not prohibited from entering into a billing arrangement with a willing LEC to bill and collect the fees.

Section 365.171, Florida Statutes, states in pertinent part:

(13) (a) (6) ...For purposes of this section, "911" service includes the functions of database management, call taking, location verification, and call transfer.

The integrity of the 911 database relies on accurate customer information in order to dispatch emergency personnel from the correct emergency operations center. This database allows for customer specific information, such as a telephone number and address, to be displayed to the emergency operator when a customer dials "911". Based on this customer specific information, the 911 operator dispatches emergency personnel that serves the address shown in the database. If the information in the database is incorrect, the processing of the call is delayed because the 911 operator must determine the correct emergency personnel to contact once the error is discovered. Therefore, it is crucial that the database be maintained with the most accurate customer account information (name, address, telephone number), and without the ALEC's cooperation, public safety is at risk.

Therefore, in order to maintain public safety and ensure the 911 database is accurate, pursuant to Sections 365.171 and 364.01(4), Florida Statutes, we find that the ALECs should be ordered to provide the 911 coordinator in each county in which they serve with their customer account records (name, address, telephone number) and all updated information, within three business days of connection or change.

Also, the ALECs should provide to the appropriate 911 County Coordinator, on a quarterly basis beginning January 1, 2000, a list of all counties in which they operate, the number of access lines by county that are relevant in the calculation of the 911 fees, and the name of a contact person available 24 hours a day, 7 days a week. This report will allow the 911 county coordinators to have an accurate list of all ALECs operating in a particular county and the number of access lines, by county, in order to ensure the correct 911 fees are being remitted. In addition, it will provide the 911 county coordinators with an ALEC contact person that is available 24 hours a day, seven days a week, in case the information in the 911 database is not accurate.

Section 365.171, Florida Statutes, states in pertinent part:

(13) "911" FEE.--

(a) ... The manner of imposing and collecting said payment shall be as follows:

(1) At the request of the county subscribing to "911" service, the telephone company shall, insofar as is practicable, bill the "911" fee to the local exchange subscribers served by the "911" service, on an individual access line basis, at a rate not to exceed 50 cents per month per line (up to a maximum of 25 access lines per account bill rendered).

(15) CONFIDENTIALITY OF RECORDS.--...The exemption applies only to the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services.

In addition, Section 119.07(3), Florida Statutes, states in pertinent part:

(r) All records supplied by a telecommunications company, as defined by s. 364.02, to a state or local governmental agency which contain the name, address, and telephone number of subscribers are confidential and exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

At the staff workshop held on July 28, 1999, concerns were raised regarding the confidentiality of the line count information. Some of the ALECs were concerned that Section 365.171(15), Florida Statutes, does not encompass the line count information submitted to the 911 county coordinator.

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Although we understand the concerns of the ALECs, the 911 fees currently remitted are derived directly from access line information and, therefore, would not be confidential anyway. Accordingly, we conclude that it is imperative for the 911 county coordinators to have accurate line count information from the ALECs in order to determine if the appropriate 911 fees are being remitted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Alternative Local Exchange Companies are responsible for the collection of 911 fees from the customer, and payment of the fees on its access lines, including any past due amounts, to the appropriate County authorities. However, an Alternative Local Exchange Carrier may enter into a billing arrangement with a willing Local Exchange Carrier to bill and collect the fees. It is further

ORDERED that the Alternative Local Exchange Carriers shall provide the 911 County Coordinator in each county in which they serve, with updated customer account records reflecting name, address, and telephone number, within three business days of connection or change. It is further

ORDERED that all Alternative Local Exchange Carriers shall provide to the appropriate 911 County Coordinators, on a quarterly basis beginning January 1, 2000, a list of all counties in which they operate, the number of access lines by county that are relevant in the calculation of the 911 fees, and the name of a contact person available 24 hours a day, seven days a week. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth

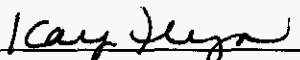
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in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 12th day of October, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



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 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, 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 November 2, 1999.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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.