

IN THE SUPREME COURT OF FLORIDA

FILED

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CLERK SUPREME COURT

By _____
CASE NO. 88,657

MANATEE COUNTY,

Appellant,

-vs-

FLORIDA PUBLIC SERVICE
COMMISSION,

Appellee.

INITIAL
BRIEF OF APPELLANT

On appeal from
The Florida Public Service Commission
Proceeding on Manatee County's Request
for boundary change
from Sarasota Exchange
to Bradenton Exchange

Florida Public Service Commission
Docket No. 850127-TL

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PRELIMINARY STATEMENT

This is the brief of Manatee County in support of its request for a boundary change from the Sarasota Northside Exchange to the Bradenton Bay Exchange. The parties are Manatee County, a political subdivision of the State of Florida and the Florida Public Service Commission. General Telephone Company of Florida (General Telephone) was allowed to intervene in the proceedings below.

The final hearing in the lower tribunal was on December 13, 1985. References to the transcript of the December 13, 1985 hearing are by the designation "TR" followed by the page number(s) to which reference is made. References to portions of the record not included in the transcript of that hearing are by the designation "R" followed by the page number(s) to which reference is made. References to Exhibits introduced at the hearing are indicated by the designation "Ex" followed by the number of the exhibit.

BRIEF OF MANATEE COUNTY

STATEMENT OF THE CASE AND STATEMENT OF FACTS

STATEMENT OF THE CASE

This proceeding concerns an undeveloped portion of Manatee County that has been scheduled to receive its telephone service, when developed, from the Northside Exchange located in Sarasota County. By resolution filed with the Florida Public Service Commission (PSC) on April 12, 1985 (R 1), Manatee County petitioned the PSC for an order requiring that General Telephone provide service to the subject area from the Bradenton Bay Exchange, which is located in Manatee County, rather than from the Northside Exchange.

In Order No. 14545, the PSC proposed to deny Manatee County's request. (R 7). Manatee County timely requested a hearing, which was held on December 13, 1985 in Tallahassee. On September 13, 1985, General Telephone Company of Florida, Inc. (Gentel) was allowed to intervene. (R 17). Prior to the hearing, Manatee County and Gentel submitted prefiled testimony pursuant to PSC rules of procedure. (TR 14, 21, 58, 71, 99, 158 and 177). In accordance with PSC procedure, the prefiled testimony was made a part of the record of the hearing and the witnesses were submitted to cross examination. After the hearing, Manatee County and Gentel filed briefs (R 49 and 81) and on March 19, 1986, the PSC entered the order which is the subject of this appeal. (R 94).

FACTS

The subject area is an undeveloped area located in Manatee County and adjacent to the Sarasota County line. (TR 12, 15, Exhibits 2A, 2B and 2I). Manatee County is concerned that the County and its citizens will encounter problems in the subject area similar to problems encountered in the Whitfield Estates, Ballentine Manor and Palm Aire areas, which are portions of Manatee County that are within the Sarasota Northside telephone exchange, i.e., they receive their telephone service from an exchange located in Sarasota County.

The problems encountered are not illusory or insignificant. One problem involves Manatee County residents being charged a one per cent (1%) sales tax on telephone bills, which tax is collected by General Telephone for Sarasota County. (TR 25, Exhibits 2D, 2E, 2F and 2G; composite exhibit 3). The tax is properly levied only on Sarasota County residents, yet Manatee County residents have been subjected to it on General Telephone bills for subscribers served from the Northside Exchange. (TR 25).

Additionally, Manatee County residents have had imposed upon them a \$.50 surcharge levied by Sarasota County for Sarasota County's 911 service, even though Manatee County residents are not legally subject to such levies by Sarasota County. (TR 25; composite exhibit 3). These problems have continued for months after they were purportedly corrected by General Telephone. (TR 25).

Another problem arises with respect to the yellow pages. Contrary to the assertion of the commission staff in its statement of position, (R 19), the Bradenton yellow pages and Sarasota yellow pages are not "virtually identical". (TR 30-31). The two sets of yellow pages have very little in common and the Sarasota yellow pages are overwhelmingly devoted to Sarasota business entities, not Manatee businesses. (TR 30).

Thus, after the subject area is developed, if it receives its telephone service from the Sarasota Northside Exchange, a person living there who utilizes his yellow pages will be referred almost exclusively to Sarasota businesses. (TR 31). This will increase the flow of commerce to Sarasota, rather than to Bradenton or to Manatee County, to the obvious detriment of Manatee County businesses. Furthermore, it will lessen the flow of tax dollars that Manatee County derives from sales taxes for sales that occur in Manatee County. However, if the subject area receives its service from the Bradenton Bay Exchange, the Manatee County residents will be referred to Manatee County businesses when they consult their yellow pages.

To avoid continuation and expansion of these problems, which already exist for portions of Manatee County, the County wants the subject area to be included within the boundaries of the Bradenton Bay Exchange. (TR 29-30).

Another problem in Manatee areas served by the Sarasota Northside Exchange is continuous confusion about the county boundaries. (TR 16). Fifty-three businesses reported a Sarasota County address rather than a Manatee County address on their sales tax returns, although the businesses were located

in Manatee County. As a result, \$19,566.71 in sales tax revenues¹ that should have been distributed to Manatee County were distributed to Sarasota County.² (TR 16, 24-25, Ex. 2C).

Similar confusion exists, moreover, on the part of those from other areas who do business with residents or businesses located in the populated south Manatee County area. Thus, General Telephone Company itself has repeatedly made mistakes as to the legal domicile of its customers in the south portion of Manatee County, charging Manatee County residents with the \$.50 surcharge that is properly chargeable only to Sarasota County residents (TR 22) and charging Manatee County residents with a one per cent sales tax that is properly imposed only upon Sarasota County residents. (TR 23).

Others who are confused by the situation are prospective businesses who are considering relocation to Manatee County. In personally touring the area, representatives from

¹ The net loss to Manatee County in sales tax collections, if it had not been discovered, would have been \$17,114.00. This is because the \$19,566.71 that was paid erroneously to Sarasota County was offset by \$2,452.71 which should have been paid to Sarasota County, but was paid erroneously to Manatee County. (TR 45, Exhibit 2C).

² Admittedly, this error may be largely a function of the postal address of the businesses involved. However, it is also obvious that the perceptions of a business owner as to his location and the identity of his community is constantly reinforced by the name that is specified on the cover of his telephone directory. The businessman advertises in the yellow pages of that directory, and in many businesses utilizes the telephone every day to receive or make business contacts, sales, or purchases. It is undeniable that the existence of a telephone directory that incorrectly tells a businessman that he lives in "Sarasota" is a contributing factor when 53 businesses incorrectly list their location in responding to sales tax forms. (TR 24-25).

such businesses will stay in motels located in Manatee County, but will think they are located in Sarasota because of the telephone directory and the listing of the motel. Additionally, they are often led to think that other existing businesses (which may be needed suppliers or important customers) are located in Sarasota County when in fact the businesses are in Manatee County. (TR 17).

Thus, the current situation contributes to continued confusion and economic harm, in that prospective businesses are discouraged from locating in Manatee County based on misinformation. Inasmuch as 30% of the manufacturers located in Manatee County are located in the south portion of Manatee County, near Sarasota (TR 16), the impact and continuous recurrence of this problem is significant. (TR 17).

Additionally, there is seasonal housing in the south portion of Manatee County where winter residents reside, in addition to motels and hotels frequented by tourists or business visitors. (TR 50). Persons who are not from the south Manatee area, when dealing with businesses or residents located in the south Manatee area, are often confused regarding the county in which the person they are dealing with is located. (TR 51).

Finally, while it was not made a major point of contention, it is nevertheless true that Manatee County has received complaints from persons in the south portion of Manatee County who cannot telephone Palmetto, which is located within Manatee County, without a toll charge. (TR 36). If the exchange boundaries were moved as requested by Manatee County,

persons in the south portion of Manatee County, including the subject area, would be able to call Palmetto without a toll charge.

The subject area is east of the Whitfield Estates, Ballentine Manor, Palm Aire areas. These are populated areas located in Manatee County, but served by the Sarasota Northside Exchange. (TR 28; Exhibit 2I). The subject area was shown on Exhibit 2I as a small area, approximately 1" square, labeled No. 3. Manatee County is developing in an eastward direction. (TR 29). If development continues, as anticipated, in an easterly direction, then Manatee County will continue to develop along the Manatee-Sarasota County line, toward the east, and then toward the south, at the point where Manatee County juts southward.

It is the desire of Manatee County that the confusion and economic losses which currently exist with respect to the developed areas of Manatee County be contained, rather than continued along with development to the east. (TR 27-29). If the subject area is served from Sarasota County, there will be a continuation of a trend, and further precedent, for serving more easterly developments in Manatee County from Sarasota County. This will result in a long and wide strip of Manatee County, all along the Sarasota County line, and the entire south leg of Manatee County, all being served from Sarasota County, resulting in confusion, identification with Sarasota and revenue loss for Manatee County. It would involve loss of new business and jobs for Manatee County residents, loss of tax revenue for Manatee County, continuation of improper "Sarasota" charges being imposed

on Manatee County residents and harm to the political and geographical integrity of Manatee County. It is this trend which Manatee County would stop.

The County does not say that General Telephone is the sole cause of all of the problems addressed herein. Nevertheless, it is undeniable that service from the Sarasota Northside Exchange is the sole cause of some of the problems and a contributory cause to others. (TR 15, 18, 19, 24).

EMERGENCY SERVICE

In addition to the economic problems discussed above, Manatee County subscribers are faced with threatened loss of life, or injury to person and property, when the subject area is developed. This is because of the way 911 emergency calls are currently handled.

The process was explained by Manatee County witness George Lubben, beginning at page 75 of the transcript. Paraphrasing it, the situation is thus. In an older exchange area, i.e., one with older, obsolete equipment, such as the Sarasota County Northside Exchange, all 911 calls go to one location. If the exchange happens to lie within two counties, then all calls from either county will go to one location in one of the counties. Where both counties have 911 service, the calls from either county would be routed to whichever county has the larger population within the exchange. Until recently, Sarasota County had no 911 service, so all 911 calls generated by Manatee County subscribers were routed to the Manatee County 911 center. Manatee County had conscientiously inserted cross references

within its system to enable it to ascertain what county the caller was located in.

Subsequently, Sarasota County adopted its 911 service and Gentel began to route all 911 calls from callers in either county in the northside exchange to the Sarasota 911 center. Sarasota County has not cross referenced all locations in the area, so many times a caller's location is not readily ascertainable. Then the Sarasota County 911 operator must glean information from the caller to try to figure out which county the caller is in and which 911 service would be appropriate to handle the call. This is the initial point of confusion. If the calls were still routed to Manatee County, this point of confusion would be eliminated. (TR 75-86).

Once the Sarasota County 911 operator identifies a caller as being from Manatee County, the call must be transferred to Manatee County. The caller must then repeat all of his or her information to a Manatee County operator. Thus, the time involved, typically, is the time that it takes for the operator to answer the call, ascertain the information, determine the jurisdiction, transfer the call and for the caller then to repeat the same information to a different operator (TR 83-86). Of course, such delay can be critical in a life threatening emergency situation. (TR 72).

The PSC apparently missed this point entirely. Thus, its findings of fact contained the assertion that "the transfer takes place in a matter of seconds via a one button transfer."

(R 94). It focused on the amount of time required to transfer the call, but ignored the real problem areas: the amount of time required to ascertain the county in which the caller is located and the necessity for requiring the caller to explain the nature of the emergency a second time.

In addition to delays, the problem of misdirected calls was cited by witness Lubben. One example involved a babysitter, in the south Manatee County area, calling 911, when a child was choking. The call was routed through the Sarasota County Northside Exchange. The response to the call was sent to the wrong address, an address in Sarasota County, rather than the similar Manatee County address where the babysitter was located.

In this particular case, the babysitter went next door and got a neighbor to help her and the neighbor called 911 and straightened out the problem. However, the example cited was a real incident that shows that the opportunity for tragedy exists as long as the residents of Manatee County must have their emergency calls routed through the Sarasota County Northside Exchange. (TR 95-96).

This was not the only occasion where emergency response was sent to the wrong location. Many times it has been sent to the wrong location because of duplicate street names in the two counties. (TR 80). And, in general, since General Telephone began routing south Manatee County 911 calls through the Sarasota Northside Exchange, there have been significant and unreasonable delays in the emergency calls getting through to Manatee County. (TR 75).

The Commissioners at the hearing and in their findings of fact expressed the view that "this problem is not of immediate concern", (R 95), since no one lives in the subject area. However, this ignores the fact that tragedy can occur in the subject area, even though it is undeveloped at the present time. For example, a caller who is transient in a motel near the subject area or is passing through the subject area and gets involved in an automobile accident, will call 911 and will have his call routed through the Sarasota County exchange, even though the caller is in Manatee County. He will then encounter the delays and potential misdirected calls mentioned above. (TR 77, 96).

Moreover, Manatee County should be commended for not sitting back and allowing the subject area to encounter problems similar to those experienced in developed portions of Manatee County. Manatee County would change the trend and have the subject area served from Manatee County so that the 911 emergency problem will not be expanded. (TR 76).

Finally, the PSC noted that Gentel "plans to install new equipment" in the Sarasota Exchange, (R 95), as if those intentions should alleviate Manatee County's concern. However, the record showed no basis to expect such action. General Telephone has provided no cost information, and filed no tariff, and provided no other assurance that it has any intention to take such steps in the future. (TR 89, 92). Such a finding, therefore, was without foundation in the record.

GENERAL TELEPHONE'S POSITION

In response to Manatee County's position, General Telephone said that the most important consideration in establishing the area for the exchange boundary is the "customer's telephone service requirements and preferences." (TR 101).

In summarizing his own prefiled testimony for General Telephone, witness Cacciatore cited a survey, attached to his prefiled testimony and introduced as Exhibit 5. The results of this survey were purported to "indicate overwhelming customer satisfaction with existing service by customers located in an area adjacent to the area in question...". (TR 106).

The PSC relied on this survey in finding that "residents of adjacent subdivisions are also content with their present telephone service out of the Sarasota Exchange." (R 94). Manatee County contended at the hearing and contends herein that utilization of this survey as the basis for decision is utterly invalid. The County's position, which is set forth at length in the argument portion of this brief, was that the survey was not limited to the appropriate respondents (TR 130, 161) and that the survey included improper and biased questions. (TR 163-164).

A second consideration cited by Gentel was the supposed economic cost of serving the subject area from the Bradenton Bay Exchange. (TR 101). The cost factors that General Telephone would encounter would be associated with crossing the Braden River, extending lines to the subject area, and acquiring easements for lines to the subject area. (TR 59-61, Exhibit 1A).

On this issue the PSC chose to rely on the unsupported conclusions of the Gentel witness when it found as follows (at R 95):

Although the county argues that costs to convert would be minimal, we accept the testimony of Mr. Caciatore of Gentel that the cost would be substantial.

This finding ignored that fact that Cacciatore's bald assertions were conclusively shown, on cross examination, to be unsupported by any facts. Thus, these needs were either already met with existing easements (TR 59), or would be met at little or no cost to General Telephone upon construction by Manatee County of a planned overpass (TR 60-61) or could not be substantiated by General Telephone's own witness who, on cross examination, admitted that he did not know what additional costs would be involved. (TR 146, 147, 186).

SUMMARY OF ARGUMENT

In reviewing a decision of the PSC, this Court's task is to determine whether competent, substantial evidence supports the Commission order. Pan American World Airways, Inc. v. Public Service Commission, 427 So.2d 716, 717 (Fla. 1983). "Where an essential finding is based solely on unreliable evidence or no evidence at all...", this Court must hold the order insufficient. Blocker's Transfer & Storage Co. v. Yarborough, 277 So.2d 9,12 (Fla. 1973). The Court "cannot affirm a decision of the Commission if it is arbitrary or unsupported by the evidence."

Citizens v. Public Service Commission, 435 So.2d 784, 787 (Fla. 1983).

The decision of the PSC found that serving the subject area from Sarasota County would not have an adverse impact on Manatee County. Further, the decision found that to require a transfer would result in substantial economic detriment to Gentel. Both of these conclusions were entirely without factual support in the record. The evidence to support them was non-existent while evidence presented by Manatee County and by Gentel's own witness provided substantial support to the contrary. In short, the record shows that the decision of the PSC was arbitrary and without substantial competent evidence to support it.

Moreover, the decision itself violates substantive law. Under Section 364.10, Florida Statutes, it is provided:

No telephone company shall make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Notwithstanding the requirements of Section 364.10, the PSC approved Gentel's refusal to revise the exchange boundaries, even though the requested revision would alleviate and eliminate much harmful impact on Manatee County at no cost to Gentel. On the record presented, the PSC had a duty, under Section 364.14(2), Florida Statutes, to order that the subject area be served from the Manatee County Bay Exchange rather than from Sarasota County.

ARGUMENT

I. THE DECISION OF THE PUBLIC SERVICE COMMISSION WAS NOT SUPPORTED BY SUBSTANTIAL, COMPETENT EVIDENCE AND WAS ARBITRARY AND THEREFORE MUST BE REVERSED BY THIS COURT.

This Court cannot affirm a decision of the PSC when it is arbitrary and unsupported by the evidence. Citizens v. Public Service Commission, 435 So.2d 784, 787 (Fla. 1983). The record herein amply demonstrated that Manatee County will suffer an adverse impact if Gentel is not required to transfer the exchange boundary as requested. Yet, to require such transfer would impose virtually no cost on Gentel. Nevertheless, the evidence was ignored and the PSC entered an order which operates to the substantial prejudice of Manatee County.

A. RETAINING THE CURRENT TELEPHONE EXCHANGE BOUNDARIES SO THAT THE SUBJECT AREA OF MANATEE COUNTY IS SERVED FROM THE SARASOTA NORTHSIDE EXCHANGE WILL HAVE AN ADVERSE IMPACT ON MANATEE COUNTY AND ITS CITIZENS.

Certain facts are undisputed in the record. First, it is undisputed that some persons that live in Manatee County, but receive telephone service from the Sarasota County Northside Exchange, have been improperly charged for Sarasota County sales tax.

Secondly, it is undisputed that some persons who live in Manatee County, but receive telephone service from the Sarasota Northside Exchange, have been improperly charged with the \$.50 surcharge for 911 service by Sarasota County.

Thirdly, it is undisputed that persons who live in the current developed south portions of Manatee County, and who are served with telephone service from the northside exchange, have "Sarasota" telephone directories and telephone numbers, and therefore Sarasota yellow pages. (TR 31). It is indisputable that these persons, when looking up a new business contact, will ordinarily utilize Sarasota yellow pages and therefore will take their business to whatever establishments are listed in the Sarasota yellow pages.

It is also undisputed in the record that the overwhelming majority of the businesses with listings in the Sarasota yellow pages are Sarasota businesses. (TR 30). Thus, it is the unavoidable conclusion that persons who live in Manatee County, but receive their telephone service from the Sarasota Northside Exchange, will frequently purchase goods and services in Sarasota rather than in Manatee County, solely because of the fact that they have Sarasota telephone directories. They have Sarasota directories because they are served by the Sarasota Northside Exchange.³

³ At the hearing, Commissioner Gunter observed that it costs money to get into the yellow pages. (TR 53). Yet in its decision, the PSC cavalierly dismisses this concern, stating that "the decision as to what directory to advertise in is solely that of the individual business." (R 95). They fail to note the dilemma of small businesses that cannot afford to list in more than one set of yellow pages. Such a business located in Manatee County will be deprived of the opportunity to trade with persons who live in the subject area and who utilize their yellow pages to make initial contact with a business, if the PSC decision is upheld.

In addition, there will be indirect adverse economic consequences because of the yellow pages situation. Businesses in the area will tend to indentify with the Sarasota business community and join organizations such as the Sarasota Chamber of Commerce (rather than the Bradenton Chamber of Commerce). They will promote and be a part of "Sarasota", although located in Manatee County.

Residents in the area will tend to identify with the Sarasota community, joining Sarasota civic clubs and contributing to Sarasota community activities and projects, rather than those of Manatee County. They will communicate a misperception when talking to friends and relatives in other parts of the country who may visit or move to Florida. These persons will start looking for a place in Sarasota to purchase homes, travel for vacations, build winter residences, etc. all to the economic detriment of Manatee County and commercial interests located therein.

Also, newer residents or temporary residents will actually be confused as to what county they are in. Persons in motels, persons renting a house or condominium for the winter, even some permanent residents, who see their Sarasota telephone book everyday and who do business in Sarasota and otherwise are oriented to Sarasota, will tend to think of themselves as being in Sarasota.

Fourth, it is indisputable that Manatee County will lose sales tax revenues to the extent that sales occur in Sarasota County rather than Manatee County.

Fifth, it is indisputable that newcomers or outsiders interested in locating in this area or in doing business with entities in this area will be confronted with misleading circumstances when they visit the area. They will stay in motels located in Manatee County which have a Sarasota directory and Sarasota telephone number. They will see businesses listed in the Sarasota yellow pages which would be prospective customers or suppliers. They will often adopt the mistaken impression that those businesses are located in Sarasota when, in fact, they are located in Manatee County.

This confusion has many potential adverse consequences. It was undisputed that 30% of Manatee County's manufacturing business is located in the southern portion of Manatee County. It was also undisputed that the Chamber of Commerce has encountered confusion on the part of prospective businesses as to where other businesses are located consistent with the foregoing discussion. When business or industry considers relocating in Manatee County and they are incorrectly led to believe that suppliers or customers for their products or services are located in Sarasota County rather than Manatee County, the effect will be to discourage location in Manatee County.

Sixth, it was undisputed that there have been unwarranted delays and confusion in emergency services, including excessive delays in responding to the correct address, or responses to an altogether incorrect address. It was also undisputed that these problems of delay and confusion would have been reduced or eliminated if the south Manatee County residents

received their telephone service from the Manatee Bay Exchange rather than the Sarasota Northside Exchange.

Seventh, it was not disputed that Manatee County is developing toward the east and that the County desires to contain the problems which are described above in the existing area, so that they are not exacerbated as Manatee County grows.

Eighth, it was established indisputably that Manatee County has experienced lost sales tax revenues (approximately \$19,000 was discovered; no one knows how much has gone undiscovered).⁴

Finally, there is the harm to Manatee County's political integrity and identity. It is an obvious and understandable source of resentment when a large portion of the residents of the county are not identified with the county, do not spend their incomes there, do not socialize there, and do not consider themselves a part of the county, but are oriented toward another locale. In the long run, the trend creates a lack of unity and lack of harmony and source of dissension within the county. It is harmful to the political identity and integrity and to the sense of community pride.

⁴ It may be arguable that the primary cause of this loss of tax revenues was the postal addresses of the businesses involved; nevertheless, it is also indisputable that for a business to have a Sarasota telephone directory as a constant, albeit false, indicator that it is in Sarasota, would tend to contribute to the confusion. Thus, the Sarasota directory makes it more likely that a person filling out a tax form will list "Sarasota" as his county location, forgetting that he is, in reality, located in Manatee County.

B. RETAINING THE CURRENT TELEPHONE EXCHANGE BOUNDARIES SO THAT THE SUBJECT AREA OF MANATEE COUNTY IS SERVED FROM THE SARASOTA NORTHSIDE EXCHANGE WILL HAVE AN ADVERSE IMPACT ON FURNISHING OF EMERGENCY SERVICES TO CITIZENS OF MANATEE COUNTY.

It was amply demonstrated that there is confusion and potential disaster brewing because of the fact that persons in the southern portions of Manatee County who call 911 have their calls routed through the Sarasota Northside Exchange. A caller must give his or her information to a Sarasota County emergency dispatcher who must take the information and ascertain whether the call is generated from Manatee County or Sarasota County. If it is determined that the call is a Manatee County call, then a transfer is made to the Manatee County emergency center and the caller must repeat the information. The necessity for a second call, repeating the details in an emergency situation, would be eliminated for Manatee County residents if the subject area received its telephone service from the Manatee Bay Exchange. In that event, calls from the subject area would go directly to the Manatee County emergency center for handling.

Moreover, the record documents that the Sarasota County Emergency Center and its equipment are less proficient and less sophisticated than those of Manatee County. In the Manatee County emergency center, confusing duplicative street names in the area have been identified in order to avoid sending emergency vehicles to the wrong address. Sarasota County has not taken comparable steps.

The fact that the subject area is at the present time undeveloped does not negate the validity of Manatee County's concern. As the testimony showed, the existing populated areas of Manatee County which are served from Sarasota County have had problems due to delays in responding to 911 calls. Manatee County is attempting to prevent this problem from recurring throughout the southern and eastern portion of the county as it is developed in the future. Moreover, the undeveloped character of the area does not prevent it from being the site of emergency situations requiring calls for 911 assistance.

C. GRANTING MANATEE COUNTY'S REQUEST WOULD RESULT IN NO ADVERSE CUSTOMER REACTION AND NO ADVERSE ECONOMIC IMPACT ON GENERAL TELEPHONE OR ITS RATEPAYERS, AND THEREFORE THERE IS NO JUSTIFICATION FOR THE PSC'S REFUSAL TO HONOR MANATEE COUNTY'S REQUEST.

Manatee County has shown that it faces serious economic and other problems by reason of inclusion of the subject area within the bounds of the Sarasota Northside Exchange. The harm suffered by Manatee County, if not justifiable due to considerations advanced by the PSC or General Telephone, would mandate that the boundary be changed, as requested by Manatee County.

CUSTOMER PREFERENCES

General Telephone offered two lines of justification for its opposition to changing the boundary. The first was its assertion that customers in the subject area will prefer to be served from the Sarasota Northside Exchange. To support this

conclusion, General Telephone cited a survey which was introduced in the record as Exhibit 5. The PSC admitted the survey "for what it was worth" and then relied on it as an evidentiary basis for its decision. (TR 180, 186). However, reliance on this survey was totally misplaced, and the survey is invalid for at least three reasons.

First, the survey was sent not only to residents of Manatee County, but to all subscribers in the Sarasota County Exchange, including Sarasota residents. (TR 130). Thus, the survey does not purport to canvass only Manatee County residents but includes responses of Sarasota County residents as well. Approximately 35% of the Sarasota Northside Exchange customers are located in Manatee County and 65% are located in Sarasota County. (TR 141). Thus, the survey has no validity whatsoever, as a statistical analysis of the preferences of residents of Manatee County. Unless the figures given in the survey results could be isolated to show the actual votes of the Manatee County residents, the survey, as presently constituted, is neither valid or reliable.

The second reason that the survey is completely invalid, and statistically unreliable, is the wording of the questions therein, particularly questions 5 and 6 (which are the most significant questions in the survey.) Questions 5 and 6 are set forth as follows:

5. You currently have a Sarasota telephone number, a listing in the Sarasota telephone directory and local calling to: Venice, the southern portion of Sarasota County, Sarasota, Bradenton and Myakka City? Would you be willing to change this for a Bradenton telephone number which would include a

listing in the Bradenton telephone directory and local calling to: Palmetto, Bradenton, Sarasota and Myakka City?

yes no

6. If there was a charge for this change of service, would you be willing to pay your share?

yes no

These questions are obviously biased in favor of General Telephone's position in this proceeding. First, there is a natural tendency for anyone, especially persons who live in a long established area such as Whitfield Estates, to want to keep their existing telephone number once it is obtained. The survey itself showed that 57% of the respondents had lived in the area for more than 5 years. Thus, it is obvious that questions as worded above would necessarily elicit a skewed set of answers. Virtually all of the respondents would start off with a preference of retaining their existing telephone number.

Secondly, the average person would tend to respond negatively when confronted with a question such as No. 5, whether or not he had any preference for keeping his existing phone number. The question sets out "what you have now" and asks "whether you would be willing to change this" for something else. Without the opportunity for further information and serious reflection, and obtaining further details as to what the proposed transfer would entail, most persons would tend to stay with the status quo rather than opt for a change.

Question No. 6 also displays a blatant flaw. Persons are asked whether they would be willing to "pay their share" if

they are transferred to a new telephone service exchange. There is no estimate of what "their share" would be. Thus, the respondents are asked, in psychological effect, to sign a blank check. The respondent might wonder "will my share be \$.80 per month? Would it be a one time \$800 fee? Or \$2,000? Or what?" It is not surprising that, with questions worded like these, a very small percentage of persons would indicate a preference to transfer their telephone exchanges and pay their share, whatever it is.

The third reason that the survey is invalid and without reliability is that it is used by General Telephone (and the PSC) to make an unwarranted generalization, i.e., that the preferences of residents of Whitfield Estates would be tantamount to the preferences of the future residents of the undeveloped subject area. This ignores the character and history of Whitfield Estates. Thus, even if the survey were not invalidated by the inclusion of Sarasota residents among the respondents and by the flawed questions discussed above, it would be invalidated by the unwarranted assumption that the tastes and preferences of residents of Whitfield can be considered the same as nonexistent residents of the subject area.

Whitfield Estates was developed in the 1940s or before (TR 161). It is a predominantly upper middle class area. (TR 162). It is the sixth wealthiest census tract statistical area in Manatee County. (TR 8). It is 75% single family dwellings. (TR 10).

The subject area, as projected, has little similarity to Whitfield Estates. It is 75% multi-family development. (TR 10). The subject area will have not only residences, but retail and industrial development. (TR 165). It is reasonably predictable that many persons who will be working at shops, motels, factories and the like in the subject area will also be living there in order to be close to their work. It will be more of a blue collar area, rather than a middle to upper middle class area, such as Whitfield Estates. (TR 165).

Finally, in this connection, the assertions of the General Telephone Company witness that the subject area is closer to Sarasota than it is to Manatee County is not entirely accurate. With respect to retail shopping, the subject area is closer to the major shopping center in Manatee County than it is to the major Sarasota County shopping center. (TR 159). Moreover, General Telephone's assertions that the road network provides easier access to Sarasota than Bradenton or Manatee County areas is equally inaccurate. (TR 160, 161).

By reason of the foregoing, the findings of the PSC that the customer preferences favor keeping the existing telephone exchange boundaries, is totally without basis in fact. It cannot serve as justification for denying Manatee County's request.

ECONOMIC CONSIDERATIONS

The second principal justification for General Telephone Company's position was "economic telephone plant and operating conditions." (TR 101).

The testimony of witness Rhinehart for Manatee County, along with admissions of General Telephone Company's witness on cross-examination, effectively gutted this consideration as a basis for General Telephone's position. Nevertheless, the PSC accepted Gentel's bald unsupported assertions in the face of contrary evidence.

The following things were established. First, there are easements and rights of way in existence, which General Telephone could utilize for service access to the subject area, without any cost to General Telephone for acquisition of such easements and rights of way. (TR 59, 60).

Secondly, the General Telephone Company service area for the Manatee Bay Exchange will include a development in Manatee County known as Tara. (TR 56). Tara is located immediately north of the subject area, across the Braden River from it. Manatee County has definite plans for constructing an overpass over the Braden River, between Tara and the subject area, by which Manatee County will provide sewer and water service to the subject area. (TR 60, 61). General Telephone could cross the Braden River by using this overpass. (TR 60). The overpass is in the design stages and General Telephone would be welcome to participate in the design so that it could accommodate its telephone lines or other needs, in order to serve the subject area. (TR 61). Thus, General Telephone would have the means to provide service from Tara, where it will already be, to the subject area, by merely crossing the Braden River at no cost or very minimal cost to General Telephone. (TR 59-60).

Such a connection will not involve running new lines across great distances, as implied in the PSC findings of fact.

Additionally, so that there is no uncertainty, Manatee County has obtained letters of intent from the owners of the property in the subject area (the Circle N Bar Ranch and Cooper Creek) which letters allow Manatee County to locate its overpass at a point which is almost the central point of the northern boundary of the subject property (TR 61; Exhibit 1C).

To his credit, General Telephone's witness admitted that there would not be any costs associated with crossing the river, as far as General Telephone Company is concerned. (TR 147). Additionally, although clinging to generality ("the longer the distance the more the cost"), he candidly admitted that he did not know whether General Telephone would incur additional expense by reason of serving the subject area from Tara (and the Manatee Bay Exchange), rather than from Palm Aire (and the Sarasota County Northside Exchange). (TR 146).

Finally, with respect to the cost of trunkage alone that would be necessary to cross the river and utilize existing easements, the following colloquy took place, at TR 186:

Q. "Have you calculated the cost of the trunkage alone that would be necessary to use to cross the river and use their easement?"

A. First, I do not make those studies, but I know that the study that was made was based on only trunks.

Q. But you don't have any idea of the dollar amount?"

A. No."

Incredibly, in spite of the foregoing, the PSC decided to "accept

the testimony of Mr. Cacciatore of Gentel that the cost would be substantial." (R 95).

It is clear that General Telephone presented absolutely no evidence to support its assertion that serving the subject area from the Manatee Bay Exchange would require more expenditure than serving the subject area from the Sarasota Northside Exchange. On the other hand, Manatee County substantiated that General Telephone can effect this change with minimal or no cost.

Taking all of the foregoing into consideration, this case may be summarized by the following statement: Manatee County has presented substantial justification in support of its request that the subject area be served from the Manatee Bay Exchange. Manatee County's documentation of its position has been largely undisputed. General Telephone Company has presented no supportable basis for its opposition to Manatee County's request. The two lines of argument that it did present were either demonstrably absurd, in the case of relying on the preferences of the subject area residents, or admittedly not established, in the case of the costs factor.

In these circumstances, for General Telephone not to serve the subject area from the Manatee Bay Exchange would be a completely arbitrary and capricious position. It would be to the continued disadvantage and detriment of Manatee County and its citizens and would discriminate against them in comparison with Sarasota County and its citizens. There is no justification for it.

The PSC decision reflects an undue or unreasonable preference or advantage in favor of Sarasota County. It subjects Manatee County to an undue or unreasonable prejudice or disadvantage. The decision, if sustained, would be in violation of Section 364.10, Florida Statutes, which states:

"No telephone company shall make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

It is provided in Section 364.14(2), Florida Statutes, as follows:

"Whenever the commission finds that the ... practices of any telephone company are unjust or unreasonable, or that the equipment, facilities or service of any telephone company are inadequate, inefficient, improper or insufficient, the commission shall determine the just, reasonable, proper, adequate and efficient rules, regulations, practices, equipment, facilities, and service to be thereafter installed, observed and used and shall fix the same by order or rule as hereinafter provided."

Based on the foregoing, this Court has no reasonable alternative but to reverse the decision of the PSC and order that General Telephone Company of Florida serve the subject area from the Manatee Bay Exchange.

CONCLUSION

The portion of Manatee County located south of Tara and the Braden River, east of Whitfield Estates, north of the Sarasota County line and west of Interstate 75, should receive its telephone service from the Manatee Bay Exchange, and it should be transferred to that exchange from the Sarasota Northside Exchange. This Court should enter an Order reversing

the March 19, 1986 decision of the PSC in the proceeding below. The Order should mandate that the PSC order that the subject area be served from the Manatee Bay Exchange, rather than the Sarasota Northside Exchange.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief was mailed to THOMAS R. PARKER, Senior Attorney, General Telephone Company of Florida, P. O. Box 110, MC7, Tampa, Florida 33601 and to WILLIAM S. BILENKY, Esq. and GUS SOTO, Esq., Florida Public Service Commission, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32301 on the 24th day of June, 1986.

Tedd N. Williams

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