BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: The Primary Jurisdiction Referral From the Circuit Court For the Sixth Judicial Circuit, Pinellas County, Florida, in Circuit Civil No. 87-14199-7	)	DOCKET NO. 880815-TL
	)	ORDER NO. 21280
	)	ISSUED: 5/25/89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

APPEARANCES:

CHESTER T. KAMIN, ROSS B. BRICKER & ROBERT W. KENT, JR., Jenner & Block, One IBM Plaza, Chicago, IL 60611; THOMAS E. ACEY, JR., Deputy General Counsel, Home Shopping Network, Inc., 12000 25th Court North, St. Petersburg, FL 33716; and PATRICK K. WIGGINS, Ranson & Wiggins, Post Office Drawer 1657, Tallahassee, FL 32302; on behalf of Home Shopping Network, Inc.

JAMES V. CARIDEO & THOMAS R. PARKER, GTE Florida Incorporated, One Tampa City Center, Post Office Box 110 - MC7, Tampa, FL 33601; and ROY L. REARDON, JOHN J. KENNEY & BRAD N. FRIEDMAN, Simpson, Thacher & Bartlett, 425 Lexington Avenue, New York, NY 10017-3909; on behalf of GTE Florida Incorporated.

TRACY HATCH & DONALD L. CROSBY, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL 32399-1850; on behalf of Commission Staff.

PRENTICE PRUITT, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL 32399-0850; Counsel to the Commissioners.

FINAL ORDER

BY THE COMMISSION:

BACKGROUND

On June 2, 1988, the Honorable Howard P. Rives, Circuit Judge in Pinellas County, Florida, ordered that Count XII of the First Amended Complaint of Home Shopping Network, Inc. (HSN), in the case of Home Shopping Network, Inc. v. GTE Corporation, General Telephone Company of Florida and GTE Communications Corporation, Civil Case No. 87-14199-7, be referred to the Commission for findings. Count XII alleged that the defendants had failed to meet their obligations to provide reasonable and sufficient telephone facilities and equipment as required by Section 364.03, Florida Statutes. The Court premised this referral on Florida case law, empowering courts to refer technical matters to the Commission for findings. See Southern Bell Tele. and Tele. Co. v. Mobile America Corp., 291 So.2d 199, 201 (Fla. 1974).

In accordance with the Court's referral, GTE Florida Incorporated (GTEFL) filed a petition with the Commission on June 17, 1988 (the Petition), requesting that the Commission initiate proceedings concerning the referral. HSN petitioned to intervene and moved to stay the requested proceedings on July 11, 1988. On July 6, 1988, HSN moved to withdraw Count XII of its complaint in the Court. GTEFL filed a Cross Motion in the Court on August 1, 1988, seeking a referral of the majority of the factual allegations relating to quality of service to the Commission on the grounds of the Commission's primary jurisdiction.

The parties met on September 13, 1988, to frame issues for the Commission to consider on the referral of Count XII of the First Amended Complaint. GTEFL proposed three issues of law and eight issues of fact on this date; HSN did not propose any issues. Due to the uncertainty as to what was before the Commission and the disputes over issues proposed by the parties, the Prehearing Officer conducted a hearing on HSN's motion for a stay and on the disputed issues; that hearing was held on September 21, 1988. By Order No. 20083, issued September 28, 1988 (Attachment 1), the Prehearing Officer granted HSN's stay request, pending a ruling on the referral. On September 29, 1988, Judge Rives issued an order (the Referral Order) granting in limited part GTEFL's Cross Motion for primary jurisdiction referral to the Commission. In the Referral Order, HSN's motion to withdraw Count XII was also granted. On November 22, 1988, Judge Rives denied HSN's Motion for Rehearing of the primary jurisdiction referral.

In the Referral Order, Judge Rives referred several questions relating to three specific paragraphs of HSN's Second Amended Complaint. On October 21, 1988, the parties met to frame issues with respect to these questions. HSN objected to the Commission's consideration of any issues, arguing that the Commission lacked the jurisdiction to consider the Court's referral (the Jurisdiction Argument). Without waiving its objections, HSN proposed on this date seven issues of law and three issues of fact. GTEFL chose not to modify the list of eleven proposed issues that it had submitted previously.

Each of the questions referred by Judge Rives seeks a determination of the responsibilities of GTE Communications Corporation, GTE Corporation and GTEFL for providing service pursuant to Section 364.03, Florida Statutes, and related Commission Rules. Since GTEFL is the only entity providing telecommunications services pursuant to Chapter 364, Florida Statutes, issues proposed by HSN as to the Commission's jurisdiction over GTEFL's affiliates were deleted by the Prehearing Officer in Order No. 20083. The Prehearing Officer further limited the issues to those specifically addressing GTEFL's actions.

Moreover, the Prehearing Officer deleted the issue proposed by HSN with respect to whether the Commission has jurisdiction over the OMNI PABX equipment that HSN purchased, on the ground that the Federal Communications Commission (FCC) has preempted Commission jurisdiction over Customer Premises Equipment (CPE). See Final Decision, 77 FCC 2d 384 (1980), recon., 84 FCC 2d 50 (1980), further recon., 88 FCC 2d 512

(1981), aff'd sub nom. Computer & Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983). The FCC defines CPE to include all equipment provided by telephone companies and located on customer premises. 88 FCC 2d 512 n. 1. The final issues list was provided to the parties as an attachment to Order No. 20343, issued November 21, 1988 (Attachment 2).

On November 18, 1988, HSN filed a Motion to Dismiss the Petition regarding the referral. In urging the Commission to dismiss this proceeding, HSN raised the Jurisdiction Argument alleging that the Administrative Procedures Act confers no authority upon regulatory agencies to make findings on a court referral. GTEFL moved to strike HSN's motion on December 5, 1988. At our Agenda Conference on March 7, 1989, we denied HSN's motion, see Order No. 20980, issued April 4, 1989 (Attachment 3).

INTRODUCTION

Hearings were held in this case on March 23 and 24, 1989. We must express our dismay and frustration at the hearing tactics that were employed by the parties in this case. This is particularly true for HSN which declined the opportunity to present direct evidence on the issues in this proceeding. HSN also failed to present testimony or exhibits addressing the issues it propounded. The parties' attorneys argued over jurisdiction and evidence to a degree unparalleled in the Commission's recent experience. We heard six witnesses give testimony and present exhibits during approximately 19 hours of hearing time. The five-volume hearing transcript covers more than 800 pages.

Notwithstanding our denial of its Motion to Dismiss, HSN continued to object at hearing and thereafter in its brief to our considering any issues except for the three sets of questions contained in the Referral Order, arguing that Florida law requires that our findings be directed only to technical matters involving our regulatory expertise.

GTEFL's theory of the case was that it has complied with all pertinent Commission rules and regulations regarding the design, construction and operation of the public switched network. As indicated in its Amended Prehearing Statement filed on February 16, 1989, GTEFL presented at hearing the direct testimony of its witnesses Bryan, Hicks, Stewart and Pilcher, who were all current or former GTEFL employees. They testified that GTEFL's public switched network delivered to HSN at virtually all times more traffic than HSN was capable of answering.

In addition, the GTEFL witnesses said that when traffic volumes increased to a point where alternative network arrangements might be more efficient, GTEFL submitted to HSN various network alternatives which would satisfy this customer's potential needs. However, they stated that this advice was ignored by HSN. Any problems associated with incoming call volumes, in their view, were directly attributable to HSN's own internal operator staffing decisions which created an inability to answer the traffic delivered by GTEFL.

HSN raised objections as to either the relevance of the GTEFL witnesses' testimony or their competence to testify and conducted very limited cross-examination of them. HSN's theory of the case was that the statutory and administrative standards governing the operations of GTEFL or its affiliates have no bearing on its lawsuit because it has alleged no violation of such standards. Therefore, the issues relating to the adequacy of GTEFL's local network with which the Commission is concerned are said by HSN to be irrelevant to the Court litigation. HSN stated that it is not challenging in Court the adequacy of GTEFL's local switching network or whether that network performed properly. Rather, HSN contends that the Court litigation concerns statements and contractual obligations of GTEFL and its affiliates. HSN charged that the statutory and administrative standards cannot shield these companies from liability for the misconduct alleged by HSN before the Court.

In its Prehearing Statement, HSN furnished notice of its intent to present eleven witnesses. HSN prefiled no direct testimony. Prefiled testimony was submitted for six HSN officers, employees or consultants who were intended to be presented as rebuttal witnesses. The other five, each a current or former employee of GTEFL, were intended to be presented as adverse witnesses, and no prefiled testimony was submitted for them. In putting on its case, HSN presented only its adverse witness Rucker and restricted its examination of him to his knowledge of three documents that were introduced into evidence. At this point in the proceeding, HSN rested its case. Because of repeated requests by the Commissioners, HSN then made its rebuttal witness Craig available to answer questions. HSN did not introduce into evidence any of the prefiled testimony that it had submitted.

At the close of the hearings, HSN was allowed to renew its motion to strike certain portions of the pre-filed testimony of GTEFL witnesses, showing the particular passages objected to and explaining why they should be striken. HSN complied with these directions, and GTEFL responded. By Order No. 21006, issued April 10, 1989 (Attachment 4), Chairman Wilson denied HSN's renewed motion and admitted the contested testimony for the limited purpose of supplementing or explaining non-contested testimony. This action was made subject to the condition that the ultimate record compiled in this proceeding must furnish independent evidence sufficient to support the contested testimony.

GTEFL and HSN submitted briefs discussing the evidence in the record and recommending findings for the Commission to adopt. Additionally, GTEFL submitted a proposed order incorporating its recommended findings for the Commission to consider issuing.

JURISDICTION

Sections 364.03 and 364.14, Florida Statutes (1987), and Rules 25-4.069 through 25-4.077, Florida Administrative Code, comprise the legal standards governing the service provided by telephone companies under our jurisdiction. The statutes impose a duty to provide adequate service not only on an aggregate network-wide basis but also with respect to each

customer. The duties imposed with respect to any given customer must be determined from the circumstances of each customer in light of the mandate of these statutes. We find that these statutes and Chapter 25-4, Florida Administrative Code, impose duties upon telephone companies to provide adequate service both on a network-wide basis to the general body of ratepayers and on an individual basis to a specific customer.

The regulatory standards contained in Chapter 25-4 are principally expressed in terms of the service required to be furnished to the general body of ratepayers and were promulgated with the intention that they would be applied in determining the adequacy of a telephone company's efforts to serve all of its customers. Nonetheless, we cannot agree with HSN that we are proscribed from making a finding about the adequacy of service to a particular ratepayer. We believe that a mechanistic application of these standards at the network level without giving due consideration to the service provided to individual customers, as urged by HSN, could result in a company's service being deemed adequate at a time when wholly inadequate service was being furnished some customers. We interpret our statutory mandate as being to prevent such an anomaly.

In a case where the adequacy of service to a specific customer is challenged, the factual circumstances of its service requirements are relevant considerations in determining service adequacy on an individual customer basis. In such an instance, many of the legal standards (e.g., the call completion standards of Rule 25-4.071), cannot be applied on a customer-specific basis, and we must rely upon our technical expertise in order to make findings with respect to whether service was adequate.

We conclude that the statutory and regulatory requirements which pertain to a telephone company's network design, construction and operation are intended to serve the best interests of the general body of ratepayers. This policy is a relevant consideration in answering the questions referred by the Court which relate to whether GTEFL complied with these legal standards.

We lack the authority to award damages for fraudulent behavior or for breach of contract by a telephone company in furnishing service. Notwithstanding this limitation, we possess sufficient authority to determine whether GTEFL provided HSN with adequate service, as required by statute, rule, tariff or contract. In the event that inadequate service has been provided, GTEFL may lawfully be required to take any reasonable steps that we deem necessary in order to make adequate service available to HSN. See Section 364.14, Florida Statutes.

Both GTEFL and HSN agree that the OMNI equipment is not regulated under state law because the FCC has assumed exclusive jurisdiction over CPE, thereby removing it from state regulation. We find that any regulatory requirement concerning this equipment imposed by state law is accordingly rendered inapplicable and that we lack the power to enforce such a

requirement. However, we disagree with two additional arguments raised by the parties. First, HSN claims that we may not inquire into unregulated activities in exercising our authority over regulated operations. We believe that our statutory authority confers upon us the inherent power to inquire into both regulated and unregulated activities which interrelate. The removal of our authority to regulate certain activities through federal preemption does not foreclose our power to inquire into such interrelated operations to determine whether our regulatory requirements are satisfied or affected by actions involving both regulated and unregulated operations. The limitation supported by HSN would profoundly impede the performance of our statutory duties, and we reject it. Next, GTEFL charges that, not only are we empowered to consider CPE, we may make findings on whether a duty regarding its provision was breached. For the reasons stated above, we believe that a statutory duty regarding CPE can have no legal force and effect.

THE FIRST FINDINGS

The first set of questions referred by the Court were:

> Were GTE's telecommunications system and OMNI equipment capable of processing HSN's: (1) Then-present volume; (2) its anticipated volume; and (3) Was the equipment then operating effectively? All as contemplated by F.S. 364.03 and/or applicable rules and regulations of the Florida Public Service Commission, if any.

These questions relate to Paragraph 34 of HSN's Second Amended Complaint, which states:

> In late 1986, HSN anticipated a substantial increase in call volume as the result of market expansion through the acquisition of UHF television stations and the further addition of cable affiliates. During this period GTE Florida and GTE Communications repeatedly told HSN that GTE's telecommunications systems and the OMNI equipment were capable of processing HSN's anticipated increased volume of calls and were in fact operating effectively in all respects. This representation was false.

Upon consideration of the record compiled in this proceeding, we find as follows:

> Yes, GTEFL's telecommunications system was capable of processing HSN's: (1) Then-present volume; (2) its anticipated volume; and (3) the equipment comprising the company's system was operating effectively; as contemplated by Florida Statute 364.03 and applicable Commission rules. Regarding the OMNI equipment, because this agency's authority to regulate this Customer Premises Equipment has been denied by the Federal Communications Commission under the federal preemption doctrine, there are no applicable regulatory standards or duties imposed by Florida Statute 364.03 or the rules in Chapter 25-4.

We make the above finding in accordance with the following interpretation of the Court's term "GTEFL's telecommunications system" (hereinafter, "the System"). In the case of calls originated outside GTEFL's service territory, the originating point of the System is where GTEFL's network takes delivery of such a call from the Point of Presence (POP) of an interexchange carrier (IXC), and the terminating point is where GTEFL's network delivers that call at the interface with the customer's premises. Accordingly, the System is not responsible for such calls upstream of an IXC's POP or downstream of the interface. We adopt the position of the Prehearing Officer that Florida's statutes and our rules are inapplicable to such equipment.

The HSN calls from outside GTEFL's service territory were originated by the IXC subsidiaries of AT&T Communications, Inc. (referred to here jointly as "AT&T"). AT&T was not a party to this proceeding. As explained above, AT&T's 800 Service network is not a part of the System; therefore, any determination regarding AT&T's handling of HSN's traffic is beyond the scope of the first set of questions referred by the court.

As explained above, we interpret the statutes and rules setting out standards for service quality as imposing duties on telephone companies to provide adequate service to a specific customer on an individual basis as well as to the general body of ratepayers on a network-wide basis. In arriving at the above finding, we have separated the first set of questions referred by the Court into eight subparts in order to facilitate our examination of the adequacy of service furnished HSN by GTEFL. We sought to determine whether GTEFL has carried out each duty applicable to the first set of questions on an individual basis, and the following discussion is arranged in that format.

Network Design. This subpart considers the design of the System. GTEFL witness Bryan correctly testified that the pertinent Commission rules concerning network performance are Rules 25-4.069 through 25-4.077 (Attachment 5), relating to dial tone delay, trunking capabilities, ring back and intercept for non-working numbers, along with generally requiring the adoption and pursuit of a maintenance program to produce adequate service. When asked whether GTEFL met the standards set forth in these rules, she said that the company met "virtually all transmission requirements, answering time requirements, intercept requirements and interruption of service standards." Her cross examination by HSN failed to produce any evidence a the failure by GTEFL to satisfy these requirements. We conclude that GTEFL met Commission requirements in constructing and operating the System.

As we discuss in more detail under the next subpart, Exhibit 10-C shows a high number of overflows which would cause network congestion and probably deny some incoming calls to other customers served by GTEFL's Clearwater 44H central office. GTEFL witness Bryan testified that this type of mass calling congestion is well known and that call gapping technology is appropriate to alleviate congestion by controlling access. She defined call gapping as a network

management control whereby the amount of traffic directed to an individual customer is limited or reduced because that customer has already exhausted its call completion abilities.

We take note of Southern Bell Telephone and Telegraph Company's tariff with which GTEFL concurs and under which 800 Service is offered for intraLATA calls, i.e., those originating within GTEFL's service territory. We also take note of AT&T's tariff under which intrastate 800 Service is offered for interLATA calls and which governs the service provided to HSN. Both tariffs have provisions requiring the customer to contract for adequate facilities in order to limit busy and unanswered calls. These provisions protect other network users from experiencing degradation of service by empowering the telephone company to terminate 800 Service if the customer refuses to order additional lines or to make use of the service in accordance with the tariff.

To address the blockage, GTEFL witness Bryan testified that GTEFL provided call studies to HSN which indicated the number of call attempts, line usage and line busies. We conclude that these studies were provided in an attempt by GTEFL to deal with the congestion without being forced to invoke the tariffs' service termination powers. HSN witness Craig testified that HSN preferred for calls to ring without being mechanically answered and placed on hold when its operators were unavailable to take callers' orders. He said that this practice was a means of both avoiding increased telephone charges and of encouraging callers to stay on the line.

Based on the record, we therefore conclude that GTEFL was in compliance with our network design requirements. In addition, we find that GTEFL attempted to address the network congestion created by HSN's decision not to mechanically answer and place calls on hold in order to avoid imposing on HSN the service termination powers of the tariffs.

Network Capability. This subpart examines the network capability of the System, inquiring into whether it was capable of transporting all of HSN's traffic volume from AT&T's POP to HSN's interface during the following three periods: (a) June 1, 1985 - August 31, 1986; (b) September 1, 1986 - December 31, 1986; and (c) January 1, 1987 - June 15, 1988. It further explores whether the System was operating efficiently in the event of our finding that it was not capable of transporting this traffic during any of these periods. The word "efficiently" should be interpreted as including, but not being limited to, compliance with regulatory statutes and rules.

With regard to the period from June 1, 1985, until August 31, 1986, GTEFL witness Bryan said there was no network blockage but there were excessive busy signals through June of 1986 and that the busy signals indicated that all access lines were being utilized. During July and August, she stated that the peaked traffic caused periodic network congestion which prompted two weeks of call gapping and then a trunk group split. Her cross examination by HSN developed no evidence that GTEFL's network was not capable of transporting all of HSN's traffic during this period. We find that such traffic control methods are standard procedures employed to address excessively high call volumes. The trunk group traffic studies, Exhibit

10-B, indicate that the network was capable of carrying the usual busy hour traffic. Therefore, based on the record, we conclude that GTEFL's network was capable of transporting all of HSN's traffic volume from AT&T's POP to HSN's demarcation during this period.

Concerning the period from September 1, 1986, to December 31, 1986, GTEFL witness Bryan stated that there was a temporary blockage problem caused by the rapid growth in HSN's traffic. The evidence in the record shows that GTEFL received notice of the projected growth in HSN's traffic on August 5, 1986, when HSN ordered 140 lines for additional 800 Service that were to be installed in less than two months. It is our understanding that the normal industry lead time for such changes is six months where additional network facilities are required. In our opinion, normal lead time was not available for GTEFL to plan to serve HSN. Further, the quantity of growth that GTEFL was told to expect was vaguely worded by HSN as being the "tip of the iceberg", Exhibit 11-B, for this order of 140 lines. The traffic studies, Exhibit 10-B, indicated that the network was working efficiently to cope with such rapid growth. Cross examination of GTEFL's witnesses by HSN developed no evidence that the System was not operating efficiently during this period. Therefore, based on the record, we conclude that the System was operating efficiently even though it was not capable of transporting all of HSN's traffic volume from AT&T's POP to HSN's demarcation from during this period because the unanticipated growth in HSN's traffic exceeded GTEFL's reasonable expectation.

From January 1, 1987, until June 15, 1988, GTEFL witness Bryan testified that HSN's service was provided from AT&T's POP in Clearwater. She also stated that there were busy signals indicating all available access lines were utilized. Additionally, HSN witness Craig said that there were instructional meetings held between HSN and GTEFL during this time period. HSN's cross examination of GTEFL's witnesses developed no evidence that the System was operating inefficiently during this period. Therefore, based on the record, we conclude that GTEFL's network was capable of transporting all of HSN's traffic volume from AT&T's POP to HSN's demarcation during this period.

Calls Delivered to GTEFL. This subpart considers how many of HSN's customers' calls were delivered by AT&T to GTEFL from September 1986 through December 1986. Neither party presented evidence as to the actual or estimated number of HSN's calls which were delivered by AT&T to GTEFL during this period. Thus, insufficient data is available for our use in reliably estimating the volume of HSN's traffic because incoming AT&T traffic was combined with GTEFL's own traffic. It was not technically possible to differentiate between calls to HSN and other Clearwater customers until the separate trunk group was implemented. Therefore, we find it impossible to determine from this record how many of HSN's customers' calls were delivered by AT&T to GTEFL during this period.

Calls Delivered by GTEFL. This subpart seeks to determine the number of calls delivered by AT&T to GTEFL that were delivered in turn to HSN. Although no evidence was

presented on how many calls AT&T delivered to GTEFL, GTEFL witness Bryan testified that GTEFL made usage studies to sample the calls it delivered to HSN. GTEFL provided the quantity of call volumes, line usage and number of line busies. From these usage studies, we note a large number of station busies. Further, we note the various possible causes for some of the line busies, e.g., possible trouble in the switching machine or in the local distribution facilities. Yet, there is no evidence to suggest that such problems were in fact the cause. The record suggests other causal possibilities that problems existed at the customer's premises such as calls being abandoned by HSN's customers after an extended period of time ringing without being answered. HSN witness Craig acknowledged on cross examination that thousands of calls were abandoned. He said further that abandoned calls are those calls which entered HSN's OMNI equipment and were not answered by HSN's operators. We consider calls delivered when they reach an end office, such as GTEFL's Clearwater office, and ring with no answer.

We conclude that, although the record is insufficient to determine how many of the calls delivered by AT&T to GTEFL were delivered to HSN, it is clear from the evidence that GTEFL delivered more calls than HSN answered.

Alternative Routing. This subpart inquires as to whether there were any alternate means of routing calls between AT&T's POP and HSN's facility other than those chosen by GTEFL. Both parties agree that alternate means of routing were available; however, they disagree as to when they became available. GTEFL witness Bryan indicated that HSN failed to respond to a proposal for a nodal network with five or six switching points throughout the U.S. Further, she testified that Megacom was not a viable service alternative for HSN until late 1986 although it had been discussed with HSN earlier. Moreover, she said that HSN was slow in accepting an alternative network arrangement. GTEFL witness Stewart testified that he discussed the possibility of either a nationwide nodal network with dedicated facilities or the use of multiple carriers or a private network. Based on the record, we conclude that there were alternate means of routing calls between AT&T's POP and HSN's facility other than the means chosen by GTEFL. Both a nodal network with switching points located in other states and AT&T's Megacom Service were alternatives that GTEFL discussed with HSN.

Availability. This subpart concerns when these alternate means became available and whether any of them would have allowed for the delivery of more calls to HSN. AT&T's FCC Tariff No. 10 shows that Megacom Service was not available in the Clearwater Exchange until December 2, 1986. No evidence in the record indicates that any improvement in call delivery would have resulted from use of AT&T's Megacom Service. In addition, we note that network access to Megacom requires the installation by GTEFL of dedicated high capacity trunks from HSN directly to AT&T's POP. The provision of such facilities requires close coordination between GTEFL and HSN. Such factors as the customer's location, expected duration of service, type (voice or data), number of calls, availability of facilities and equipment and the amount of required investment would have to be considered by GTEFL in its planning. See Rule 25-4.066(5)(Attachment 5). GTEFL witness Hicks testified that

HSN relocated its operations three times during the mushrooming expansion of its traffic. Without more precise information, including traffic forecasts from HSN, it does not appear that GTEFL could plan properly for alternate service.

HSN Traffic. This subpart concerns whether GTEFL delivered to HSN all the traffic that HSN could answer during the period GTEFL provided regulated network service. GTEFL witness Bryan testified that GTEFL delivered to HSN virtually at all times more traffic than HSN was capable of answering. She stated that GTEFL provided HSN with line usage studies which showed call attempts reaching a busy signal. These studies in October of 1985 and thereafter showed that GTEFL was delivering traffic in excess of HSN's internal call handling capability, according to GTEFL witness Bryan. HSN witness Craig confirmed that thousands of calls were abandoned. Further, he confirmed that GTEFL provided traffic studies, Exhibit 21-L, which reflected the number of busy signals received by HSN's customers during certain periods of time. The evidence also reflects that, for certain study periods, the number of calls delivered by GTEFL but not answered by HSN were excessive, e.g., on November 5, 1986, delivered call attempts exceeded 79,000 but only 29,000 were answered. No evidence was developed through HSN's cross examination of GTEFL witnesses to indicate that GTEFL failed to deliver traffic in excess of HSN's ability to answer. Therefore, based on the record, we conclude that GTEFL delivered traffic to HSN in quantities which exceeded HSN's ability to answer.

Service Adequacy. This subpart considers whether, in view of the foregoing, GTEFL provided adequate telephone service to HSN during the period from June 1, 1985, until June 15, 1987. "Adequate" should be interpreted as including, but not being limited to, compliance with regulatory statutes and rules. Our individual findings above must be considered in reaching a conclusion on this issue. The evidence compiled in the record supports the above individual findings; therefore, no deficiencies in GTEFL's regulated network facilities have been identified. Accordingly, we find that GTEFL provided adequate telephone service to HSN during this period.

SECOND QUESTION

The second question referred by the Court was:

> Did the equipment and service employed by the Defendants in the within cause comply with standards under F.S. 364.03 and/or applicable P.S.C. rules, if any?

The second question relates to Paragraph 35 of HSN's Second Amended Complaint, which states:

> In late 1986, HSN became concerned about whether it was receiving all of the customer calls that were being placed to HSN, and raised this question with GTE Florida and GTE Communications. GTE Florida and GTE Communications told HSN that all customer calls were being passed to HSN and that any problems that existed were solely the result of HSN's operator staffing decisions, and not due to GTE's equipment or services. These statements were false.

Upon consideration of the record compiled in this proceeding, we find as follows:

> Yes, the service furnished by GTEFL and the company's equipment used to provide it complied with the standards under Florida Statute 364.03 and applicable Commission rules. Regarding the OMNI equipment, because this agency's authority to regulate this Customer Premises Equipment has been denied by the Federal Communications Commission under the federal preemption doctrine, there are no applicable regulatory standards or duties imposed by Florida Statute 364.03 or Rule Chapter 25-4.

While the first set of questions referred by the Court dealt with the adequacy of service provided specifically to HSN, we interpret this second question as seeking a determination of whether GTEFL's service on a network-wide basis complied with the adequacy standards in meeting its customers' needs. While HSN's calling volume accounted for a significant percentage of GTEFL's total traffic, we have answered this second question from the perspective of whether the System met the applicable adequacy standards in handling the traffic of the entire general body of ratepayers. In arriving at the above finding, we have separated this second question into five subparts in order to facilitate our examination of the adequacy of service provided by GTEFL. We sought to determine whether GTEFL has complied with each of the five rules (Attachment 5) that are applicable to this question on an individual basis, and the following discussion is arranged in that format.

Rule 25-4.071. This rule contains our standards governing the adequacy of service. GTEFL witness Bryan testified that GTEFL performed all the necessary busy season busy hour studies and included a reasonable forecast of growth as required by this rule. In addition, she testified that GTEFL has a trunk servicing group which analyzed network traffic levels on a monthly basis to address any deterioration of service. On cross examination, no evidence was developed to indicate that the requirements of this rule were not met. We take note of Southern Bell's Switched Access Tariff, with which GTEFL concurs, requiring that GTEFL perform routine measurement functions to assure that an adequate number of transmission paths are in service. However, GTEFL witness Bryan said that assessing the demand charges for IXCs authorized by this tariff would not have solved the problem of the peaked nature of the incoming traffic to HSN. Measurements required by the tariff are based on the engineering assumption that traffic will occur randomly, and she said that HSN's traffic did not fit that engineering assumption. Based on the evidence in the record, we conclude that GTEFL performed the required usage studies to provide the grade of service required by Rule 25-4.071.

Rule 25-4.070. Interruption of telephone service standards are found in this rule. GTEFL witness Bryan testified that GTEFL complied with all Commission rules, and on cross examination, no evidence to the contrary was developed. Therefore, based on the evidence in the record, we conclude that GTEFL met the requirements of Rule 25-4.070.

Rule 25-4.069. GTEFL is required to satisfy the standards contained in this rule governing the maintenance of telephone plant and equipment. GTEFL witness Bryan said that GTEFL has employees who analyze the network monthly and rectify any deterioration of service that is found. She stated that they detected the high traffic peaks which resulted in the extreme line busy conditions for HSN and implemented call gapping. Additionally, she said that GTEFL attempted to educate HSN as to the volume and peaked nature of its traffic. According to her testimony, the rapid increase in calls to HSN resulted in busy signals which caused GTEFL to split traffic into two groups to protect incoming service to the other Clearwater subscribers. She indicated that blocking increased as HSN's traffic grew but that GTEFL added additional trunks within six weeks. An early conversion to "Toll Exit" was achieved to assure the customer better service, according to this witness. She defined "Toll Exit" as the reconfiguration of the network through a process that involved "rehoming" AT&T's traffic in order to comply with the court's requirement that AT&T divest the Bell Operating Companies. Although "Toll Exit" had originally been scheduled for December 13, 1986, GTEFL advanced this change to October 14, 1986, indicating to GTEFL witness Bryan that GTEFL was concerned with providing HSN with adequate service. HSN's cross examination of GTEFL witness Bryan developed no evidence that GTEFL failed to comply with this rule. In Exhibits 10-C and 10-D, HSN adverse witness Rucker confirmed the need to address problems in the network and the efforts of GTEFL personnel to implement corrective action. Based on the record, we conclude that GTEFL met the requirements of Rule 25-4.069 by pursuing a maintenance program which achieved an efficient operation furnishing adequate service.

Rule 25-4.072. This rule establishes the required transmission levels. The only evidence submitted concerning transmission levels was the direct testimony of GTEFL witness Bryan that GTEFL complied with all rules. HSN developed no evidence on cross examination to indicate that GTEFL failed to meet this rule. Accordingly, we conclude that, based on the record, GTEFL met the requirements of Rule 25-4.072.

Rule 25-4.073. Required answering times are established by this rule. Exhibit 10-B describes the negotiations with AT&T on August 18, 1986, which led to GTEFL's splitting of trunk groups to Clearwater in conjunction with "Toll Exit." We note that GTEFL's rapid response to HSN's growth in October with alternative routing and early "Toll Exit" appears to have made unnecessary its decision to split the trunk group serving HSN. However, the possibility that its newly-installed facilities would become stranded investment may have influenced GTEFL's decision. HSN's erratic forecasts of its line needs, indicated in Exhibit 21-B, also may have affected GTEFL's planning. The testimony of GTEFL witness Hicks and HSN witness Craig showed uncertainty regarding HSN's forecasts, which was also demonstrated by Exhibit 21-B. GTEFL witness Bryan's testimony furnished evidence that GTEFL had the resources necessary to meet the unprecedented service demands. HSN's cross examination of GTEFL's witnesses failed to produce any evidence that GTEFL did not comply with this rule. Accordingly, we find that GTEFL was realistic in its forecast.

Therefore, based on the record, we conclude that GTEFL provided the necessary plant and equipment based on realistic forecasts of growth to meet the requirements of Rule 25-4.073.

THE THIRD FINDINGS

The third set of questions referred by the Court were:

> (1) Was there a breach of duty under F.S. 364.03 of "selling deficient equipment"? (2) Was there a breach of duty under F.S. 364.03 in the service of any equipment so sold? (3) Was there a breach of either (1) or (2) above under any rule, regulation or applicable requirement of the P.S.C. with respect to said equipment?

These questions relate to Paragraph 62 of HSN's Second Amended Complaint, which states:

> By making fraudulent statements, selling deficient equipment and then failing to service the equipment, willfully concealing the equipment's flaws, failing to advise HSN of the problems that the local and long distance networks had in handling the volume of HSN calls, and the other misconduct described above, defendants acted in bad faith and breached and violated their duties to HSN.

Upon consideration of the record compiled in this proceeding, we find as follows:

> In view of the assumption of exclusive regulatory jurisdiction over the provision of Customer Premises Equipment by the Federal Communications Commission under the federal preemption doctrine, no duty may be imposed under state law to govern the sale or servicing of such Customer Premises Equipment.

PROCEDURAL MATTERS

During the hearing, GTEFL witness Bryan was asked to submit a late-filed exhibit detailing the chronology and quantity of each of HSN's line requests and GTEFL's trunking response to such requests. GTEFL responded by filing Late-Filed Exhibit 10-F (LF 10-F), on March 29, 1989. HSN filed a motion to strike LF 10-F on March 31, 1989, arguing that LF 10-F is nonresponsive to the Commission's request in that it neither shows HSN's line requests corresponding with GTEFL's trunking responses nor provides the methodology used to determine the responses. Further, HSN argues that the information is fundamentally unreliable. In response, GTEFL argues that LF 10-F is precisely responsive to the Commission's request and contains all of the requested information. GTEFL further argues that neither the lack of supporting documentation nor contradictory evidence supplied justifies striking LF 10-F. As a matter of Commission practice, all late-filed exhibits are accepted subject to objection. In view of HSN's objection to LF 10-F, we find that admitting the contested exhibit into the record without granting HSN an opportunity to test its objections would be a denial of due process. Therefore, we grant HSN's motion to strike LF 10-F.

Finally, GTEFL's proposed order does not resolve the issues in the manner adopted herein; therefore, we will reject it.

It is therefore

ORDERED by the Florida Public Service Commission that each finding made in the body of this Order in response to the questions referred by the Circuit Court for the Sixth Judicial Circuit, Pinellas County, Florida, in Circuit Civil No. 87-14199-7, is hereby expressly adopted. It is further

ORDERED that Home Shopping Network, Inc.'s Motion to Strike GTE Florida Incorporated's Late-Filed Exhibit 10-F is hereby granted and the exhibit is hereby stricken from the record. It is further

ORDERED that GTE Florida Incorporated's proposed order is hereby rejected.

By ORDER of the Florida Public Service Commission, this 25th day of MAY, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

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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 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 sewer 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of GTE FLORIDA INCORPORATED Requesting Findings Regarding the Primary Jurisdiction Referral From the Circuit Court for the Sixth Judicial Circuit, Pinellas County, Florida, in Circuit Civil No. 87-14199-7	)	DOCKET NO. 880815-TL
	)	ORDER NO. 20083
	)	ISSUED: 9-28-88

ORDER GRANTING STAY OF PETITION

On June 2, 1988, the Honorable Howard P. Rives, Circuit Judge in Pinellas County, Florida ordered that Count XII of the First Amended Complaint of Home Shopping Network, Inc. (HSN) in the case of Home Shopping Network, Inc. v. GTE Corporation, General Telephone Company of Florida and GTE Communications Corporation, Civil Case No. 87-14199-7, be referred to this Commission for findings. Count XII alleged that the defendants had failed to meet their obligations to provide reasonable and sufficient telephone facilities and equipment as required by Section 364.03, Florida Statutes. Such referrals are expressly sanctioned by Florida case law, which provides for courts to refer technical matters to this Commission for findings. See Southern Bell Tele. and Tele. Co. v. Mobile America Corp., 291 So.2d. 199, 201 (Fla. 1974).

GTE Florida Incorporated (GTE, formerly General Telephone Company of Florida) filed a petition with the Commission on June 17, 1988, requesting that the Commission initiate proceedings concerning the referral. HSN filed a Petition to Intervene and Motion for Stay on July 11, 1988. On July 6, 1988, HSN moved to dismiss Count XII in the Court. GTE had no objection to dismissal of Count XII. GTE filed a Cross Motion in the Court on August 1, 1988, to refer the majority of the factual allegations relating to quality of service to the Commission.

Commission Staff met with the parties on September 13, 1988 to attempt to frame issues for the Commission to consider on the referral of Count XII of the First Amended Complaint. Due to the uncertainty as to what was before the Commission, our Staff scheduled a hearing before the undersigned, as Prehearing Officer, to hear the Motion for Stay and rule on the disputed issues; that hearing was held on September 21, 1988. On September 20, 1988, Judge Rives granted the motion to withdraw Count XII. GTE's cross motion is still under consideration by the Court.

Having reviewed the transcript of the Court's September 20th proceeding and considered the arguments of HSN and GTE, it appears that the appropriate action is to grant the stay. This will allow the Court to determine what issues, if any, are appropriate for the Commission to hear. However, we intend for the stay to remain in effect only for as long as the Court requires to rule on the pending cross motion and the parties need to bring that ruling before us for further action. The period of the stay will not exceed thirty days.

The stay granted herein will hold the dates presently in place for the Commission's determination if our findings are deemed necessary by the Court. Upon the Court's entry of its decision on GTE's cross motion, the parties must act timely to bring it before us for further action in this docket. We will assist the Court in any way on matters referred to this Commission.

Therefore, based on the foregoing, it is

ORDERED by Commissioner John T. Herndon, as Prehearing Officer, that the Motion of Home Shopping Network, Inc. for a Stay is hereby granted for the period ending October 21, 1988, unless the Circuit Court rules earlier on the pending referral motion. It is further

ORDERED that the parties shall act promptly to seek our appropriate action when the Circuit Court enters its decision and that the dates previously reserved for this matter shall remain in place pending a decision by the Circuit Court.

By ORDER of Commissioner John T. Herndon, as Prehearing Officer, this 28th day of SEPTEMBER, 1988.

John T. Herndon
JOHN T. HERNDON, Commissioner
and Prehearing Officer

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition Of GTE Florida Inc. Requesting Findings Regarding the Primary Jurisdiction Referral From the Circuit Court for the Sisth Judicial Circuit, Pinellas County, Florida, In Circuit Civil Case No. 87-14199-7	)	DOCKET NO. 880815-TL
	)	ORDER NO. 20343
	)	ISSUED: 11-21-88

ORDER ON PREHEARING PROCEDURE

Pursuant to the provisions of Rule 25-22.038, Florida Administrative Code, all parties and Staff are hereby required to file with the Director of Records and Reporting a Prehearing Statement on or before January 15, 1989. Each prehearing statement shall set forth the following:

(a) all known witnesses that may be called and the subject matter of their testimony;

(b) all known exhibits, their contents, and whether they may be identified on a composite basis and witness sponsoring each;

(c) a statement of basic position in the proceeding;

(d) a statement of each question of fact the party considers at issue and which of the party's witnesses will address the issue;

(e) a statement of each question of law the party considers at issue;

(f) a statement of each policy question the party considers at issue and which of the party's witnesses will address the issue;

(g) a statement of the party's position on each issue identified pursuant to paragraphs (d), (e) and (f) and the appropriate witness;

(h) a statement of issues that have been stipulated to by the parties;

(i) a statement of all pending motions or other matters the party seeks action upon; and

(j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

The original and fifteen copies of each prehearing statement must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of January 15, 1989. Failure of a party to timely file a prehearing statement shall be a waiver of any issues not raised by other parties or by the Commission Staff. In addition, such failure shall preclude the party from presenting testimony in favor of his or her position on such omitted issues. Copies of prehearing statements shall also be served on all parties. Prehearing statements shall substantially conform to the Florida Rules of Civil Procedure requirements as to form, signatures, and certifications.

Each party is required to prefile all exhibits and all direct testimony it intends to sponsor in written form. Prefiled testimony shall be typed on standard 8 1/2 x 11 inch transcript quality paper, double spaced, with 25 numbered lines, in question and answer format, with a sufficient left margin to allow for binding. An original and fifteen copies of each witness' prefiled testimony and each exhibit must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the due date. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony. Copies of all prefiled testimony shall also be served by the sponsoring party on all other parties.

A final prehearing conference will be held on February 13, 1989, in Tallahassee. The conditions of Rule 25-22.038(5)(b), Florida Administrative Code, will be met in this case and the following shall apply:

Any party who fails to attend the final prehearing conference, unless excused by the prehearing officer, will have waived all issues and positions raised in his or her prehearing statement.

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: he or she was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issues; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, he or she shall bring that fact to the attention of the prehearing officer. If the prehearing officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify his or her position in a post-hearing statement of issues. In the absence of such a finding by the prehearing officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in his or her post-hearing statement.

To facilitate the management of documents in this docket, parties and Commission Staff shall submit an exhibit list with their respective prehearing statements. Exhibits will be numbered at the Prehearing Conference. Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the Exhibit Number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 870675-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes
% of Use by Time of Day

The following dates have been established to govern the key activities of this proceeding in order to maintain an orderly procedure.

1. December 1, 1988 - Direct Testimony to be filed

2. January 15, 1989 - Rebuttal Testimony to be filed

3. January 15, 1989 - Prehearing Statements to be filed

4. February 13, 1989 - Prehearing Conference

5. March 23-24, 1989 - Hearings to be held.

Attached to this order as Appendix "A" is a tentative list of the issues which will be addressed in this proceeding. Prefiled testimony and prehearing statements shall be addressed to the issues set forth in Appendix "A".

Discovery

When interrogatories or requests for production are served on a party and the respondent intends to object to or ask for clarification of an interrogatory or request for production, the objection or request for clarification shall be made within ten (10) days of service of the interrogatory or request for production. This procedure is intended to reduce delay time in discovery.

By ORDER of John T. Herndon, Commissioner and Prehearing Officer, this 21st day of NOVEMBER, 1988.

John T. Herndon
John T. Herndon, Commissioner
and Prehearing Officer

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APPENDIX "A"

LIST OF ISSUES

ISSUES OF LAW

ISSUE 1: Are the applicable legal standards pertaining to the required sufficiency, adequacy and efficiency of service provided by GTEFL contained in Sections 364.03 and 364.14, Fla. Stat. (1987) and Commission Rules 25-4.069 through 25-4.077, Fla. Admin. Code?

ISSUE 2: Is GTEFL required to design, construct and operate its public switched network in conformance with statutory and administrative rule requirements for the benefit of the general public?

ISSUE 3: What are the legal and ratemaking consequences, if any, of GTEFL building excess capacity into its public switched network in addition to the standards and requirements set forth in Commission Rules 25-4.070 through 25-4.077, Fla. Admin. Code?

ISSUE 4: Does the Commission have jurisdiction over claims that GTEFL defrauded and breached its contractual obligations to HSN?

ISSUE 5: Does the Commission have jurisdiction over the unregulated activities of GTEFL?

ISSUE 6: Does the APA authorize the Commission to issue nonbinding and nonappealable "answer[s] and/or recommendations" under the facts presented here?

ISSUES OF FACT

ISSUE 7: Did GTEFL design, construct and operate its portion of the public switched network in conformance with Commission requirements?

ISSUE 8: Did GTEFL perform the required usage studies to provide the Commission required grade of service during the average busy season busy hour as required by Commission Rule 25-4.071?

ISSUE 9: Did GTEFL meet the interruption of service standards required by Commission Rule 25-4.070?

ISSUE 10: Did GTEFL adopt and pursue a maintenance program which achieved an efficient operation of its network and which rendered safe, adequate and continuous service at all times as required by Commission Rule 25-4.069?

ISSUE 11: Did GTEFL provide the transmission levels required by Commission Rule 25-4.072?

ISSUE 12: Did GTEFL provide the necessary plant and equipment based on realistic forecasts of growth to meet the requirements of Commission Rule 25-4.073?

ISSUE 13: Was GTEFL's network capable of transporting all of HSN's traffic volume from AT&T/ATT-C's POP to HSN's demarcation during the periods of:

(a) June 1, 1985 - August 30, 1986?
If not, was the network operating effeciently?

(b) September 1, 1986 - December 31, 1986?
If not, was the network operating efficiently?

(c) January 1, 1987 - June 15, 1988
If not, was the network operating efficiently?

ISSUE 14: How many of HSN's customer's calls were delivered by AT&T/ATT-C to GTEFL from September, 1986 through December, 1986?

ISSUE 15: How many of the calls delivered by AT&T/ATT-C to GTEFL were delivered to HSN?

ISSUE 16: Were there any alternate means of routing AT&T/ATT-C's POP calls delivered by AT&T/ATT-C between the long distance terminal and HSN's facility other than the means chosen by GTEFL?

ISSUE 17: If the response to Issue 20 is affirmative, when did these alternate means become available, and would any of these alternate means have allowed for the delivery of more calls to HSN?

ISSUE 18: Overall, did GTEFL deliver to HSN all the traffic that HSN could answer during the period GTEFL provided regulated network service?

ISSUE 19: Did GTEFL provide adequate telephone service to HSN during the period of June 1, 1985 through June 15, 1987?

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Primary jurisdiction referral from the Circuit Court for the Sixth Judicial Circuit, Pinellas County, in Circuit Court No. 87-14199-7	)	DOCKET NO. 880815-TL
	)	ORDER NO. 20980
	)	ISSUED: 4-4-89

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

ORDER DENYING MOTION TO DISMISS

BY THE COMMISSION:

On June 2, 1988, the Honorable Howard P. Rives, Circuit Judge in Pinellas County, Florida, ordered that Count XII of the First Amended Complaint of Home Shopping Network, Inc. (HSN) in the case of Home Shopping Network, Inc. v. GTE Corporation, General Telephone Company of Florida and GTE Communications Corporation, Civil Case No. 87-14199-7, be referred to the Commission for findings. Count XII alleged that the defendants had failed to meet their obligations to provide reasonable and sufficient telephone facilities and equipment as required by Section 364.03, Florida Statutes. The Court premised this referral on Florida case law, empowering courts to refer technical matters to the Commission for findings. See Southern Bell Tele. and Tele. Co. v. Mobile America Corp., 291 So.2d 199, 201 (Fla. 1974) (Southern Bell).

In accordance with the Court's referral, GTE Florida Incorporated (GTEFL), filed a petition with the Commission on June 17, 1988 (the Petition), requesting that we initiate proceedings concerning the referral. HSN petitioned to intervene and moved to stay the requested proceedings on July 11, 1988.

On July 6, 1988, HSN moved to dismiss Count XII of its complaint in the Court. GTEFL filed a Cross Motion in the Court on August 1, 1988, seeking a referral of the majority of the factual allegations relating to quality of service to the Commission on the grounds of our primary jurisdiction.

The parties to the above-referenced proceeding met on September 13, 1988, to frame issues for us to consider on the referral of Count XII of the First Amended Complaint. Due to the uncertainty as to what was before the Commission and the disputes over issues proposed by the parties, our Staff scheduled a hearing before the Prehearing Officer to hear HSN's motion for a stay and to rule on the disputed issues; that hearing was held on September 21, 1988. By Order No. 20083, issued September 28, 1988, the Prehearing Officer granted HSN's stay request, pending a ruling on referral. On September 29, 1988, Judge Rives issued an order (the Referral Order) granting GTEFL's Cross Motion for primary jurisdiction referral to the Commission. In the Referral Order, HSN's motion to withdraw

Count XII was also granted. On November 22, 1988, Judge Rives denied HSN's Motion for Rehearing on the primary jurisdiction referral.

In the Referral Order, Judge Rives referred several questions relating to three specific paragraphs of HSN's Second Amended Complaint. Paragraph 34 of this complaint states:

> In late 1986, HSN anticipated a substantial increase in call volume as the result of market expansion through the acquisition of UHF television stations and the further addition of cable affiliates. During this period GTE Florida and GTE Communications repeatedly told HSN that GTE's telecommunications systems and the OMNI equipment were capable of processing HSN's anticipated increased volume of calls and were in fact operating effectively in all respects. This representation was false.

Based on this paragraph, the Court proposed the following question:

> Were GTE's telecommunications system and OMNI equipment capable of processing HSN's: (1) Then-present volume; (2) its anticipated volume; and (3) Was the equipment then operating effectively? All as contemplated by F.S. 364.03 and/or applicable rules and regulations of the Florida Public Service Commission, if any.

Paragraph 35 of HSN's Second Amended Complaint states:

> In late 1986, HSN became concerned about whether it was receiving all of the customer calls that were being placed to HSN, and raised this question with GTE Florida and GTE Communications. GTE Florida and GTE Communications told HSN that all customer calls were being passed to HSN and that any problems that existed were solely the result of HSN's operator staffing decisions, and not due to GTE's equipment or services. These statements were false.

The Court proposed the following question with respect to the above allegations:

> Did the equipment and service employed by the Defendants in the within cause comply with standards under F.S. 364.03 and/or applicable P.S.C. rules, if any?

Paragraph 62 of HSN's Second Amended Complaint states:

> By making fraudulent statements, selling deficient equipment and then failing to service the equipment, willfully concealing the equipment's flaws, failing to advise HSN of the

> problems that the local and long distance networks had in handling the volume of HSN calls, and the other misconduct described above, defendants acted in bad faith and breached and violated their duties to HSN.

Based on these allegations, the Court referred the following three questions to the Commission:

> (1) Was there a breach of duty under F.S. 364.03 of "selling deficient equipment"?
>
> (2) Was there a breach of duty under F.S. 364.03 in the service of any equipment so sold?
>
> (3) Was there a breach of either (1) or (2) above under any rule, regulation or applicable requirement of the P.S.C. with respect to said equipment?

Each of the questions referred by Judge Rives seeks a determination of the responsibilities of GTE Communications Corporation (GTEC), GTE Corporation (GTE) and GTEFL for providing service pursuant to Section 364.03, Florida Statutes, and related Commission Rules. Since GTEFL is the only entity providing telecommunications services pursuant to Chapter 364, Florida Statutes, issues relating to GTEFL's affiliates were deleted by the Prehearing Officer in Order No. 20083. Based on Staff's recommendation, the Prehearing Officer limited the issues to those specifically addressing GTEFL's actions. The final issues list was provided to the parties as an attachment to Order No. 20343, issued November 21, 1988.

On November 18, 1988, HSN filed a Motion to Dismiss the Petition, maintaining that the referral was inappropriate and should be dismissed because HSN is not alleging in its civil suit that GTEFL has violated a statute or rule enforceable by the Commission. According to HSN, the Florida Supreme Court held in Southern Bell that the allegations contained in a court's referral to the Commission for guidance must allege the violation of a regulation, statute or administrative standard.

Further, HSN alleges that we lack jurisdiction over the subject matter addressed in the referral inasmuch as the questions involve equipment. Moreover, HSN believes that we are being asked to rule on the conduct of parties who are not within our regulatory purview, e.g., GTEC and GTE, and to review GTEFL's unregulated activities. Finally, we are said to lack authority under Chapter 120, Florida Statutes, known as "the Florida Administrative Procedures Act" (the APA), to issue non-binding answers or recommendations or both. In this regard, HSN charges that the APA, enacted after Southern Bell was decided, contemplates that we shall issue only binding and appealable rules and orders. For this reason, HSN concludes that any opinion that we issue on the referral would violate the APA. Based on its belief that any action taken by the Commission on the matters referred would exceed our statutory authority, HSN requests that the Petition be dismissed.

On December 5, 1988, GTEFL filed a Motion to Strike HSN's Motion to Dismiss, claiming that HSN's motion is procedurally defective and substantively erroneous. GTEFL charges also that the Motion to Dismiss is inappropriately addressed to the Commission. HSN is claimed by GTEFL to be merely rehashing here an argument -- that the referral is inappropriate -- which has been rejected both when raised initially and later on reconsideration by the Court. GTEFL asserts that HSN cannot attack a court order in an administrative proceeding.

The source of the Commission's authority is Chapter 364, Florida Statutes, governing our regulation of telephone companies, according to the Motion to Strike. The APA is said by GTEFL to only set forth procedural requirements and therefore does not furnish statutory authority to the Commission. GTEFL believes the Commission should proceed to issue the findings requested by the Court without regard to whether the Court will treat them as binding.

Procedurally, the Motion to Dismiss is untimely because it was filed beyond the twenty-day deadline for filing such pleadings and thus should be stricken, in GTEFL's view, since HSN has thereby waived its right to seek dismissal. Moreover, GTEFL contends that the Motion to Dismiss contains no valid jurisdictional allegations supporting this challenge to the Commission's lack of jurisdiction over the subject matter.

After considering the arguments, we find that HSN's initial argument that the referral is inappropriate because HSN does not specifically allege a violation of any statute or Commission Rule is a too narrow reading of Southern Bell. The Supreme Court in that case stated:

> If a complaint raises intricate problems of a technical nature requiring an expert determination of whether the standards set by statute and implemented by more detailed regulations have been met in a particular instance, the court should be free, though not required, to refer such matters to the PSC for its findings, in order to obtain the benefit of the state regulatory agency's specialized expertise in the field.
>
> The PSC is uniquely qualified to determine difficult technical questions regarding the adequacy of telephone service and has a technical staff whose functions include dealing with difficult issues.

291 So.2d at 202.

The Supreme Court made it clear that the trial court could refer questions of compliance with the statutory standards set forth in Section 364.03, Florida Statutes, to the Commission. That case should not be read to be applicable only when a specific allegation is before a court. Reading the paragraphs of HSN's complaint referred by the Court, it is

clear that HSN has raised technical issues regarding the adequacy of GTEFL's network service to HSN. The questions referred by the Court are specifically referenced to Section 364.03. The issue of the adequacy of network provisioning by GTEFL is highly technical and is particularly within the Commission's purview. Based on the contents of HSN's allegations and the Supreme Court's language in the Southern Bell case, it is clear that the Court's referral is consistent with the Southern Bell case and is, therefore, appropriate. It is also important to note that, according to GTEFL, these same allegations raised here by HSN have been argued and rejected by Judge Rives.

With respect to HSN's argument that we lack the subject matter jurisdiction to address the questions referred by the Court, we conclude that this argument belies a thorough reading of the questions submitted by the Court. Each of the questions seeks a determination of the duties and responsibilities of GTEFL, GTEC and GTE with respect to the equipment and service provided to HSN pursuant to Section 364.03 and related Commission Rules. We do not have regulatory jurisdiction over the activities of GTE and GTEC, e.g., such as the terms and conditions under which the OMNI system was provided to HSN. However, we do have jurisdiction over the services and facilities provided by GTEFL. The three paragraphs of HSN's complaint referred by the Court have clearly raised allegations directed expressly at GTEFL's service quality provided to HSN. We have the clear statutory authority to address these issues. Our lack of authority to regulate the activities of GTE and GTEC does not deprive it of jurisdiction to answer the questions posed by the Court; namely, a determination of the statutory duties, if any, of each of the entities involved. Accordingly, we find that we have subject matter jurisdiction to consider the Court's referral.

The last major argument raised by HSN is that the APA supercedes the decision in Southern Bell and allows the Commission to issue only binding and appealable rules or orders, and thus we cannot issue non-binding answers or recommendations to the Court. Initially, we agree with GTEFL's argument that the APA is procedural in nature and not a substantive limit on our jurisdiction to act in accordance with our statutory responsibilities. Additionally, we note that HSN does not cite any specific provision of the APA that is inconsistent with the Southern Bell case. Presumably, HSN refers to the appellate provisions of Section 120.68, but we can find nothing in that section which is inconsistent with the Southern Bell case. Our orders are binding on those who were parties to the proceeding or who had notice and a reasonable opportunity to participate in the case. This is not inconsistent with the Southern Bell case wherein the Supreme Court held that:

> ...PSC findings, where sought, are not conclusive but should be considered together with any other evidence before the court on the issue of liability, and on the issue of damages if applicable to that issue. The judge should consider the total evidence in arriving at his

> conclusions and a jury should be similarly governed by the weight of all of the evidence before it. The PSC findings in such a case would be much like that of the report of a referee or special master which the court, or jury, could act upon as all of the evidence might indicate.

Id. at 201&2.

The Supreme Court further states that such determination "shall not be binding on the circuit court, or upon a jury, if there be contradictory evidence sufficient to support a contrary verdict." While the Supreme Court noted that an order of the Commission would not bind either the court or the jury, it is clear that it would be binding on the parties to our proceeding. As the Supreme Court said, our order setting forth our findings in this case would be evidence to be considered in the Court trial. This is not inconsistent with the APA.

Further, HSN also intimates without any explanation that our order in this proceeding would somehow not be appealable under the APA. We believe that the proper forum for an appeal of our order in this proceeding is a question for the appealing party to answer. Beyond this, the appealing party must comply with the appellate requirements of the APA, Chapter 364 and Article V, Section 3(b)(2), Florida Constitution.

For the reasons stated above, HSN's Motion to Dismiss is denied because the Court has referred questions which are within our jurisdiction to resolve. We have the authority under case law to act in accordance with the Court's referral, and we believe that the APA should not be interpreted as barring such action.

It is, therefore,

ORDERED by the Florida Public Service Commission that Home Shopping Network, Inc.'s Motion to Dismiss filed on November 18, 1988, is hereby denied. It is further

ORDERED that this docket shall remain open for further proceedings.

By ORDER of the Florida Public Service Commission, this 4th day of APRIL, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

TH/DLC

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 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 sewer 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Primary jurisdiction referral from the Circuit Court for the Sixth Judicial Circuit, Pinellas County, in Circuit Civil No. 87-14199-7	)	DOCKET NO. 880815-TL
	)	ORDER NO. 21006
	)	ISSUED: 4-10-89

ORDER ON RENEWED MOTION TO STRIKE

At a hearing in the above-referenced matter conducted on March 23, 1989, we requested the parties to submit written pleadings concerning the objections raised by Home Shopping Network, Inc. (HSN) to certain testimony presented by witnesses for GTE Florida Incorporated (GTEFL). HSN had filed a Motion to Strike on January 17, 1989. On March 28, 1989, HSN filed a Renewed Motion to Strike Certain Pre-Filed Written Testimony, and on March 29, 1989, HSN filed a corrected copy of this pleading (the Renewed Motion). On March 30, 1989, GTEFL filed its Response (the Response).

Pursuant to our directions, HSN attached to the Renewed Motion interlined versions of the pre-filed testimony of GTEFL Witnesses: Patricia C. Bryan, Ben R. Pilcher, Brad Hicks and Robert E. Stewart, indicating the portions sought to be striken. In support of the Renewed Motion, HSN raises six types of objections which are discussed below. The Attachment to this Order is a page and line listing of each respective witness's pre-filed testimony claimed by HSN to be inadmissible. It identifies the type of objection made by HSN with respect to each portion of the testimony.

A. SCOPE LIMITATION OBJECTION

HSN contends that portions of the testimony of Witnesses Bryan, Hicks and Stewart -- identified as Objection "A" on the Attachment -- relate to matters beyond the scope of referrals adopted by the Florida Supreme Court in Southern Bell Tele. and Tele. Co. v. Mobile America Corp., 291 So.2d 199 (Fla. 1974) (Southern Bell). In HSN's view, the holding in Southern Bell permits a court to refer to the Commission only "intricate problems of a technical nature," supra at 202, requiring the application of our regulatory expertise.

GTEFL responds that HSN has misinterpreted the Southern Bell holding, pointing out that the Supreme Court said that a court may find it desirable "to utilize the expertise of the PSC regarding statutory compliance as to service;" supra at 201. According to GTEFL, this ruling does not limit the scope of referral to purely technical information as urged by HSN. Moreover, GTEFL alleges that even technical information must not be considered in a vacuum, particularly regarding specific allegations about adequacy of service.

After considering the arguments and reviewing the testimony which is the subject of HSN's Scope Limitation Objection, we deny this objection in all instances raised by HSN because we do not interpret the Southern Bell holding in the same manner as HSN. We do not believe that the Supreme Court intended for this decision to limit to purely technical matters the scope of our consideration of issues referred by a court.

Any attempt to factor out non-technical evidence proffered in a hearing would prove counterproductive, in our view, since such a limitation could only serve to impede rather than promote our understanding of the issues under consideration. Accordingly, we reject in general the argument that our authority to consider referrals embraces only technical material. Our jurisdiction to answer referral questions must encompass a consideration of non-technical facts that provide useful background and explanatory information placing the evidence in a proper perspective, thereby facilitating our decision-making.

B. REFERRAL LIMITATION OBJECTION

HSN objects to certain matters contained in the testimony of Witnesses Bryan, Hicks and Stewart -- identified as Objection "B" on the Attachment -- on grounds that they are beyond the scope of the Commission's jurisdiction which is said to be limited by the Court's referral. HSN argues that the Court defined the scope of the Commission's jurisdiction by the questions it referred and that the testimony subject to this objection must be striken because it exceeds the scope of the referred questions.

GTEFL replies that the Court's Referral Order specifies that each question is to be answered in relation to the adequacy of service provided HSN by GTEFL under applicable statutes and Commission rules. GTEFL maintains that the testimony covered by HSN's Referral Limitation Objection addresses whether GTEFL provided adequate service in accordance with these statutes and rules. As an example, GTEFL identifies issues concerning network functionality and the availability of alternative services as relating to the question of whether adequate service was furnished to HSN specifically.

According to GTEFL, the factual circumstances surrounding the issue of adequacy of service must be addressed in order for the Commission to determine how this question should be answered for the Court. Under Rule 25-4.071(3), Florida Administrative Code, telephone companies must design their networks based upon "realistic forecasts of growth." GTEFL claims that Witness Bryan's testimony illustrates that the growth component used in planning is derived, in part, from data provided by the company's high-volume customers. For this reason, information received from HSN about its traffic forecasts is said to be relevant to the question of whether the service provided by GTEFL was adequate. GTEFL believes that these facts furnish useful background information that allows us to place the technical aspects of service adequancy into proper context.

Initially, we are compelled to point out that our jurisdiction derives from Chapter 364, Florida Statutes, and cannot be expanded or contracted by the Court. However, the questions referred by the Court do limit the scope of our inquiry into the adequacy of GTEFL's service to HSN. These questions clearly relate to issues of service adequacy raised by HSN in its complaint filed with the Court.

Upon review of the subject testimony, we deny the Referral Limitation Objection in each instance that HSN raises it because this testimony falls within the scope of the question relating to service adequacy. The testimony relates to HSN's traffic information that is possessed by GTEFL. It concerns GTEFL's attempts to convey to HSN this data indicating that large numbers of calls were not being answered by HSN. We find this testimony to be relevant to the service adequacy question because it tends to show that GTEFL, as obligated by Rule 25-4.071(3), attempted to exchange information with HSN. This testimony is relevant to GTEFL's efforts to design its network which is, in part, dependent upon the capabilities of HSN, as a subscriber with a large traffic load, in handling calls delivered to it. We believe such informational efforts to be an important part of the adequacy of service equation.

C. HEARSAY OBJECTION

HSN asserts that certain parts of the testimony of all four GTEFL witnesses is hearsay, see the testimony identified as Objection "C" on the Attachment. HSN complains that this testimony relies on statements made by persons who are not testifying in this proceeding. Because these statements are offerred by these witnesses to prove the truth of the matter asserted, HSN asks that they be striken as hearsay.

GTEFL charges that hearsay is evidence that is admissable in our proceedings. GTEFL cites Section 120.58(1)(a), Florida Statutes, which provides as follows:

> . . . Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. This paragraph applies only to proceedings under s. 120.57.

GTEFL cites a line of legal precedents which hold that administrative agencies are not bound by the strict rules of evidence that are enforced by the courts. Moreover, GTEFL asserts that Judge Rives is aware of the standards of admissibility that govern administrative hearings and has no expectation that any other standards would be employed in answering the questions referred.

Additionally, GTEFL states that "virtually all of its hearsay testimony was corroborated by live witnesses who appeared at the hearing." As an example, GTEFL says that GTEFL Witness Bryan's testimony relates to that of GTEFL Witness Hicks and HSN Witness Craig, both of whom testified at the hearing. Finally, GTEFL claims that Witness Bryan was tendered as an expert witness; therefore, she may render opinions based on facts and data other than her personal knowledge in accordance with Section 90.704, Florida Statutes.

After reviewing the testimony covered by HSN's Hearsay Objection, we conclude that the testimony offered by Witness Bryan is admissible and that the testimony offered by the other three GTEFL witnesses is admissible for the limited purpose of

supplementing or explaining non-hearsay testimony. As a result, we deny this objection in all instances asserted by HSN; however, the non-expert testimony is admitted at this time on a conditional basis.

We note that the record contains testimony which is not subject to any objection as to admissibility by HSN, and we believe that this testimony may furnish an independent basis upon which findings in this docket may be supported. However, no decision can be reached at this time regarding whether the record is adequate to support ultimate findings. For this reason, our decision here regarding the Hearsay Objection asserted against Witnesses Pilcher, Hicks and Stewart is conditioned upon our ultimate finding that the record in this proceeding contains independent non-hearsay evidence sufficient to support a final ruling in this docket.

D. INCOMPETENT WITNESS OBJECTION

Certain testimony of Witnesses Bryan, Hicks and Stewart -- identified as Objection D on the Attachment -- is argued by HSN to extend beyond their competence to testify because the matters exceed the scope of the witnesses' experience. Since these matters are outside the firsthand knowledge of each witness, HSN argues that these parts of their testimony should be stricken as inadmissable.

GTEFL retorts that its witnesses are competent to testify on the disputed matters because their testimony is credible and corroborated. GTEFL asserts that no court decision can be located that compels our striking such testimony on the sole basis that it lies beyond the witnesses' firsthand knowledge. As an example, GTEFL claims that HSN's objection to the testimony of Witness Hicks regarding his efforts to inform HSN about its traffic volume is groundless because he has firsthand knowledge of such activities. Additionally, GTEFL says that the disputed testimony of Witness Stewart concerning HSN's "erratic line forecasts" overlooks the evidence that he received line forecasts from HSN and attended HSN planning sessions devoted to future growth. Finally, as explained above, GTEFL reiterates that Witness Bryan was tendered as an expert witness, thereby relieving her of any requirement to have firsthand knowledge.

Our conclusion with respect to the Incompetent Witness Objection is similar to that explained above regarding the Hearsay Objection. Concerning the testimony of Witness Bryan, we will deny the Incompetent Witness Objection in all instances because she is accepted as an expert witness, and as such, she may base her testimony on information acquired from others.

The testimony of Witnesses Hicks and Stewart is deemed admissible, on a conditional basis, for the limited purpose of supplementing or explaining other admissible testimony. We find that De Groot v. L. S. Sheffield, 95 So.2d 912, 916 (Fla. 1957), permits us to admit their testimony if it is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." They have acquired information in the performance of their employment duties, and while it is not based on their

firsthand knowledge, we believe the information so acquired is acceptable to us as adequate.

As noted above, some testimony is not covered by any HSN objection and may furnish an independent basis to support our ultimate findings. Therefore, our decision here regarding the Incompetent Witness Objection covering the testimony of Witnesses Hicks and Stewart is conditioned upon our concluding that the record contains independent evidence sufficient to support a final ruling here.

E. NO FOUNDATION OBJECTION

The testimony identified as Objection E on the Attachment is said by HSN to be opinion testimony by Witness Bryan, as an expert witness, for which the requisite foundation has not been established. We have examined her testimony in light of this objection and found that it contains facts upon which an expert witness can properly base an opinion. Therefore, the No Foundation Objection covering the testimony of Witness Bryan is denied in all instances asserted by HSN.

With regard to the testimony of Witnesses Hicks and Stewart identified as Objection E on the Attachment, HSN charges that it is inadmissible because no foundation has been set for demonstrating the involvement or experience of these non-expert witnesses. GTEFL repeats its earlier arguments in response to HSN's No Foundation Objection, asserting that Witnesses Hicks and Stewart have personal knowledge of the matters in their testimony, which is not based on opinion.

HSN objects to the assertion of Witness Hicks that "HSN needed to hire more operators if it wanted to answer more calls." HSN also objects to the statements of Witness Stewart that "HSN's projections of future growth in terms of facility requirements were in a constant state of flux" and that "HSN employees were confused about future growth." For the reasons explained above, we find this objection to be one of "the formalities in the introduction of testimony common to the courts of justice" that is not strictly employed in administrative agencies, Id. We find this testimony admissible because it is relevant evidence that can be reasonably accepted as adequate support for the witnesses' conclusions. Accordingly, we deny the No Foundation Objection in all instances asserted by HSN against the testimony of Witnesses Hicks and Stewart.

F. EXHIBIT NO. 12-B OBJECTION

HSN requests that we strike the document identified as Exhibit No. 12B which is attached to the Amended Direct Testimony of Witness Stewart filed on March 21, 1989. According to HSN, the "designation of this late-filed exhibit violates the Commission's Prehearing Order." GTEFL claims that this objection was raised at the hearing in this docket and overruled by the Commission. Therefore, GTEFL believes that the transcript of this proceeding demonstrates that this objection has been resolved, making it improper for further consideration.

We have reviewed pages 487-504 of the transcript and concluded that, while the document complained of by HSN was identified as Exhibit No. 12-B, it was never moved for admission into evidence by GTEFL. For this reason, Exhibit No. 12-B is not part of the record in this proceeding. In light of this circumstance, HSN's objection to the document's admission is moot.

G. SURREBUTTAL TESTIMONY OF WITNESS BRYAN

HSN objects to the Surrebuttal Testimony of Witness Bryan filed by GTEFL in its entirety, complaining that no rebuttal testimony has been admitted to justify the introduction of any surrebuttal testimony. GTEFL charges that HSN has waived any objection to the introduction of this testimony: first, by failing to take the opportunity extended to HSN to argue its objections at the motion hearing set for March 7, 1989, and second, by waiving its objections at the hearing by failing to object when the testimony was inserted into the record. Finally, GTEFL argues that Witness Bryan's testimony is particulary useful information.

We find that the Surrebuttal Testimony presented by Witness Bryan contains important information useful to our consideration of the issues in this proceeding. Any statements in the testimony directed to the pre-filed testimony of HSN Witness Adler, which was not offered at the hearings, are of no legal consequence. However, the decisions by HSN to not call Witness Adler to testify and to not introduce her pre-filed testimony do not diminish the usefulness to the Commission of those portions of the Surrebuttal Testimony of Witness Bryan that furnish additional information relevant to the issues. Accordingly, HSN's objection to the admission of this testimony is denied.

H. PRIOR RULINGS

GTEFL points out in its response that the Commission has entered rulings on some of HSN's objections to the admissability of testimony and that some of these objections have improperly been renewed in the Renewed Motion. With regard to the Amended Direct Testimony of Witness Stewart and dedicated facilities, the Renewed Motion seeks to have declared inadmissible the answers to three questions. The first question concerns discussions with HSN representatives about optional nodal network, see Tr. 510. GTEFL asserts that the Commission has ruled that this testimony is admissible; however, the Commission entered no ruling at the hearing with regard to this material.

The second two questions deal with a letter from a HSN executive to a GTEFL executive, see Tr. 511. GTEFL asserts that the Commission has ruled that this testimony is admissible. We find that this material has been ruled admissible by the Commission. Therefore, HSN's attempt to renew this objection is inappropriate.

GTEFL objects to HSN's renewed attempts to have the expert testimony of Witness Bryan declared inadmissible after agreeing that it would be admissible if corroborated. In view of the corroboration of Witness Hicks, GTEFL argues that HSN's objection has already been denied. We agree.

Nothing in this Order should be construed as altering, through reconsideration or otherwise, those rulings on the admissibility of evidence that were entered by the Commission at the hearings on March 23 and 24, 1989. To the extent that HSN has included objections in the Renewed Motion which have already been ruled on by the Commission, the transcript of the March 23rd and 24th hearings shall govern these objections, and this Order shall have no effect on those admissibility rulings.

It is, therefore,

ORDERED by the Florida Public Service Commission that the Motion to Strike filed on January 17, 1989, and the Corrected Renewed Motion to Strike Certain Pre-Filed Written Testimony filed on March 29, 1989, by Home Shopping Network, Inc., are hereby denied subject to the limitations upon the admissibility of certain testimony for limited purposes imposed in the body of this Order. It is further

ORDERED that the objections of Home Shopping Network, Inc., to the admission of certain testimony are hereby denied subject to the conditions imposed in the body of this Order upon the admission of this testimony. It is further

ORDERED that any conflict between the transcript of the hearings in this docket conducted on March 23 and 24, 1989, and this Order with regard to the admission of evidence shall be resolved in favor of rulings reflected in the transcript.

By ORDER of MICHAEL McK. WILSON, as Chairman of the Florida Public Service Commission, this 10th day of April, 1989.

MICHAEL McK. WILSON
Chairman

(S E A L)

TH/DLC

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 sewer 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.

ATTACHMENT

TESTIMONY OF GTEFL WITNESS BRYAN

Page	Line	Objection
3	11-24	A, B, C, D, E
23	11-24	C, D
24	3-8	A, B, C, D, E
24	13-22	C, D, E
24-25	25-4	A, B, C, D, E
25	18-20	A, B, C, D, E
25-26	25-10	A, B, C, D, E
26	15-25	A, B, C, D, E
29-30	10-1	C, D, E
30	4-9	A, B, C, D
30	14-24	A, B, C, D, E
31	4-13	C, D
32	4-5	A, B, C, D, E
32	13-15	C, D, E
33	1-3	C
33	11-19	C
34	4-10	A, B, C, D, E
35	4-10	C
35	21-23	C
36	6-15	A, B, C, D
36	17-25	A, B, D, E
37	1-11	A, B, C, D, E
37-38	22-2	C
38	7-12	C
38	18-22	A, B, C, D
39	1-17	A, B, C, D, E
41	6-17	C, D,
42	13-15	C, D
45	16-25	C
48	1-3	C, E
50	13-22	C, E
51	10-11	C

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TESTIMONY OF GTEFL WITNESS PILCHER

Page	Line	Objection
5	17-23	C
6	15-20	C
6-7	24-1	C

TESTIMONY OF GTEFL WITNESS HICKS

Page	Line	Objection
2	14-18	A, B, D, E
3	1-25	A, B
4	1-22	A, B

TESTIMONY OF GTEFL WITNESS STEWART

Page	Line	Objection
6	8-14	A, B
7	4-19	A, B, C
7-8	21-4	A, B, C
8	8-12	A, B
8-9	16-7	A, B
9-10	9-3	A, B
10	7-18	A, B
11	1-10	B, C, D, E

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(8) In the event that a utility and applicant are unable to agree in regard to an extension, either party may appeal to the Commission for a review.
Specific Authority: 364.10, 364.20, F.S.
Law Implemented: 364.03, F.S.
History: Revised 12/1/68, Amended 3/31/76, formerly 25-4.67.

25-4.068 Grades of Service.

(1) Each telephone utility shall provide equipment and facilities designed and engineered in accordance with realistic anticipated subscriber demands for regrading of service and shall have as its objective the satisfaction of at least ninety-five percent (95%) of all applications for regrades of service inside the base rate area of each exchange within a thirty (30) day maximum interval.

(2) To ensure a uniform treatment of the various grades and classes of service on a statewide basis, each telephone utility not presently in compliance shall establish as a goal the attainment of the following objectives:

(a) The minimum grade of service offered shall not exceed a maximum of four (4) main stations per circuit.

(b) This minimum grade of service offering beyond the base rate area, where offered, shall be provided at that company's prescribed rates for such service without the application of mileage or zone charges.

(c) Accordingly, each affected telephone company shall, as economic considerations permit, undertake such expansion of its plant and revisions to its tariff as may be necessary to realize these objectives within (5) years from the effective date of these rules. The utility may regroup subscribers in such manner as may be necessary to carry out the provisions of this rule but it shall not deny service to any existing subscriber.

(3) During the interim period required for compliance with the above, the presently prescribed maximum of five (5) main stations per line for multi-party service shall apply.
Specific Authority: 364.20, F.S.
Law Implemented: 364.03, 364.15, F.S.
History: Revised 12/1/68, Amended 3/31/76, formerly 25-4.68.

25-4.069 Maintenance of Plant & Equipment.

(1) Each telephone utility shall adopt and pursue a maintenance program aimed at achieving efficient operation of its system so as to permit the rendering of safe, adequate and continuous service at all times.

(2) Maintenance shall include keeping all plant and equipment in a good state of repair consistent with safety and adequate service performance. Broken, damaged, or deteriorated parts which are no longer serviceable shall be repaired or replaced. Adjustable apparatus and equipment shall be readjusted as necessary when found by preventive routines or fault location tests to be in unsatisfactory operating condition. Electrical faults, such as leakage or poor insulation, noise induction, crosstalk, or poor transmission characteristics, shall be corrected to the extent practicable within the design capability of the plant affected.

(3)(a) Each telephone company shall disaggregate and separately tariff the charges for installation and maintenance of embedded CPE and inside wire.

(b) Each telephone company shall make provision for sufficient parts, supplies and personnel to meet the requirements of this subsection and paragraphs 25-4.0345 (2)(b).

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(c) Maintenance for inside wire shall be offered to customers as specified below. However, if the Commission has approved the deregulation of maintenance of inside wire for a company, that company is not required to maintain inside wire under tariff.

1. At the customer's option:
   a. A tariffed, recurring monthly maintenance service charge, if the company installed the inside wire, or
   b. A tariffed, nonrecurring quarter hour maintenance premises work charge plus a charge for materials.
2. At the company's option, a tariffed recurring monthly maintenance service charge for inside wire the company did not install.

(d) Unless the company's embedded CPE has been deregulated, maintenance for all CPE shall be offered to customers under the following two options:

1. A tariffed, recurring monthly maintenance service charge plus a charge for parts as required; or
2. A tariffed, nonrecurring quarter-hour maintenance service charge plus a charge for parts as required.

Specific Authority: 350.127(2), F.S.
Law Implemented: 364.03, 364.15, F.S.
History: Revised 12/1/68, amended 12/13/82, 9/30/85, formerly 25-4.69.

25-4.070 Interruption of Service.

(1) Each telephone utility shall make all reasonable efforts to minimize the extent and duration of interrruptions of service. Service repair programs should have as their objective the restoration of service on the same day that the interruption is reported to the company (Sundays and holidays excepted).

(2) Each telephone utility shall conduct its operations in such manner to insure that, in each exchange, ninety-five (95%) percent of all interruptions in telephone service occurring in any calendar month shall be cleared and service restored within twenty-four (24) hours (Sundays and holidays excepted) after the trouble is reported to the company, except where such interruptions are caused by emergency situations, unavoidable casualties and acts of God affecting large groups of subscribers or due to subscriber owned equipment.

(3) Priority shall be given to service interruptions reported to, or ascertained by, the company which affect public health and safety and such service interruptions shall be corrected as promptly as possible on an emergency basis.

(4) Each telephone utility shall maintain an accurate record of trouble reports made by its customers and shall establish as its objective the maintenance of service at a level such that the average rate of all initial customer trouble reports (trouble index) in each exchange or service center will not exceed an amount equal to six (6) times the average main station to line ratio for that exchange at the first of each year per one hundred (100) total telephone units per month. The calculation of telephone units shall consist of the following computation: Each residence main and business extension telephone = one telephone unit - each business main or PBX trunk = two and one-half (2 1/2) telephone units - each key, centrex or coin station = two and one-half (2 1/2) telephone units and each residence extension station = one half (1/2) unit. For any reporting period where the actual average trouble index during that period exceeds the prescribed level for any exchange by two (2) or more reported troubles per one hundred (100) telephone units, such a situation shall be considered to indicate the need for investigative or corrective action by the company. These average rates shall not apply to reports resulting from interruptions caused by emergency

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situations, unavoidable casualties, acts of God affecting large groups of subscribers, non-service affecting reports or troubles found to be beyond the control of the telephone company or due to subscriber owned equipment. For the purpose of this rule an initial report shall be construed to mean a customer report on a station, or other plant item, on which all previous customer reports on record for that particular trouble have been closed.
Specific Authority: 364.20, F.S.
Law Implemented: 364.03, 364.17, 364.18, F.S.
History: Revised 12/1/68, Amended 3/31/76, formerly 25-4.70.

25-4.071 Adequacy of Service.

(1) Each telephone utility shall furnish local and toll central office switching service on a twenty-four (24) hour basis each day of the year in all exchanges.

(2) Usage studies, including operator intercept, recorded announcement, directory assistance, repair and business office services shall be made and records maintained to the extent and frequency necessary to determine that sufficient equipment is provided during the average busy season busy hour, that an adequate operating force is provided to meet the prescribed answering time requirements of Rule 25-4.073 and to permit force adjustments throughout the year for greater operating economy.

(3) Each telephone utility shall provide switching equipment, trunking and associated facilities within its operating territory for the handling of local and toll traffic, designed and engineered on the basis of realistic forecasts of growth so as to meet the following service standards during the average busy season busy hour:

(a) At least ninety-five (95%) percent of all calls will receive a dial tone within three (3) seconds.

(b) At least ninety-seven (97%) percent of all calls offered to any trunk group (toll connecting, interoffice, extended area service) will not encounter an all-trunk busy condition.

(4) Telephone calls to valid numbers should encounter a ring-back tone, line busy signal, or non-working number intercept facility (operator or recording) after completion of dialing. The call completion standards established for such calls by category of call is as follows:

Intra-office calls	-- ninety-five (95%) percent
Inter-office calls	-- ninety-five (95%) percent
Extended Area calls	-- ninety-five (95%) percent
Intra-company DDD calls	-- ninety-two (92%) percent
Inter-company DDD calls and Intra-company calls utilizing the facilities of two or more companies	-- ninety (90%) percent

(5) All telephone calls to invalid telephone numbers in common controlled central offices and to vacant selector levels in step-by-step central offices will encounter an operator or suitable recorded intercept facility, preferably a recording other than the non-working number recording used for valid number calls; provided that in those central offices designed to use digit absorption in the processing of calls, a period of five (5) years from the effective date of these rules shall be permitted to meet this requirement, except where practical or economic considerations dictate otherwise.

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(6) A line busy signal (60 impulse per minute tone) shall not be used for any signaling purpose except to denote that a subscriber's line or other valid terminal or centrex or PBX trunks and/or equipment where the quantity is controlled by the customer is in use. Those companies now using this tone to denote other conditions, such as all-trunk busy conditions, congestion or blockage in common control central office facilities, etc., will establish and report to the Commission, objective dates for correcting this condition within one hundred eighty (180) days of the effective date of this rule.
Specific Authority: 364.20, F.S.
Law Implemented: 364.03, 364.17, 364.18, F.S.
History: Revised 12/1/68, Amended 3/31/76, formerly 25-4.71.

25-4.072 Transmission Requirements.
(1) Telephone utilities shall furnish and maintain the necessary plant, equipment and facilities to provide modern, adequate, sufficient and efficient transmission of communications between customers in their service areas. Transmission shall be at adequate volume levels and free of excessive distortion. Levels of noise and crosstalk shall be such as not to impair communications. The maximum loss objective of inter-toll trunks shall be consistent with the requirements of the nationwide switching plan and overall transmission losses within each trunk group will not vary more than plus or minus two (2) db.
(2) The telephone industry and the Public Service Commission, through their test programs, are making constantly increasing demands upon milliwatt supply units. The accessibility and dependability, with respect to accurate frequency setting and correct output level, is of extreme importance. Effective immediately, along with any major addition or changeout, accurate dependable milliwatt supplies shall be made a part of each central office entity. Additionally, for those central offices having an installed line capacity of one thousand (1,000) lines or more, the buffered access on a minimum three line rotary group basis shall be a part of the milliwatt supply.
(3) Within two (2) years from the effective date of these rules each central office will be equipped with a minimum of one (1) termination which will trip ringing and terminate the line on a balanced basis so that end to end noise measurements may be made.
Specific Authority: 364.20, F.S.
Law Implemented: 364.03, F.S.
History: New 12/1/68, Amended 3/31/76, formerly 25-4.72.

25-4.073 Answering Time.
(1) Each telephone utility shall provide equipment designed and engineered on the basis of realistic forecasts of growth, and shall make all reasonable efforts to provide adequate personnel so as to meet the following service criteria under normal operating conditions:
(a) At least ninety (90%) percent of all toll calls offered to each toll office shall be answered within ten (10) seconds after the start of the audible ring.
(b) At least ninety (90%) percent of all calls directed to intercept, directory assistance and repair services and eighty (80%) percent of all calls to business offices shall be answered within twenty (20) seconds after the start of the audible ring.
(c) The terms "answered" as used in subparagraphs (a) and (b) above shall be construed to mean more than an acknowledgment that the customer is waiting on the line. It shall mean that the operator or service representative is ready to render assistance and/or accept the information necessary to process the call, except that with respect to

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calls to business office services where the company practice provides that such calls are directed to an operator position, an additional twenty (20) seconds will be allowed to extend the call excluding the time required for the customer to provide sufficient information to the operator in order to process the call. In those instances where the call cannot be extended within the allotted interval, the calling party is to be given the option of placing the call again or providing a number by which a company representative will return the call within ten (10) minutes or at a time mutually convenient to the parties.

(2) Answering time studies shall be made to the extent and frequency necessary to determine compliance with this rule. Monthly summary results of such studies shall be filed with the Commission promptly after the end of each calendar quarter.

(3) All telephone companies are expected to answer their main published telephone number on a twenty-four (24) hour a day basis. Such answering may be handled by a special operator at the toll center or directory assistance facility when the company offices are closed. Where after hours calls are not handled as described above, at least the first published business office number will be equipped with a telephone answering device which will notify callers after the normal working hours of the hours of operation for that business office. Where recording devices are used, the message shall include the telephone number assigned to handle urgent or emergency calls when the business office is closed.

Specific Authority: 364.20, F.S.
Law Implemented: 364.03, F.S.
History: New 12/1/68, Amended 3/31/76, formerly 25-4.73.

25-4.074 Intercept Service.

(1) Intercept service shall be engineered to provide a ninety (90%) percent completion for changed numbers (with the exception of the thirty (30) day period immediately following an inter-office transfer with directory) and an eighty (80%) completion for vacant or non-working numbers without encountering a false station busy signal; provided that in those central offices designed to use digit absorption in the processing of calls, a period of five (5) years from the effective date of these rules shall be permitted to meet this requirment, except where practical or economic considerations dictate otherwise.

(2) Subscriber lines which are temporarily disconnected for nonpayment of bills will be placed on intercept (Preferably operator intercept).

(3) All private branch exchanges (and In-Dial Paging Systems), whether provided by the company or customer, equipped for direct in-dialing and installed after the effective date of these rules shall meet the service requirements outlined herein prior to the assignment of a number block by the telephone company.

(4) With the exception of numbers that are changed coincident with the issuance of the new directory, intercept service shall be provided by each telephone company in accordance with the following:

(a) In terminal per station offices, intercept service shall be provided for non-working and changed numbers until assigned, re-assigned or no longer listed in the directory.

(b) In terminal per line offices, intercept service shall be provided for changed numbers for business service until re-assigned or no longer listed in the directory and for changed numbers for residence service for a minimum period of sixty (60) days, unless re-assigned.

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(c) Any 7-digit number (or other number serving a public safety or other emergency agency) when replaced by the universal emergency number "911" shall be intercepted by either a telephone company assistant or a public safety agency operator or special recorded announcement for at least one year or until the next directory issue.

Also, where economically feasible, intercept service for the universal emergency telephone number "911" shall be provided in central offices where the number is inoperable. The intercept service can be machine with a message indicating the "911" emergency number is inoperable in that area and to consult the directory for the appropriate emergency number or if a directory is not available to dial operator for assistance.

(5) All central offices installed after the effective date of these rules shall be provided with sufficient intercept equipment to meet the criteria set out in this section.

Specific Authority: 364.20, F.S.
Law Implemented: 364.03, F.S.
History: New 12/1/68, Amended 3/31/76, formerly 25-4.74.

25-4.075 Foreign Exchange Service. Foreign exchange service shall be furnished by each telephone company operating in Florida between the exchanges within the territory served by it or to exchanges of another company to any person applying for same who will pay the approved tariff rate for such service when facilities to furnish said service are available. The tariffs of all such telephone companies shall include for Commission approval rates and charges applying to foreign exchange service.

Specific Authority: 364.20, F.S.
Law Implemented: 364.16, 364.20, F.S.
History: New 12/1/68, Amended 3/31/76, formerly 25-4.75.

25-4.0751 Direct Distance Dialing Service. Each telephone utility shall undertake such additions to and modifications of its equipment and facilities as may be required to provide on customer dialed toll calls a method to automatically identify the calling number (ANI) for individual and two-party line service. This program shall be initiated without unreasonable delay and shall have as its objective the satisfaction of this requirement on the following schedule, except where economically impracticable:

(a) Within three (3) years on existing central offices equipped for one and two party ANI.

(b) Within five (5) years from the effective date of this rule in all existing central office units.

(c) Immediately upon placing into service any new central office units.

Specific Authority: 364.20, F.S.
Law Implemented: 364.03, F.S.
History: New 3/31/76, formerly 25-4.751.

25-4.076 Pay Telephone Service Provided By Local Exchange Companies.

(1) Each local exchange company shall, where practical, supply at least one coin telephone in each exchange that will be available to the public on a twenty-four (24) hour basis. This coin telephone shall be located in a prominent location in the exchange. Except as provided herein, a telephone company may not be required to provide pay telephone service at locations where the revenues derived therefrom are insufficient to support the required investment unless reasonable public requirements will be served. Pay stations shall be lighted during the hours of darkness when light from

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other sources is not adequate to read instructions and use the instrument.

(2) Each telephone station shall return any deposited amount if the call is not completed, except messages to a Feature Group A access number.

(3) Each telephone station shall have the capability of coin free access to a local exchange company toll operator and the universal emergency telephone number "911" where operable; and coin free or coin return access to local directory assistance, intercept, repair service and calls to the business office of the company.

(4) Each telephone station shall be equipped with a legible sign, card or plate of reasonable permanence which shall identify the following: the telephone number and location address of such station, the name or recognizable logo of the owner and the party responsible for repairs or refunds, free telephone number of responsible party and clear dialing instructions (including notice of the lack of availability of local or toll service). The identification of the location address for local exchange and pay telephone companies shall be coordinated with the appropriate "911" or emergency center where applicable.

(5) Each telephone station which provides access to any long distance company must provide access to all locally available long distance companies regardless of which form of access is available.

(6) Each telephone station must allow incoming calls to be received, with the exception of those located at penal institutions, hospitals and schools, and at locations specifically exempted by the Commission. There shall be no charge for receiving incoming local calls. Where incoming calls are not received, intercept shall be provided.

(7) Where there are fewer than three telephones located in a group, a directory for the entire local calling area shall be maintained at each station. Where there are three or more telephones located in a group, a directory for the entire local calling area shall be maintained at every other station. However, where telephone stations are fully enclosed, a directory shall be maintained at each station.

(8) Normal maintenance and coin collection activity shall include a review of the cleanliness of each station and reasonable efforts shall be made to ensure that 95% of all stations are clean and free of obstructions.

(9) Each telephone station installed after January 5, 1987 shall conform to subsections 4.29.2 - 4.29.4 and 4.29.7 - 4.29.8 of the American National Standards Specifications for Making Buildings and Facilities Accessible and Usable by Physically Handicapped People, approved February 5, 1986 by the American National Standards Institute, Inc. (ANSI A117.1-1986). Except for locations on floors above or below entry level in buildings not serviced by a ramp or elevator, such stations shall be placed in areas accessible to the physically handicapped.

Specific Authority: 350.127(2), F.S.
Law Implemented: 364.03, F.S.
History: New 12/1/68, Amended 3/31/76, formerly 25-4.76, Amended 1/5/87.

25-4.077 Metering and Recording Equipment.

(1) Where mechanical or electronic means are used for registering or recording information which will affect a subscriber's bill, such equipment shall be in good mechanical and electrical condition, shall be accurately read, and shall be frequently inspected to insure that it is functioning properly.

(2) Every telephone meter and recording device shall be tested prior to its installation, either by the manufacturer, the utility, or an approved organization equipped for such testing.

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(3) Each utility shall provide, or have access to, the necessary facilities, instruments, and equipment for testing its metering and recording equipment and shall adopt appropriate practices for the periodic testing and maintenance of such devices to insure the integrity of their operation. Such practices shall include specific instructions for verifying, including the frequency of such verification, the time of day reflected on the operator calculagraphs and/or DDD ticketing equipment.
Specific Authority: 364.20, F.S.
Law Implemented: 364.03, F.S.
History: New 12/1/68, Amended 3/31/76, formerly 25-4.77.

25-4.0770 Customer Appointments.

(1) When the company determines that it is likely that a premises visit and entry to the customer's premises (for installation, moves, changes or repairs) will be necessary, the company shall, with customer approval, advise the customer of the time that its representative will be at the premises. Appointments will be set within the time frames of 7-12 A.M., 12-5 P.M., or 5-9 P.M. or, upon customer and company agreement, appointments may be set for a specific hour or day. Appearance of the company representative to render the service during the set period shall constitute a kept appointment by the company. Failure of the company representative to be present during the prescribed period for the appointment shall constitute a missed appointment by the company. In confirming the appointment, the company shall specifically advise the customer of the hour or hours applicable to the appointment.

(2) Each company shall keep at least 95% of all such appointments each month. Where appointments cannot be kept by the company, the customer shall be notified by telephone call prior to the beginning of the appointment period if a can-be-reached number is obtained from the customer and a new appointment shall be scheduled. No appointment cancelled in this manner shall constitute a kept or missed appointment by the company.

(3) Whenever a company representative is unable to gain admittance to a customer's premises during the scheduled appointment period, the company representative shall leave a notice, indicating the date, time, name of subscriber, telephone number, and signature of the representative. Failure of the customer to be present to afford the company representative entry to the premises during the appointment period shall constitute a missed appointment by the customer.

(4) Appointments may be cancelled by the customer by telephone or personal notification, prior to the start of the appointment period.

(5) The company shall maintain data and records sufficient to allow the Commission to ascertain compliance with this rule.

(a) Each company shall at least maintain the following information on each appointment made: reason for premise entry (installation, move, change, or repair); the date and time the customer requested service; the appointment date and time period agreed upon; the date and time the appointment is cleared without a premise visit, if applicable; the date and time of cancellation of an appointment by either party; the date and time of arrival at the customer's premises; and the date and time of completion of the service. This information shall be maintained for one year following the completion of the service.

(b) Each company shall report quarterly to the Commission the record of the company with respect to missed appointments. The report shall contain, on both a monthly and annual basis, the total number of customer appointments made pursuant to this rule, the number of appointments cleared without a premise visit, the number of appointments kept