

**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA  
RICHARD M. ELLIS  
KENNETH A. HOFFMAN  
LORENA A. HOLLEY  
MICHAEL G. MAIDA  
MARTIN P. McDONNELL  
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551  
215 SOUTH MONROE STREET, SUITE 420  
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788  
TELECOPIER (850) 681-6515

September 5, 2006

R. DAVID PRESCOTT  
HAROLD F. X. PURNELL  
MARSHA E. RULE  
GARY R. RUTLEDGE  
MAGGIE M. SCHULTZ  
GOVERNMENTAL CONSULTANTS  
PARSONS B. HEATH  
MARGARET A. MENDUNI

Ms. Blanca Bayo, Director  
Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2340 Shumard Oak Blvd.  
Tallahassee, FL 32399

Re: Notice of Administrative Appeal  
Order No. PSC-06-0681-FOF-TL  
Docket No. 060300-TL

Dear Ms. Bayo:

Enclosed is the original Notice of Administrative Appeal in the above matter. Also enclosed is an additional copy for you to date stamp and return to me.

Please contact me if you have any questions. Thank you for your assistance.

Sincerely,



Marsha E. Rule

cc: Thomas D. Hall, Clerk of the Florida Supreme Court  
David Smith  
Adam Teitzman  
Charlie Beck

DOCUMENT NUMBER-DATE

08114 SEP-5 06

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

GTC, Inc. d/b/a GT Com

Appellant,

v.

The Florida Public Service Commission, Lisa Polak Edgar, in her official capacity as Chairman of the Florida Public Service Commission; and J. Terry Deason, Isilio Arriaga, Matthew M. Carter II, and Katrina J. Tew, in their official capacities as Commissioners of the Florida Public Service Commission

Appellees.

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In re: Petition for recovery of intrastate costs and expenses relating to repair, restoration and replacement of facilities damaged by Hurricane Dennis by GTC, Inc. d/b/a GT Com

Docket No. 060300-TL

Filed: September 5, 2006

**NOTICE OF ADMINISTRATIVE APPEAL**

NOTICE IS GIVEN that GTC, Inc. d/b/a GT Com, Appellant, pursuant to Rule 9.030(a)(1)(B)(ii), Florida Rules of Appellate Procedure and Section 364.381, Florida Statutes, appeals to the Florida Supreme Court the Florida Public Service Commission's Order No. PSC-06-0681-FOF-TL, rendered on August 7, 2006 in Docket No. 060300-TL, *In re: Petition for recovery of intrastate costs and expenses relating to repair, restoration and replacement of facilities damaged by Hurricane Dennis, by GTC, Inc. d/b/a GT Com.* This is a final order permitting GT Com limited recovery of certain hurricane-related costs and expenses pursuant to §364.051(4)(b), Florida Statutes. A copy of the order is attached as Exhibit A.

DOCUMENT NUMBER - DATE

08114 SEP-5 06

FPSC-COMMISSION CLERK



Kenneth A. Hoffman, Esq.  
Marsha E. Rule, Esq.  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
P. O. Box 551  
Tallahassee, Florida 32302  
Telephone: 850-681-6788

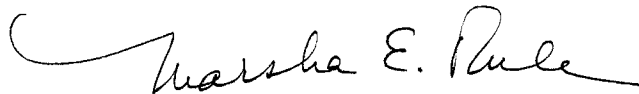
Attorneys for GTC Inc. d/b/a GT Com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Administrative Appeal has been furnished by U.S. mail this 5<sup>th</sup> day of September, 2006, to the following:

Florida Public Service Commission  
Adam Teitzman, Esq.  
David Smith, Esq.  
2450 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
[ateitzman@psc.state.fl.us](mailto:ateitzman@psc.state.fl.us)

Office of Public Counsel  
Charles J. Beck, Esq.  
111 West Madison St., #812  
Tallahassee, FL 32399-1400  
[beck.charles@leg.state.fl.us](mailto:beck.charles@leg.state.fl.us)



Attorney

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for recovery of intrastate costs and expenses relating to repair, restoration and replacement of facilities damaged by Hurricane Dennis, by GTC, Inc. d/b/a GT Com.

DOCKET NO. 060300-TL  
ORDER NO. PSC-06-0681-FOF-TL  
ISSUED: August 7, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

ORDER ON GT COM STORM COST RECOVERY

BY THE COMMISSION:

**I. CASE BACKGROUND**

On March 31, 2006, GTC, Inc. d/b/a GT Com (GT Com or Company) filed a petition for approval of storm recovery costs associated with the costs of repairing its lines, plants and facilities damaged by Hurricane Dennis in 2005. GT Com has initiated this petition pursuant to Section 364.051(4)(b), Florida Statutes, which provides that any damage to its lines, plants, or facilities as a result of a named tropical storm occurring after June 1, 2005, constitutes a compelling showing of changed circumstances and costs may be recoverable through guidelines established in the statute.

The statute, which was signed into law June 2, 2005, provides that we shall verify the petitioner's intrastate costs and expenses and determine whether the intrastate costs and expenses are reasonable under the circumstances for the named tropical system. If the company maintains a storm-reserve fund, customers can only be charged for costs in excess of any amount available in that fund. Any charge we approve cannot exceed 50 cents per month per customer line for a period of not more than 12 months. We may order the company to recover the charge from its local basic customers, nonbasic customers, and if appropriate, its wholesale loop unbundled network element customers. At the end of the collection period, we must verify that the collected amount does not exceed the amount authorized by the order, and if excess collections are found, order the company to refund that amount. Because GT Com has fewer than 1 million access lines, it is not required to meet a minimum damage threshold in order to qualify to file a petition for storm cost recovery. However, it may file only one petition for storm cost recovery in any 12-month period, but the application may cover damages from more than one named tropical system.

DOCUMENT NUMBER - DATE

07053 AUG-7 06

FPSC-COMMISSION CLERK

GT Com asserts that the Legislature expressly chose to permit recovery of “costs” and “expenses” and to use these words without qualifying terms. According to GT Com, these unambiguous terms must be construed in their plain and ordinary sense. As such, GT Com believes it is entitled to recover its *costs and expenses* – not its net costs, tax-adjusted costs, depreciated, or costs that are considered “incremental;” the Legislature did not impose limitations on costs and expenses eligible for recovery. Throughout the case, GT Com has maintained its position regarding its interpretation of the terms “costs and expenses.” GT Com has repeated its objection to all inquiries regarding budgeted expenses or revenues, budget variances, financial statements, revenues, net operating income or loss, cost of capital, depreciation status, incremental costs or any information not specified in Section 364.041(40)(b), Florida Statutes. While GT Com has maintained this objection, it has generally complied with the discovery requests made in this case.

The Office of Public Counsel (OPC), takes the position that Section 364.051(4)(b), Florida Statutes, provides us with broad discretion, along with the responsibility, to determine which costs should be included in storm surcharges. While OPC does not take the position that the incremental cost approach is mandated by the statute, it believes we have the authority to use an incremental approach and should apply the approach because: 1) the methodology prevents customers from being charged twice for the same costs and, 2) the incremental approach has been used consistently by this Commission in all recent electric utility cases and in a Commission-approved stipulation between Sprint and the Office of Public Counsel. OPC has taken the position throughout this case that GT Com has not supported its requested amount of storm cost recovery for the reasons that either GT Com has not provided documentation to support a particular cost or it has failed to prove the costs are incremental costs caused by storm damage.

We have an obligation to determine whether the costs and expenses requested by a company are reasonable for storm cost recovery. Specifically, Sections 364.051(4)(b)(2) and (3), Florida Statutes, sets forth our responsibilities:

- (b)(2) The commission shall verify the intrastate costs and expenses submitted by the company in support of its petition.
- (b)(3) The company must show and the commission shall determine whether the intrastate costs and expenses are reasonable under the circumstances for the named tropical storm.

The legislative intent of this Statute is to require that a thorough analysis be conducted of the costs and expenses included in a company’s request for storm cost recovery so that its customers are not obligated to pay for costs that they already pay for through their monthly bills or that are not directly attributable to the tropical system.<sup>1</sup> Furthermore, we find a reasonable

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<sup>1</sup> Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 2232 states: The committee substitute requires that the company show and the commission determine whether costs and expenses are reasonable under the circumstances. Traditionally, for rate-base-regulated industries, the commission would apply a “prudent and reasonable” test to ensure, for example, that costs are not double recovered, are booked to the appropriate costs

interpretation of the statute is to provide for recovery as long as there is not recovery by other means.

On July 10, 2005, Hurricane Dennis, a Category 3 hurricane with winds between 111-130 miles per hour, made landfall on Santa Rosa Island, Florida. Thereafter, the storm moved across the Florida Panhandle bringing tropical storm-force winds to a large part of Northwest Florida. In addition to torrential rain, GT Com stated the storm surge associated with Hurricane Dennis contributed to the damage incurred by GT Com.

GT Com states that it has incurred a total of \$444,192 in costs related to Hurricane Dennis. Of that amount, GT Com has apportioned \$312,693 to intrastate costs, exclusive of carrying costs and taxes. GT Com serves 46,861 lines in 17 exchanges throughout North Florida. These exchanges include: Alligator Point, Altha, Apalachicola, Blountstown, Bristol, Carrabelle/Dog Island, Chattahoochee, Eastpoint/St. George, Hosford, Keaton Beach, Laurel Hill, Mexico Beach, Paxton, Perry, Port St. Joe, Tyndall Air Force Base, and Wewahitchka.

This is the first petition filed under the storm cost recovery procedures established by Section 364.051(4)(b), Florida Statutes.

## II. INTRASTATE COSTS AND EXPENSES

### A. Parties' Arguments

GT Com contends the total amount of direct company-wide costs and expenses incurred to repair, restore and replace lines, plants and facilities damaged by Hurricane Dennis is \$463,710. GT Com's work orders appropriately account for these costs and expenses.

OPC asserts the majority of the cost justification, which appears in witness Ellmer's Exhibit RME-10, page 1 of 1, relates to costs which the Company appears to have capitalized or should have capitalized. OPC also believes that a good amount of the remaining costs are either costs that should have been capitalized, or cost of removal charged to the Reserve for Depreciation, or costs that may not be incremental to the Company's normal operating and maintenance expenses. Additionally, the Company ignored offsetting loop support payments it expects to receive on account of the hurricane from high-cost allocations from the Universal Service Fund. In addition, the benefit loadings and overhead allocations have not been adequately supported and the charges for taxes and carrying costs do not appear to be legitimate. Based on these arguments, OPC believes that it is impossible to determine the incremental costs incurred by GT Com related to Hurricane Dennis from the Company's filing.

### B. Analysis

The amount of intrastate costs and expenses that GT Com incurred to repair, restore, or replace lines, plants, or facilities damaged by Hurricane Dennis is \$312,693. This amount

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accounts, and are necessary for the restoration process. The proposed language implies a similar type of review. (dated April, 2005, pages 7-8)

reflects the costs that GT Com incurred, but is not intended to denote the amount deemed appropriate for recovery. This issue sets forth the starting point that will be used to establish the amount GT Com should be entitled to recover from its customers. Section 364.051(4)(b), Florida Statutes, clearly states that we shall determine whether the intrastate costs and expenses are reasonable under the circumstances. The determination of reasonableness is addressed below.

While GT Com states in its prehearing statement that it incurred intrastate costs and expenses of \$463,710 relating to repairing, restoring and replacing its lines, plants and facilities damaged by Hurricane Dennis, this amount includes intrastate proposed income taxes of \$129,505 and carrying charges of \$21,512. In determining the amount of intrastate costs and expenses that GT Com incurred relating to repairing, restoring, or replacing the lines, plants, or facilities damaged by Hurricane Dennis, it is appropriate to accept GT Com's filing of total intrastate costs of \$463,710, but to remove intrastate taxes and carrying charges of \$151,017 (\$129,505 of taxes and \$21,512 in carrying charges) for a total of \$312,693. Taxes and carrying costs are not direct costs associated with the storm. However, they are "fall out" items that have been requested by the Company. Adjustments for taxes and carrying charges are addressed later in this Order.

Stated another way, GT Com has submitted schedules that include interstate and intrastate costs and expenses of \$444,193. By applying the intrastate factor of 70.3957% to this amount, the resulting figure is \$312,693. Accordingly, the gross amount of intrastate costs and expenses GT Com incurred related to repairing, restoring, or replacing the lines, plants, or facilities damaged by Hurricane Dennis is \$312,693. This amount will be adjusted later in this Order.

### **III. REASONABLE UNDER THE CIRCUMSTANCES**

#### **A. Parties' Arguments**

GT Com argues all such costs and expenses are reasonable under the circumstances, including GT Com's use of fiber, a carrier system and smaller copper cable to repair, restore and replace its Alligator Point lines, plant and facilities in lieu of an exact replacement of the existing lines, plant and facilities. In no event, however, should GT Com's prudent choice of replacement materials cause it to recover less than if it had opted to replace the exact facilities damaged by Hurricane Dennis.

OPC contends the majority of the cost justification, which appears in RME-10, are costs which the Company appears to have capitalized or should have capitalized. A good amount of the remaining costs are either costs that should have been capitalized, or costs of removal charged to the Reserve for Depreciation, or costs that may not be incremental to the Company's normal operating and maintenance expenses. Benefit loadings and overhead allocations are inadequately supported, and the charges for taxes and carrying costs do not appear to be legitimate. It is impossible to determine the incremental costs incurred by GT Com related to

Hurricane Dennis from the Company's filing. Finally, the Company ignored offsetting loop support payments it expects to receive on account of the hurricane.

B. Analysis

Section 364.051(4)(b), Florida Statutes, establishes a mechanism and provides an opportunity and forum whereby telecommunications companies can petition this Commission for reimbursement of certain storm related costs. The statute stipulates that the storm must have caused damage to the petitioner's lines, plants or facilities and those damages must be a result of a named tropical system (system must be named by the National Hurricane Center) occurring after June 1, 2005. We shall verify the intrastate costs and expenses submitted by the company in support of its petition. In order to receive reimbursement of the requested intrastate costs/expenses, the company is obliged to show that the subject costs are *reasonable under the circumstances for the named tropical system*. Below we have identified five cost categories that we believe are not reasonable under the circumstances and shall not be recovered through the storm cost recovery mechanism.

OVERHEAD

GT Com

The methodology employed by GT Com to allocate costs results in a reasonable level of overhead expenses. The overhead expenses are automatically assigned by a software-generated entry. An allocation of overhead expense is assigned to each work order based on the percentage of total time charged to the order. The assignment methodology fulfills the requirements of FCC Part 32 rules, as amended. GT Com's five step process to allocate costs, as described in witness Ellmer's testimony, along with supporting exhibits, provide full support for GT Com's cost allocations.

OPC

GT Com has not provided support to justify the inclusion of costs related to "Other Overhead." GT Com has not shown the specific costs that are being allocated. GT Com's cost allocations summarized on RME-12 does not agree with the "Other Overhead" allocations shown on RME-10. The total of Benefits and Other Overhead charged to Work Order No. 2005838 is \$75,035. As the total in-house plant labor and engineer labor charged to Work Order No. 2005838 is \$52,187, the allocation of Benefits and Other Overhead is 144%. It is unlikely that Benefits and Overhead would be greater than the actual direct labor associated with this work order.

Analysis

GT Com has identified approximately \$28,080 in total company storm-related overhead expenditures included in its request for storm cost recovery. The amount of "Other Overhead" shown on RME-10 shall not be considered for storm cost recovery purposes. As previously



mentioned, the company is obliged to show that the subject costs are *reasonable under the circumstances for the named tropical system*.

We find that the phrase "*reasonable under the circumstances*" allows us great latitude in determining the methodology and factors that should be taken into consideration when reviewing the petitioner's request. We also find that this statute was enacted to assist the petitioner in defraying additional costs caused by extraordinary circumstances, specifically tropical storms.

One of the main goals of this statute is to assist the petitioner financially. Accordingly, the reasonable clause implicitly ensures that storm related cost recovery should be based on expenditures incurred over and above normal operating expenditures. It is highly unlikely that the Legislature intended, through Section 364.051(4), Florida Statutes, to reimburse companies for costs that they would have incurred regardless of whether a storm had occurred or not.

We find the overhead costs included by GT Com are part of the Company's normal operating costs and should therefore be removed for storm cost recovery purposes. However, even if we were to consider the costs appropriate for hurricane cost recovery, the allocated overhead costs do not appear reasonable. During witness Ellmer's deposition, our staff asked witness Ellmer why the percentage of overhead costs allocated to Work Order 2005838 (838) was 144 percent of the direct plant labor while in Work Order 2005839 (839) the percentage of overhead costs allocated was 185 percent of the direct plant labor. Witness Ellmer responded that he had not had time to research the variance. At the hearing, witness Ellmer was again asked if he was able to come to a resolution about the disparity of overhead percentages applied to different work orders. Witness Ellmer stated he had not had time to research the variance.

Not only is the variance between work orders problematic, the overhead amounts are unreasonable. GT Com has not provided support to justify overhead amounts that exceed the amount of direct plant labor. Overhead allocation percentages in excess of 100 percent appear unreasonable.

Witness Buckley recommends reducing the overhead costs by the total company amount of \$28,080. Witness Buckley recommends eliminating this amount because the Company failed to provide backup documentation to support the costs and therefore witness Buckley could not determine if the overhead amount was appropriate.

Further, witness Ellmer acknowledged that the allocation of overhead included costs that would have been incurred regardless of whether Hurricane Dennis occurred. Expenses such as vehicle expense, maintenance, fuel, maintenance of tractors, trenchers, tools, minor tools, provisioning costs, engineering expenses, plant operation administration, and general and administrative costs include overhead costs would have been incurred regardless of whether a tropical storm occurred.

Based on the above discussion, the amount of the overhead costs shall be removed for purposes of developing a storm cost recovery amount. The subject costs/expenditures would have been incurred by GT Com regardless of whether Hurricane Dennis had occurred or not.

Further, even if the costs were considered part of GT Com's hurricane costs, GT Com has failed to provide support to determine if the overhead amount is appropriate, and could not provide justification for the overhead allocations which exceed 100 percent of direct labor costs. Without supporting documents, we cannot fulfill our obligation to verify as required by law.

### BENEFITS

#### GT Com

GT Com asserted it has not had time to research the benefit levels contained in RME-10 and as a result, will accept witness Buckley's proposed adjustment of \$35,921, even though this results in a total disallowance of benefit costs.

#### OPC

OPC believes the benefit costs are not reasonable. The majority of costs for "Benefits" and "Other Overhead" are charged to two work orders, 2005838 (838) and 2005839 (839). GT Com has not provided an explanation of how the benefits were allocated, but states that overhead is automatically allocated by Company software. Benefits in the amount of \$49,775 were charged to Work Order 838, but does not show how this amount was allocated. Total Benefits and Other Overhead for Work Order 838 is \$75,035. When compared to plant labor and engineering labor charged to this work order of only \$52,187, the allocation of "Benefits" and "Other Overhead" is 144 percent of plant and engineering labor. It is unlikely that Benefits and Overhead would be greater than the actual direct labor associated with this work order. The same situation exists for Work Order 839. The relationship between direct labor and benefits and overhead is unusual. The benefits and overhead amounts should not be approved for recovery unless the Company can provide a full and clear explanation of these costs and their allocation and show they are incremental costs caused by storm damage.

#### Analysis

The requested benefits costs shall not be considered for storm cost recovery purposes. During the hearing, witness Ellmer was asked if these costs would have been incurred even if Hurricane Dennis had not occurred. Witness Ellmer agreed that the costs would have been incurred regardless of Hurricane Dennis. As an example, witness Ellmer agreed that GT Com has included nonproductive time such as vacations and holidays to the extent that those costs were included in GT Com's books of operation. Those costs have been allocated to the work order costs that GT Com seeks to recover. Further, witness Ellmer acknowledged that expenses such as provisioning costs, engineering expenses, plant operation administration, and general and administrative costs include labor costs and benefits that GT Com would have incurred regardless of whether a tropical storm occurred. Yet, GT Com has allocated these costs to the work order costs that GT Com seeks to recover in this docket.

The costs related to Benefits included in GT Com's storm cost recovery request shall be removed because the costs are part of GT Com's normal business operations and would have

been incurred regardless of Hurricane Dennis. In addition, there is another reason to consider the removal of the Benefit costs from GT Com's request for storm cost recovery.

Witness Buckley recommended a reduction of \$35,941 (total company) to benefits because GT Com could not support the benefit to payroll ratios in work orders 2005838 (838) and 2005839 (839). Witness Buckley questioned the benefit to payroll ratio on work orders 838 (95.4%) and 839 (133.2%). While witness Buckley requested GT Com to provide information to support the benefit to payroll ratios, he did not receive sufficient information to justify the abnormally high ratios.

Because the benefit to payroll ratio could not be supported for work orders 838 and 839, witness Buckley recommended calculating the average benefit to payroll ratio of four other work orders<sup>2</sup> of 31.7% and apply it to work orders 838 and 839. Applying the 31.7% ratio to work orders 838 and 839 resulted in a recommended combined reduction of \$35,941 in benefits for these two work orders.

When asked at hearing if the Company could now support the benefit to payroll ratio, witness Ellmer stated that he was unable to find a final resolution to the benefits question.

As discussed earlier, all normal costs or costs that a company would have incurred irrespective of a tropical storm system should be removed for purposes of storm cost recovery. The record is clear that the benefit costs included in GT Com's petition include costs that it would have incurred had the Company not encountered a tropical storm. Further, GT Com did not provide support to justify the benefits to payroll allocation percentage for Work Orders 838 and 839. Based on the above analysis, the benefit costs included in RME-10 are not *reasonable under the circumstances* and shall not be recovered in this docket.

### IN-HOUSE LABOR

#### GT Com

GT Com's rates are not established by this Commission to allow GT Com the opportunity to recover specific prudently incurred costs and a Commission-established return. GT Com's prices for various services are limited by both statute and market forces. As such, under price-cap regulation, there is no revenue requirement established by this Commission which includes recovery of in-house labor costs. These costs may or may not be recovered by GT Com through GT Com's local rates in any given year.

#### OPC

GT Com's filing does not comport with the incremental cost approach or with any recent decision or settlement pertaining to storm damage costs. The incremental cost approach to storm

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<sup>2</sup> The four work orders are 2005796, 2005797, 2005798, and 2005861.

damage recovery allows a company to recover those costs which are incremental to labor and expense dollars that would normally be recovered through base rates or rate caps.

Analysis

GT Com's in-house labor costs should be removed for storm cost recovery purposes. GT Com's in-house labor costs should not be included in the amount to be recovered through a storm charge as the Company is already recovering this amount through its normal business operations. Witness Ellmer agreed during cross examination that its in-house labor costs that were included in GT Com's storm cost recovery request amount, would have been incurred by the Company regardless of whether Hurricane Dennis had occurred. The cost included for in-house labor, therefore, was not incurred as an extraordinary amount related to Hurricane Dennis. Since the labor costs would have been incurred by GT Com regardless of whether Hurricane Dennis had occurred, it is not reasonable for the Company to recover these costs through the storm charge recovery mechanism.

ALLIGATOR POINT FACILITY UPGRADE

GT Com

The degree of damage on Alligator Point forced GT Com to make extensive repairs. GT Com prudently developed a long-term solution that not only provides more secure facilities with less exposure to damage from waves and storm surge, but also permits the use of cost-saving fiber optics in lieu of more expensive and less resilient 900-pair copper cable, thus modernizing GT Com's facilities. Given the Company's past experience with this area, the extent of the current damage, the certain prospect of future hurricane damage, and the Company's long-term plans for modernizing its facilities, GT Com engineers could not justify simply replacing the cable and waiting for the next hurricane to wash it away again. GT Com believes it would not have been reasonable or prudent to simply replace the old facilities. Fiber provides a more reliable network, higher quality service, cuts down on routine repairs and is less prone to noisy line issues that we continuously experience along the coast.

By using prudent management and replacing old technology with new technology, GT Com is able to offer new services such as digital subscriber line (DSL). GT Com believes that if a PC crashes today and it's five years old, when you replace it, you don't replace it with five-year-old technology, you replace it with today's technology. And if GT Com gets additional bells and whistles, that's what it gets. It believes that prudent management requires it to replace old facilities with what is the technology of the day. As explained in witness Ellmer's direct testimony, the cost of the three projects at Alligator Point exceeded the cost of simply moving and replacing the damaged cable by approximately \$40,000.

OPC

GT Com did not replace the damaged copper cable with new copper cable. It replaced part of the system with fiber optic cable. Obviously, this is not a repair to a storm damaged

system, but is a new investment which will provide service to ratepayers over a substantial period of time. These costs should be capitalized and not recovered as storm damage because they are not in the nature of repair.

Analysis

Witness Buckley recommended that the storm damage costs be reduced by \$40,000 on a total company basis because the company chose to upgrade the copper cable with fiber optic cable rather than merely replacing it.

We find that \$40,000 of the Alligator Point facility should be removed from GT Com's requested storm cost recovery amount. This amount relates to the petitioner's upgrading of its facilities from using copper cable to using fiber cable. The additional cost relates to the installation of the Alligator Point CXR System. A CXR or "carrier" system provides voice and/or data services over fiber optic lines from the central offices to a location in the field or to the customer's premises. The additional expenditure may have been a practical and reasonable business decision, however, *under the circumstances*, the additional costs incurred should not be recoverable under the implicit tenets (enhancements and upgrades are above and beyond replacement costs) of Section 364.051(4)(b), Florida Statutes. The petitioner's reimbursement request should be based on costs relating to restoring or replacing the lines, plants or facilities that existed prior to the storm. A reimbursement should not be received for the additional costs necessary to enhance or upgrade the petitioners' facilities. We note that the statute does not preclude the petitioners from making upgrades or enhancements or similar prudent business decisions, however, any costs above or beyond the replacement cost(s) should be borne by GT Com's stockholders and not its customers. This is especially true in this case since GT Com acknowledged that the upgrade will allow it to expand its services and thus potentially increase its revenues.

CAPITALIZED ASSETS

GT Com

All costs incurred to repair, restore, or replace, lines, plants, or facilities damaged by Hurricane Dennis should be recovered through the per line charge allowed by Section 364.051(4)(b), Florida Statutes. GT Com believes that since Section 364.051(4)(b), Florida Statutes, permits the recovery of costs for replacing lines, and by definition, replacement costs are, by definition capital costs, Section 364.051(4)(b), Florida Statutes, allows for the recovery of capital costs. As GT Com's rates are capped by statute and not set by this Commission, the accounting treatment of an expense is irrelevant to its case. Accounting treatment is important only in connection with the Commission's ratemaking authority for monopoly rate base, rate of return utilities. Since GT Com is a price capped carrier, rate of return regulation is not applicable, so for purposes of hurricane cost recovery under Section 364.051(4)(b), Florida Statutes, it simply does not matter whether a particular cost is capitalized or expensed.

OPC

In Docket No. 041292-EI, Order No. PSC-05-0937-FOF-EI, issued September 21, 2005, regarding the 2004 storm damage cost recovery requested by Florida Power and Light, we decided that costs associated with capital additions or replacement should not be recovered as storm damage cost, nor should the cost of removing the storm damaged property, i.e., the cost of removal. We disallowed for recovery all cost which would have been capitalized or charged against the reserve for depreciation under normal conditions. Further, by Order No. PSC-05-0946-FOF-TL, issued October 3, 2005, we accepted a settlement proposal between OPC and Sprint-Florida, Inc. In the settlement proposal, Sprint agreed to recover only the extraordinary capital costs associated with the replacement of facilities so that the recovery amount would include only capital costs to the extent the cost or reconstruction exceeded the normal material and labor cost of construction.

GT Com's supporting documentation for its hurricane costs shown on witness Ellmer's Exhibit RME-10, identified costs that have been capitalized or should have been capitalized. Any costs incurred by GT Com which have been capitalized or should legitimately have been capitalized, such as the replacement of pedestals and the associated labor, should not be recovered through a recovery charge for storm damage. Further, loop support payments from the Universal Service Fund should also be considered when reviewing the need for a surcharge.

Analysis

GT Com included in its storm cost recovery request \$250,838 in total company costs for four work orders that related to capital projects. After accounting for the adjustments discussed above (Overhead, Benefits, In-House Labor, and Alligator Point Capital Upgrade), the total company capital costs remaining in GT Com's request is \$201,080.

Section 364.051(4)(b)(3), Florida Statutes, requires a company to show and this Commission to determine that the intrastate costs and expenses are reasonable under the circumstances for the named tropical storm. While GT Com argues that the statute does not make a distinction between costs that are expensed and costs that are capitalized, the statute does provide the costs are to be reasonable under the circumstances.

GT Com argues that it is a price-capped telecommunications provider, and therefore, GT Com's revenues and rates are not established by this Commission to allow GT Com the opportunity to recover its prudently incurred costs and a Commission-established return. GT Com is not a rate of return, rate base regulated company. As such, we do not establish its rates or charges. GT Com cannot petition for a general rate increase unless it can substantiate that circumstances have changed substantially to justify an increase in its rates for basic local telecommunications services. Rather, a price-capped company has limitations set on its basic annual revenue increases.

Clearly, Hurricane Dennis impacted GT Com's network infrastructure, causing the Company to incur costs for repairing, replacing, and restoring its lines, plants, and facilities.

Further, GT Com made an informed and thoughtful decision before incurring costs to procure the capital assets required to restore service to its customers. GT Com's decision for choosing the replacement assets was based on engineering and economic principles.

GT Com maintains that the only limitation that Section 364.051(4), Florida Statutes, imposes is that if a company had a storm-reserve fund, a company could only recover the storm costs in excess of the storm-reserve fund. GT Com further argues that a plain reading of the statute would indicate that all capital costs are recoverable through the storm cost recovery mechanism. Accepting GT Com's interpretation and the price-capped arguments above, one could arrive at the conclusion that GT Com should be entitled to the recovery of the capital costs it incurred to restore its network facilities.

We question whether it is reasonable to allow the entire capital asset cost to be recovered over a one-year period. GT Com has acknowledged that the economic lives of these assets are greater than one year as it has established a 15-year depreciable life for the capitalized assets addressed in this case. With the exception of 726 feet of cable, all assets that were replaced by GT Com as a result of Hurricane Dennis, were fully depreciated. Allowing recovery of the replacement plant in a one-year period, when GT Com's current depreciation policy is to use a fifteen year life, is not reasonable. Businesses operating in a competitive environment do not recoup capital asset costs in a single year – the costs are included in the balance sheet with the goal of earning a return on the assets over time.

Section 364.051(4)(b)(1), Florida Statutes, allows a company to file a petition to recover its intrastate costs and expenses relating to repairing, restoring, or replacing the lines, plants, or facilities damaged by a named tropical system. The statute, however, does not provide a definition of the term "costs." Costs can logically mean the dollars expended to repair, restore, or replace; or, costs can be defined as the incremental increase in total costs. Many other definitions exist for the term "costs."

We have consistently applied the principle that when an asset exceeds a minimum threshold level and has a long term life, that asset should be capitalized. With respect to petitions for storm cost recovery, we have consistently applied this capitalization methodology.<sup>3</sup> Capitalization of assets is not limited to regulated utilities – it is used by most businesses.

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<sup>3</sup> Docket No. 041291-EI In re: Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance by Florida Power & Light Company, Order No. PSC-05-0937-FOF-EI, issued September 21, 2005; Docket No. 041272-EI In re: Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan by Progress Energy Florida, Inc., Order No. PSC-05-0748-FOF-EI, issued July 14, 2005; Docket No. 050374-TL – In re: Petition for approval of storm cost recovery surcharge, and stipulation with Office of Public Counsel, by Sprint-Florida, Incorporated, Order No. PSC-05-0946-FOF-TL, issued October 3, 2005.

We find it appropriate to remove the costs that are attributable to the four GT Com work orders<sup>4</sup> that relate to capital assets as shown on RME-10. The amount of this adjustment will be addressed below.

There is another reason to consider the removal of capital costs from GT Com's request for storm cost recovery. Of the four work orders detailing GT Com's total company capital costs of \$250,838, three projects, totaling \$170,433, will likely be recovered through the Universal Service Fund (USF) for High-Cost Loop Support. High-Cost Loop Support provides support for the "last mile" of connection for rural companies in service areas where the cost to provide this service exceeds 115% of the national average cost per line. For the portion of the company's cost per loop between 115% and 150% of the national average cost, the company would receive 65% of those costs. For loop costs exceeding 150% of the national average cost per loop, the company would receive 75% of those costs. The remaining portion of the costs would be recovered through interstate rates. High-Cost Loop Support is an element of the Federal Universal Service Program that is administered by the Universal Service Administrative Company (USAC). Only a common carrier designated as an Eligible Telecommunications Carrier (ETC) may receive money from the USF. GT Com has been designated an ETC in Florida.

Should GT Com's average per loop cost exceed the national average by 150%, which has been the case for at least the past five years, GT Com will be allowed recovery of its capital costs over a period of fifteen years. Under the High-Cost Support Mechanism for rural carriers, GT Com will be allowed a return on the undepreciated value of the assets along with recovery of depreciation expense. As for the likelihood of GT Com receiving funding through the USF, witness Ellmer acknowledges that GT Com has received funding every year since 1986, when he began working for the Company. Assuming GT Com's average loop costs continues to exceed the national average, GT Com will continue to receive a return and depreciation expense over the fifteen year period on its investment.

RME-10 shows that of the \$250,838 in total company capitalized assets, \$80,405 pertains to the Alligator Point CXR System. Costs incurred for this type of equipment are not eligible for recovery through the High-Cost Loop Support as it is not part of the local loop. Of the \$80,405 incurred, we have removed \$40,000 in costs for the Alligator Point Facility Upgrade and have removed \$2,751 of Overhead, Benefits, and In-House Labor as addressed in adjustments one through four.

In summary, GT Com should not recover capital assets through the storm cost recovery surcharge because the asset lives and benefits will continue for at least 15 years.

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<sup>4</sup> Work Order Nos. 2005797, 2005861, 2005796, and 2005798.



C. Decision

Of the storm recovery costs included in GT Com's petition, costs related to Overhead, Benefits, In-House Labor, the Alligator Point Fiber Upgrade, and Capital Assets shall be disallowed as these costs cannot be considered reasonable under the circumstances. A chart detailing our adjustments is included on page 18 of this Order.

**IV. APPROPRIATE AMOUNT OF INTRASTATE COSTS AND EXPENSES TO BE RECOVERED**

A. Parties' Arguments

GT Com argues all costs and expenses it incurred related to repairing, restoring or replacing the lines, plants and facilities damaged by Hurricane Dennis were reasonable under the circumstances, and therefore, the total amount of \$463,710 is eligible for recovery. However, Section 364.051(4)(b)(5) and (8), Florida Statutes, limits recovery to a maximum charge of \$0.50 per customer line for a 12-month period. GT Com serves approximately 46,861 access lines and therefore will be able to recover only approximately \$281,166 of this amount.

OPC asserts GT Com has not provided documents to show that it incurred incremental cost as a basis for justifying a surcharge. GT Com did not submit a calculation of incremental costs, and therefore, there is no way to verify what level of incremental costs, if any, is recoverable from GT Com's customers under Section 364.051 of the Florida Statutes.

B. Analysis

Above, we addressed the reasonableness of five categories of costs which include: Overhead, Benefits, In-House Labor, the Alligator Point Upgrade, and Capital Assets. In addition, below we address Taxes, Carrying Costs, and Universal Service Fund Reimbursements which impact GT Com's storm cost recovery amount.

1. Overhead

Based on our above analysis, GT Com's incurred costs of \$312,693, shall be reduced by \$19,767 (\$28,080 total company multiplied by the intrastate factor of 70.3975%) to remove the Other Overhead amounts requested by GT Com.

2. Benefits

GT Com did not provide support to justify the benefits to payroll allocation percentages. We find that \$38,952 (\$55,333 times the intrastate allocation factor of 70.3957%) shall be deducted from the incurred costs of \$312,693, we previously identified.

3. In-House Labor

The amounts incurred for In-House Labor shall be removed from GT Com's filed storm recovery costs. GT Com has included total company In-House Labor costs of \$61,180. Applying GT Com's intrastate allocation factor or 70.3957% to the total company costs results in an adjustment of \$43,068, which shall be deducted from the incurred costs of \$312,693, we previously identified.

4. Alligator point fiber optic upgrade

We find it appropriate to reduce the Alligator Point Fiber Upgrade replacement by a total company amount of \$40,000 or \$28,158 on an intrastate basis (\$40,000 multiplied by GT Com's intrastate allocation factor of 70.3957%.)

5. Capital assets

Based on our analysis above, \$141,552 in intrastate costs (\$201,080 multiplied by GT Com's intrastate factor of 70.3957%) that relate to monies spent for capitalized assets shall be removed from the previously identified incurred cost of \$312,693.

6. Taxes, carrying costs and universal service fund recovery

To determine the appropriate amount of intrastate storm costs and expenses that GT Com shall be allowed to recover, we analyzed the impact of taxes, carrying costs, and reimbursements from the Universal Service Fund. A discussion of each of these elements follows.

i. Taxes

GT Com argues it must report as income and pay taxes on any and all revenue it eventually receives from the customer surcharge sought in this docket. The tax effect must be included in the calculation of hurricane costs in order for the Company to fully recover such costs. The total company income taxes are \$183,967, as shown on Exhibit RME-11.

OPC contends actual storm damage expenses are deductible for income tax purposes and as a result, there would be no income tax due on the repairs associated with storm damage costs. Since the costs would be deductible for income tax purposes, the revenues collected by GT Com's customers would exactly offset the cost of repairs so the revenue impact would be zero and no income taxes would be due. The Company has calculated a tax on the interest or carrying charge. As interest is deductible for Federal and State income taxes, the Company has illegitimately calculated a tax on an expense which is deductible.

We agree with witness Larkin that matching the expenses with the revenues generated if GT Com is allowed to recover Hurricane costs would result in a complete offset and therefore no income taxes would result. Witness Ellmer stated that the Hurricane Dennis expenses of \$193,354 as shown on Exhibit RME-10 work order numbers 2005838 and 2005839 were

deducted in 2005. It is witness Ellmer's contention that the Company should be able to get the benefit of the income tax deduction and recover all of the costs as well, even those that are deductible for income taxes. Adding taxes to the amount of storm damage costs approved is unreasonable as the company has already received a tax benefit from deducting the storm damage expenses incurred in 2005 and will receive a tax benefit in future years as depreciation amounts are deducted for tax purposes.

If the Company is awarded storm damage recovery, the company will pay income taxes on the additional revenue received. Any additional taxes generated as a result of storm damage recovery needs to be matched against the tax savings that GT Com realized, as a result of storm damage tax deductions. We find it appropriate to exclude the tax amount of \$183,967 from the company's request on a total company basis or \$129,505 on an intrastate basis.

ii. Carrying costs

GT Com did not quantify carrying costs and taxes in its original petition because the expenses sought by the company, apart from carrying costs and taxes arising from such expenses, exceed the amount that is recoverable under Section 364.051(4)(b), Florida Statutes. GT Com argues that if we were to make adjustments that reduce such expenses below the cap, GT Com's related intrastate carrying costs and taxes in the amount of \$151,018, as shown in Exhibit RME-11 should be considered.

OPC argues there would be little, if any, cost recoverable under the Florida Statutes that would require a carrying charge. GT Com's work orders require substantial adjustment for internal labor and allocations of "Benefits" and "Other Overhead."

GT Com included \$21,512 in intrastate carrying costs in its total request for intrastate storm damage recovery of \$463,710. As shown on Exhibit RME-11, GT Com applied an interest rate of 6.880% to the storm damage expenditures of \$444,192. According to Exhibit RME-11, the interest rate of 6.880% represents the average short term borrowing rate of the parent company for 2005.

In the Sprint Storm Cost Recovery Docket No. 050374-TL, we approved the use of the commercial paper rate as reported in the Wall Street Journal on the first business day of each month in determining carrying costs. We apply the commercial paper rate as standard practice when calculating refunds to customers. During cross examination, witness Ellmer agreed that the commercial paper rate could be used in determining a carrying cost to be applied to a storm damage amount approved for GT Com. The current commercial paper rate is 5.29%.

We find appropriate a storm damage recovery of \$987 which represents the unreimbursed storm cost recovery expenses. The corresponding carrying cost of \$77 reimburses GT Com for the time value of money covering the period from when GT Com incurred the expense until recovery from its customers, based on the thirty day commercial paper rate.

iii. Universal service fund reimbursements

GT Com contends there are several reasons why we should not offset any increase in High-Cost Loop Support against GT Com's request for storm cost recovery. These reasons can be summarized as follows: first, receipt of these funds is speculative, secondly Section 364.051(4)(b), Florida Statutes, permits GT Com to recover all intrastate costs and expenses relating to repairing, restoring or replacing the lines, plants or facilities damaged by Hurricane Dennis, and lastly, any received support should be attributed to any expenses disallowed for cost recovery in this docket. Based on this rationale, GT Com made no adjustment to its filing to account for future recovery of Universal Service support related to the storm expenses.

OPC asserts much of the capital investment included in the Company's request will be recovered from Universal Service High-Cost funding, a fact that has been totally ignored in the Company's filing. Loop support payments should also be considered when reviewing the need for a surcharge. If the Company receives greater loop support payment as a result of higher plant costs and operating expenses, why would a surcharge be necessary?

We agree with OPC that GT Com has not accounted for the receipt of Universal Service funds from the High-Cost Loop Support program as a reduction in its requested storm cost recovery. Similar to an insurance recovery that would serve to offset storm costs, any recovery from the Universal Service Fund (USF) that can be attributed to additional expenses related to Hurricane Dennis, should reduce GT Com's storm cost recovery, thus, reducing its proposed customer surcharge.

During his deposition, witness Ellmer was asked questions regarding the insurance proceeds. Witness Ellmer asserted that he would not include costs that were recovered from somewhere else. While his statements related to insurance proceeds, the same philosophy should hold true for reimbursements from the USF. Also during his deposition, witness Ellmer was asked whether he would agree that the amount of recovery sought in this docket should be offset by the amount that GT Com would receive from the High-Cost Fund. Witness Ellmer stated:

"To the extent that the High-Cost Fund amount is directly attributable and can be identified as attributable to the hurricane costs, I would have a hard time arguing against it. However, I do believe because there's a two-year lag that some form of carrying cost should be included in my recovery."

We find it appropriate to offset the requested hurricane costs with any funds received from the USF. While witness Ellmer claims that USF recovery is speculative at this point, and that he doesn't know whether GT Com's average loop cost will exceed the national average cost per loop for 2005, GT Com's average loop costs have exceeded the national average in excess of 150%, for the past five years. GT Com has received USF reimbursements since at least 1986. Based on past USF receipts, GT Com should once again qualify for the maximum level of funding.

At the same time, if a reduction is made to GT Com's storm expense, there should be a corresponding reduction to the allocated amount of Universal Service recovery. According to GT Com witness Ellmer, GT Com will receive in 2007, approximately \$141,449 in additional High-Cost Loop Support payments as a result of the 2005 expenses and capital projects related to Hurricane Dennis. If the full expense request in this docket was approved, \$141,449 in additional High-Cost Loop Support payments would need to be deducted from the request to account for the recovery from the USF. To recover this amount from the ratepayers, the ones held responsible for paying into the USF in the first place, would be tantamount to double recovery for GT Com. To account for the adjustments made to GT Com's request, a corresponding reduction to the USF reimbursements must also be made. We find a reduction in the USF reimbursements of \$101,240 is appropriate. In other words, the anticipated net recovery from the USF for High-Cost Loop Support in this case is \$40,209. Therefore, the storm cost recovery, as adjusted, has been lowered by \$40,209 to account for additional recovery related to storm expense from the USF.

GT Com will not begin to receive USF payments for its 2005 costs until January 2007. Therefore, GT Com shall be entitled to receive the carrying costs from the time the storm recovery costs were incurred until it has recouped its costs through the USF reimbursements. Using the commercial paper rate, the carrying costs will be \$3,886.

C. Decision

The chart below summarizes our adjustments.

GT Com's Requested Intrastate Storm Recovery – Issue 1		\$463,710
Staff's Recommended Removal of GT Com's Requested Carrying Costs & Income Taxes (\$21,512 Carrying Costs & \$129,505 Income Taxes)		<u>\$151,017</u>
Staff Recommended Incurred Costs - Issue 1		\$312,693
Staff Recommended Deductions:		
1. Overhead (\$28,080 x 70.3957%)	\$19,767	
2. Benefits (\$55,333 x 70.3957%)	\$38,952	
3. In-House Plant and Engineering Labor (\$61,180 x 70.3957%)	\$43,068	
4. Fiber Replacement (\$40,000 x 70.3957%)	\$28,158	
5. Capital Assets (\$201,080 x 70.3957%)	<u>\$141,552</u>	
Total Deductions		<u>\$271,497</u>
Intrastate Storm Costs Before USAC Reimbursements		\$41,196
Less USAC Reimbursements		<u>\$40,209</u>
Net Storm Costs Allowable		\$987
Plus Carrying Cost - Timing from Customers		\$77
Timing for USAC Reimbursements		<u>\$3,886</u>
Total that may be Recovered from GT Com's Customers		<u>\$4,950</u>

**V. APPROPRIATE LINE ITEM CHARGE PER ACCESS LINE**

As the amount of recovery is \$4,950 we find GT Com may assess its customers a one-time charge of up to \$0.11 per access line. This amount is derived by taking the recovery amount of \$4,950 and dividing this amount by 46,861 access lines.

The charge may be assessed at GT Com's earliest convenience, but no earlier than 30 days from the date of our vote. As this is a one-time charge, there is no need to establish an assessment period. GT Com shall provide our staff the wording to be used on its bills regarding the storm charge prior to issuance. This docket shall remain open for a period of time to allow us to verify the collected amount does not exceed the amount authorized.

Based on the foregoing, it is

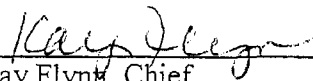
ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that this docket shall remain open for a period of time to allow us to verify the collected amount does not exceed the amount authorized.

By ORDER of the Florida Public Service Commission this 7th day of August, 2006.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By:

  
\_\_\_\_\_  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

AJT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing 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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.