

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed tariff filing to)	DOCKET NO. 900385-TL
establish rates and charges for Digital)	
Channel Services by GTE FLORIDA)	ORDER NO. 24594
INCORPORATED.)	
<hr/>		ISSUED: 5/29/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 GERALD L. GUNTER
 MICHAEL McK. WILSON

ORDER ESTABLISHING A GENERIC INVESTIGATION

AND

ACKNOWLEDGING WITHDRAWAL OF INTERMEDIA'S
 PROTEST OF ORDER NO. 24039

BY THE COMMISSION:

On April 24, 1990, GTE Florida Incorporated (GTEFL) filed a tariff to offer intraexchange digital channel services that provide access transport over high capacity digital facilities. In this filing, GTEFL also requested a specific accounting treatment--that it be permitted to book these services as common line services as opposed to private line services. By Order No. 24039, issued January 28, 1991, we approved this tariff filing, including granting GTEFL the authority to book the services as common line. On December 24, 1990, Intermedia Communications of Florida, Inc., (Intermedia) filed a petition protesting Order No. 24039. In its protest, Intermedia asserts that it is a substantially affected party because it is a customer of GTEFL's common line services and a potential customer for its private line services. Therefore, Intermedia asserts, decisions affecting pricing and bundling of common line services will have a direct impact on it. In addition, Intermedia states that as a certificated interexchange carrier (IXC), it is a substantially affected party because our decision to permit GTEFL to book these services as common line ". . . alters the basic policy framework within which competition in private line and special access services are allowed or prohibited." And finally, Intermedia states that our decision is anti-competitive

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because it will permit GTEFL to predatorily price its private line services by cross subsidizing them in its cost allocation process.

The only aspect of Order No. 24039 that Intermedia is protesting is our decision to allow GTEFL to book these digital channel services as common line services as opposed to private line services. Intermedia states that many other fundamental Commission policies regarding the regulation of local exchange companies (LECs) and IXCs are ". . . grounded in the heretofore clearly understood distinction between common line services and private line and special access services." A change in this fundamental distinction, Intermedia argues, goes beyond the scope of GTEFL's proposed tariff to offer private line services at certain rates and charges.

Intermedia has also requested emergency relief. Intermedia requests that we require that GTEFL temporarily modify its tariff to treat its Digital Channel Services as private line services until Intermedia has had its opportunity for hearing on this issue.

Subsequently, on January 14, 1991, GTEFL filed a Motion to Dismiss and Response to Petition Protesting Proposed Tariff (motion to dismiss). In its motion to dismiss, GTEFL states that Intermedia is not a substantially affected party because it does not provide intrastate private line services. Since Intermedia does not provide intrastate services, GTEFL asserts, it does not have any ". . . injury which is within the zone protected by law."

GTEFL also argues that Intermedia's right to request a hearing only goes to an increase in rates. In such a case, GTEFL states, a hearing regarding the appropriate rates would be held and the portion of the rates increased would be held subject to refund. Intermedia has not in this case protested the rates at which GTEFL plans to offer its digital channel services. GTEFL also argues that Intermedia had its opportunity to present argument to this Commission at our Agenda Conference and chose not to. All of the concerns raised by Intermedia were, GTEFL asserts, presented by other parties and considered by this Commission in its decision.

On January 25, 1991, Intermedia filed its Memorandum in Opposition to Motion to Dismiss in which it, at length, discusses its view that GTEFL ". . . misapprehends the law of standing and the anticompetitive thrust of the newly-revised Chapter 364." Then, finally, on February 15, 1991, Intermedia filed a renewal of its

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protest to Order No. 24039, incorporating by reference its earlier protest filed December 24, 1990.

We find that Intermedia's protest demonstrates that Intermedia has standing to protest our decision in Order No. 24039 by showing that it will be substantially affected as a customer of GTEFL, as a currently certificated IXC operating within in the current regulatory framework, and as a potential competitor in the provision of intrastate private line services, if such is approved in the pending alternate access vendors docket, Docket No. 890183-TL. We believe Intermedia's protest raises significant policy issues that need to be addressed.

However, we do not find this particular tariff filing the appropriate vehicle by which to address these policy issues. The scope of these policy issues is much broader. Therefore, we find it appropriate to establish a generic proceeding to address the concerns raised in Intermedia's protest. The fundamental issue to be addressed is the appropriate accounting treatment for mixed, common and dedicated services offered over the same channelized facility. However, we do not limit the scope of the generic proceeding to this one issue. All parties will have an opportunity to identify the appropriate issues.

Regarding Intermedia's request for emergency relief, if and when the outcome of the generic proceeding requires the revisiting of the authority we granted GTEFL in Order No. 24039 to book its digital channel services as common line services, we will consider it at that time. There is no emergency circumstance that justifies our requiring GTEFL to temporarily modify its approved tariff.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that a generic proceeding shall be established in a separate docket to explore the concerns raised in Intermedia Communications of Florida, Inc.'s protest as set forth herein. It is further

ORDERED that Intermedia Communications of Florida, Inc.'s withdrawal of its protest to Order No. 24039 is hereby acknowledged. It is further

ORDERED that this docket is hereby closed.

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By ORDER of the Florida Public Service Commission, this 29th
day of MAY, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

SFS

by: Kay Heizer
Chief, Bureau of Records

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.