

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint by Roy A. Day) DOCKET NO. 920620-TL
against GTE Florida Incorporated) ORDER NO. PSC-93-0837-FOF-TL
Regarding Extended Calling) ISSUED: June 7, 1993
Service.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER DENYING GTE FLORIDA INCORPORATED'S MOTIONS
TO DISMISS, STRIKING ALL PLEADINGS, MOTIONS, AND
OTHER PAPER FILED IN THIS DOCKET BY ROY A. DAY, AND
DISMISSING COMPLAINTS OF ROY A. DAY WITH PREJUDICE

BY THE COMMISSION:

By petition dated March 31, 1992, Roy A. Day filed a complaint with the Commission regarding GTE Florida, Inc.'s (GTEFL's) extended calling service (ECS) plan. The gist of Mr. Day's complaint appears to be that, since implementation of the ECS plan, Mr. Day can no longer tell if a call is local or billed at the ECS rate of \$.25. However, he also accuses the Commission and GTEFL of everything from fraud to conspiracy, demands monetary damages of over \$20,000,000, and rails against governmental and legal systems from the laws of the State of Florida to the constitutionality of "licensed attorneys".

This Commission has had prior dealings with Mr. Day. By Order No. PSC-92-1469-FOF-TL, issued December 17, 1992, the Commission found that Mr. Day's numerous and repetitive pleadings filed in Dockets Nos. 920188-TL and 920939-TL were filed for an improper purpose. His pleadings were accordingly stricken and Mr. Day was banned from filing anything further without the Chairman's permission.

In an attempt to respond to some of Mr. Day's concerns, and in order to explain some of the procedural aspects involved in processing his complaint, several letters were sent to Mr. Day. Not only did these letters fail to satisfy Mr. Day, they roused his litigious and prodigious ire. In fact, those individuals who responded to Mr. Day soon found themselves named as defendants in a federal lawsuit filed by Mr. Day.

DOCUMENT NUMBER-DATE

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Mr. Day's documents are uniformly acrimonious. The complaints, to the extent that they can be followed, are rambling, redundant, reckless and accusatory, yet devoid of any specific factual allegations. Mr. Day is clearly aware of and somewhat knowledgeable about the rules of practice and procedure; however, he wilfully ignores them. He does not provide copies of his filings to all parties. He freely and liberally incorporates by reference without attaching the document to which he refers. Mr. Day's filings are also rife with various demands. For instance, in a number of his filings, he has demanded that the Commission not provide GTEFL with copies of his documents, that GTEFL not respond to his documents, and that GTEFL not pay its attorneys for responding to his documents. He has demanded that a "blue ribbon panel" of "citizen-attorneys" be appointed to rewrite the laws of the State of Florida.

By letter dated June 19, 1992, Mr. Day filed an amendment to his initial complaint. In this pleading, Mr. Day claims that he has a right to local service only. Mr. Day claims that the FCC interstate toll access charge is a fraud and deprives him of his Fourteenth Amendment rights of due process and equal protection of the law. Accordingly, Mr. Day demands that the laws of the State of Florida be rewritten to allow Mr. Day to have his interstate toll access charge removed from his monthly service bill.

On July 9, 1992, GTEFL filed a motion to dismiss Mr. Day's original complaint. GTEFL's argument is, in essence, that since Mr. Day seeks monetary damages, this Commission lacks jurisdiction to hear his complaint. GTEFL also argues that, to the extent Mr. Day's complaint seeks advice regarding his legal remedies, the Commission lacks the jurisdiction to render such advice and/or Mr. Day's petition is defective on its face. Finally, GTEFL argues that hearings regarding ECS were held both in Tallahassee and in GTEFL's service territory, and that Mr. Day's concerns should have been raised at that time.

On September 15, 1992, Mr. Day filed a second amended complaint with the Commission, along with a motion to strike his first amended complaint. In his second amended complaint, Mr. Day attacks both GTEFL and the Commission regarding the former's request for increased rates. Mr. Day accuses the Commission and GTEFL of fraud and conspiracy. According to Mr. Day, the administrative process puts out nothing but "fraudulent, clone, status quo decisions" which do not represent the public because the public cannot afford the "artificial-monopolistic legal fees of

\$300 per hour." Mr. Day also accuses GTEFL of mismanagement and of "doctoring" its books. Finally, Mr. Day realleges by reference his original federal complaint, consisting of 76 pages, as well as his supplemental federal complaint, consisting of 37 pages.

The original federal complaint includes a total of 10 counts. Count one is brought under 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. §§ 1983 and 1985. Count two is brought pursuant to 28 U.S.C. §§ 2201 and 2202. Counts three and five are civil actions for fraud and for monetary damages. Counts four and nine are civil actions for negligence and monetary damages. Count six is an action for fraud. Count seven is a civil action for breach of contract. Count eight is a civil action for emotional distress and for monetary damages. Count ten is brought under 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. §§ 1988.

The supplemental complaint consists of 4 counts. Count eleven is brought under 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. §§ 1983 and 1985. Count twelve is brought under 28 U.S.C. §§ 2201 and 2202 and the Fourteenth Amendment to the Constitution of the United States. Count thirteen is an action for fraud and monetary damages. Count fourteen is an action for negligence and for monetary damages.

On October 13, 1992, GTEFL filed a motion to dismiss Mr. Day's first amended complaint. On October 20, 1992, GTEFL filed a motion to dismiss the second amended complaint. With minor exceptions, these motions make essentially the same arguments expressed in GTEFL's original motion to dismiss.

On March 18, 1993, the Staff of this Commission filed a memorandum recommending that the Commission deny GTEFL's motions to dismiss Mr. Day's complaints, and to strike Mr. Day's pleadings and dismiss his complaints on its own motion. A copy of the Agenda Item was sent to Mr. Day by U.S. Mail on March 19, 1993; however, the cover memorandum was inadvertently dated March 1, 1993.

By cover letter dated March 22, 1993, Mr. Day filed a Motion for Emergency Ruling on March 24, 1993, a Motion to Disqualify the Commission, a Motion to Reschedule the March 30, 1993 Agenda Conference and for a copy of the Staff Recommendation, and a Motion for a Change of Venue for the Commission's Actions on the Above-Entitled Action. Mr. Day charged that the Commission either "backdated" its memorandum or "wilfully, intentionally, maliciously, wantonly and fraudulently" failed to mail a copy of

the Agenda Item to him until March 19, 1993, "solely for the purpose to prevent Roy A. Day from appearing on March 30, 1993 for the said conference". Mr. Day claims that he is "a pauper-citizen," that the event complained of (implementation of GTEFL's extended calling service [ECS] plan) took place in the Tampa Bay area, and that any attempt to hear this matter anywhere other than in the Tampa Bay area is nothing more than an attempt by the Commission to deny Mr. Day and the citizens the right to be meaningfully heard. Accordingly, Mr. Day demands that the March 30, 1993 Agenda Conference be rescheduled to another time and to the Tampa Bay area.

Mr. Day also moved the Commission to provide a copy of the recommendation in this matter "in a form pauperis mode." Further, Mr. Day repeated and realleged each of his prior pleadings, including his motions to disqualify the Commission and to transfer this case to federal court. Finally, in order to "prevent Roy A. Day's rights and property from being adversely affected," Mr. Day requested an emergency ruling on March 24, 1993.

Without getting too deeply into the charges in Mr. Day's March 22, 1993 filing, we note that the original Staff recommendation was not even filed until March 18, 1993. Thus, it is clear that the date on the notice sent to Mr. Day was a typographical error, and not any attempt at backdating.

GTEFL's MOTIONS TO DISMISS

As noted above, GTEFL has filed three separate motions to dismiss in this matter. The standard for ruling on a motion to dismiss is whether, accepting the complainant's claims arguendo, the complaint fails to state a cause of action. Notwithstanding the merits of Mr. Day's claims, GTEFL's motions fail to address his complaints in their entirety. As such, they are facially insufficient and are, accordingly, denied.

Although GTEFL's motions to dismiss are insufficient on their face, pursuant to Rule 1.140(f), Florida Rules of Civil Procedure, this Commission may, upon its own motion, strike any material that it finds to be redundant, immaterial, impertinent, or scandalous. The vast majority of Mr. Day's pleadings are either redundant or immaterial and are, therefore, stricken. As for his claims for fraud and conspiracy, these are two claims that must be pled with as much specificity as circumstances allow. Mr. Day's claims,

being wholly conclusory, lack any degree of specificity. As such, these claims are impertinent and scandalous, and are, therefore, stricken. Mr. Day's remaining counts are either for monetary damages, or brought under federal law. This Commission is without jurisdiction to entertain such claims. Accordingly, these claims are immaterial and are, for that reason, stricken.

Since we have stricken all of Mr. Day's claims, nothing remains to be done with regard to his complaint. It is, therefore, dismissed with prejudice.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that GTE Florida Incorporated's motions to dismiss the complaints of Roy A. Day are hereby denied. It is further

ORDERED that all paper filed in this cause by Roy A. Day is nevertheless stricken, as being either redundant, immaterial, scandalous or impertinent, as set forth in the body of this Order. It is further

ORDERED that the complaints filed in this docket by Roy A. Day are hereby dismissed, with prejudice, as set forth in the body of this Order. It is further

ORDERED that Docket No. 920620-TL be and is hereby closed.

By ORDER of the Florida Public Service Commission this 7th day of June, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

by: Kay Flynn
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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.