BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into the proper regulatory treatment of digital channel services	) DOCKET NO. 910808-TL) ORDER NO. PSC-94-0343-FOF-TL) ISSUED: March 28, 1994

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION

ORDER REGARDING DIGITAL CHANNEL SERVICES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On April 24, 1990, GTE Florida Incorporated (GTEFL) filed a tariff to offer intraexchange digital channel services (DCS) that provide access transport over high capacity channelized digital facilities. In this filing, GTEFL also requested that it be permitted to classify these services as common line services as opposed to private line services. On December 24, 1990, Intermedia Communications of Florida, Inc., (ICI) filed a Petition protesting the Commission's decision at the December 18, 1990 agenda to approve GTEFL's tariff filing. Order No. 24039 was issued January 28, 1991, granting GTEFL the authority to classify the services as common line. On February 15, 1991, ICI filed a renewal of its Petition protesting the tariff. In its Petition, ICI asserted that the Commission's decision was anti-competitive because it would permit GTEFL to predatorily price its private line services by cross subsidizing them in its cost allocation process. Order No. 24594, issued May 29, 1991, addressing ICI's protest states:

> We believe ICI's protest raises significant policy issues that need to be addressed.

> However, we do not find that this particular tariff filing [is] 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 ICI'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.

The instant Docket was opened to identify and address the relevant issues. Upon review, the primary issue appears to involve the separation of cable and wire facility investments. The allocation of cable and wire facility investments for DCS type services is done in accordance with FCC rules (Code of Federal Regulations, (CFR) Part 36). Current FCC Part 36 investment categories were established when private line and common lines were clearly distinguishable. Investment in plant that is used for both private line dedicated service and common line switched service now poses a dilemma of whether to categorize the investment as private line or common line for separation purposes. Paragraph 36.154 identifies three subcategories relating to cable and wire facilities. The costs assigned to either subcategory 1.1, intrastate private line, or subcategory 1.2, interstate private line, are directly assigned to the appropriate jurisdiction. Subscriber or Common lines, subcategory 1.3, are used jointly for local exchange service and exchange access for state and interstate interexchange services and are allocated to the jurisdictions based on the gross allocator (75% intrastate and 25% interstate).

Services offered over common line facilities are typically central office based switched services offered from the General Subscriber Tariff. Investment and expenses for common line facilities are allocated, for jurisdictional separations purposes, 75% intrastate and 25% interstate. Common line loops are subject to a Subscriber Line Charge (SLC) imposed by the interstate jurisdiction for partial recovery of the outside plant revenue requirement assigned to the interstate jurisdiction.

By contrast, private line circuits are point to point or multi-point. That is, there are typically dedicated circuits

between specific points. Private line services are purchased from either an interstate or intrastate Private Line Tariff, depending on how the service is used. According to CFR 36.154, private line services with mixed use are considered 100% interstate if 10% or more of the use is interstate in nature. All investments and expenses associated with private line are booked directly to the jurisdiction from which they are purchased.

Until the advent of digital channelization and cross connect technology (e.g., channelized T-1 facilities), each communication path required its own physical transmission facility. Although private line circuits were routed through the central office, they were fixed, identifiable circuits. However, one physical circuit may now be segmented (multiplexed) into increments of 24 or more individual digital channels. Some channels may be used for private line, others for network access registers (voice), and others for switched data.

Many central offices enable the subscriber to redirect these circuits on demand through the use of services such as Flexserv (Southern Bell), Controlink (GTE) and Flexlink (United). Thus, the actual use of the facility may vary depending on the demand of the subscriber.

GTEFL categorizes all investments and expenses used for DCS as common line, subcategory 1.3, and therefore allocates them between interstate and intrastate based on the gross allocator, i.e. 75% intrastate, 25% interstate. By contrast, Southern Bell identifies, through study area data, that portion of the channels used for local exchange service and assigns it to common line investments. The result is that out of an investment of $8.7 million, Southern Bell assigns approximately $1.3 million to common line. That $1.3 million is being allocated 75% intrastate and 25% interstate. The remainder is private line. Presumably GTEFL could also identify its portion of the investment used for common line services rather than classify all of its investment in DCS to common line. Upon review, it appears that this would be a more accurate method of allocating the costs between jurisdictions.

When GTEFL originally sought approval for its DCS tariff, we were concerned that, due to the 10% rule described previously, Florida would lose jurisdiction over these services. It appeared that 10% or more of the DCS traffic was interstate. However, GTEFL has indicated that the derived channels utilized for interstate interLATA service were only 1.4% of all DCS channels for 1992. The

remainder of the usage was intrastate. This data alleviates our concern regarding loss of jurisdiction. Additionally, the data provided by GTEFL indicates there would be only an insignificant increase (approximately $5,000) in intrastate revenue requirements if DCS were treated as a private line service as opposed to a common line service. This is due to the shift in expenses from interstate to intrastate.

In ICI's protest of the Commission's approval of GTEFL's Digital Channel Service tariff as a common line service, it argues that:

> At the very least, this approach gives GTEFL both the opportunity and incentive to cross-subsidize private line services in the cost allocation process. For example, the Digital Channel Service tariff allows for Contract Service arrangements. . . . The appropriate implementation of this grant of pricing discretion depends on the proper determination of incremental costs where common costs are jointly incurred. If GTEFL were not careful, it might offer private line services under CSAs below its real costs. This would not only be anti-competitive, but would also defeat the Commission's overriding policy of raising private line and special access rates so that they do cover costs and contribute to company overhead.
>
> Under this approach jurisdictionally interstate private line might be treated as intrastate. While this might allow the Commission to insure that its intrastate policies are honored (assuming unchecked CSAs are not prevalent), it might cause the Commission to inadvertently impede interstate commerce, as well as to breach implied commitments with respect to the exercise of its jurisdiction. (pp. 5-6)

Upon review, we reject ICI's argument which we find to be based on an incorrect assumption. If one were to assume that, through the separations process, investments and expenses were improperly shifted to the interstate jurisdiction, then a company's total intrastate revenue requirement presumably would decline. However, unlike the interstate jurisdiction, it does not follow that the rates for a <u>specific</u> intrastate service would automatically decline, because we do not determine individual service-specific revenue requirements prior to setting rates for

intrastate services. Rather, we establish rates for a company's various services, so that the total revenues generated from all services equal the intrastate revenue requirement.

It appears that the primary determining factor for separations purposes is the actual usage of the plant investment. While a channelized facility between a customer's location and the central office is fundamentally dedicated, a portion of the investment may be appropriately classified as common line investment. The FCC has affirmed that individual local exchange services provided over a channelized facility are subject to End User Common Line Charges. Thus, the "channelized facility" does not appear to be a common line, but rather the individual channels.

Upon review, it appears that our decision[1] to allow GTEFL to assign facilities used for digital channel services entirely to common line investments warrants modification. Only those portions of the DCS facilities used for local exchange service and exchange access for state and interstate interexchange services shall be categorized as common line investments; the remaining investment shall be classified as private line.

Additionally, GTEFL must comply with Rule 25-4.044, Florida Administrative Code regarding the use of the Private Line/Special Access Cost Manual. The manual provides the methodology for an incremental cost study for private line services. In Docket No. 900385-TL, GTEFL provided incremental cost information for pricing its digital channel services. We have reviewed that information, and find it to be in compliance with the Private Line/ Special Access Cost Manual.

By Order No. PSC-93-1015-FOF-TP, issued July 12, 1993, in Docket No. 910757-TP, we found that the presence of cross-subsidization can be determined by comparing the revenues generated from a service with the relevant costs of providing the service, or equivalently, a service's price with its relevant unit cost. It was further found that the appropriate cost standard for detecting cross subsidy is incremental cost and that in order to prevent cross subsidization, companies must cover their incremental cost in pricing services. Accordingly, use of the private line cost manual for pricing the digital channel services will minimize cross subsidization concerns for DCS.

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[1] Order No 24039, issued in Docket No. 900385-TL

Consistent with our decision that DCS investment is primarily private line, facilities used to provide DCS shall be treated as intraexchange private line service. GTEFL shall utilize the private line cost manual in pricing this service for future DCS tariff filings. The Company also shall modify its existing tariff no later than June 1, 1994, to classify the DCS facilities as a private line service. However, for separations purposes GTEFL shall identify that portion of the investment and expenses pertaining to the facilities being used for common line services and apply the gross allocator.

Another issue in this Docket is whether the regulatory framework was altered by the approval of GTEFL's tariff in Docket No. 900385-TL. In its Petition dated December 24, 1990, ICI alleges that the Commission's decision in Docket 900385-TL alters the basic policy framework within which competition in private line and special access services are allowed or prohibited. ICI asserts that the scope and nature of ICI's regulated intrastate operations are directly affected by changes in this regulatory framework.

ICI appears to believe that provision of digital channel services by the LEC, which can include both private line and switched services, places ICI at a competitive disadvantage. Indeed, in response a staff interrogatory, ICI responded that it

> does not enjoy the ability to similarly combine switched services with dedicated services over its high cap facilities. Therefore, it must compete with the LEC at a disadvantage.
>
> It is this purposeful conferring of an advantage to the LEC in competing with high cap facilities that marks the significant change in regulatory policy. Moreover, state regulatory support of efficient and full use of telecommunication resources does not extend to the LEC's competitors... [F]rom ICI's perspective, the approval of GTEFL's tariff is another example of the asymmetrical regulation of the telecommunications industry in which the LEC is favored.

However, we fail to see how the Commission's decision in Docket No. 900385-TL regarding the provision of digital channel services by GTEFL, which is similar to services already provided by Southern Bell and other LECs, alters Commission "policy." It appears that ICI simply is frustrated by its statutorily imposed inability to

compete on an equal footing by providing switched service over its facilities.[2] Accordingly, we find that the Commission decision regarding GTEFL's tariff does not alter the framework within which competition in the provision of private line and special access services are allowed or prohibited.

Therefore, it is

ORDERED by the Florida Public Service Commission that GTE Florida Incorporated shall treat facilities used to provide Digital Channel Services the same as those used to provide intraexchange private line service. It is further

ORDERED that GTEFL shall utilize the private line cost manual in pricing this service for future DCS tariff filings. It is further

ORDERED that GTEFL shall modify its existing tariff no later than June 1, 1994, to classify the Digital Channel Service facilities as a private line service. It is further

ORDERED that for separations purposes GTEFL shall identify that portion of the investment and expenses pertaining to the facilities being used for common line services and apply the gross allocator. It is further

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[2] The provision of switched services by ICI is prohibited by statute. ICI is an AAV. Section 364.337(3)(a), Florida Statutes, provides that:

> If the commission finds the provision of alternative access vendor services to be in the public interest, it may authorize the provision of such service. For the purposes of this section "alternative access vendor services" means the provision of private line service between an entity and its facilities at another location or dedicated access service between an end-user and an interexchange carrier by other than a local exchange telecommunications company, and are considered to be interexchange telecommunications services.

ORDERED that the Commission's decision regarding GTEFL's tariff does not impair competition in the provision of private line and special access services. It is further

ORDERED that this Docket shall be closed at the end of the protest period assuming no timely protest is filed.

By ORDER of the Florida Public Service Commission, this 28th day of March, 1994.

STEVE TRIBBLE, Acting 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 18, 1994.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.