BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a rate increase by GTE Florida Incorporated.	)	DOCKET NO. 920188-TL ORDER NO. PSC-96-0667-FOF-TL ISSUED: May 17, 1996

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER AUTHORIZING ONE-TIME SURCHARGE

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 May 1, 1992, GTE Florida Incorporated (GTEFL) filed an application for increased rates. In its original application, GTEFL requested an annual revenue increase of $110,997,618. On September 3, 1992, GTEFL submitted revised testimony and exhibits, in which it reduced its requested increase to $65,994,207.

This Commission held customer hearings on August 17, and September 16, 17, and 24, 1992, in Tampa, St. Petersburg, Sarasota, and Lakeland, respectively, and technical hearings on October 13, 14, 15, 16, and 19, 1992, in Tallahassee. By Order No. PSC-93-FOF-0108-FOF-TL, issued January 21, 1993, we determined that GTEFL's rates should be reduced by $14,475,000.

On February 4, 1993, GTEFL filed a Motion for Reconsideration of Order No. PSC-93-FOF-0108-FOF-TL. By Order No. PSC-93-0818-FOF-TL, issued May 27, 1993, we modified Order No. PSC-93-FOF-0108-FOF-TL, and decreased the revenue reduction from $14,475,000 to $13,641,000.

On June 25, 1993, GTEFL served notice of its appeal of Orders Nos. PSC-93-FOF-0108-FOF-TL and PSC-93-0818-FOF-TL. It did not

request a stay of these orders. On July 7, 1994, the Supreme Court rendered its decision which affirmed, in part, and reversed, in part, Orders Nos. PSC-93-FOF-0108-FOF-TL and PSC-93-0818-FOF-TL, and remanded the case for further action consistent with its opinion. GTE Florida Incorporated v. Deason, 642 So. 2d 545 (Fla. 1994). Among other things, the Court determined that we should not have disallowed certain costs associated with transactions between GTEFL and two of its affiliates, GTE Data Services and GTE Supply.

On remand, by Order No. PSC-95-0512-FOF-TL, issued April 26, 1995, we authorized GTEFL to increase rates prospectively for local exchange access services, including flat and measured residential and business access lines, network access registers, semipublic coin lines, PATS lines, and shared tenant service trunks, by a uniform $.18 per month, and to increase rates for local and toll directory assistance. However, we also found that GTEFL's failure to request a stay pending the disposition of its appeal precluded recovery of these expenses during the pendency of the appeal.

On May 25, 1995, GTEFL served notice of its appeal of Order No. PSC-95-0512-FOF-TL. On February 29, 1996, the Supreme Court ruled that GTEFL should be allowed to recover the previously disallowed expenses for the period May 27, 1993, through May 3, 1995, through a surcharge. However, the Court specified that "no customer should be subjected to a surcharge unless that customer received GTE services during the disputed period of time." GTE Florida Incorporated v. Clark, 21 Fla. L. Weekly S101 (Fla. Feb. 29, 1996).

On an annual basis, the previously disallowed expenses are $4,750,000; since these rates were not in effect for 23 months, the amount that GTEFL is entitled to recover through a surcharge is approximately $9.1 million. According to GTEFL, it will have completed all necessary billing system modifications required to implement the surcharge by, and intends to implement the surcharge in, June 1996. GTEFL also proposes to include interest for the period June 1993, through May 1996, in the surcharge.

Although we agree that it is appropriate to include interest in the surcharge, we disagree with GTEFL as to the amount. GTEFL used its weighted cost of debt, or 8.5 percent, to calculate the interest to be included in the surcharge. We do not believe that its weighted cost of debt is the proper interest rate. A surcharge is the reciprocal of a refund, and equity dictates that the same interest rate should apply in either situation. Accordingly, GTEFL should have used Rule 25-4.114, Florida Administrative Code, Refunds, to compute the interest rate.

Rule 25-4.114, Florida Administrative Code, specifies that the average monthly interest rate for 30-day commercial paper be used to compute the interest rate for a refund. Using this rate, we find that interest of approximately $1 million should be included in the surcharge. Accordingly, the total amount that GTEFL is entitled to recover through a surcharge is $10,131,950 million. GTEFL has identified its current subscribers who were customers during the relevant period. Dividing $10,131,950 by the relevant number of access lines, or 1,171,863, yields a surcharge of $8.65 per access line.

GTEFL proposes to recover this amount via a one-time surcharge per line in June 1996, applicable to those subscribers of local exchange access services, including flat and measured residential and business access lines, network access registers, semipublic coin lines, PATS lines, and shared tenant service trunks, who received service during the period May 27, 1993, through May 3, 1995. GTEFL does not intend to bill the surcharge to Lifeline customers. While the surcharge will not vary by class of service, it will vary depending on whether a customer had service throughout the 23-month period. Subscribers who received service for only a portion of the period will be assessed a prorated surcharge.

Due to the magnitude of the surcharge, we considered requiring GTEFL to collect the surcharge over a three-month period. Although this approach would reduce the amount paid each month, it would also result in the customer paying more in the aggregate, for two reasons. First, the total number of eligible customers is constantly decreasing. As the group of eligible customers decreases, the surcharge per line increases. Second, assessing the surcharge for a longer period would result in additional interest expense. Accordingly, we believe that a one-time surcharge is the most equitable solution for both GTEFL and its customers.

Based upon the foregoing, we find that GTEFL should assess a one-time surcharge of $8.65 per line in June 1996. The surcharge shall apply to those subscribers of local exchange access services, including flat and measured residential and business access lines, network access registers, semipublic coin lines, PATS lines, and shared tenant service trunks, who received service during the period May 27, 1993, through May 3, 1995. The surcharge shall further be prorated for those customers who were not subscribers throughout the entire period, and it shall not be collected from Lifeline customers. GTEFL shall notify its customers of the details associated with the one-time surcharge via a bill insert. GTEFL shall provide the proposed bill insert, and a description of how the surcharge will appear on customers' bills, for staff's approval, prior to its mailing the bill or the bill insert.

It is, therefore,

ORDERED by the Florida Public Service Commission that GTE Florida Incorporated's proposal to assess a one-time surcharge upon subscribers of local exchange access services, including flat and measured residential and business access lines, network access registers, semipublic coin lines, PATS lines, and shared tenant service trunks, who received service during the period May 27, 1993, through May 3, 1995, is granted, in part, and denied, in part, as set forth in the body of this Order. It is further

ORDERED that GTE Florida Incorporated is authorized to collect a one-time surcharge of $8.65 per line in June, 1996. The surcharge shall apply to those subscribers of local exchange access services, including flat and measured residential and business access lines, network access registers, semipublic coin lines, PATS lines, and shared tenant service trunks, who received service during the period May 27, 1993, through May 3, 1995. It is further

ORDERED that the surcharge should be prorated for those customers who were not subscribers throughout the entire period. It is further

ORDERED that GTE Florida Incorporated shall not collect the surcharge from Lifeline customers. It is further

ORDERED that GTE Florida Incorporated shall notify its customers of the details associated with the one-time surcharge via a bill insert. GTE Florida Incorporated shall provide the bill insert, along with a description of how the surcharge will appear on customers' bills, for staff's approval, prior to its being mailed out. It is further

ORDERED that, unless a person whose interests are substantially affected by the action proposed herein files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, this Order shall become final and this docket shall be closed on the following date.

By ORDER of the Florida Public Service Commission, this 17th day of May, 1996.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RJP

Commissioner J. Terry Deason dissents from the Commissions decision as set forth below. Commissioner Diane K. Kiesling joins in Commissioner Deason's dissent.

I dissent from the Commission's decision to implement the mandate of the Florida Supreme Court by way of imposing a surcharge on only a fraction of the original body of those customers who initially benefited from what the court found to be an erroneous rate reduction. When the Commission first revisited this issue after the initial reversal of the revenue requirement determination (GTE Florida, Inc. v. Deason, 642 So. 2d 545 (Fla. 1994), reversing, in part, In re: Application for a rate increase by GTE Florida Incorporated, 93 F.P.S.C. 491 (1993), Order No. PSC-93-0108-FOF-TL; Mandate implemented in In re: Application for a rate increase by GTE Florida Incorporated, 95 F.P.S.C. 497 (1995), Order No. PSC-95-0512-FOF-TL (Commissioners Deason and Johnson dissenting)), I felt that the revised rate structure was unfair and inequitable. My objection was that the Commission's duty to implement the Court's mandate was a ministerial one and that our only option was to reverse pro rata the erroneous rate reductions on the same percentage basis as they were initially made.

The Commission did not conduct the ministerial implementation of the mandate. Instead, making judgements about the relative competitive nature of the various classes of service, the increase was heaped on the non-toll and non-access services so that they

bore a rate increase that exceeded -- on a percentage basis -- the revenue requirement overturned by the court. However, that decision, in that it arguably involved the Commission's legislative function in ratesetting, could be viewed as legally sufficient. I do not take issue with that decision here.

I would note, however, that the oral recommendation of staff at agenda was that the surcharge determination should necessarily be guided by the determination in In re: Application for a rate increase by GTE Florida Incorporated, 95 F.P.S.C. 497 (1995), Order No. PSC-95-0512-FOF-TL, whereby non-toll and non-access rates were initially raised. I disagree. Instead, I believe that designing the surcharge for undercollections for the period prior to our April 1995 decision changing rates prospectively must be guided by the rate relationships established in the original rate case order and not contested on appeal. There need be no linkage between this decision and the April 1995 decision. The first decision established rates to be observed prospectively and was conceivably based on the commission's powers to act legislatively in setting rates. Our decision to impose the surcharge for undercollections for the period of May 1993 until the mandate-inspired rate change in April of 1995 was based however on a mandate from the Court that was grounded more in principles of equity and fairness than the legislative nature of ratesetting. In fact, the Court, in citing Village of North Palm Beach v. Mason, 188 So.2nd 778 (Fla. 1966), suggested that under the facts of the GTE case "[i]t would be inequitable for either utilities or ratepayers to benefit, thereby receiving a windfall, from an erroneous PSC order." (Emphasis added). GTE Florida, Inc. v. Clark, et al (25 Fla. L. Weekly S101, 102 (Fla. February 29, 1996).

Administrative convenience should not prevail over fairness and equity, as the Court's decision instructs. We need to acknowledge that the surcharge method of restoring equity to this case may be difficult to achieve. Fairness dictates that all customers who benefitted from the rate reductions be identified so that they may pay a fair share of the revenue deficiency. We should not heap the entire burden of the surcharge on those customers who have not either discontinued service or who were deemed in April 1995 to be deserving of a further (effective) rate reduction. Under our decision here both toll and access customers as well as customers who have discontinued service will receive the windfall that the Court cautioned against. Inasmuch as the Commission allows the surcharge to be calculated on a rate structure that was different from that which was final and unchallenged on appeal prior to the rate structure change that was made in April of 1995, the resulting windfall to a segment of the customers is wrong. For that reason I dissent.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 7, 1996.

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 substantially 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.