

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to rescind and) DOCKET NO. 960875-TL
dismiss GTE Florida) ORDER NO. PSC-96-1261-FOF-TL
Incorporated's tariff A117 by) ISSUED: October 8, 1996
Thomas Morgan.)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING PETITION FOR LACK OF JURISDICTION

BY THE COMMISSION:

BACKGROUND

Improved Mobile Telephone Service (IMTS) is the radio telephone service which was in place before cellular service was developed. IMTS was installed in the late 1960's to provide telephone service in an automobile. The mobile service customer is charged a monthly service fee and pays for each minute of air time. Demand for GTE Florida Incorporated's (GTEFL) IMTS service peaked in 1986 with approximately 1220 customers. With the introduction of cellular service in the mid-1980's, demand has markedly diminished over time. Today, there are approximately 118 customers on the system. GTEFL is the only large LEC in Florida still offering IMTS service.

On June 14, 1996, GTEFL filed with the Commission its tariff A117. The tariff proposed to discontinue IMTS as a GTEFL service offering on October 1, 1996. The tariff was administratively approved with an effective date of June 29, 1996.

On July 11, 1996, Mr. Thomas R. Morgan filed a petition to rescind and dismiss with prejudice GTEFL's A117 tariff. In addition, Mr. Morgan requested that GTEFL be required to reinstate its A117 tariff and keep it in effect until at least July 31, 1998, unless the IMTS service/system is sold by GTEFL to another system operator prior to that date. Furthermore, Mr. Morgan requested that GTEFL be required to stop preempting 941 NXXs that have been

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accorded permissive dialing in the IMTS switch for use in the 813 NPA and restore the ability of IMTS subscribers to dial calls throughout the 813/941 NPAs, as the IMTS subscribers had been able to do prior to March 2, 1996.

DECISION

IMTS is a full duplex, direct dial mobile telephone service provided by certain communication common carriers on protected and exclusive frequencies licensed by the FCC. This places IMTS in the FCC's jurisdiction; but GTEFL has continued to tariff and provide IMTS in its General Services Tariff with us, unlike all other major LECs in Florida. Until recently the service has been offered without any threats to its availability. With the high penetration rates of cellular technology, the availability of NXX codes has increasingly become an issue of great concern to the North American Numbering Plan Administrator. When GTEFL started offering IMTS, GTEFL installed the available technology. GTEFL's HiCom switch, manufactured by Harris Corp. in the mid-1970s, was programmed to accept only NPA formats then in use. With the implementation of interchangeable NPAs, this technology has been limited. HiCom switches are incapable of processing interchangeable NPA formats.

GTEFL has indicated that it will discontinue IMTS because of the HiCom switch's current inability to recognize and complete calls to interchangeable NPAs. While the Petitioner argues otherwise, and claims that GTEFL could have remedied this situation by requesting the electronic "source code" from Harris Corporation when Harris announced its intention to cease manufacture and technical field support of any kind for the HiCom switches, it is true that the HiCom switches cannot currently recognize and complete calls from interchangeable NPAs. The IMTS HiCom switch's technology has not been adapted to cope with changing needs of the industry: interchangeable NPAs. Cellular technology does have the capability to handle interchangeable NPAs.

In May 1996, GTEFL implemented "permissive dialing", at the request of staff, as an interim step. With the interim step, GTEFL allowed permissive dialing in its IMTS HiCom switch using protected NXX codes in the 941 NPA for use in the 813 NPA. This was to allow IMTS customers the time to acquire alternative wireless services. However, this interim step requires the protection of NXX codes that will eventually affect the life of the 941 and 813 NPAs. The petitioner also argues that GTEFL did not notice IMTS customers of its intent to withdraw IMTS service, and thereby denied IMTS customers any opportunity to comment and object to withdrawal of the service. This does not appear to be the case. GTEFL provided

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written notice of the discontinuance of IMTS service approximately 3 months in advance of the discontinuance date. We believe that GTEFL provided IMTS customers more than adequate notice of discontinuance of the service.

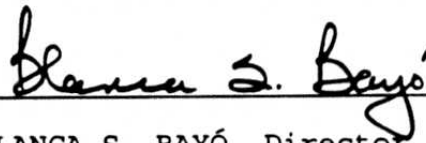
Upon careful consideration we have determined that we do not have the authority to address Mr. Morgan's petition. IMTS is wireless service, over which we have no jurisdiction. See Radio Telephone Communications, Inc. v. Southeastern Telephone Company, 170 So.2d 577, 582 (Fla. 1964), where the Supreme Court said; "The Legislature did not intend . . . to regulate any type of radio service, including the 'radiotelephone' service provided by Southeastern and RTC to their subscribers." The fact that IMTS service has been a tariffed offering in Florida does not change our lack of jurisdiction. IMTS service is within the jurisdiction of the Federal Communications Commission.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition to Rescind and Dismiss GTE Florida Incorporated's Tariff A117 by Thomas Morgan is dismissed for lack of jurisdiction. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 8th day of October, 1996.



BLANCA S. BAYÓ, 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.

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, 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 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.