

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of  
appropriateness of GTE Florida  
Incorporated's tariff filing to  
introduce Advanced Credit  
Management. (T-97-0474 filed  
5/27/97)

DOCKET NO. 970713-TL  
ORDER NO. PSC-98-0021-FOF-TL  
ISSUED: January 5, 1998

The following Commissioners participated in the disposition of  
this matter:

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

PROPOSED AGENCY ACTION  
ORDER DENYING RULE WAIVERS AND DISAPPROVING TARIFF

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.

BACKGROUND

On May 27, 1997, GTE Florida Incorporated (GTEFL) filed a  
tariff to introduce Advanced Credit Management (ACM), a program  
designed to improve billing and collection performance. This was  
docketed in Docket No. 970713-TL. At the same time, GTEFL filed a  
Petition for Exemption and/or Variance from Rule 25-4.110(3),  
Florida Administrative Code, Customer Billing for Local Exchange  
Telecommunication Companies, and Rule 25-4.113, Florida  
Administrative Code, Refusal or Discontinuance of Service by  
Company. The company requested an exemption and/or variance from  
these rules in order to implement its ACM program. This was  
docketed in Docket No. 970631-TL.

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FOR TELETYPE REPORTING

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In Order No. PSC-95-0588-FOF-TL, issued May 11, 1995, amended by Order No. PSC-95-0588A-FOF-TL, issued August 8, 1995, we granted GTEFL an exemption from Rule 25-4.113, Florida Administrative Code, in order to implement an ACM tariff on an experimental basis from May 1, 1995, to April 30, 1996. The tariff established limits on residential and business subscribers' toll use and allowed GTEFL to block all 1+ (except 1+411, 1+800, and 1+888), and all 0+ and 00 calls when the subscriber exceeded an assigned credit limit. On November 16, 1995, GTEFL filed a proposed tariff to add 1+900/976/700, Subscriber Abbreviated Dialing (#NXX), DDD 1+, 1+555-1212, 1+NPA+555-1212, 1DDD+01+, 1DDD+011, 10XXX+1+, 10XXX+011+, and 101XXXX+011+ calls to the types of calls to be blocked. We denied the tariff in Order No. PSC-96-0530-FOF-TL, issued April 15, 1996.

Pursuant to Section 120.542(6), Florida Statutes, notice of GTEFL's petition for exemption and/or variance was submitted to the Secretary of State on May 30, 1997, for publication in the Florida Administrative Weekly on June 13, 1997. No comments were submitted during the comment period, which ended on June 27, 1997. By letter dated August 4, 1997, GTEFL waived the provision in Section 120.542(7), Florida Statutes, that requires the Commission to grant or deny petitions for waiver or variance within 90 days of receipt.

#### The Present Tariff Filing

GTEFL stated in its petition that it has been experiencing an adverse trend in its uncollectible accounts. The ACM tariff that GTEFL presently proposes for the purpose of reversing that trend is very similar to the November 16, 1995, tariff filing. The only difference is that a blocked subscriber wanting to regain toll service would be required to pay the amount in excess of the toll limit plus at least 80% of the remaining amount due, instead of the amount in excess of the toll limit plus at least 50% of the remaining amount due. The proposed ACM tariff would establish limits on residential and business subscribers' toll use. GTEFL would use an evaluation of a subscriber's credit status to determine a subscriber's deposit requirement and set the toll credit limit.

Under the ACM tariff, GTEFL would use a commercial credit reporting service to obtain credit ratings and establish credit limits for persons applying for new service. GTEFL calls this element of the tariff "credit scoring." Subscribers who have already established service with GTEFL would be scored on a behavioral basis. GTEFL calls this element of the tariff

"behavioral scoring." There is a third element to the tariff, called "credit limit toll blocking." The ACM tariff would be applicable to all residential and small business accounts.

Credit scoring

Credit scoring would be established for each new subscriber's account for combined local service and toll usage. GTEFL's toll credit limit would be based initially on a credit score assigned by a credit reporting service. GTEFL would rely on information obtained from TransUnion, Equifax, and TRW. Persons establishing new service would be informed of their toll credit limit during the initial application process.

There would be three credit levels: low, medium, and high. The proposed criteria for the three credit levels and the credit limits established as a result of the scoring process are:

Low Risk - Unlimited toll credit

- No collection judgements
- No collection accounts
- No charge off accounts
- No delinquency history over 30 days past due

Medium Risk - Residence - \$300 Credit Limit; Business - \$800 Credit Limit

- No collection judgements
- Collection accounts have been paid
- No or minimal charge off accounts
- Various degrees of delinquency history from 30-180 days, but paid off or current at time of scoring

High Risk - Residence - \$200 Credit Limit; Business - \$500 Credit Limit

- Collection judgements
- Charge off accounts
- Outstanding collection accounts
- Various degrees of delinquency history from 30-180 days, with accounts delinquent at time of scoring
- Subscriber provides positive identification to GTE following a "No match/No record" on a credit inquiry

New subscribers who do not have a credit history would be assigned to the high risk category.

Behavioral scoring:

Behavioral scoring would be used for existing subscribers. Existing subscribers would be scored based on their past payment history with GTEFL. Notices would be mailed to subscribers explaining the ACM tariff, how credit limits will be assigned, and how toll blocking will be implemented. Subscribers would be notified of their initial credit limit amount and subsequent credit limit changes through credit limit notices mailed to the billing address. The behavioral score would be updated monthly, based on billing and payment behavior during the preceding six to 12 months. New subscribers would begin behavioral scoring after six months, and established subscribers would have 12 rolling months of history evaluated each month. An automated behavioral scoring model would be utilized to assign values for returned checks, payments and adjustments, new charges, dates of first and last payments, date billed, due date of bill and balance forwarded, when calculating a revised behavior score. The subscriber's behavioral score would be used as the basis for adjusting toll blocking credit limits.

Again, there would be three credit levels: low, medium, and high. The proposed criteria for the three credit levels and the credit limits established as a result of the scoring process are:

Low Risk - Unlimited Credit

- All bills during past 12 months paid in full and on time
- No dishonored checks during past 12 months
- No service denials due to non-payment during preceding 12 months
- No more than two reminder notices on account during preceding 12 months

Medium Risk - Residence - \$300 Credit Limit; Business - \$800 Credit Limit

- Telephone bills not paid on time and in full five or more times during the preceding 12 months
- No more than two dishonored checks for telephone bill payments during the preceding 12 months
- No more than one service denial due to non-payment during preceding 12 months
- No more than five reminder notices on account during preceding 12 months

High Risk - Residence - \$200 Credit Limit; Business - \$500 Credit Limit

- Six or more telephone bills not paid on time or in full during preceding 12 months
- Three or more dishonored checks for telephone bill payments during the preceding 12 months
- Two or more service denials due to non-payment during preceding 12 months
- Six or more reminder notices on account during preceding 12 months

Credit limit toll blocking

The types of calls to be blocked in this tariff would be all 1+, 0+, 00, 10XXX+, and 101XXXX+ calls. Subscribers would retain access to 1+411, 1+800 and 1+888 numbers and the relay service. Subscribers would also retain dial tone for local calling, extended area service (EAS), extended calling service (ECS), and access to emergency services.

When a subscriber exceeds the assigned toll credit limit, a five-working days notice would be sent. The notice would be separate and apart from the regular monthly bill. It would reflect the current balance, account credit limit, amount over the credit limit and the minimum payment. After the five day period, access to the toll network would be automatically blocked unless the subscriber paid the amount over the credit limit plus 80% of the credit limit. Service could be otherwise restored at the discretion of the company in special circumstances.

Rule Waivers

With the amendments made to the Administrative Procedures Act by the 1996 Legislature, agencies are required to consider requests for variances or waivers from their rules according to the requirements set forth in Section 120.542, Florida Statutes. GTEFL seeks to avoid the application of Rules 25-4.110(3) and 25-4.113(1)(f). It asks the Commission instead to recognize its ACM tariff as explication of its responsibilities as set forth in Section 364.03, Florida Statutes.

Section 120.542, Florida Statutes, provides that:

- (1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation....

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Rule 25-4.110(3)(a), Florida Administrative Code, provides that:

Bills shall not be considered delinquent prior to the expiration of 15 days from the date of mailing or delivery by the utility. However, the company may demand immediate payment under the following circumstances:

\* \* \*

2. Where toll service is two times greater than the subscriber's average usage as reflected on the monthly bills for the three months prior to the current bill, or, in the case of a new subscriber who has been receiving service for less than four months, where the toll service is twice the estimated monthly toll service; or
3. Where the company has reason to believe that a business subscriber is about to go out of business or that bankruptcy is imminent for that subscriber.

Rule 25-4.113(1), Florida Administrative Code, provides that:

As applicable, the company may refuse or discontinue telephone service under the following conditions provided that, unless otherwise stated, the subscriber shall be given notice and allowed a reasonable time to comply with any rule or remedy any deficiency:

\* \* \*

- (f) For nonpayment of bills for telephone service, including the telecommunications access system surcharge referred to in Rule 25-4.160(3), provided that suspension or termination of service shall not be made without 5 working days' written notice to the subscriber, except in extreme cases. The written notice shall be separate and apart from the regular monthly bill for service. A company shall not, however, refuse or discontinue service for nonpayment of a dishonored check service charge imposed by the company. No company shall discontinue service to any subscriber for the initial nonpayment of the current bill on a day the company's business office is closed or on a day preceding a day the business office is closed.

The applicable underlying statute in this case is Section 364.19, Florida Statutes, which provides that:

This Commission may regulate by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons.

GTEFL argues that, to implement the ACM tariff, it is necessary to obtain "exemptions and variances" from the technical requirements of Rules 25-4.110(3)(a) and 25-4.113, Florida Administrative Code. Rule 25-4.110(3)(a), Florida Administrative Code, permits GTEFL to demand immediate payment of all charges under specified conditions, including where toll service is two times greater than the subscriber average usage as reflected on the

monthly bills for the three months prior to the current bill. Under its ACM tariff, when a subscriber exceeds an assigned credit limit, GTEFL would demand 80% payment of toll charges incurred plus the amount in excess of the credit limit.

Rule 25-4.113, Florida Administrative Code, prohibits disconnection of service except under specified circumstances, including a failure to make payment on a bill. Under its ACM tariff, GTEFL would suspend toll usage when a subscriber of medium or high risk reaches an assigned credit limit and fails to make payment after a five-working days notice period. GTEFL asserts that its ACM tariff "approaches" matters addressed in Rule 25-4.113, Florida Administrative Code, in a manner different only with respect to the establishment of limits on toll use.

GTEFL asserts that variances from these rules benefit its subscribers as well as the company. It points out that by taking early action under the ACM tariff, ultimate disconnection of local service may be averted. The company states that the ACM tariff would be an alternative to local service disconnection. It states further that the tariff alleviates the need for deposits, "as was intended by the Commission."

GTEFL states that variances from these rules will serve the purposes of the underlying statutes. The company notes that the rules implement Section 364.03, Florida Statutes, requiring local exchange companies to charge reasonable rates. It contends that the variances it seeks will not affect the reasonableness of its rates or its provision of services. It contends further that the same is true of the other statutes implemented under these rules, Sections 364.04, 364.05, 364.17, and 364.19, Florida Statutes. In addition, the company contends that strict application of the Commission rules would create a substantial hardship and violate principles of fairness because it would be less able to control its uncollectible expense.

Rule 25-4.110, Florida Administrative Code, implements Sections 364.03, 364.04, 364.05, 364.17 and 350.113, Florida Statutes. Of these, only Sections 364.04 and 350.113, Florida Statutes, are applicable to price regulated local exchange companies pursuant to Section 364.051(1)(c), Florida Statutes. Section 364.04, Florida Statutes, concerns schedules of rates, tolls, rentals, contracts, and charges. Section 350.113, Florida Statutes, concerns the Public Service Regulatory Trust Fund. Neither is relevant to GTEFL's request for waiver in this instance. Hence, it would not be necessary for the Commission to grant GTEFL a waiver of Rule 25-4.110, Florida Administrative Code. Therefore, the company's petition to this extent is denied.



Rule 25-4.113, Florida Administrative Code, implements Sections 364.03, 364.19, and 427.704, Florida Statutes. Section 427.704, Florida Statutes, concerns the telecommunications relay services, access to which GTEFL asserts would not be blocked under the proposed tariff. Section 364.03, Florida Statutes, as noted, is not applicable here. Thus, we conclude that the test that GTEFL must meet is to demonstrate that the purpose of the underlying statute, Section 364.19, Florida Statutes, will be achieved by means other than by Rule 25-4.113, Florida Administrative Code.

Section 364.19, Florida Statutes, authorizes the Commission to regulate the service relationship between telecommunications companies and their patrons by "reasonable rules." Rule 25-4.113, Florida Administrative Code, sets out rules that this Commission has determined reasonably govern the discontinuance of service to customers by local exchange companies.

GTEFL has not demonstrated that the purpose of the underlying statute, Section 364.19, Florida Statutes, would be satisfied if we were to grant GTEFL the waiver it seeks to Rule 25-4.113, Florida Administrative Code. To suspend a subscriber's access to locally available interexchange companies upon reaching arbitrary credit limits is not consistent with the provision of telecommunications services under reasonable rules. Rather, we find that the provision in Rule 25-4.113, Florida Administrative Code, permitting discontinuance of service where accounts fall delinquent adequately protects the interests of both the company and its subscribers. The rule recognizes the common and rudimentary notion that one who contracts for services is entitled to receive them only with making payment according to terms. The rule specifies the remedies available to the company in the event of a subscriber's breach. As noted above, in Order No. PSC-96-0530-FOF-TL, we denied GTEFL's November 16, 1995, proposed ACM tariff that was not substantively different from the present proposal.

Under our authority pursuant to Section 364.19, Florida Statutes, we may regulate service contracts between telecommunications companies and their customers. Such contracts are not limited to Contract Service Arrangements, but include all arrangements stating terms and conditions for telecommunications service. Accordingly, Section 364.025(1), Florida Statutes, requires GTEFL, as a local exchange company, to furnish basic local exchange telecommunications service within a reasonable time to any person requesting such service within the company's service territory. Section 364.02(2), Florida Statutes, defines basic local telecommunications service to include access to all locally available interexchange companies. Rule 25-4.113, Florida Administrative Code, reasonably and sufficiently circumscribes the

responsibility of local exchange companies to provide basic local telecommunications service pursuant to the applicable statutes. Rule 25-4.113, Florida Administrative Code, authorizes the companies to discontinue telephone service in nine specific circumstances. It also disallows discontinuance of service in seven other specific circumstances. The rule is enunciated in painstaking detail and it neither addresses nor alludes to a subscriber's creditworthiness as a determinant of service eligibility. We find that it is not appropriate to further limit the local exchange companies' responsibility to provide basic local telecommunications service by exposing subscribers to toll blocking when they exceed arbitrary credit limits.

Furthermore, we find that the requested waiver is not necessary to avoid substantial hardship or a violation of principles of fairness. Some subscribers who would be affected by the ACM tariff may not have become delinquent. They would have simply exceeded an arbitrary toll credit limit established by GTEFL in a particular month. Moreover, in the case of new subscribers, the credit limit would of course reflect the subscriber's payment performance with creditors other than GTEFL. While some of these subscribers may have demonstrated credit difficulties in the past, local exchange companies can collect deposits from these subscribers to protect against the possibility of nonpayment, pursuant to Rule 25-4.109, Florida Administrative Code. It would be inappropriate to allow GTEFL to block subscribers' access to all locally available interexchange companies when they have not missed paying their monthly bill.

The decision to provide or deny toll access to any person should rest with the interexchange company, not with GTEFL. Under the ACM tariff, GTEFL would be able to make a determination of a subscriber's creditworthiness that would affect all interexchange companies. Since GTEFL has entered the long distance market, it is not appropriate for GTEFL to set itself up as a "gatekeeper" for its competitors. If an interexchange company or GTEFL doubts a person's credit, it may routinely get credit bureau reports and make a judgement whether a deposit is warranted or not, just as any other business would. It is not appropriate for GTEFL to act as an intermediary in the relationship between a subscriber and the provider of the subscriber's toll service, as it would under its ACM tariff.

#### Conclusion

Therefore, we deny GTEFL's petition for exemption and/or variance from Rule 25-4.113, Florida Administrative Code. GTEFL has not met the requirements set forth in Section 120.542, Florida

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Statutes. GTEFL has not demonstrated that what it seeks will permit the company to satisfy the underlying purposes of Section 364.19 and, by implication, 364.025, Florida Statutes, to require local exchange companies to provide basic local telecommunications services under reasonable rules. This is not to suggest, however, that we are opposed to any local exchange company proposal to control bad debt and collection expenses through credit management tariffs. Furthermore, GTEFL may avoid substantial hardship by requiring deposits of subscribers whose credit is suspect. Finally, GTEFL cannot sustain an argument that principles of fairness will be violated if the Commission denies its petition because denial does not amount to discriminatory treatment.

While we have denied GTEFL's petition for a waiver of Rule 25-4.110(3), Florida Administrative Code, because the rule is inapplicable in this instance, that by itself is insufficient to support GTEFL's proposed tariff. Waiver of Rule 25-4.113, Florida Administrative Code, is a necessary condition enabling implementation of GTEFL's proposed ACM tariff. We have, however, also denied GTEFL's petition for a waiver of Rule 25-4.113, Florida Administrative Code. Therefore, we disapprove GTEFL's proposed ACM tariff.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the petition of GTE Florida Incorporated for waivers of Rules 25-4110(3) and 25-4.113, Florida Administrative Code is hereby denied. It is further

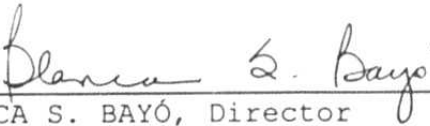
ORDERED that GTE Florida Incorporated's Advanced Credit Management tariff proposal is disapproved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 5th  
day of January, 1998.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

CJP

Commissioner Deason dissented without opinion.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 January 26, 1998.

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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.