

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of the cost
of basic local
telecommunications service,
pursuant to Section 364.025,
Florida Statutes.

DOCKET NO. 980696-TP
ORDER NO. PSC-98-1299-PCO-TP
ISSUED: October 6, 1998

ORDER ON THE OFFICE OF THE PUBLIC COUNSEL'S
FIRST MOTION TO COMPEL AGAINST GTE FLORIDA INCORPORATED

I. BACKGROUND

Pursuant to Section 364.025, Florida Statutes, this proceeding in Docket No. 980696-TP addresses the Commission's determination of the cost of basic local telecommunications service, on a basis no greater than a wire center, for the entire state of Florida. On August 19, 1998, the Office of the Public Counsel (OPC) filed the Citizens' First Motion to Compel Against GTE Florida to provide all documents requested by the Citizens' second set of requests for production of documents dated August 11, 1998. On August 26, 1998, GTE Florida Incorporated (GTEFL) filed its Opposition to the motion.

II. OPC'S MOTION

The OPC requests certain backup documentation regarding the testimony of GTEFL witness Steven A. Olson. According to the OPC, Mr. Olson's stated purpose of his testimony is to "present GTE Florida's financial results of operations based on both an adjusted total company and separated intrastate operating basis for the twelve month financial period ending December 31, 1997." Mr. Olson also states that "GTE Florida is not earning excessive profits and, if anything, existing revenue flows do not provide an adequate profit in addition to recovering the actual cost of the network used to provide service." The OPC maintains that GTEFL must not be allowed to make assertions such as this about the level of GTEFL's earnings and, at the same time, refuse to provide documentation concerning the basis and accuracy of those assertions. Contrary to GTEFL's contention that the OPC's requests improperly go to the prudence of GTEFL's expenses, the OPC contends that the requests

DOCUMENT NUMBER-DATE

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are for relevant information about the type and magnitude of expenses included in GTEFL's calculations. Finally, OPC states that there is no basis for GTEFL's claim that the requests are overly burdensome.

III. GTEFL'S RESPONSE

GTEFL argues that the OPC is requesting the information in question for an improper, irrelevant prudency analysis. GTEFL asserts that the only possible purpose for the OPC's request of this very detailed data is to perform a rate-case type of analysis. GTE contends that as a price cap regulated company it is no longer under rate-of-return regulation; therefore, the type of analysis for which the requested information would be used is irrelevant to a proceeding whose purpose is to select a cost proxy model for universal service purposes. Further, GTEFL would agree to strike portions of Mr. Olson's testimony if the OPC would withdraw its Motion to Compel, since the testimony portions referenced by the OPC are not critical from GTEFL's perspective. GTEFL states that it has provided to OPC workpapers and documents used in the preparation of Mr. Olson's Exhibit SAO-1, in response to the OPC's production of document request number 2. GTEFL contends that this request properly goes to the accuracy of the information provided, while the other requests improperly go to the prudency of the expenditures.

Finally, GTEFL contends that the OPC's request is overly burdensome. GTEFL claims that five of the ten requests would require it to copy 7,900 invoices. The remaining ten requests would likely require additional research and the production of 8,000 to 9,000 more pages.

IV. DISCUSSION

Rule 1.350(a), Florida Rules of Civil Procedure, states in pertinent part:

(a) Request. Scope: Any party may request any other party (1) to produce and permit the party making the request, or someone acting in the requesting party's behalf, to inspect and copy any designated documents ... that constitute or contain matters within the scope

of Rule 1.280(b) and that are in the possession, custody or control of the party to whom the request is directed; ...

Rule 1.280(b), Florida Rules of Civil Procedure, Scope of Discovery, provides in pertinent part:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action. . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. . .

As stated above, Rule 1.350(a) requires any party, in this case GTEFL, to produce any designated document in its possession, custody, or control to the requesting party and allow that party to inspect and copy the documents, so long as the information sought is within the scope of Rule 1.280(b). Under Rule 1.280(b), the information sought must be relevant to the subject matter of the proceeding. In this case, the OPC has requested information stemming from the testimony of GTEFL witness Olson. Through this testimony, GTEFL itself has raised the issue of the size and magnitude of its expenses for the purpose of the filings it has made in this proceeding. The OPC appears to be seeking relevant information that would support the statements made by the GTEFL witness.

The issue then becomes whether the OPC's request is overly burdensome. GTEFL has represented that the OPC's request will require the production of thousands of pages of documents. In a proceeding where hundreds and thousands of pages of documentation is the norm, GTEFL has failed to substantiate its claim that the OPC's request is overly burdensome.

V. RULING

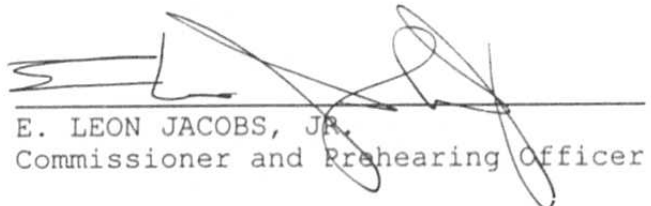
Accordingly, the OPC's Motion to Compel is hereby granted. GTEFL shall make the information requested in the Citizens' Second Set of Requests for Production of Documents available to the OPC at a mutually agreeable time and place no later than 9:00 a.m., Friday, October 9, 1998.

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Based on the foregoing, it is

ORDERED by the Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, that the Office of the Public Counsel's First Motion to Compel Against GTE Florida Incorporated is granted as specified in the body of this Order.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 6th day of October, 1998.


E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

WPC

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida

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Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.