

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by GTE Florida
Incorporated for declaratory
statement that its intraLATA
customer contact protocol
complies with Order PSC-95-0203-
FOF-TP

DOCKET NO. 990157-TL
ORDER NO. PSC-99-0955-FOF-TL
ISSUED: May 11, 1999

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

DECLARATORY STATEMENT

BY THE COMMISSION:

By Petition filed February 10, 1999, GTE Florida Incorporated
(GTE) requested a declaratory statement to determine whether its
proposed intraLATA customer contact protocol for new customers
complied with Order PSC-95-0203-FOF-TP, In re: Investigation into
IntraLATA Presubscription (IntraLATA Presubscription Order).

We determine that we have jurisdiction over this proceeding
pursuant to sections 364.01 and 120.565, Florida Statutes.

A declaratory statement is a means for answering a question
concerning the applicability of a statutory provision, rule, or
order of the Commission as it applies or may apply to a petitioner
in his particular set of circumstances. Our resolution of the
question presented in this proceeding will apply only to GTE's
particular circumstance. We have relied entirely upon the facts
presented in the petition for declaratory statement, and we have
made no independent investigation or verification of those facts.
Any material changes in the facts presented by petitioner could
substantially alter or void this declaratory statement.

DOCUMENT NUMBER-DATE

05995 MAY 11 8

FPSC-RECORDS/REPORTING

Preliminary Matters

We find that GTE's Petition for Declaratory Statement meets the threshold requirements of section 120.565, Florida Statutes, and Uniform Rule 28-105.002, Florida Administrative Code. GTE has demonstrated a genuine question or doubt regarding the legitimacy of its proposed contact protocol for new customers, and it has shown a need for a declaratory statement. Therefore, we grant the Petition for Declaratory statement.

Question Presented

GTE asked whether its modification to the prescribed protocol is consistent with Commission Order PSC-95-0203-FOF-TP. GTE intends to read a list of competitive carriers while recommending GTE's intraLATA service. As an example, GTE provides the following script:

You have many companies to choose from to provide your local toll service. I can read from a list of the companies available for selection; however, I'd like to recommend GTE's local toll service.

Discussion

Commission Orders

In order to fully answer GTE's question, it is necessary to set out a history of presubscription at the Commission. The issue of customer contact protocol resulted from the Commission's decision to allow presubscription of intraLATA toll service. In the IntraLATA Presubscription Order, we found intraLATA presubscription was in the public interest and ordered the four large local exchange companies to implement intraLATA presubscription by the end of 1997. 95 FPSC 2:206.

During the implementation of presubscription, complaints were filed against BellSouth and a docket was opened. We determined that to ensure the proper development of competition in the intraLATA market, BellSouth must maintain competitively neutral customer contact protocols. (Order No. PSC-96-1569-FOF-TP (BellSouth Restriction Order)) Restrictions were imposed on BellSouth with regard to its marketing of intraLATA toll services to new customers.

After we imposed restrictions on BellSouth, we turned our attention to the other LECs. In Proposed Agency Action Order No. PSC-97-0709-FOF-TP (PAA Order), we found the other LECs should also use the competitively neutral prompts when they communicate information about intraLATA carrier choices to new customers. In Re: Generic Consideration of Incumbent Local Exchange (ILEC) Business Office Practices and Tariff Provisions in the Implementation of IntraLATA Presubscription, 97 FPSC 6:271, 274 (1997).

In Order No. PSC-98-0710-FOF-TP (Generic Order), a final order resulting from a challenge of the PAA Order by Sprint-Florida, Inc. (Sprint) and GTE, we approved a modification of the protocol by adding the phrase "in addition to us" when reading the list of available carriers. We found that Sprint's contact script met the underlying principle of the restriction "to insure that customers have an opportunity to make informed decisions regarding the choice of intraLATA toll providers." In Re: Generic Consideration of Incumbent Local Exchange (ILEC) Business Office Practices and Tariff Provisions in the Implementation of IntraLATA Presubscription, 98 FPSC 5:560, 563-564 (1998).

Finally, in Order No. PSC-98-1469-FOF-TP (BellSouth Restriction Modification Order), we considered lifting the marketing restrictions for BellSouth. We noted that customer intraLATA activity was the only circumstance that had changed over the last 18 months since our order prohibiting the market activity BellSouth again sought to conduct. We found that because of interexchange company marketing efforts customers had become sufficiently informed to make educated choices despite any inherent advantage BellSouth had due to its gatekeeper position. We granted BellSouth relief from the BellSouth Restriction Order by revising the first step in the protocol. BellSouth is now required to advise customers that "due to the newly competitive environment, customers have the option of selecting a carrier for their local toll calls in addition to us." (Emphasis supplied) In Re: Petition of BellSouth Telecommunications, Inc., to Lift Marketing Restrictions Imposed by Order No. PSC-96-1569-FOF-TP, 98 FPSC 10:514, 520 (1998).

The Declaration Sought by GTE

In its Petition, GTE explained its new customer contact protocol. It would offer to read a list of competitive carriers while recommending GTE's intraLATA services. GTE argued that its

circumstances are similar, if not more pronounced, to those that led the Commission to modify its protocol requirements for Sprint and BellSouth. Specifically, GTE alleged that no complaints have been filed against it, nor has it been a target for investigation for former or current practices as they relate to new customers. GTE stated that it has never marketed its own IntraLATA services to new customers. GTE maintained that the key consideration in the BellSouth Restriction Order was to take remedial measures. It argued that this was not the case with respect to the Generic Order; therefore, analogies should be drawn from the Order that was not based upon a complaint.

With respect to factors we considered when modifying the contact protocol, GTE argued that increased competition in the intraLATA market was a key factor in relaxing BellSouth's restriction and in refusing to prohibit Sprint's marketing to new customers. Other relevant factors in our decisions allowing LEC marketing to new customers cited by GTE included customer's awareness of increased competitive options and BellSouth's market share loss.

GTE, while stating it should be immaterial to the declaratory statement it seeks, argued its intraLATA market share erosion has been even more drastic than BellSouth's. GTE argued that the statistics of market share erosion underscore the Commission's conclusion that "[c]ompetitive changes have occurred in the intraLATA market and customer awareness and sophistication have increased" which indicated there have not been any negative effects on the IXCs.

GTE argued its new customer contact protocol met the objective to insure that customers had an opportunity to make informed decisions regarding the choice of intraLATA toll providers. GTE argued its contact protocol is amply justified in terms of competitive conditions and the Commission's interpretation of its IntraLATA Presubscription Order.

GTE requested that the declaratory statement not approve a specific script wording, but rather confirm that the IntraLATA Presubscription Order permits GTE to offer to read a list of competitive carriers while recommending GTE's intraLATA services. In support of its request, GTE stated that its proposed new customer contact protocol is consistent with prior orders and the Commission's actions with regard to BellSouth and Sprint. GTE argued the IntraLATA Presubscription Order does not require

carriers to obtain approval of scripts and that the Commission did not dictate any language for Sprint, only determining Sprint was not prohibited from using language it already employed. GTE argued the BellSouth Restriction Modification Order does not seem to require BellSouth to use the same script language as Sprint.

Conclusion

In the Generic Order, we agreed that Sprint's contact protocol script which used the phrase "in addition to us" met the underlying principle of the competitively neutral restriction. We found Sprint's customers have an opportunity to make informed decisions regarding the choice of intraLATA toll providers. (98 FPSC 5:360, 363-364)

The marketing restrictions were intended to ensure competitively neutral customer contact protocols, increase customer awareness, and allow the IXCs to establish a presence in the intraLATA marketplace. When we modified BellSouth's marketing restrictions, not only did we consider the reported market activity, but also how many entities, besides the LEC, were available for a new customer to call upon to initiate service. In our consideration to lift marketing restrictions, we agreed with the joint complainants that the limited competition in local markets placed BellSouth in the unique and advantageous position of being the first point of contact for most new connections. We also agreed there was justifiable concern that BellSouth might use its gatekeeper position to unduly influence the customer's choice of intraLATA carriers. (98 FPSC 10:514, 519)

We believed that the first "buying experience" was crucial, but also recognized that the marketing restrictions precluded BellSouth from explaining fully its products and services. We stated, however, that BellSouth had other means of educating and informing the customers besides inbound customer contacts. (Id.) Finally, we offered a test that to be competitively neutral, the prompts must be consistent with the following:

If the customer declines to have the list read to him or her and the customer leaves with knowledge of only one provider, the negotiation is not competitively neutral.

(Id. at 520)

BellSouth was granted relief from the marketing requirements of Section III, Item 1 which states:

1. BellSouth shall advise customers that due to the newly competitive environment they have an option of selecting a long distance carrier for their local toll calls.

The Order revised the new customer contact protocol to state:

BellSouth shall advise customers that due to the newly competitive environment they have an option of selecting a carrier for their local toll calls in addition to us.

(Emphasis supplied.) (Id.) BellSouth is still required to offer to read to the customers the list of available carriers and if the customer responds affirmatively, then read the list. Finally, if the customer declines to have the list read, the customer service representative must ask the customer to identify the carrier of choice. If the customer's response is ambiguous or non-committal, the service representative must offer to read the list of available carriers and encourage the customer to make a selection. If the customer does not want to make a selection, the customer will be advised that he must dial an access code to reach an intraLATA carrier each time he makes an intraLATA call until a presubscribed carrier is chosen. Other than the phrase "in addition to us", the above described new customer contact protocol must be followed by all LECs.

We agree with GTE that we do not want to approve specific script language. However, we adopted the competitively neutral protocol as well as approved a particular part of a script to be used by Sprint in the Generic Order because Sprint asked the specific question.

GTE stated that its language would be read only if the customer expressed no carrier preference when asked. We deny the reading of the specific phrase "I'd like to recommend" as it goes beyond our competitively neutral standard by marketing GTE's service in a manner other than intraLATA toll competitors do not have available. The approved phrase "in addition to us" simply informs the customer of all the available carriers but does not emphasize one carrier over another. Our denial of GTE's request is directed to language that markets service rather than language that informs the customer of choices and is only limited to calls by new

ORDER NO. PSC-99-0955-FOF-TL
DOCKET NO. 990157-TL
PAGE 7

customers to GTE. GTE is still allowed to market its services in the same manner as all its other competitors.

The denial of this particular contact phrase is consistent with the Orders that address the circumstances where competition in the local exchange telecommunications market between LECs and ALECs is in its infancy. While there is competition in the intraLATA market as evidenced in GTE's petition, there is still little competition in the local exchange market where customers would be calling more than one company for local exchange service and then be offered a choice for presubscribed intraLATA service. This is the gatekeeper position that we have repeatedly expressed concern about in our previous orders.

Now, therefore, it is

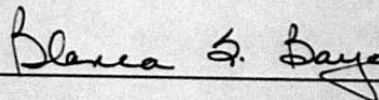
ORDERED by the Florida Public Service Commission that the Petition for a Declaratory statement filed by GTE Florida Incorporated is granted. It is further

ORDERED that the substance of the Declaratory Statement is as set forth in the body of this order. It is further

ORDERED that this docket should be closed.

ORDER NO. PSC-99-0955-FOF-TL
DOCKET NO. 990157-TL
PAGE 8

By ORDER of the Florida Public Service Commission this 11th
day of May, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

Commissioner Johnson dissented in this decision.

(S E A L)

DWC

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.

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

ORDER NO. PSC-99-0955-FOF-TL
DOCKET NO. 990157-TL
PAGE 9

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.