

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against GTE Florida Incorporated for apparent violation of service standards.

DOCKET NO. 991376-TL  
ORDER NO. PSC-00-0687-FOF-TL  
ISSUED: April 12, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
E. LEON JACOBS, JR.

ORDER GRANTING OPC'S MOTION TO DETERMINE THAT GTE'S WILFUL VIOLATION OF THE COMMISSION'S QUALITY OF SERVICE RULES SINCE JANUARY 1, 1996 WILL BE AT ISSUE IN THIS PROCEEDING, REQUIRING GTE FLORIDA TO SHOW CAUSE AND GRANTING OPC'S FIRST MOTION TO COMPEL

BY THE COMMISSION:

I. BACKGROUND

Pursuant to Rule 25-4.0185, Florida Administrative Code, GTE Florida Incorporated (GTE) is required to file with the Commission quarterly reports which demonstrate its measure of its quality of service. During January 1998 through September 1999, GTE's quarterly reports indicated that it has consistently not met the 95% performance standard for restoration of interrupted service (out-of-service repair) within 24 hours of report, as required by Rule 25-4.070(3)(a), Florida Administrative Code. Additionally, GTE's reports indicated that since January 1998, for nine out of 21 months, it has not complied with Rule 25-4.066, Florida Administrative Code, regarding installation of primary service (installation of new service) within three working days.

On September 10, 1999, based upon our staff's investigation of GTE's compliance record from January 1998 through September 1999, a docket was opened to initiate show cause proceedings against GTE for apparent service standards violations. On October 13, 1999, prior to our staff filing a recommendation in this matter, GTE, the Office of Public Counsel (OPC), and Commission staff met to discuss the concerns regarding GTE's quality of service reports that were the subject of the investigation. By letter, dated October 29,

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1999, GTE submitted an offer of settlement. By Order No. PSC-99-2501-PCO-TL, issued December 21, 1999, we rejected GTE's proposed offer of settlement, and set this matter for hearing. The hearing is scheduled for August 17, 2000.

On January 10, 2000, OPC filed a Motion to Determine that GTE's Wilful Violation of the Commission's Quality of Service Rules since January 1, 1996 will be at Issue in this Proceeding (Motion to Expand). On January 24, 2000, GTE filed its response in opposition.

On February 8, 2000, GTE filed its Response and Objections to Citizens' Third Set of Requests for Production of Documents. GTE objected to providing any documents relating to 1996, 1997, or 2000 in its response to requests number 24, 25, and 31 through 40. On February 10, 2000, OPC filed its First Motion to Compel Against GTE, and on February 22, 2000, GTE filed its Answer opposing OPC's First Motion to Compel.

## II. MOTION TO EXPAND

In its motion to expand the scope of the proceeding, OPC claims that GTE's violations of the quality of service standards date back to at least 1996, with 305 out-of-service repair violations and 55 installation of new service violations during 1996 and 1997. OPC argues that GTE would have us ignore the 1996 and 1997 violations, when looking at GTE's compliance record for these years is highly relevant in showing that the violations were wilful and, therefore, in determining the appropriate fine.

In its response, GTE argues that OPC is attempting to expand the scope to 1996 to address standards that were not initially a part of this docket. According to GTE, Order No. PSC-99-2501-PCO-TL defines the basic parameters of this proceeding, the matters to be investigated, and the time period at issue. Specifically, GTE states, the relevant subject matter and time period to be addressed have been defined by the Commission as GTE's apparent failure to meet two service standards rules (Rule 25-4.070(3)(a), Florida Administrative Code, Restoration of Interrupted Service, and Rule 25-4.066, Florida Administrative Code, Installation of Primary Service) at various times since January 1, 1998.

GTE also argues that the Commission's focus on particular service standards and its decision to examine GTE's compliance

record for the past two years, were based upon the Commission staff's review of GTE's periodic service quality reports. It states that, as such, both the Commission staff's November 18, 1999 recommendation and our Order No. PSC-99-2501-PCO-TL explicitly reflect 1998 as the initial period at issue in this docket. Therefore, GTE concludes, the Commission, rather than OPC, has defined the relevant subject matter and period to be addressed in this docket, and OPC, having missed the opportunity to address the appropriate scope of the proceeding prior to the Commission's decision, cannot now try to change the basic parameters of the inquiry.

We agree that the scope of this proceeding was set by Order No. PSC-99-2501-PCO-TL. It is, however, subject to modification by this Commission, and we are persuaded that GTE should be answerable for alleged rules violations during the entire time period within which they may have occurred. The concern in changing the parameters within which a company is accused of violations is that of notice. Though Order No. PSC-99-2501-PCO-TL put GTE on notice as to a certain time period within which this docket was concerned, with proper notice being given, that time period may be expanded without prejudice to the parties. We believe that notice given this date of an expanded time period will allow all parties adequate time to prepare their testimony and exhibits consistent with the new parameters. Accordingly, it is our decision that GTE's alleged Wilful Violation of the Commission's Quality of Service Rules since January 1, 1996, will be at issue in this Proceeding, and thus, OPC's Motion to Expand is granted.

### III. SHOW CAUSE

In view of the foregoing analysis, we emphasize that pursuant to Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with, or to have willfully violated any lawful rule or order of the commission, or any provision of Chapter 364, Florida Statutes. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally," Barlow v. United States, 32 U.S. 404, 411 (1833).

We believe that GTE Florida's conduct in apparently failing to meet the performance standard for restoration of interrupted service (out-of-service repair) within 24 hours of report, as required by Rule 25-4.070(3)(a), Florida Administrative Code, and for failing to comply with Rule 25-4.066, Florida Administrative Code, regarding installation of primary service (installation of new service) within three working days has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In re: Investigation into the Proper Application of Rule 25-14.003, Florida Administrative Code, Relating to Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as GTE's conduct at issue here, would meet the standard for a "willful violation."

Upon consideration, GTE Florida shall show cause why it should not be fined up to \$25,000 per day for each apparent violation dating back to January 1, 1996, of Rules 25-4.070(3)(a), and 25-4.066, Florida Administrative Code, or have its certificate cancelled. Because this Docket has already been set for an administrative hearing, GTE need not respond in writing specifically to this Order, but may, instead, present its responsive evidence regarding these apparent violations within the context of the prefiled testimony filed for the hearing. Failure to respond at hearing with responsive evidence regarding the alleged violations dating back to January 1, 1996, will constitute an admission of all facts and a default pursuant to Rule 28-106.111(4), Florida Administrative Code.

#### IV. OPC'S FIRST MOTION TO COMPEL AGAINST GTE

In its Motion to Compel, OPC argues that GTE wants the Commission to ignore the 1996 and 1997 violations, and has, therefore, refused to provide any information to OPC dating back to 1996. OPC maintains, however, that this information is clearly relevant to determining whether GTE's apparent violations were wilful.

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GTE responds that the discovery requested by OPC covers time periods not at issue in this docket; therefore, the requests are inappropriate.

In view of our foregoing decision to expand the scope of this proceeding and to show cause GTE Florida for apparent service standards violations dating back to 1996, we find that the discovery requests propounded by OPC are likely to lead to the discovery of admissible evidence. Therefore, OPC's Motion to Compel is granted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission the Motion to Determine that GTE's Wilful Violation of the Commission's Quality of Service Rules since January 1, 1996, Will Be At Issue in this Proceeding, filed by the Office of Public Counsel on January 10, 2000, is hereby granted. It is further

ORDERED that the First Motion to Compel filed by the Office of Public Counsel on February 10, 2000, is granted. It is further

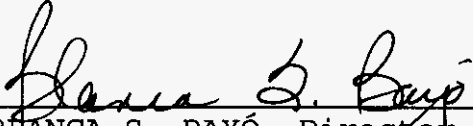
ORDERED that GTE Florida Incorporated shall show cause why it should not be fined up to \$25,000 per day for each apparent violation dating back to January 1, 1996, of Rules 25-4.070(3)(a), and 25-4.066, Florida Administrative Code, or have its certificate cancelled. GTE need not respond in writing specifically to this Order, but may, instead, present its responsive evidence regarding these apparent violations within the context of the prefiled testimony filed for the hearing. It is further

ORDERED that failure by GTE Florida Incorporated to respond at hearing with responsive evidence regarding the alleged violations dating back to January 1, 1996, will constitute an admission of all facts and a default pursuant to Rule 28-106.111(4), Florida Administrative Code.

ORDERED that this Docket shall remain open pending the outcome of the show cause proceedings.

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By ORDER of the Florida Public Service Commission this 12th  
day of April, 2000.

  
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BIANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

CLF

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 herein granting the motions filed by the Office of Public Counsel may seek: 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.

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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 portions of this order requiring GTE Florida Incorporated to show cause are preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the show cause portion of this order shall respond as set forth in the body of this order. Failure to respond as set forth in this order shall constitute an admission of all facts and a default pursuant to Rule 28-106.111(4), Florida Administrative Code.

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 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.