

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for recovery of intrastate costs and expenses relating to repair, restoration and replacement of facilities damaged by Hurricane Dennis, by GTC, Inc. d/b/a GT Com.

DOCKET NO. 060300-TL  
ORDER NO. PSC-06-0529-PHO-TL  
ISSUED: June 22, 2006

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on June 19, 2006, in Tallahassee, Florida, before Commissioner Isilio Arriaga, as Prehearing Officer.

APPEARANCES:

KENNETH A. HOFFMAN, Esquire and MARSHA E. RULE, Esquire, Rutledge, Ecenia, Purnell & Hoffman, P.A., Post Office Box 551, Tallahassee, Florida 32302

On behalf of GTC Inc., d/b/a GT Com ("GT Com").

CHARLES J. BECK, Esquire, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400

On behalf of Citizens of the State of Florida ("OPC").

ADAM J. TEITZMAN, Esquire and PATRICK K. WIGGINS, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Commission ("Staff").

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE

05435 JUN 22 06

FPSC-COMMISSION CLERK

II. CASE BACKGROUND

On March 31, 2006, GTC, Inc. d/b/a GT Com (GT Com) filed its Petition for Recovery of Costs Pursuant to Section 364.051(4), Florida Statutes. GT Com requests the Commission approve recovery of its intrastate costs and expenses relating to repairing and restoring lines, plant and facilities damaged by Hurricane Dennis in 2005.

An administrative hearing will be held on this matter on June 28, 2006.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services's confidential files.

#### IV. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

V. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issue #</u>
<u>Direct and Rebuttal</u>		
R. Mark Ellmer	GT Com	1-3
Hugh Larkin, Jr. *	OPC	1-3
Michael E. Buckley **	Staff	3

\* Rebuttal Only

\*\* Direct Only

VI. BASIC POSITIONS

**GT COM:** Section 364.051(4)(b), Florida Statutes, specifically permits a local exchange telecommunications company that, like GT Com, is subject to carrier of last resort obligations, to recover its “intrastate costs and expenses relating to repairing, restoring, or replacing the lines, plants, or facilities” damaged by Hurricane Dennis. The statute provides only five limitations on such recovery:

- (1) The costs and expenses must be verified. §364.051(4)(b)2.
- (2) The costs and expenses must be reasonable under the circumstances for the specific storm. §364.051(4)(b)3.
- (3) If a company has a storm reserve fund, it may recover only those costs and expenses in excess of the amount available in the fund. §364.051(4)(b)4.
- (4) Cost recovery is capped at a maximum charge of \$6.00 per customer line per storm season. §§364.051(4)(b)5. and 8.
- (5) Finally, the costs and expenses must exceed a minimum amount that ranges from \$0 for companies with fewer than 1 million access lines up to \$5 million for companies with 3 million or more access lines.

These are the only restrictions on cost recovery set forth in §364.051(4)(b), Florida Statutes. GT Com has no storm reserve fund and is not required to meet a minimum damage threshold because it has fewer than 1 million access lines. Therefore, there are only three statutory inquiries relevant to GT Com’s request:

- (1) Are the costs for which GT Com seeks recovery “intrastate costs and expenses relating to repairing, restoring, or replacing the lines, plants, or facilities damaged by a named tropical system”?
- (2) Has GT Com verified that it incurred such costs and expenses?

(3) Are those costs and expenses reasonable under the circumstances for Hurricane Dennis?

GT Com has demonstrated that the answer to all three inquiries is “yes.” GT Com therefore is entitled to recover all such costs and expenses, up to a maximum of \$0.50 per customer line per month for a 12-month period, regardless of whether any particular cost or expense could be considered “incremental” to its normal operations, regardless of how any particular expense is treated for accounting purposes, and regardless of how a traditional rate base, rate of return regulated utility would recover such costs pursuant to other statutory authority.

Section 364.051(4)(b), Florida Statutes, does not in any way predicate recovery of costs upon (or define recoverable costs in terms of or with reference to) budgets, budgeted expenses or revenues, budget variances, financial statements, revenues, net operating income or loss, cost of capital, depreciation status, incremental costs or any information not specified in §364.051(4)(b), Florida Statutes. In addition, GT Com is a price-regulated small local exchange company. GT Com’s rates for basic local telecommunications services are not based on traditional rate base, rate of return regulation or oversight of GT Com’s revenues and expenses. Accordingly, GT Com will object to any attempt to introduce into evidence in this proceeding or otherwise bring before the Commission for consideration any documents or information that relate to matters irrelevant to this proceeding, including but not limited to those listed above.

**OPC:** The Commission has repeatedly used an incremental cost approach, including an adjustment to remove normal capital costs, as the appropriate methodology for storm cost recovery. *See, e.g.*, order no. PSC-06-0464-FOF-EI issued May 30, 2006. The Commission has either ordered the use of this approach or approved settlements using this approach in cases dealing with Florida Power & Light Company, Progress Energy, Gulf Power, and Sprint. The incremental cost approach, including an adjustment to remove normal capital costs, is not directly required by statute. Instead, the Commission has determined that it is the most appropriate methodology to use to determine the reasonable and prudent costs for storm cost recovery.

By including normal expenses and normal capital amounts in its request, GT Com completely ignores the methodology used and approved by the Commission. The company would in effect double count these expenses and would recover these normal costs from customers twice: once through a surcharge, and a second time through the rates customers pay for service. In addition, much of the capital investment included in the company’s request will be recovered from universal service high cost funding, a fact that has been totally ignored in the company’s filing.

The Commission should deny the company's request because it would require customers to pay for unreasonable costs related to Hurricane Dennis, in contravention of section 364.051(4)(b)3, Florida Statutes. The denial should be without prejudice to the company being allowed to refile its case using an appropriate costing methodology.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

## VII. ISSUES AND POSITIONS

**ISSUE 1:** **WHAT AMOUNT OF INTRASTATE COSTS AND EXPENSES DID GT COM INCUR RELATING TO REPAIRING, RESTORING, OR REPLACING THE LINES, PLANTS, OR FACILITIES DAMAGED BY HURRICANE DENNIS?**

### **POSITIONS**

**GT COM:** GT Com incurred intrastate costs and expenses of \$463,710 relating to repairing, restoring and replacing its lines, plants and facilities damaged by Hurricane Dennis.

**OPC:** The majority of the cost justification, which appears in Mr. Ellmer's Exhibit RME-10, page 1 of 1, are costs which the Company appears to have capitalized or should have capitalized. A good amount of the remaining costs are either costs that should have been capitalized, or cost of removal charged to the Reserve for Depreciation, or costs that may not be incremental to the Company's normal operating and maintenance expenses. Benefit loadings and overhead allocations are inadequately supported, and the charges for taxes and carrying costs do not appear to be legitimate. It is impossible to determine the incremental costs incurred by GT Com related to Hurricane Dennis from the company's filing. Finally, the company ignored offsetting loop support payments it expects to receive on account of the hurricane.

**STAFF:** Staff has no position at this time.

**ISSUE 2:** ARE THE COSTS AND EXPENSES IDENTIFIED IN ISSUE NO. 1 REASONABLE UNDER THE CIRCUMSTANCES FOR HURRICANE DENNIS?

**POSITIONS**

**GT COM:** Yes. All such costs and expenses are reasonable under the circumstances, including GT Com's use of fiber, a carrier system and smaller copper cable to repair, restore and replace its Alligator Point lines, plant and facilities in lieu of an exact replacement of the existing lines, plant and facilities. In no event, however, should GT Com's prudent choice of replacement materials cause it to recover less than if it had opted to replace the exact facilities damaged by Hurricane Dennis.

**OPC:** No, they are not reasonable for the reasons stated in response to issue 1.

**STAFF:** Staff has no position at this time.

**ISSUE 3:** WHAT IS THE APPROPRIATE AMOUNT OF INTRASTATE COSTS AND EXPENSES RELATED TO DAMAGE CAUSED BY HURRICANE DENNIS, THAT SHOULD BE RECOVERED PURSUANT TO SECTION 364.051(4)?

**POSITIONS**

**GT COM:** All costs and expenses incurred by GT Com relating to repairing, restoring or replacing the lines, plants and facilities damaged by Hurricane Dennis were reasonable under the circumstances and therefore the total amount of \$463,710 is eligible for recovery. However, §364.051(4)(b) 5. and 8. limits recovery to a maximum charge of \$0.50 per customer line per month for a 12-month period. GT Com serves approximately 47,155 access lines and therefore will be able to recover only approximately \$283,000 of this amount.

**OPC:** Zero.

**STAFF:** Staff is not a party to, and has no substantial interest in, this proceeding. Staff's role is generally to assure that there is a complete record for consideration by the Commissioners. Staff's positions set forth herein are preliminary pending the outcome of the hearing.

Staff witness Buckley recommends in his testimony and exhibit that the following adjustments be made:

- Reduce the Alligator Point cable replacement by \$40,000 (total company).

- Reduce the total company cost by \$35,941 for benefits cost because the company did not provide sufficient supporting documentation.
- Reduce the total company cost by \$28,080 for overhead cost because the company did not provide sufficient supporting documentation.

**ISSUE 4:**     **WHAT IS THE APPROPRIATE LINE ITEM CHARGE PER ACCESS LINE, IF ANY, THAT SHOULD BE CHARGED TO THE CUSTOMERS OF GT COM FOR RECOVERY OF THE AMOUNT IDENTIFIED IN ISSUE 3?**

**POSITIONS**

**GT COM:**     GT Com should be permitted to charge \$0.50 per customer line per month for a 12-month period.

**OPC:**        Zero.

**STAFF:**     The appropriate monthly line item charge per access line is the amount, if any, approved in issue 3 divided by 47,155 access lines divided by 12.

**ISSUE 5:**     **IF A LINE ITEM CHARGE IS APPROVED IN ISSUE 4, ON WHAT DATE SHOULD THE CHARGE BECOME EFFECTIVE AND ON WHAT DATE SHOULD THE CHARGE END?**

**POSITIONS**

**GT COM:**     The charge should become effective as soon as possible after Commission approval, and should continue for a total of 12 consecutive months.

**OPC:**        There should be no charge because the company hasn't justified a charge.

**STAFF:**     If a charge is approved in Issue 4, the company should file a tariff within 30 days of the vote in this docket. The tariff should be effective for a total of 12 consecutive months.

**ISSUE 6:**     **SHOULD THE DOCKET BE CLOSED?**

**POSITIONS**

**GT COM:**     No. GT Com will monitor and review its cost recovery and at the end of the recovery period, will refund any collections in excess of the approved amount



pursuant to §364.051(4)(b) 6, Florida Statutes. This docket therefore should remain open pending such final review and any necessary true-up.

**OPC:** Yes.

**STAFF:** Staff has no position at this time.

VIII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u> R. Mark Ellmer	GT Com	(RME - 1)	Resume of R. Mark Ellmer
		(RME - 2)	Costs and Expenses Charged to Work Order No. 2005838
		(RME - 3)	Photos of Coastal Damage
		(RME - 4)	Costs and Expenses Charged to Work Order No. 2005839
		(RME - 5)	Photos of Damage to Alligator Point
		(RME - 6)	Costs and Expenses Charged to Work Order No. 2005796
		(RME - 7)	Costs and Expenses Charged to Work Order No. 2005797
		(RME - 8)	Costs and Expenses Charged to Work Order No. 2005861
		(RME - 9)	Costs and Expenses Charged to Work Order No. 2005798
		(RME - 10)	Map of Work Order Costs to Petition Amounts
		(RME - 11)	GT Com Carrying costs and Taxes
		(RME - 12)	Summary of Cost Allocations
		(RME - 13)	2005 Tracom Contract Price List
		(RME - 14)	GT Com Inventory Materials
Michael E. Buckley	Staff	(MEB - 1)	Audit Report

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Rebuttal</u> R. Mark Ellmer	GT Com	<u>(RME – 15)</u>	Analysis of Cost Allocations - Total
		<u>(RME – 16)</u>	Analysis of Cost Allocations – July
		<u>(RME – 17)</u>	Support for Cost Allocations – July
		<u>(RME – 18)</u>	Analysis of Cost Allocations – August
		<u>(RME – 19)</u>	Support for Cost Allocations – August
		<u>(RME – 20)</u>	Analysis of Cost Allocations – September
		<u>(RME – 21)</u>	Support for Cost Allocations – September

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

#### IX. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

#### X. PENDING MOTIONS

None.

#### XI. PENDING CONFIDENTIALITY MATTERS

##### **GT COM:**

1. GT Com's Response to Staff Interrogatories Nos. 2 and 13;
2. GT Com's Response to Staff Requests for Production of Documents No. 2;
3. GT Com's Response to OPC Requests for Production of Documents No. 2;
4. GT Com's Responses to Staff Audit Requests Nos. 2 – 7, 9 and 12.

XII. RULINGS

Opening and Closing statements, if any, shall not exceed ten minutes per party.

Each party shall file a short pre-hearing Memorandum of Law of no more than 10 pages in length regarding the meaning and interpretation of §364.051(4)(b), Florida Statutes (2005), on or before June 23, 2006.

It is therefore,

ORDERED by Commissioner Isilio Arriaga, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Isilio Arriaga, as Prehearing Officer, this 22nd day of June, 2006.

  
\_\_\_\_\_  
ISILIO ARRIAGA  
Commissioner and Prehearing Officer

( S E A L )

AJT

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.

ORDER NO. PSC-06-0529-PHO-TL

DOCKET NO. 060300-TL

PAGE 12

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; 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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.