

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

June 15, 1989

TO : DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF COMMUNICATIONS [MAILHOT] DM
DIVISION OF LEGAL SERVICES [HATCH] H

RE : DOCKET NO. - 820537-TP ACCESS CHARGES

AGENDA : JUNE 27, 1989 - FINAL AGENCY ACTION - CONTROVERSIAL - PARTIES
MAY NOT PARTICIPATE

PANEL : FULL COMMISSION

CRITICAL DATES : NONE

SPECIAL INSTRUCTIONS: NONE

ISSUE AND RECOMMENDATION SUMMARY

ISSUE 1: Whether the Commission's treatment of Gulf Telephone Company by itself, comports with the industry-wide nature of the solution embodied in Order No. 14452 (Docket No. 820537-TP, issued June 10, 1985).

RECOMMENDATION: The Commission's treatment of Gulf Telephone Company is consistent with the industry-wide nature of the solution embodied in Order No. 14452.

DOCUMENT NUMBER-DATE
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FPSC-RECORDS/REPORTING

DOCKET NO. 820537-TP
JUNE 15, 1989

ISSUE 2: Whether the Commission's decision to single out Gulf Telephone Company is arbitrary and discriminatory.

RECOMMENDATION: No. The Commission's decision regarding Gulf Telephone Company is not arbitrary and discriminatory.

ISSUE 3: Whether the Commission's decision not to allow Gulf Telephone Company and its customers to receive the intraLATA access charges subsidy pool payments is inconsistent with Order No. 15327 (Docket No. 820537-TP, issued November 4, 1985, wherein United Telephone Company was allowed to receive subsidy payments while at the same time the company was overearning and being investigated for such). SEE Order No. 15327 at page 5.

RECOMMENDATION: The Commission's decision not to allow Gulf to receive the intraLATA access charge subsidy pool payments is consistent with Order No. 15327 (Attachment 2). No determination has been made by the Commission that United Telephone Company has overearned during the time the subsidy pool has been in effect. United Telephone has been a net contributor and not a net recipient of the interLATA subsidy pool.

ISSUE 4: Whether the Commission's decision not to allow Gulf Telephone Company and its customers to receive the interLATA access charge pool payment is inconsistent with Order No. 19677 (Docket No. 860984-TP, issued July 15, 1988).

RECOMMENDATION: The Commission's decision not to allow Gulf to receive the interLATA subsidy is not inconsistent with Order No. 19677 (Attachment 5).

DOCKET NO. 820537-TP
JUNE 15, 1989

ISSUE 5: Should Gulf Telephone be ordered to forego the net subsidy of \$188,000 per year which it received from the interLATA access subsidy pool, effective July 1, 1989?

RECOMMENDATION: Yes, effective July 1, 1989, Gulf Telephone Company should be ordered to forego the net subsidy which it receives from the interLATA access subsidy pool for the loss it sustained from going to a bill and keep environment for access charges. To forego the net subsidy means that Gulf will contribute and receive equal amounts to and from the pool. We also recommend that the subsidy received until June 30, 1989 be treated as part of Gulf's earnings.

ISSUE 6: Should the subsidy payments and receipts for the other LECs in the subsidy pool be adjusted to reflect the Commission's decision in Issue 5?

RECOMMENDATION: Yes, the subsidy payments and receipts for the other LECs should be adjusted to the amounts shown in Attachment 6.

DOCKET NO. 820537-TP
JUNE 15, 1989

DISCUSSION OF ISSUES

ISSUE 1: Whether the Commission's treatment of Gulf Telephone Company by itself, comports with the industry-wide nature of the solution embodied in Order No. 14452 (Docket No. 820537-TP, issued June 10, 1985).

RECOMMENDATION: The Commission's treatment of Gulf Telephone Company is consistent with the industry-wide nature of the solution embodied in Order No. 14452.

POSITION OF PARTIES:

Public Counsel: Citizens contend that the Commission unfairly singles out Gulf for removal of its subsidy because Gulf agreed to a rate reduction and a refund while allowing United to keep its subsidy despite being in an overearnings posture.

ATT-C: AT&T contends that the Commission's decision with respect to Gulf Telephone Company does comport with the nature of the solution embodied in Order No. 14452.

GULF: No position.

STAFF ANALYSIS: The Office of the Public Counsel, on behalf of the citizens of Florida (Citizens), contends that the Commission has singled out Gulf for removal of its subsidy because Gulf agreed to a rate reduction and refund.

ATT-C disagrees with Citizens.

This issue concerns the Commission's treatment of Gulf in relation to Order No. 14452. Order No. 14452 proposed an industry-wide solution to a problem by establishing a subsidy pool. As ATTAC correctly points out, the Commission realized that an exception should be made because of the inequity in giving a subsidy to a company which was overearning. Order No. 14452 states:

"Presently, we have several separate dockets investigating possible overearnings of LECs. We find it appropriate to delay any receipt of subsidy by those companies involved in overearnings investigations until the investigations are completed. We believe it would not be logical to provide a subsidy to a LEC that is in an overearnings position; thus our decision to delay subsidy payments to the involved companies."

At that time, the Commission made an exception to the make whole principle of the subsidy pool for companies in an overearnings position. As discussed in Issue 3, this exception eventually led to United becoming a net contributor to the pool, even though it was a loser in going to bill and keep. Subsequently, Gulf Telephone was found to be overearning and the Commission therefore removed Gulf from the subsidy pool, consistent with its intentions from the outset of the subsidy pool. Somehow Citizens believe that Gulf was removed from the subsidy pool "because Gulf agreed to a rate reduction and a refund." It is clear in Order No. 19692 that Gulf was removed from the subsidy pool because it appeared to be "financially healthy." In this order, "financially healthy" is just a euphemism for overearning. Staff's recommendation to remove Gulf's subsidy was based on Gulf's earnings level. Gulf's agreement to refund overearnings and to reduce rates is irrelevant to the decision to remove its subsidy. The Commission should have removed Gulf from the subsidy pool because it was overearning regardless of whether Gulf had made any rate reductions or refunds.

DOCKET NO. 820537-TP
JUNE 15, 1989

The basic purpose of going to bill and keep was to eliminate the subsidies inherent in the pooling system. The subsidy pool was designed to keep LEC's whole in the transition from pooling to access bill and keep. It was never envisioned that the access subsidy would be permanent. It was intended to last only until the Commission was presented with an opportunity to address each company's particular circumstances either through a rate case or other proceeding.

Accordingly, Staff believes and recommends that the Commission's treatment of Gulf Telephone Company is consistent with the industry-wide nature of the solution embodied in Order No. 14-52.

DOCKET NO. 820537-TP
JUNE 15, 1989

ISSUE 2: Whether the Commission's decision to single out Gulf Telephone Company is arbitrary and discriminatory.

RECOMMENDATION: No. The Commission's decision regarding Gulf Telephone Company is not arbitrary and discriminatory.

POSITION OF PARTIES:

Public Counsel: Yes. See position on Issue 1.

ATT-C: AT&T submits that the Commission's decision with respect to Gulf Telephone Company is neither arbitrary nor discriminatory.

Gulf: No position.

STAFF ANALYSIS: Citizens contend that the Commission has singled out Gulf in an arbitrary and discriminatory manner. ATT-C disagrees with Citizens.

Citizens position seems to be that the Commission has been arbitrary towards Gulf by removing its subsidy and not that of all the other subsidy recipients. Public Counsel argues that the subsidy issue should be addressed in a generic proceeding and that its failure to do so is arbitrary and discriminatory. The Commission is not required to act in an industry wide generic fashion. As discussed previously in Issue 1, the subsidy was a keep-whole mechanism that would apply until the Commission acted to address the subsidy.

The Commission had good cause to remove Gulf from the subsidy pool because it was and has been overearning. The issue of removing a company from the subsidy pool was discussed in Issue 1. The Citizens also state that even if the Commission wishes to consider earnings, "1986 earnings may no longer be relevant or indicative of Gulf's current or going forward earnings level." Gulf refunded \$130,000 for 1986's overearnings.

Gulf refunded \$334,000 for 1987's overearnings. Gulf reduced rates by \$224,000 annually on May 1, 1988 and still was ordered to refund \$304,000 as a preliminary overearnings refund for 1988. Citizens are correct that "the year is now 1989 and circumstances have changed." Gulf's overearnings have almost tripled since 1986. Circumstances have changed to being even more supportive of Gulf's removal from the subsidy pool.

The Citizens also appear to believe that the Commission's treatment of Gulf was discriminatory. As will be explained in Issue 3, the Commission's treatment of Gulf was entirely consistent with that of United. In fact, the Commission was more lenient towards Gulf than it was towards United in allowing its subsidy.

Therefore, Staff believes and recommends that the Commission find that its decision regarding Gulf Telephone Company is not arbitrary and discriminatory.

DOCKET NO. 820537-TP
JUNE 15, 1989

ISSUE 3: Whether the Commission's decision not to allow Gulf Telephone Company and its customers to receive the intralATA access charges subsidy pool payments is inconsistent with Order No. 15327 (Docket No. 820537-TP, issued November 4, 1985, wherein United Telephone Company was allowed to receive subsidy payments while at the same time the company was overearning and being investigated for such). SEE Order No. 15327 at page 5.

RECOMMENDATION: The Commission's decision not to allow Gulf to receive the intralATA access charge subsidy pool payments is consistent with Order No. 15327 (Attachment 2). No determination has been made by the Commission that United Telephone Company has overearned during the time the subsidy pool has been in effect. United Telephone has been a net contributor and not a net recipient of the interLATA subsidy pool.

POSITION OF PARTIES:

Public Counsel: Yes. See position on Issue 1.

ATT-C: AT&T submits that the Commission's decision with respect of Gulf Telephone Company is not inconsistent with Order No. 15327.

Gulf: No position.

STAFF ANALYSIS: The Citizens argue that the Commission's decision to remove Gulf's subsidy was inconsistent with the treatment of United in Order No. 15327. In Order No. 15327, United was allowed to receive a temporary subsidy pending the outcome of an overearnings investigation. This is exactly the same treatment afforded to Gulf, in that Gulf received its subsidy while its earnings investigation in Docket No. 870454-TL was conducted.

The Citizens fail to note what actually happened after Order No. 15327 and the outcome of United's earnings investigation. The Citizens recognize that United's subsidy receipts declined but state that, "the access charge orders subsequent to Order No. 14452 do not clearly delineate the reasons for the decline in United's subsidy pool receipts." However, we note that Order No. 15821 page 2 (Attachment 3) clearly states that the subsidy decrease for United was due to "United and Quincy's overearnings procedures." Order No. 15821 also required United's subsidy to be reduced retroactively to July 1, 1985, when the subsidy pool began. The Commission has been much more lenient towards Gulf by only requiring the elimination of the subsidy on a prospective basis.

In raising this issue, the Citizens also state that United was receiving a subsidy while overearning. This simply is not true. The Citizens have not supported this statement. The overearnings in question for United were for 1984 (Order No. 15192 Attachment 4). This was before the subsidy pool began. United's subsidy was reduced based on prior year's overearnings. There have not been any findings of overearnings for United for any years subsequent to 1984.

The Citizens also point out that United is receiving a \$724,000 subsidy. The Citizens fail to mention that United is contributing \$823,000 for a net contribution of \$99,000. This results from the operational mechanics of the subsidy mechanism. Because United overearned during a period prior to the inception of the subsidy pool, it has been a net contributor to the subsidy pool. Once again, the Commission has been more lenient towards Gulf than towards United. Gulf is not being required to be a net contributor to the pool but simply to contribute and receive an equal amount.

DOCKET NO. 820537-TP
JUNE 15, 1989

The Commission has been more than fair towards Gulf Telephone in comparison to United. Strict consistency with United's decision would require Gulf to eliminate its subsidy retroactively to 1986 and would require Gulf to contribute to the subsidy pool prospectively.

DOCKET NO. 820837-TP
JUNE 15, 1989

ISSUE 4. Whether the Commission's decision not to allow Gulf Telephone Company and its customers to receive the InterLATA access charge pool payment is inconsistent with Order No. 19677 (Docket No. 860984-TP, issued July 15, 1988).

RECOMMENDATION: The Commission's decision not to allow Gulf to receive the InterLATA subsidy is not inconsistent with Order No. 19677 (Attachment 5).

POSITION OF PARTIES:

Public Counsel: Yes. Order No. 19677 embodies the Public Service Commission's decision to continue the subsidy mechanism for all receiving companies (including Gulf) after hearing and after opportunity for all parties to address the specific access subsidy issue.

ATT-G: AT&T submits that the Commission's decision is not inconsistent with Order No. 19677.

Gulf: No position.

STAFF ANALYSIS: The Citizens state that the Commission has been inconsistent with Order No. 19677 (Attachment 5) because that Order states:

Upon consideration, we find it appropriate to retain the InterLATA access subsidy mechanism in its current form.

The Citizens also state that "The language clearly indicates that the Commission's intent was not to disturb the so-called access "subsidies." The Citizens interpret this to mean that the access subsidy amounts are set in stone

DOCKET NO. B20537-TP
JUNE 15, 1989

The issue being addressed in Order No. 19677 was whether the subsidy mechanism should remain or whether companies receiving a subsidy should be allowed to increase their access charges and eliminate the subsidies. The issue had nothing to do with the earnings levels of any individual company. The Order in no way changed the Commission's intentions as expressed in prior Orders (see Issues 1, 2 & 3), that a company which was overearning should not receive a subsidy.

Therefore Staff recommends that the Commission find that its proposal to remove Gulf's access subsidy is consistent with its decision in Order No. 19677.

DOCKET NO. 820537-TP
JUNE 15, 1989

ISSUE 5: Should Gulf Telephone be ordered to forego the net subsidy of \$188,000 per year which it received from the interLATA access subsidy pool, effective July 1, 1989?

RECOMMENDATION: Yes, effective July 1, 1989, Gulf Telephone Company should be ordered to forego the net subsidy which it receives from the interLATA access subsidy pool for the loss it sustained from going to a bill and keep environment for access charges. To forego the net subsidy means that Gulf will contribute and receive equal amounts to and from the pool. We also recommend that the subsidy received until June 30, 1989 be treated as part of Gulf's earnings.

STAFF ANALYSIS: In Order No. 19692, the Commission proposed to eliminate Gulf's subsidy. The Citizens protested the action and raised Issues 1 through 4. We have not been persuaded by any of Citizens' arguments. Staff believes that eliminating Gulf's subsidy is consistent with all prior Commission action and decisions. In fact, to allow Gulf to continue to receive its subsidy would be inconsistent.

Therefore, we recommend that Gulf be removed from the subsidy pool, effective July 1, 1989.

DOCKET NO. 820537-TP
JUNE 15, 1989

ISSUE 5: Should the subsidy payments and receipts for the other LECs in the subsidy pool be adjusted to reflect the Commission's decision in Issue 5?

RECOMMENDATION: Yes, the subsidy payments and receipts for the other LECs should be adjusted to the amounts shown in Attachment 6.

STAFF ANALYSIS: If the Commission orders Gulf to forego its subsidy as recommended in Issue 5, then each of the remaining LECs would have to contribute less to the access subsidy pool. The amounts which are currently contributed by each LEC are based on Order No. 17321 issued 3-24-87. In Attachment 6, we have prepared a schedule of revised amounts which would be contributed and received by each LEC, if Gulf is ordered to forego its subsidy. We recommend that the Commission approve the amounts shown in Attachment 6 as the new amounts to be contributed and received by each LEC for the InterLATA access subsidy pool.

1441C

ORDER OF THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Access Charges Interstate Access : Docket No. 82017-10
Charges for Toll Use of Local Exchange : Docket No. 13447
Payable LEC : 105070 7-19-88

The following Commissioners participate in the disposition of this matter:

KATIE NICHOLS, Chairman
THOMAS M. BEARD
GERALD L. GUNTER
JOHN T. HERNON
MICHAEL MCK. WILSON

Florida Public Service Commission
Communications Department

DETAILS OF PROPOSED AGENCY ACTION

ORDER ELIMINATING INTERLATA ACCESS SUBSIDY
FOR GULF TELEPHONE COMPANY

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 formal proceedings pursuant to Rule 23-26.079, Florida Administrative Code.

This Order was initiated to investigate the 1986 earnings of Gulf Telephone Company (Gulf). Based on the Commission's and the Office of Public Counsel's (Public Counsel) investigation it appeared that Gulf was earning in excess of its last authorized return on equity. At the March 29, 1988 Agency Conference, we approved a stipulation between Public Counsel and Gulf which resolved the overearning issue. The stipulation calls for Gulf to reduce certain rates and to make refunds of its overearnings. In approving that stipulation, we noted that, at the same time Gulf was overearning, the Company was also receiving a subsidy from the interLATA access subsidy pool. In effect, the customer's of other local exchange companies were contributing to Gulf's overearnings and, thereby, funding a portion of the refunds to Gulf's customers.

The interLATA access charge subsidy pool was established in July, 1985, as part of our implementation of a bill-and-keep system for interLATA access charges. The subsidy mechanism was designed to maintain revenue neutrality for each LEC experiencing a loss from access bill-and-keep. Each LEC was kept in the same relative earnings position before and after implementation of bill-and-keep for access charges. Having just embarked on the unknown regulatory trail of bill-and-keep, we created the subsidy mechanism as a cushion against the then unknown effects of our access charge decisions.

In light of Gulf's 1986 earnings level it appears that Gulf is financially healthy indeed. Therefore, we find it inappropriate that Gulf should receive an interLATA access charge subsidy in light of its current earnings posture. It is clear that Gulf no longer needs the current access subsidy to support its current earnings. Accordingly, effective August 1, 1988, Gulf shall no longer receive a subsidy from the interLATA access charge subsidy pool. All subsidy payments received by Gulf for the period January 1, 1983 through July 31, 1988, shall be treated as part of Gulf's 1988 earnings.

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2010 RECORDS/REPOSITIVE

DATE: 1983
 ORDER NO. 8707-14
 PAGE 2

In accordance with my decision to eliminate Gulf's access charge subsidy, we also find it appropriate to remove the access bill-and-keep subsidy amounts. Attached to this order as Appendix 1 are the revised subsidy amounts which shall govern the access bill-and-keep subsidy calculation.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the existing InterLATA access charge bill-and-keep subsidy received by Gulf Telephone Company shall be eliminated as set forth in the body of this order. It is further

ORDERED that the InterLATA access charge subsidy mechanism is revised as set forth in the body of this order and as shown in Appendix 1 of this Order.

By ORDER of the Florida Public Service Commission
 this 19th day of JULY 1983

Steve Zubble
 Steve Zubble, Director
 Division of Records and Reporting

(S E A L)

IN

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(1), Florida Statutes (1983), as amended by Chapter 87-145, Section 6, Laws of Florida (1987), 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.

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 at his office at 101 East Gaines Street, Tallahassee, Florida 32304-6870, by the close of business on August 9, 1983. In the absence of such a petition, this order shall become effective August 18, 1983 as provided by Rule 25-22.029(5), Florida Administrative Code, and as reflected in a subsequent order.

Case No. 1987-
 COUNTY NO. 120117 TP
 PAGE 3

Any objection to protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the following conditions and is received within the specified protest period.

If this order becomes final and effective on August 16, 1988, any party adversely 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 sewer 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 9.001(a), Florida Rules of Appellate Procedure.

