

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for ruling or,) DOCKET NO. 941196-TL
in the alternative, petition for) ORDER NO. PSC-95-0364-FOF-TL
declaratory statement or other) ISSUED: March 14, 1995
appropriate action regarding)
penalty imposed by Florida)
Public Service Commission for)
late payment of regulatory)
assessment fees by GTE Florida)
Incorporated.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING REQUEST FOR RULING

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 a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Section 350.113, Florida Statutes establishes the "Florida Public Service Regulatory Trust Fund." Each telephone company licensed or operating under Chapter 364, Florida Statutes, is required to pay to the Commission .15 percent of its gross operating revenues within thirty days following each six month period ending June 30th and December 31st. The statute requires that the funds "shall be used in the operation of the commission in the performance of the various functions and duties required of it by law." GTE Florida Incorporated (GTEFL or the company) is a telephone company licensed under Chapter 364, Florida Statutes, within the meaning of this statute.

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Section 350.113, Florida Statutes further provides that:

The commission shall provide each regulated company with written notice of the date that payment of the fee is due at least 45 days prior to such date. If any regulated company fails to pay the required fee by such date, the commission shall estimate the amount of fee due from such information as it may be able to obtain from any source and shall add 5 percent of such amount to the fee as a penalty if the failure is for not more than 30 days... The commission shall collect the fee and penalty, plus interest and all costs of collection, from the regulated company.

July 30, 1994, fell on a Saturday. On Monday, August 1, 1994, GTEFL hand delivered its check for the January through June Regulatory Assessment Fee to the Commission's Division of Administration.

On August 3, 1994, by letter from the Commission's Division of Administration, GTEFL was advised that its regulatory assessment fee was submitted late. The letter assessed the statutory 5% penalty and 1% interest.

On August 11, 1994, counsel for GTEFL responded to the letter. GTEFL cited Rule 25-22.028(5), Florida Administrative Code, which states in part:

In computing any period of time prescribed or allowed by these rules, by order of a presiding officer, or by any applicable statute.... The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

On September 8, 1994, the Commission's General Counsel responded by letter to GTEFL. He replied that the reliance on Rule 25-22.028(5), F.A.C. was misplaced, as that rule is only applicable to Commission proceedings determining substantial interests of parties, and not to the payment of regulatory assessment fees. The letter reaffirms that GTEFL's regulatory assessment fee for the January through June, 1994 period was filed late, and therefore, penalties and interest in the amount of \$42,824.26 were due and owing.

On November 11, 1994, GTEFL filed a Request for Ruling, or, in the Alternative Petition for Declaratory Statement or other Action.

In that pleading "GTEFL contends that its fee was timely filed and asks the Commission to rule that no penalties are warranted in this case."

A specific statutory provision prescribes the payment of regulatory assessment fees by telecommunications companies. Section 364.336, Florida Statutes states: "each telecommunications company licensed or operating under this chapter.... shall pay to the commission, within 30 days following the end of each 6-month period, a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business."

Rule 25-4.0161, F.A.C. sets forth the procedure for filing the fee and repeatedly emphasizes the due date and consequences for the failure to timely pay the fee:

(1) As applicable and as provided in s. 350.113, F.S., s. 364.336, F.S., and s. 364.337(4), F.S., each company shall remit a fee based upon its gross operating revenue

...
(2) Regulatory assessment fees and the applicable regulatory assessment fee return form are due... on July 30 for the preceding period or any part of the period from January 1 until June 30. Commission Form PSC/CMU 25 (1/91), entitled "Communication Company Regulatory Assessment Fee Return," applicable to local exchange telecommunications companies... (is) incorporated into this rule by reference...

The rule is silent as to the appropriate procedure when the due date falls on a Saturday. We believe that GTEFL has substantially complied with the requirements of Rule 25-4.0161, F.A.C. and Section 350.113, Florida Statutes. Therefore, we grant GTEFL's Request for Ruling that its January through June, 1994, regulatory assessment fee was timely paid.

Given the determination that GTEFL's payment was timely and that the application of statutory penalties and interest is not appropriate, GTEFL's Alternative Petition for Declaratory Statement is moot.

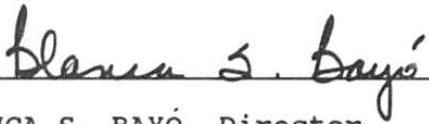
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that GTEFL's Request for Ruling that its January through June, 1994, regulatory assessment fee payment was timely is granted. It is further

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ORDERED that if no protest is filed by any person whose substantial interests are affected by the proposed agency action within 21 days of the issuance of this order, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 14th day of March, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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

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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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 4, 1995.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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

If this order becomes final and effective on the date described above, any party substantially 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 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 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 9.900(a), Florida Rules of Appellate Procedure.