

State of Florida

Commissioners:
SUSAN F. CLARK, CHAIRMAN
J. TERRY DEASON
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DIVISION OF APPEALS
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Public Service Commission

August 9, 1996

Mr. Sid J. White, Clerk
Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32301

950984-TP

Re: Case No. 88,627 - GTE Florida, Inc. v. Clark, etc., et al.

Dear Mr. White:

Enclosed for filing in this case is the Commission's Motion to Abate.

Sincerely,

David E. Smith
David E. Smith, Director
Division of Appeals

- ACK _____ DES:wlt
- ACE _____
- ADD _____ Enclosure
- CAF _____ cc: Parties of Record
- CMB _____
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FPSC RECORDS REPORTING

IN THE SUPREME COURT OF FLORIDA

GTE FLORIDA INCORPORATED,

Appellant,

v.

SUSAN F. CLARK, ETC., ET AL.,

Appellee.

CASE NO. 88,627

MOTION TO ABATE

Appellee, the Florida Public Service Commission (Commission), pursuant to Rule 9.300, Florida Rules of Appellate Procedure, requests this Court to enter an order abating this appeal until such time as the Commission has disposed of a pending Motion for Reconsideration and rendered its final order in accordance with Rule 9.020(g), Florida Rules of Appellate Procedure. In support of its Motion, the Commission states the following:

1. In 1995, the Florida Legislature passed revisions to Chapter 364, Florida Statutes, which for the first time allowed competition between local exchange telephone companies. Among the new provisions of the statute was Section 364.161, Florida Statutes, Unbundling and Resale, which required incumbent local exchange companies to offer their services for resale to competitors "to the extent technically and economically feasible".

The statute further provided that the parties should negotiate agreements for the unbundled services and that the Commission should arbitrate issues on which the companies could not agree.

2. In accordance with Section 364.161 and procedures adopted by the Commission, Metropolitan Fiber Systems of Florida, Inc. (MFS) filed a petition on January 24, 1996 requesting that the Commission establish the rates, terms and conditions for resale of services provided by GTE Florida, Inc. (GTEFL) and Central Telephone Company of Florida/United Telephone Company of Florida (Centel/United). MFS and GTEFL were able to resolve some issues between them and entered into a "Partial Florida Co-Carrier Agreement" which was approved by the Commission in the order on appeal in this case, Order No. PSC-96-0811-FOF-TP, issued June 24, 1996. That order also embodied the Commission's decision after hearing on all disputed issues between MFS and GTEFL.

3. On July 8, 1996, MFS filed a Motion for Reconsideration of Order No. PSC-96-0811-FOF-TP. On July 22, 1996, GTEFL filed its "Reply Opposing the Motion for Reconsideration of Metropolitan Fiber Systems of Florida, Inc." On the same date, GTEFL filed its Notice of Appeal in this case. MFS's motion remains pending at this time.

4. Rule 9.020(g)(1), Florida Rules of Appellate Procedure, provides that if a Motion for Reconsideration is filed, then

the final order shall not be deemed rendered with respect to any claim between the movant and any party against whom relief is sought by the motion or motions until the filing of a signed, written order disposing of all such motions between such parties.

5. MFS's Motion for Reconsideration seeks further Commission review of issues which were in dispute between MFS and GTEFL. In its reply, GTEFL clearly opposes further Commission consideration of the issues raised in MFS's motion. These issues will be resolved only when the Commission issues its final order granting or denying reconsideration.

6. Rule 9.110(m), Florida Rules of Appellate Procedure, provides:

If a notice of appeal is filed before rendition of a final order, the appeal shall be subject to dismissal as premature. However, if a final order is rendered before dismissal of the premature appeal, the premature notice of appeal shall be considered effective to vest jurisdiction in the court to review the final order. Before dismissal, the Court in its discretion may permit the lower tribunal to render a final order.

7. GTEFL's appeal pending reconsideration of the Commission's order is premature and subject to dismissal. However, the Commission asks only that the Court abate this matter until the final order on reconsideration has been issued. This will prevent the possibility of multiple, uncoordinated appeals of the same order. GTEFL will not be prejudiced by abatement and the interest of judicial economy will be served.

WHEREFORE, appellee, the Florida Public Service Commission, asks this Court to enter an order abating this appeal until such time as the pending motion for reconsideration of Metropolitan

Fiber Systems of Florida, Inc. has been disposed of and a final order rendered.

Respectfully submitted,

ROBERT D. VANDIVER
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A handwritten signature in black ink, appearing to read "David E. Smith", written over a horizontal line.

DAVID E. SMITH
Director of Appeals
Florida Bar No. 309011

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to the following persons by U.S. Mail this 9th day of August, 1996.

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