

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a rate) DOCKET NO. 920188-TL
increase by GTE Florida) ORDER NO. PSC-96-1266-FOF-TL
Incorporated.) ISSUED: October 8, 1996
_____)

The following Commissioners participated in the disposition of this matter:

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

FINAL ORDER ON REMAND

BY THE COMMISSION:

BACKGROUND

On May 1, 1992, GTE Florida Incorporated (GTEFL) filed an application for increased rates. GTEFL originally requested an annual revenue increase of \$110,997,618. On September 3, 1992, GTEFL submitted revised testimony and exhibits, in which it reduced the requested increase to \$65,994,207.

This Commission held customer hearings on August 17, and September 16, 17, and 24, 1992, in Tampa, St. Petersburg, Sarasota, and Lakeland, respectively, and technical hearings on October 13, 14, 15, 16, and 19, 1992, in Tallahassee. By Order No. PSC-93-0108-FOF-TL, issued January 21, 1993, we determined that GTEFL's rates should be reduced by \$14,475,000.

On February 4, 1993, GTEFL filed a Motion for Reconsideration of Order No. PSC-93-0108-FOF-TL. By Order No. PSC-93-0818-FOF-TL, issued May 27, 1993, we modified our decision and ordered that GTEFL's annual revenues be reduced by \$13,641,000.

On June 25, 1993, GTEFL served notice of its appeal of Orders Nos. PSC-93-0108-FOF-TL and PSC-93-0818-FOF-TL. It did not request a stay of those orders. On July 7, 1994, the Supreme Court affirmed, in part, and reversed, in part, Orders Nos. PSC-93-0108-FOF-TL and PSC-93-0818-FOF-TL, and remanded the case for further action consistent with its opinion. GTE Florida Incorporated v. Deason, 642 So. 2d 545 (Fla. 1994). Among other things, the Court determined that the Commission should not have disallowed certain

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costs associated with transactions between GTEFL and two of its affiliates, GTE Data Services and GTE Supply.

On remand, by Order No. PSC-95-0512-FOF-TL, issued April 26, 1995, we authorized GTEFL to increase rates prospectively for local exchange access services, including flat and measured residential and business access lines, network access registers, semipublic coin lines, PATS lines, and shared tenant service trunks, by a uniform \$.18 per month, and to increase rates for local and toll directory assistance. However, we also found that GTEFL's failure to request a stay pending the disposition of its appeal precluded recovery of these expenses during the pendency of the appeal.

On May 25, 1995, GTEFL served notice of its appeal of Order No. PSC-95-0512-FOF-TL. On February 29, 1996, the Supreme Court ruled that GTEFL should be allowed to recover the previously disallowed expenses, for the period between May 27, 1993, and May 3, 1995, through a surcharge. However, the Court specified that "no customer should be subjected to a surcharge unless that customer received GTE services during the disputed period of time." GTE Florida Incorporated v. Clark, 21 Fla. L. Weekly S101 (Fla. Feb. 29, 1996).

On remand, by Order No. PSC-96-0667-FOF-TL, issued May 17, 1996, we authorized GTEFL to apply a one-time surcharge of \$8.65, in June 1996, to subscribers of local exchange access services, including flat and measured residential and business access lines, network access registers, semi-public coin lines, PATS lines, and shared tenant service trunks, who received service during the period May 27, 1993, through May 3, 1995. Subscribers who received service for only a portion of the period were to be assessed a prorated surcharge amount.

On June 7, 1996, the Office of Public Counsel (OPC) filed a protest to Order No. PSC-96-0667-FOF-TL, and requested a hearing under Section 120.57(1). On June 20, 1996, GTEFL moved to dismiss OPC's protest. On July 2, 1996, OPC responded to GTEFL's motion to dismiss.

By Order No. PSC-96-1021-FOF-TL, we denied GTEFL's motion to dismiss OPC's protest, and denied OPC's petition for a Section 120.57(1) hearing. Instead, we ordered that the subject of OPC's protest be set for a Section 120.57(2) proceeding, and directed parties to file briefs by August 9, 1996. This order concerns the issues briefed by the parties in the Section 120.57(2) process.

DECISION

In its second remand order the Supreme Court found that GTEFL should be allowed to assess a surcharge to recover erroneously disallowed expenses, for the period between May 27, 1993 and May 3, 1995. Further, the Court directed that no customer should be assessed a surcharge unless the customer received service from GTEFL during that 24-month period. Thus, GTEFL customers who took service from the Company during the period May 27, 1993 to May 3, 1995 will be assessed a surcharge.

Since GTEFL and the OPC have stipulated to the amount to be recovered from a surcharge, the sole disputed issue for our consideration involves identifying the customers who should be surcharged. In Order No. PSC-96-0667-FOF-TL, we determined that the surcharge should be applied to those customers who received service during the specified period, who were still GTEFL subscribers. In its brief GTEFL states that the Supreme Court's second remand order only specified two requirements:

- (1) that a surcharge be imposed to allow GTEFL to fully recover its incorrectly denied expenses; and
- (2) that the surcharge should not be levied on customers who did not receive GTEFL services during the period between the Commission's mistaken opinion (May 27, 1993) and implementation of the local rate increase in the first remand (May 3, 1995). (GTEFL Brief, p.2).

GTEFL concludes that the Commission's Order No. PSC-96-0667-FOF-TL fully complies with the Court's decision and the terms in that Order regarding a surcharge should be implemented as soon as possible.

In its brief, OPCs contend that all GTEFL subscribers during this period, both those who still receive service and those who have disconnected, are subject to the surcharge. Accordingly, under OPC's interpretation, GTEFL would be required to bill the surcharge to current and former customers. OPC offers two arguments in support of its interpretation. First, OPC argues that this situation is the converse of that where a refund would be required, and should be handled comparably. Second, OPC asserts that GTEFL should, as competitive businesses do, charge its customers only for those services they actually receive.

THE REFUND COMPARISON

OPC cites to Commission Rule 25-4.114, Florida Administrative Code, Refunds:

(3) Basis of Refund. Where the refund is the result of a specific rate change, including interim rate increases, and the refund can be computed on a per customer basis, that will be the basis for the refund. However, where the refund is not related to specific rate changes, such as a refund for overearnings, the refund shall be made to customers of record as of a date specified by the Commission. In such case, refunds shall be made on the basis of access lines. Per customer refund refers to a refund to every customer receiving service during the refund period. Customer of record refund refers to a refund to every customer receiving service as of a date specified by the Commission...

(5) Method of Distribution. For those customers still on the system, a credit shall be made on the bill. In the event the refund is for a greater amount than the bill, the remainder of the credit shall be carried forward until the refund is completed. If the customer so requests, a check for any negative balance must be sent to the customer within ten (10) days of the request.

For customers entitled to a refund but no longer on the system, the company shall mail a refund check to the last known billing address except that no refund for less than \$1.00 will be made to these customers.

OPC asserts that if a refund were required, a "per customer" refund would apply; and the same procedure should apply for a surcharge. OPC states:

Had there been an excessive local rate and directory assistance charge during the period May 27, 1993 through May 7, 1995, the refund would come squarely within the definition of a "per customer" refund. The Commission's

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rule would have required GTE to mail a check to customers no longer on GTE's system. (OPC Brief, p. 5)

We disagree with OPC's comparison. Had specific rates been in effect during the two-year period that were excessive, a "per customer" refund would have been appropriate. Likewise, if specific rates charged during the two-year period could have been identified as having been underpriced, a "per customer" surcharge would be appropriate. That, however, is not the case here; there were no uniquely identifiable rates from which the disallowed expenses would have been recovered. OPC improperly assumes that the recurring increases authorized in May 1995 can retroactively serve this purpose. (See OPC Brief, p. 2: "In effect, the Court's action requires the Commission to charge the \$.18 per month local rate increase and directory assistance rate increase for the period May 27, 1993, through May 7, 1995.")

Further, we believe that OPC's view will virtually guarantee that GTEFL will not fully recover the previously disallowed expenses. According to the stipulation signed by GTEFL and OPC, there were approximately 1.9 million access lines in service as of April 1995. Based on GTEFL's analysis, of the customers who received service during the two-year period, approximately 1.1 million will still be receiving service in September 1996. As a result, if we accept OPC's position GTEFL will be required to try to locate possibly as many 800,000 customers who no longer receive service. GTEFL asserts that it has no way to locate customers that left its system years ago; and even if it could find them, it has no way of making them pay the surcharge.

We believe that such an undertaking would be burdensome and expensive. In addition to being unduly onerous and impractical, we believe that the imposition of such a requirement on GTEFL would directly conflict with the Supreme Court's Order. In its Order, the Court was quite clear as to its desire:

The issue in this case is whether GTE should be able to recover its expenses, erroneously denied in the first instance, for the period between May 27, 1993, and May 3, 1995.

We reverse the PSC's order implementing our remand. We mandate that GTE be allowed to recover its erroneously disallowed expenses through the use of a surcharge.

GTE Florida Incorporated v. Clark, 21 Fla. L. Weekly S101 (Fla. Feb. 29, 1996).

We believe that any surcharge procedure that does not provide a reasonable assurance that GTEFL will recover its previously disallowed expenses violates the Court's mandate.

THE COMPETITIVE BUSINESS ARGUMENT

Noting that Chapter 364 expressly incorporates procompetitive policies, OPC asserts that GTEFL should do what competitive businesses would do:

charge customers for the services provided to them instead of sending a majority of its current customers bills for services provided to other customers. (OPC Brief, p.8).

While ideally this may be the course to follow, for the reasons presented above, under these circumstances GTEFL would have to forego recovery of at least part of the previously disallowed expenses. While GTEFL could do this, we believe it is clear that the Court did not expect it.

Upon consideration, we believe that the method incorporated in Order No. PSC-96-0667-FOF-TL is the only viable alternative that comports with the Supreme Court's directive, and ensures that GTEFL fully recovers its previously disallowed expenses. We see no alternative that will make GTEFL whole, and resolve this matter once and for all.

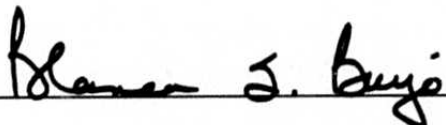
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that GTEFL shall implement a one-time surcharge during October 1996 based on the method outlined in Order No. PSC-96-0667-FOF-TL to subscribers of local exchange services, including flat and measured residential and business access lines, network access registers, semi-public coin lines, PATS lines, and shared tenant services trunks, who received service during the period May 27, 1993, through May 7, 1995. The surcharge shall be prorated for those customers who were not subscribers throughout the entire period, and it shall not be collected from Lifeline customers. Based on data contained in the stipulation between OPC and GTEFL dated August 9, 1996, the surcharge amount shall be \$9.66 per line (\$10,314,114 divided by 1,068,096 lines). It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 8th
day of October, 1996.



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.

Any party adversely affected by the Commission's final action in this matter may request: 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.