

ORIGINAL
FILE COPY



GTE Telephone Operations

Marceil Morrell**
Vice President & General Counsel - Florida

Associate General Counsel
Anthony P. Gillman**
Leslie Reicin Stein*

Attorneys*
Kimberly Caswell
M. Eric Edgington
Ernesto Mayor, Jr.

One Tampa City Center
Post Office Box 110, FLTC0007
Tampa, Florida 33601
813-224-4001
813-228-5257 (Facsimile)

* Licensed in Florida
** Certified in Florida as Authorized House Counsel

October 11, 1996

Ms. Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 950984-TP
Resolution of petition(s) to establish nondiscriminatory rates, terms and conditions for resale involving local exchange companies and alternative local exchange companies pursuant to Section 364.161, Florida Statutes

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen copies of GTE Florida Incorporated's Motion for Stay of Order Pending Judicial Review in the above matter.

Service has been made as indicated on the Certificate of Service. If there are any questions with regard to this matter, please contact me at 813-228-3087.

Very truly yours,

Anthony P. Gillman
Anthony P. Gillman

- ACK
- AFA
- APP (FYI)
- CAF
- CMU
- CTR
- EAG
- LEG 2
- LIN 5
- OPC
- RCH
- SEC 1
- WAS
- DTH

RECEIVED & FILED

EPSC-BUREAU OF RECORDS

A part of GTE Corporation

DOCUMENT NUMBER-DATE

10903 OCT 11 96

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution of petition(s) to establish)	
nondiscriminatory rates, terms and conditions)	Docket No. 950984-TP
for resale involving local exchange companies)	Filed: October 11, 1996
and alternative local exchange companies)	
pursuant to Section 364.161, Florida Statutes)	
<hr/>		

**GTE FLORIDA INCORPORATED'S
MOTION FOR STAY OF ORDER
PENDING JUDICIAL REVIEW**

GTE Florida Incorporated (GTEFL), pursuant to F.P.S.C. Rule No. 25-22.061(1)(a), seeks a stay of the Florida Public Service Commission's Order No. PSC-96-0811-FOF-TP (Initial Order) and Order No. PSC-96-1160-FOF-TP (Order on Reconsideration) pending judicial review. In support of this motion, GTEFL states as follows:

I. Background

1. Under the 1995 revisions to Chapter 364 of the Florida Statutes, incumbent local exchange carriers (LECs) were required to unbundle their network features, functions and capabilities and offer them for resale to the extent it is technically and economically feasible to do so. Fla. Stat. §364.161(1). Alternative local exchange carriers (ALECS) were required to negotiate with LECs to establish rates, terms and conditions for such unbundled elements. After entering negotiations with GTEFL, Metropolitan Fiber Systems of Florida, Inc. (MFS) reached a partial agreement on certain issues. However, the parties reached an impasse on the compensation arrangements for the unbundled elements.

Unable to reach an agreement, MFS filed a petition with the Commission to arbitrate their dispute. Fla. Stat. §364.161(1).

2. As part of its unbundling proposal, GTEFL agreed to provide unbundled loops and ports. Although GTEFL proposed new rates for the ports, the rates for loops were already tariffed. As such, GTEFL proposed to charge its currently tariffed rates for those loops. As noted by GTEFL witness Dennis Trimble, “[u]nbundled loop prices are already available today in GTEFL’s Facilities for Intrastate Access tariff.” (Trimble Direct, p. 4).

The tariffed loop prices are noted below:

	<u>Unbundled Loop</u>	<u>Existing Tariffed Rate</u>
a.	2-wire analog voice grade loop;	\$23.00
b.	4-wire analog voice grade loop;	\$33.00
c.	2-wire ISDN digital grade loop;	\$23.00
d.	4-wire ISDN digital grade loop;	\$250 1st System \$154.00 Add'l System

3. Although GTEFL proposed to charge its existing tariffed rates, the Company acknowledged that these rates alone were not sufficient to recover the contribution to joint and common costs provided by services carried over the local loop. Presently, the local loop provided to GTEFL’s customers serves as the platform for many other services such as toll and discretionary services. The rates for these services have been set by the Commission at artificially high levels in order to subsidize the below-cost residential service provided by GTEFL throughout its operating territory. GTEFL argued that this

existing subsidy flow should be addressed and replaced with a new mechanism. Otherwise, the Commission would be confiscating GTEFL's property.

4. On June 24, 1996, the Commission issued its Initial Order, adopting rates which were (except for 4-wire ISDN digital grade loop) lower than the existing tariffed rates noted above. The Commission lowered the rates to the TSLRIC levels, thereby removing all existing contribution to joint and common costs. In addition to lowering those rates, the Commission also rejected GTEFL's request to replace the existing subsidy mechanism with some other mechanism. By refusing to implement another mechanism, the Commission effectively eliminated the existing subsidy entirely.

5. GTEFL appealed the Commission's Initial Order to the Florida Supreme Court. The notice of appeal was filed on July 22, 1996.

6. MFS also sought reconsideration of the Commission's Initial Order. Because of this motion, the Commission took the position that its Initial Order was not final. The Commission filed a motion to abate GTE's appeal of the Initial Order until a final order was rendered on MFS' motion for reconsideration. GTE agreed to the abatement.

7. In its Order on Reconsideration, the Commission denied MFS' motion that the Initial Order be reconsidered. The Commission also granted a stay of the effective date of GTE's tariffs until thirty days after the Order on Reconsideration is issued. Under this Order, GTE's tariffs will become effective on October 17, 1996.

8. On October 11, 1996, GTE filed its notice of appeal of both the Initial Order and Order on Reconsideration. GTEFL's notice to appeal is attached hereto.

9. GTE had previously moved the Commission for a stay of the Initial Order. However, this motion was never addressed because the Initial Order did not become final until the Order on Reconsideration was issued. As such, GTE is refiling the motion to stay both the Initial Order and Order on Reconsideration.

**II. Initial Order and Order on Reconsideration
Involve a Decrease in Rates**

10. GTEFL seeks a stay pursuant to Rule No. 25-22.061(1)(a) which requires that a stay be granted pending judicial review when the Order involves a "decrease in rates" charged to GTEFL's customers. In these instances, it is not necessary for GTEFL to show that it is likely to prevail on the merits, that it has suffered irreparable harm or that the stay is not contrary to the public interest.

11. There is no question in this case that the Initial Order and Order on Reconsideration decrease the rates presently charged by GTEFL to its carriers and end user customers.

12. The two orders effectively mandate a decrease in GTEFL's local loop rates charged to MFS and other carriers. As noted above, the unbundled loops in question, or their functional equivalents, are already tariffed. However, the rates approved by the Commission are lower than those tariffed rates, as shown below:

	<u>Unbundled Loop</u>	<u>Existing Rate</u>	<u>Commission Rate</u>
a.	2-wire analog voice grade loop;	\$23.00	\$20.00
b.	4-wire analog voice grade loop;	\$33.00	\$25.00
c.	2-wire ISDN digital grade loop;	\$23.00	\$20.00

- d. 4-wire ISDN digital grade loop; \$250 1st System same
\$154.00 Add'l
System

13. As reflected above, GTEFL's current loop rates are being decreased. The same 2-wire loop that MFS could have purchased before at \$23.00 is now priced at \$20.00. Likewise, the same 4-wire loop which presently is priced at \$33.00 is now priced at \$25.00.

14. The Commission has also effectively decreased the rates GTEFL charges to its end users and interexchange carriers by eliminating the subsidy payment made through the provision of toll, access and other discretionary services. These services presently subsidize residential rates and are part and parcel of the local loop provided to the customer. By adopting a rate which provides no contribution to this subsidy and by refusing to replace this subsidy with a different mechanism, the Commission has decreased the rates charged by GTEFL. In fact, the Commission has reduced the existing subsidy to zero.

III. No Bond Should Be Required

15. Rule 25-22.061(1)(a) permits the Commission to require GTEFL to post a bond or issue some other corporate undertaking as a condition of the stay. GTEFL recommends that the bond should be set at zero. No bond is necessary because granting the stay will not prejudice MFS, the only party who petitioned the Commission to resolve a dispute between it and GTEFL.

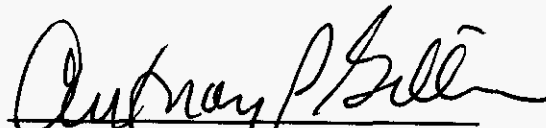
16. MFS will not be prejudiced by this stay because MFS also dislikes the Initial Order. MFS filed a motion of reconsideration of that order, arguing that the rates approved by the Commission are too high. MFS contends that the Commission "ignored or misapplied the applicable law or failed to considered [sic] significant evidence presented in the hearing." *Motion for Reconsideration by Metropolitan Fiber Systems of Florida, Inc.* at 3. MFS cannot complain about a stay of orders which it thinks were erroneously decided.

17. It is obvious from its motion for reconsideration that MFS feels strongly that the Commission erred in issuing the Initial Order on unbundling and denying its motion for reconsideration. If MFS agrees with GTEFL that the two orders are based upon error, then they cannot be prejudiced by the fact that GTEFL is seeking a stay of those erroneous orders. Indeed, MFS may welcome such a stay.

GTEFL respectfully requests the Commission to stay Order No. PSC-96-0811-FOF-TP, Order No. PSC-96-1160-FOF-TP and the effective date of GTEFL's tariffs filed pursuant to those Orders until GTEFL's appeal of them is concluded.

Respectfully submitted on October 11, 1996.

By:

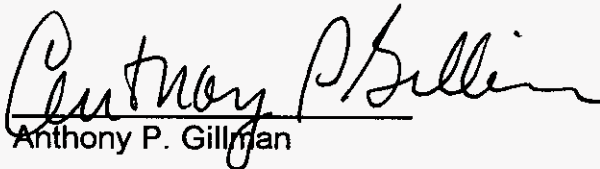


Anthony P. Gillman
Kimberly Caswell
Post Office Box 110, FLTC0007
Tampa, Florida 33601
Telephone: 813-228-3087

Attorneys for GTE Florida Incorporated

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Motion for Stay of Order Pending Judicial Review in Docket No. 950984-TP were sent via U.S. mail on October 11, 1996 to the parties on the attached list.


Anthony P. Gillman

Donna L. Canzano
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd., Room 370
Tallahassee, FL 32399-0850

David B. Erwin
Young VanAssenderp et al.
225 S. Adams St., Ste. 200
P.O. Box 1833
Tallahassee, FL 32302

Donald L. Crosby
Continental Cablevision, Inc.
Southeastern Region
7800 Belfort Parkway Suite 270
Jacksonville, FL 32256-6925

Lee Willis
Macfarlane Ausley et al.
227 S. Calhoun Street
Tallahassee, FL 32302

F. B. Poag
Sprint/United-Florida
555 Lake Border Drive
Apopka, FL 32703

Peter Dunbar/Robert Cohen
Pennington Culpepper et al.
215 S. Monroe St., 2nd Floor
Tallahassee, FL 32301

James Falvey/Richard Rindler
Swidler & Berlin
3000 K Street, N.W., Ste. 300
Washington, DC 20007

Jill Butler
Florida Regulatory Director
Time Warner Communications
2773 Red Maple Ridge
Tallahassee, FL 32301

Floyd R. Self
Messer Caparello Madsen
Goldman & Metz, P.A.
215 S. Monroe St., Suite 701
Tallahassee, FL 32302

J. Phillip Carver c/o Nancy Sims
Southern Bell Tel. & Tel. Co.
150 S. Monroe St., Suite 400
Tallahassee, FL 32301

Andrew D. Lipman
Metropolitan Fiber Systems of Fla.
One Tower Lane, Suite 1600
Oakbrook Terrace, IL 60181-4630

John Murray
Payphone Consultants, Inc.
3431 N.W. 55th Street
Ft. Lauderdale, FL 33309-6308

Patricia Kurlin
Intermedia Comm. of Florida
3625 Queen Palm Drive
Tampa, FL 33619

Gary T. Lawrence
City of Lakeland
501 East Lemon Street
Lakeland, FL 33801-5079

Leslie Carter
Digital Media Partners
2600 McCormack Dr., Suite 255
Clearwater, FL 34619-1098

Richard D. Melson
Hopping Green Sams & Smith
123 S. Calhoun Street
Tallahassee, FL 32314

Michael W. Tye
AT&T
101 North Monroe St., Suite 700
Tallahassee, FL 32301

Charles Beck
Office of Public Counsel
111 W. Madison St., Room 812
Tallahassee, FL 32399-1400

Steven D. Shannon
MCI Metro Access Trans.
2250 Lakeside Boulevard
Richardson, TX 75082

H. W. Goodall
Continental Fiber Technologies
4455 BayMeadows Road
Jacksonville, FL 32217-4716

Richard A. Gerstemeier
Time Warner AxS of Florida
2251 Lucien Way, Suite 320
Maitland, FL 32751-7023

Leo George
Winstar Wireless of Florida
1146 19th St., N.W., Suite 200
Washington, DC 20036

Jodie Donovan-May
Teleport Communications Group
2 Lafayette Centre, Suite 400
1133 21st Street, N.W.
Washington, DC 20036

Patrick K. Wiggins
Wiggins & Villacorta, P.A.
501 E. Tennessee St., Suite B
Tallahassee, FL 32308

Michael J. Henry
MCI Telecommunications Corp.
780 Johnson Ferry Rd., Suite 700
Atlanta, GA 30342

Robin D. Dunson
1200 Peachtree St., N.E.
Promenade I, Room 4038
Atlanta, GA 30309

Kenneth Hoffman
Rutledge Ecenia et al.
215 S. Monroe St., Suite 420
Tallahassee, FL 32301

Timothy Devine
MFS Communications Co. Inc.
Six Concourse Pkwy., Ste. 2100
Atlanta, GA 30328

Sue E. Weiske, Senior Counsel
Law Department
Time Warner Communications
160 Inverness Drive West
Englewood, CO 80112

Benjamin Fincher
Sprint Communications Co.
3065 Cumberland Circle
Atlanta, GA 30339

Greg Krasovsky
Commerce & Economic Oppor.
Room 426 Senate Office Building
Tallahassee, FL 32399

Laura Wilson/Charles Dudley
Florida Cable Telecomm. Assn.
310 N. Monroe Street
Tallahassee, FL 32301

C. Everett Boyd, Jr.
Ervin Varn Jacobs Odom & Ervin
305 S. Gadsden Street
Tallahassee, FL 32301

Bill Tabor
Utilities & Telecommunications
Room 410 House Office Building
Tallahassee, FL 32399

Mark K. Logan
Bryant Miller & Olive, P.A.
201 S. Monroe Street, Suite 500
Tallahassee, FL 32301

Graham A. Taylor
TCG South Florida
1001 W. Cypress Creek Rd.
Suite 209
Ft. Lauderdale, FL 33309-1949

Brian Sulmonetti
LDDS Communications Inc.
1515 S. Federal Highway, #400
Boca Raton, FL 33432-7404

Nels Roseland
Executive Office of the Governor
Office of Planning and Budget
The Capitol, Room 1502
Tallahassee, FL 32399-0001