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ORIGINAL  
FILE COPY

Charles A. Guyton  
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June 5, 1997

By Hand Delivery

970676-TL

Blanca S. Bayó, Director  
Records and Reporting  
Florida Public Service Commission  
4075 Esplanade Way, Room 110  
Tallahassee, Florida 32399-0850

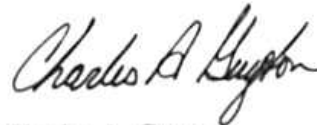
**Re: Petition for Waiver of Rule 25-4.005(1)(c)**

Dear Ms. Bayó:

Enclosed for filing on behalf of St. Joseph Telephone & Telegraph Company, Gulf Telephone Company, and The Florida Telephone Company, Inc. are the original and fifteen (15) copies of Petition For Waiver of Rule 25-4.005(1)(c).

If you or your Staff have any questions regarding this filing, please contact me.

Very truly yours,



Charles A. Guyton

- ACK \_\_\_\_\_
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  - APP \_\_\_\_\_
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## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition For Waiver Of Rule )  
25-4.005(1)(c) )

Docket No.  
Filed: June 5, 1997

## PETITION FOR WAIVER OF RULE 25-4.005(1)(c)

Pursuant to Section 120.545, Florida Statutes (1996 Supp.), St. Joseph Telephone & Telegraph Company, Gulf Telephone Company, and The Florala Telephone Company, Inc. ("the Companies") hereby petition the Florida Public Service Commission ("Commission") to waive a portion of Rule 25-4.005(1)(c), Florida Administrative Code as it will apply to the Companies' planned petition seeking approval of the merger of Gulf Telephone Company and The Florala Telephone Company, Inc. with and into St. Joseph Telephone & Telegraph Company and the associated transfers of the certificates of public convenience and necessity of Gulf Telephone Company and The Florala Telephone Company, Inc. The Companies seek a waiver of the portion of Rule 25-4.004(1)(c), Florida Administrative Code which requires the filing of a complete list of all subscribers sent a written notice. As grounds for this petition, the Companies state:

1. The petitioners' names, addresses, telephone numbers and facsimile numbers are:

St. Joseph Telephone & Telegraph Company  
502 5th Street  
Port St. Joe, Florida 32456  
Tel. No. (904) 229-7222  
Fax No. (904) 229-8689

Gulf Telephone Company  
115 W. Drew Street  
Perry, Florida 32347  
Tel No. (904) 594-0900  
Fax No. (904) 594-7462

The Florala Telephone Company, Inc.  
522 North Fifth Street  
Florala, Alabama 36442  
Tel. No. (334) 858-3211  
Fax No. (334) 858-3459

2. The Companies seek, in regard to their planned petition to consolidate Gulf Telephone Company and The Florala Telephone Company, Inc. into St. Joseph Telephone & Telegraph Company, a waiver of the following portion of Rule 25-4.005(1)(c), Florida Administrative Code:

A complete lists [sic], by telephone number (numerical sequence), name address, and class of service of all subscribers sent a written notice shall be furnished the Commission immediately following distribution.

3. The statute which Rule 25-4.005(1)(c), Florida Administrative Code, implements is Section 364.335, Florida Statutes (1995).

4. Absent a waiver of the portion of Rule 25-4.005(1)(c), Florida Administrative Code, which requires the filing of a complete list of subscribers furnished a notice of intent to file a petition to transfer a certificate, both the customers of Gulf Telephone Company and The Florala Telephone Company, Inc. and the companies themselves will suffer substantial hardship. The substantial hardship faced by the customers of Gulf Telephone Company, The Florala Telephone Company, Inc. and their customers if the rule is not waived are set forth in paragraphs 5 and 6.

Gulf Telephone Company  
115 W. Drew Street  
Perry, Florida 32347  
Tel No. (904) 594-0900  
Fax No. (904) 594-7462

The Florala Telephone Company, Inc.  
522 North Fifth Street  
Florala, Alabama 36442  
Tel. No. (334) 858-3211  
Fax No. (334) 858-3459

2. The Companies seek, in regard to their planned petition to consolidate Gulf Telephone Company and The Florala Telephone Company, Inc. into St. Joseph Telephone & Telegraph Company, a waiver of the following portion of Rule 25-4.005(1)(c), Florida Administrative Code:

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5. The detailed information required on the list to be provided to the Commission is confidential to some of the customers of the Companies. None of the customers have publicly disclosed the type of service they take; some of the customers have not publicly disclosed their complete address; and some of the customers have opted for unlisted telephone numbers which are not listed in the local telephone directories and which are not generally available to the public. To those customers this detailed information is confidential, but if it is provided to the Commission without a request for confidential treatment, the Commission must disclose it as a public record. Disclosure of the confidential customer information would work a substantial hardship to the customers who consider this information to be confidential. It would constitute an invasion of the right of privacy, a legal right protected by the Florida Constitution.

6. It would also work a substantial hardship upon the Companies if they were to undertake to protect the confidentiality of the information on the required list. It would be a severe economic hardship for the Companies to have to (a) contact each of their customers (over 13,00 for Gulf and Florida) and inquire as to which of the required information on the list the customer considers to be confidential, (b) retain counsel for the preparation of the request for confidentiality and supporting documentation necessary to file to protect the confidential information, and (c) prepare the line-by-line justification of the confidential information.

7. The requirement of filing the list of all subscribers provided a written notice has regularly been waived by the Commission.<sup>1</sup> Requiring the Companies to file the list of affected

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<sup>1</sup> See, Order No. PSC-93-0152-FOF-TL, Docket No. 920935-TL, 93 FPSC 1:773; Order No. 12260, Docket No. 830231-TL, 83 FPSC 7:330; Order No. 12029, Docket No. 830195-TL, 83 FPSC 6:131.

subscribers when the Commission has regularly waived such a requirement for other companies in the same circumstance would be a violation of principles of fairness.

8. The purposes of the underlying statute will be achieved with a waiver of the filing of the list of affected subscribers. The underlying statute envisions that there will be notices of transfers of certificates, but it leaves the notice requirements, both as to content and circulation, up to the Commission. Section 364.335, Florida Statutes states, in pertinent part: "Each applicant for a certificate shall: ... Submit an affidavit that the applicant has caused the notice of its application to be given to such persons and in such manner as may be prescribed by commission rule."<sup>2</sup> The statute does not even address the subsequent filing of a list of subscribers provided with a notice.

9. The purpose of the underlying statute is that there be adequate notice given of a transfer of a certificate. Even with a waiver of the filing of the list of subscribers notified, there will be more than adequate notice. As otherwise provided by Rule 25-4.05(1)(c), Florida Administrative Code, there will be notices sent to governing bodies in the affected service areas; there will be notices provided to the Commission and Public Counsel; there will be legal notices in newspapers of general circulation in the service areas; and, most importantly, all the customers served by Gulf Telephone Company and The Florida Telephone Company, Inc. will receive a written notice. The purpose of the underlying statute - adequate notice - will be well served even without the filing of the list of subscribers provided a written notice. Moreover, the Companies

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<sup>2</sup> Although this language is applicable to applications for certificates, a later subsection of the statute provides that "transfer ... of a certificate shall be subject to the provisions of this section..." Section 364.335(4), Florida Statutes (1995).

will compile the required list and make it available for inspection and review by the Commission Staff; they simply want to avoid the hardship incident to filing the list.

10. The waiver sought is temporary. The Companies only seek a waiver of the subscriber list filing requirement as applicable to the planned petition to consolidate Guif Telephone Company and The Florala Telephone Company, Inc. into St. Joseph Telephone & Telegraph Company. The waiver would be limited to that docket only. Subsequent to and outside of that docket, the rule would continue to operate as written unless other petitioners under the rule sought waivers or variances or the Commission's rule were repealed.

WHEREFORE, the Companies request, as to their planned petition to consolidate Gulf Telephone Company and The Florala Telephone Company with and into St. Joseph Telephone & Telegraph Company, that the Commission grant a waiver of the requirement in Rule 25-4.005(1)(c) that the petitioners file with the Commission immediately following distribution a complete list, by telephone number, name address, and class of service all subscribers sent a written notice of the petitioners' intent to petition for transfer of certificates.

Respectfully submitted,

Steel Hector & Davis LLP  
Suite 601, 215 S. Monroe Street  
Tallahassee, Florida 32301  
Tel. No. (904) 222-2300  
Fax No. (904) 222-8410

By:   
Charles A. Guyton

## CERTIFICATE OF SERVICE

I hereby certify that on this the 5th day of June, 1997, a copy of the foregoing Petition for Waiver of Rule 25-4.005(1)(c) was served by hand delivery\* or First Class United States Mail on the following:

Martha Carter Brown, Esquire\*  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Jack Shreve, Esquire  
Public Counsel  
Office of Public Counsel  
Room 812  
111 West Madison Street  
Tallahassee, Florida 32399-1400

By   
Charles A. Guyton