

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

MEMORANDUM

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July 24, 1997

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TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (MONTEIRO) *WJP*
DIVISION OF LEGAL SERVICES (PELLEGRINI) *MB*

RE: 970676-TL - PETITION BY ST. JOSEPH'S TELEPHONE AND
TELEGRAPH COMPANY, GULF TELEPHONE COMPANY, AND THE
FLORALA TELEPHONE COMPANY, INCORPORATED FOR PARTIAL
WAIVER OF REQUIREMENTS OF RULE 25-4.005(1)(C), FLORIDA
ADMINISTRATIVE CODE

AGENDA: 08/05/97 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 09/03/97 - STATUTORY DEADLINE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\970676.RCM

CASE BACKGROUND

St. Joseph Telephone & Telegraph Company, Gulf Telephone Company, and The Florala Telephone Company, Inc., are currently under the same ownership. The three companies have petitioned the Commission for 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 transfer is addressed in staff's recommendation in Docket No. 970809-TP, which will be taken up following this item.

On June 5, 1997, St. Joseph Telephone & Telegraph Company, Gulf Telephone Company, and The Florala Telephone Company, Inc., jointly filed a petition for a partial waiver of Rule 25-4.005, Florida Administrative Code, Transfer of Certificate of Public

DOCUMENT NUMBER-DATE

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FOSC-RECORDS/REPORTING

DOCKET NO. 970676-TL
JULY 24, 1997

Convenience and Necessity As to All or Portion of Service Area (Attachment A). Rule 25-4.005(1)(c), Florida Administrative Code, requires that a written notice be issued to each subscriber in the area to be transferred and that a complete list of the noticed subscribers, by telephone number, name, address, and class of service, be submitted to the Commission. The companies' request for waiver is only for the purposes of the merger transaction.

The companies assert that they will comply with all of the other requirements of 25-4.005, Florida Administrative Code. They will send notices to governing bodies in the affected service areas; notices to the Commission and Public Counsel; and notices to all the customers served by Gulf Telephone Company and The Florida Telephone Company. The companies have already sent the notices to the newspapers of general circulation in the service areas. The companies seek a waiver of the requirement to provide a list of affected customers to the Commission, as applicable to the planned petition to merge Gulf Telephone Company and The Florida Telephone Company, Inc., into St. Joseph Telephone & Telegraph Company.

The petition was filed on June 5, 1997, and a revised page was filed on June 6, 1997 (Attachment B). Pursuant to Section 120.542(6), Florida Statutes, notice of the Petition for Waiver was submitted on June 17, 1997, to the Secretary of State for publication in the June 27, 1997, Florida Administrative Weekly. The comment period ended July 11, 1997, and no comments were received. The statutory deadline for the Commission's decision regarding the waiver petition is September 3, 1997, in accordance with Section 120.542(7), Florida Statutes.

DISCUSSION OF THE ISSUES

ISSUE 1: Should the Commission grant the request of St. Joseph Telephone & Telegraph Company, Gulf Telephone Company, and The Florida Telephone Company, Inc., for a partial waiver of Rule 25-4.004(1)(c), Florida Administrative Code, for the portion which requires the filing of a complete list of all subscribers sent a written notice, regarding the planned petition to consolidate Gulf Telephone Company and The Florida Telephone Company, Inc., into St. Joseph Telephone & Telegraph Company?

RECOMMENDATION: Yes. (Monteiro)

STAFF ANALYSIS: Rule 25-4.005, Florida Administrative Code, reads, in the pertinent part, as follows:

25-4.005 Transfer of Certificate of Public Convenience and Necessity As to All or Portion of Service Area

(1) Request for approval by the Commission of transfer of any certificate of public convenience and necessity (or portion thereof) shall be made by joint petition of the certificate holder and transferee after reasonable notice has been given to all subscribers affected by the proposed transfer. Requests for approval shall be accompanied by an affidavit that notice of intention to file the petition has been given:

(a) By mail or personal delivery to the governing bodies of the counties and municipalities affected, to the public counsel, and to the Commission.

(b) By a legal advertisement in a newspaper of general circulation in the area affected and published on two (2) separate occasions at least two (2) weeks prior to the filing of the joint petition on the proposed transfer, and

(c) By written notice subject to Commission approval, issued to each subscriber in the area to be transferred concurrent with the filing of the petition. A complete list, 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.

As previously stated, on June 5, 1997, St. Joseph Telephone & Telegraph Company, Gulf Telephone Company, and The Florala Telephone Company, Inc., filed a petition for a partial waiver of Rule 25-4.005(1)(c), Florida Administrative Code, as applicable to the upcoming merger. The companies will send notices to governing bodies in the affected service areas; notices to the Commission and Public Counsel; and notices to all the customers served by Gulf Telephone Company and The Florala Telephone Company. They have already sent the notices to the newspapers of general circulation in the service areas, in accordance with Rules 25-4.005(1)(a) and 25-4.005(1)(b), Florida Administrative Code. The companies seek only a waiver of the requirement to provide a list of affected customers to the Commission, as required by Rule 25-4.005(1)(c), Florida Administrative Code.

The companies state that 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

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which are not listed in the local telephone directories and which are not generally available to the public. To these 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.

However, if the companies were to undertake to protect the confidentiality of the information on the required list, it would impose a "substantial hardship" on the companies. The petition states that it would be a severe economic hardship for the companies to have to (a) contact each of their customers (over 11,000 in Florida) and inquire about 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.

Staff believes that the petition for waiver meets the specifications set forth in Section 120.542(5), Florida Statutes. The petitioners have demonstrated that enforcement of the rule would cause substantial hardship on the customers and the companies. If the list was submitted to the Commission, the customers would be subjected to substantial hardship through publication of personal and possibly confidential information. If the companies were to undertake to protect the confidentiality of the list, it would constitute substantial hardship due to the financial resources that would need to be expended to file for confidentiality. Furthermore, the companies have demonstrated, in accordance with Section 120.542(2), Florida Statutes, that the purpose of Chapter 364.335, Florida Statutes, will be served even without the filing of the list of subscribers provided written notice. Adequate notice of the application will still be provided in accordance with Rule 25-4.005(1), Florida Administrative Code, and Section 364.335(1)(d), Florida Statutes. The Commission has previously granted a waiver of this Rule in Order No. PSC-93-0152-POF-TL, issued January 9, 1997.

Staff recommends that the Commission grant the companies' Petition for Waiver of Rule 25-4.005(1)(c), Florida Administrative Code.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed if no person, whose substantial interests are affected by the proposed action, files a protest within the 21 days of the issuance of the Proposed Agency Action Order. (Pellegrini)

STAFF ANALYSIS: This docket should be closed if no person, whose substantial interests are affected by the proposed action, files a protest within the 21 days of the issuance of the Proposed Agency Action Order.

ATTACHMENT A
DOCKET NO. 970676-ET
JULY 24, 1997

HECTOR
& DAVIS

Steel Hector & Davis LLP
215 South Monroe, Suite 601
Tallahassee, Florida 32301-1804
904.222.2300
904.222.8410 Fax

Charles A. Guyton
904.222.3423

June 5, 1997

By Hand Delivery

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

970676-TL

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

CAG/ld
encs.
TAL/20589-1

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305.577.7000
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561.655.1509 Fax

6

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DOCUMENT NUMBER-DATE

05608 JUN-5 1997

FPSC-RECORDS/REPORTING

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 Florida 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 Florida 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 Florida 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.

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.¹ Requiring the Companies to file the list of affected

¹ 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."² 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

² 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 Gulf Telephone Company and The Florida 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 Florida 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
Charles A. Guyton

ATTACHMENT B
DOCKET NO. 970676-TL
JULY 24, 1997

HECTOR
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June 6, 1997



By Hand Delivery

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 the revised page 2 of Petition For Waiver of Rule 25-4.005(1)(c) previously filed with the Commission on June 5, 1997. The revised page being filed today should be substituted for the page that was originally filed. The changes reflected on the revised page were made to correct a typographical error in the prefix of Gulf Telephone Company's phone and fax numbers.

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

Very truly yours,

A handwritten signature in cursive script that reads "Charles A. Guyton".

Charles A. Guyton

CAG/ld
encs.
TAL/20607-1

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DOCUMENT NUMBER-DATE

05646 JUN-6 97

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RECORDS/REPORTING

Gulf Telephone Company
115 W. Drew Street
Perry, Florida 32347
Tel No. (904) 584-0900
Fax No. (904) 584-7462

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522 North Fifth Street
Florala, Alabama 36442
Tel. No. (334) 858-3211
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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.