

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for partial waiver of Rule 25-4.005(1)(c), F.A.C., on behalf of St. Joseph Telephone & Telegraph Company, Gulf Telephone Company, and The Florala Telephone Company, Inc.

DOCKET NO. 970676-TL

In re: Joint petition for approval of consolidation of The Florala Telephone company, Inc., and Gulf Telephone Company, into St. Joseph Telephone & Telegraph Company, Inc.; cancellation of Certificates Nos. 4 and 21 held by The Florala Telephone Company, Inc. and Gulf Telephone Company; and name change on Certificate No. 29 from St. Joseph Telephone & Telegraph Company to GTC, Inc.

DOCKET NO. 970809-TP
ORDER NO. PSC-97-0982-FOF-TP
ISSUED: August 15, 1997

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING WAIVER AND APPROVING CONSOLIDATION

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BACKGROUND

On July 1, 1997, St. Joseph Telephone & Telegraph Company (St. Joseph), Gulf Telephone Company (Gulf), and The Florala Telephone Company, Inc., (Florala) filed a joint petition for approval of the consolidation of the three companies into St. Joseph and of the name change from St. Joseph to GTC, Inc. (GTC). The companies have a common ownership,

Earlier, on June 5, 1997,¹ in anticipation of their petition for approval of consolidation, the three companies jointly filed a petition for a waiver of Rule 25-4.005(1)(c), Florida Administrative Code. 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 limited their petition for rule waiver to the present consolidation approval proceeding.

Pursuant to Section 120.542(6), Florida Statutes, notice of the petition for rule waiver was submitted on June 18, 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.

PETITION FOR WAIVER

Rule 25-4.005, Florida Administrative Code, Transfer of Certificate of Public Convenience and Necessity As to All or Portion of Service Area, reads in pertinent part as follows:

(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

¹A revised version of the petition was filed on June 6, 1997, reflecting the correction of clerical errors.

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.

The companies only request a waiver of the requirement to provide a list of affected subscribers to the Commission, as specified in subpart (c). The companies asserted that they will comply with all of the other requirements of Rule 25-4.005, Florida Administrative Code. They will send notices to governing bodies in the affected service areas; notices to this Commission and the Office of Public Counsel; and notices to all the subscribers served by Gulf and Florida. The companies have published notices in newspapers of general circulation in the service areas.

The companies state that the required information is in some respects confidential to some of their subscribers. None of the subscribers have publicly disclosed the type of service they take. Some of the subscribers have not publicly disclosed their complete address. Some of the subscribers have chosen unlisted telephone numbers, which are not listed in the local telephone directories and which are not generally available to the public. The companies

state that to these subscribers this 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.

If the companies were to undertake to protect the confidentiality of the information on the required list, they assert that it would impose a "substantial hardship" on them. They state that it would be a severe economic hardship for them to have to (a) contact each of their subscribers (over 11,000 in Florida) and inquire about which of the required information 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.

Section 120.542(1), Florida Statutes, declares that:

Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.

Section 120.542(2), Florida Statutes, provides that:

[W]aivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person or when application of a rule would create a substantial hardship ... For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the ... waiver.

We find that the companies' petition for waiver meets the requirements set forth in Section 120.542(5), Florida Statutes. We find, furthermore, that the companies have demonstrated that

enforcement of Rule 25-4.005(1)(c), Florida Administrative Code, would cause substantial hardship for the subscribers and the companies. If the list were to be submitted to the Commission, subscribers would be subject to substantial hardship through publication of possibly confidential information. If the companies were to undertake to protect subscribers' confidentiality interests, they would be subject to substantial hardship because of the significant expense of filing a request for exemption from public disclosure.

Furthermore, we find that the companies have demonstrated, pursuant to Section 120.542(2), Florida Statutes, that the purpose of Section 364.335(1)(d), Florida Statutes, the underlying statute, will be served even without the filing of the list of subscribers who were provided with written notice. Section 364.335(1)(d), Florida Statutes, provides that "[e]ach applicant for a certificate shall: ... Submit an affidavit that the applicant has caused notice of its application to be given to such persons and in such manner as may be prescribed by commission rule."

We conclude that adequate notice of the application for consolidation will be provided if we grant a waiver of Rule 25-4.005(1)(c), Florida Administrative Code, as requested. We note that we have granted a waiver of this rule in previous cases. See, e.g., Order No. PSC-93-0152-FOF-TL, issued January 9, 1997.

Accordingly, we find it appropriate to grant the companies' Petition for Waiver of Rule 25-4.005(1)(c), Florida Administrative Code. Furthermore, we instruct our staff to develop revisions to the rule consistent with our decision herein.

CONSOLIDATION

Pursuant to Sections 364.33, 366.335, Florida Statutes, and Rule 25-4.005, Florida Administrative Code, Florida, Gulf and St. Joseph have asked for approval to consolidate their companies into St. Joseph and to change the name of St. Joseph to GTC.

The companies have asserted that the consolidation will improve customer service, operating efficiency and streamline administrative activities for their subscribers. Instead of three separate operating companies, there will be a single operating local exchange company. The consolidation and associated transfer

of certificates will be a corporate restructuring with no financial exchanges taking place.

St. Joseph does not propose with the consolidation to make any changes in the rates or scope of service currently being provided. Since each of the companies has elected price cap regulation, presently existing rates shall serve as caps.

For these reasons, we find it appropriate to approve the consolidation of Florala, Gulf and St. Joseph into St. Joseph and the change of the name, St. Joseph Telephone & Telegraph Company, to GTC, Inc. In addition, Certificates Nos. 4 and 21 held by Florala and Gulf, respectively, shall be canceled. Certificate No. 29 held by St. Joseph shall amended to reflect the change of name from St. Joseph Telephone & Telegraph Company to GTC, Inc.

Pursuant to Rule 25-9.044, Florida Administrative Code, we instruct St. Joseph to file within 30 days of our decision labels to be placed on the existing tariffs of Florala, Gulf and St. Joseph, reflecting the new name, GTC, Inc.

STUDY AREAS

The companies have petitioned the FCC to allow them to combine their study areas into a single study area.² Study areas have been frozen since 1984, as set forth in 47 C.F.R. § 36.741. The FCC procedure for study area waivers provides that "[o]ne of the criteria that the [FCC] has established to evaluate petitions for waiver of the frozen study area boundary rule is the requirement that the state authority does not oppose the proposed modification." FCC Public Notice DA 95-1344, released June 21,

²Petition for Waiver to Change Study Area Boundaries, In the Matter of St. Joseph Telephone & Telegraph Company, The Florala Telephone Company, Gulf Telephone Company Petition of Affiliated Local Exchange Carriers for Waiver of "Study Area" Boundaries as Defined in Appendix - Glossary of Part 36 in Connection with a Proposed Merger of The Florala Telephone Company and Gulf Telephone Company into St. Joseph Telephone & Telegraph Company (to be Renamed GTC, Inc.), Regarding the Companies' Exchange Areas in the States of Florida, Alabama and Georgia. Before the Federal Communications Commission. Filed July 8, 1997.

1995; In the Matter of Petitions for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, Order, AAD No. 95-78, DA 95-1403, Released June 21, 1995.

Although the study area is used for purposes of jurisdictional separations, under the federal universal service program it has been given additional significance for eligible telecommunications carriers (ETCs) in rural areas. A state-approved ETC may receive universal service funding for provision of supported services in a given service area. One of the requirements for approval as an ETC is that the carrier provide service throughout the designated service area. In Section 214(e)(5), of the Telecommunications Act of 1996, a "service area" for the purpose of designating ETCs is defined as follows:

In the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

The Joint Board recommended, and the FCC adopted, the study area of a rural company as its service area. The FCC Report and Order on Universal Service³ allows a state commission to propose a definition of the service area served by a rural telephone company as something other than the study area, but the FCC must approve any such change. Pursuant to 47 C.F.R. § 54.207(c)(1), either the state commission or the party seeking to redefine the service area must petition the FCC for this purpose.

The FCC has addressed the effect of requiring ETCs to serve noncontiguous areas in a rural telephone company's service area. In FCC 97-157, the FCC noted at ¶190 that:

universal service policy objectives may be best served if a state defines rural service

³CC Docket 96-45, FCC 97-157, Released May 7, 1997.

areas to consist only of the contiguous portion of a rural study area. We conclude that requiring a carrier to serve a non-contiguous service area as a prerequisite to eligibility might impose a serious barrier to entry, particularly for wireless carriers.... We encourage states to determine whether rural service areas should consist of only the contiguous portions of an ILEC's study area, and to submit such a determination to the [FCC].

Presently, rural carriers in Florida, with the exception of ALLTEL Florida, Inc., serve largely contiguous areas. Because the study areas of the three companies involved in this proceeding have two or more counties separating each of them, the combined area would be the most extreme example of a non-contiguous service area for a rural telecommunications company in this state. We have not had an opportunity to evaluate or address the issue of service areas for rural companies; nevertheless, it appears that the consolidation of these three companies into one service area could create a substantial barrier to entry for provision of residential services by alternative providers in the high cost areas served by the companies. We believe, therefore, that the service areas, for purposes of universal service support, should remain as they are until such time as we determine that a different service area is in the public interest.

Accordingly, we find it appropriate to advise the FCC by means of this Order, that we do not object to the combination of the three study areas of the companies into a single study area. Due to the apparent barrier to entry that would be created, however, we prefer that the service areas remain separate for the purpose of designating ETCs.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that each and all of the specific findings herein are approved in every respect. It is further

ORDERED that the joint request of St. Joseph Telephone & Telegraph Company, Gulf Telephone Company, and The Florida

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Telephone Company, Inc., for waiver of Rule 25-4.005(1)(c), Florida Administrative Code, as herein described, is granted. It is further

ORDERED that the joint petition for approval of the consolidation of St. Joseph Telephone & Telegraph Company, Gulf Telephone Company, and The Florala Telephone Company, Inc., into St. Joseph Telephone & Telegraph Company is granted. It is further

ORDERED that the name change in Certificate 29 from St. Joseph Telephone & Telegraph Company to GTC, Inc., is approved. It is further

ORDERED that Certificates Nos. 4 and 21 held by The Florala Telephone Company, Inc., and Gulf Telephone Company, respectively, shall be canceled. It is further

ORDERED that St. Joseph Telephone & Telegraph Company shall submit within 30 days of our decision labels to be placed on the existing tariffs of The Florala Telephone Company, Inc., Gulf Telephone Company and St. Joseph Telephone & Telegraph Company reflecting the new name, GTC, Inc. It is further

ORDERED that by this Order we advise the Federal Communications Commission that we do not object to the combination of the study areas of the Florala Telephone Company, Inc., Gulf Telephone Company and St. Joseph Telephone & Telegraph Company into a single study area, but that we prefer that the service areas of the companies remain separate for the purpose of designating eligible telecommunications carriers for universal service funding. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, these Dockets shall be closed.

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By ORDER of the Florida Public Service Commission, this 15th
day of August, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



By: Kay Flynn, Chief
Bureau of Records

(S E A L)

CJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-

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22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 5, 1997.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.