



GTE Telephone Operations

Marcell Morrell**
Vice President & General Counsel - Florida

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

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

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

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

September 8, 1997

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

Re: Docket No. ~~950699~~-TL
Resolution by City Commission of Haines City Requesting Extended
Area Service From Haines City Exchange to All Exchanges Within
Polk County

Dear Ms. Bayo:

Please find enclosed an original and fifteen copies of GTE Florida Incorporated's
Opposition to Request to address Commission at Agenda Conference for filing in the
above matter. Service has been made as indicated on the Certificate of Service. If
there are any questions regarding this matter, please contact me at (813) 483-2617.

ACK _____
AFA _____ Very truly yours,

APP _____
CAF _____
SMU Sheffer Kimberly Caswell (am)
Kimberly Caswell

CTR _____
E _____ KC:tas
L _____ 1 Enclosures

I _____ 3

C _____

T _____

S _____ A part of GTE Corporation

W/S _____

OTH _____

DOCUMENT NUMBER-DATE

08997 SEP-85

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution by City Commission)
of Haines City Requesting Extended)
Area Service (EAS) from Haines City)
Exchange to All Exchanges Within)
Polk County)

Docket No. 950699-TL
Filed: September 8, 1997

**GTE FLORIDA INCORPORATED'S OPPOSITION TO REQUEST
TO ADDRESS COMMISSION AT AGENDA CONFERENCE**

GTE Florida Incorporated (GTEFL) opposes the Request to Address Commission at Agenda Conference (Request), filed by the Office of Public Counsel (OPC) on September 5, 1997. That Request asks the Commission to allow each party to address the Commission at the agenda conference that will decide this case. GTEFL, one of the principal parties in this docket, does not support OPC's Request. The Request, if granted, would compromise GTEFL's due process rights and cause GTEFL significant expense without yielding any benefit to the Commission.

OPC asks the Commission to take the extraordinary step of allowing discussion on a non-speaking agenda item. This item has already been the subject of a full public hearing. The parties have expressed their views at that hearing, in their briefs, in prefiled testimony, and at numerous other points during the hearing process. There is nothing to be gained by yet more debate of the parties' positions. The fact that Haines City and OPC are not fully satisfied with the recommended relief is no reason to allow another round of arguments. GTEFL itself does not support the recommendation--based on the calling statistics in this case, GTEFL had argued that no mandatory toll relief is justified--but

DOCUMENT PREP-DATE

08997 SEP-85

FILED IN NG

GTEFL understands that mere dissatisfaction with the Staff recommendation does not justify reargument of the case.

OPC's justification for more debate—that "there has been no avenue to date to respond to the staff recommendation"—is unpersuasive. By that logic, post-hearing argument should be granted in every case because the Staff recommendation, by necessity, is issued after the hearing in every case. Again, OPC had abundant opportunity to argue its views during the hearing process, as Staff's recommendation reflects. There is no need for the Commission to hear those views again.

The record in this case is closed. Any attempt by OPC or Haines City to introduce new information or evidence at this point would compromise GTEFL's due process rights. Post-hearing argument of the sort that OPC requests does not afford the kind of due process safeguards—such as the right of cross-examination—that a legitimate hearing does. These protections are not optional, but necessary to avoiding constitutional due process violations. GTEFL submits that the action OPC requests is impermissible unless all parties consent to it. GTEFL, at least, has not; indeed, OPC made no effort to even contact GTEFL about its proposal. GTEFL assumes that OPC did not contact Sprint-Florida either.

OPC's request, if granted, would force GTEFL to send a lawyer, a regulatory compliance manager, and a toll plan expert to the agenda session at which the Haines City item will be addressed. GTEFL should not be compelled to bear such expense just so OPC can have yet another chance to argue what it has all along—that Haines City should have more comprehensive toll relief.

In this regard, some perspective is important. Haines City was given the opportunity for a hearing in this case only because GTEFL consented to conducting this proceeding under a statute and rules which were superseded by the 1995 revisions to Chapter 364. Because the Commission no longer has the authority to order GTEFL to provide non-basic services, GTEFL could have flatly refused to further consider Haines City's extended area service (EAS) request. However, in the spirit of cooperation, GTEFL agreed to a hearing to resolve this docket under the old EAS rules. Despite its good faith in going forward with this proceeding, GTEFL seems to be the only party willing to abide by those rules.


Throughout this process, OPC has urged the Commission to ignore the traffic statistics on the Haines City routes, despite the fact that objective calling data are critical to evaluating EAS requests under the Commission's rules and longstanding precedent. The Commission originally found that the traffic on the Haines City routes was not sufficient to order even an EAS survey, let alone EAS or any other form of toll relief. (Order PSC-96-0620-FOF-TL (May 8, 1996).) Nothing changed between the time of that conclusion and the hearing date, except for Haines City's protest of the proposed Order denying any toll relief. Only because of Haines City's persistence has it now received a Staff recommendation for any toll relief—despite the fact that, in GTEFL's view (and consistent with the Commission's original position), the traffic statistics do not warrant such relief.

Furthermore, GTEFL has offered Haines City a more attractive alternative to the Staff's recommendation. In response to particular needs expressed by the public witnesses, GTEFL refined its Local Calling Plan (LCP) as originally presented by GTEFL

no circumstances that would justify granting the extraordinary post-hearing and post-briefing argument OPC seeks.

OPC and Haines City should regard Staff's recommendation, if adopted, as the significant victory that it is. Further argument on this matter would not aid the Commission and would compromise GTEFL's due process rights. GTEFL thus asks the Commission to deny OPC's request, filed on behalf of Haines City.

Respectfully submitted on September 8, 1997.

By:  /dm
Kimberly Caswell
Anthony Gillman
Post Office Box 110, FLTC0007
Tampa, Florida 33601
Telephone: 813-483-2617

Attorneys for GTE Florida Incorporated

witness Robinson in this case. GTEFL has now assigned definite rates to go along with the four calling options presented in prefiled testimony and at the hearing. GTEFL presented its revised LCP to Haines City and OPC in a meeting held after the Staff Recommendation was issued. The LCP includes, among other things, flat-rate calling options to both Lakeland and Bartow (and many other exchanges), as well as discounts to other exchanges, depending on the individual customer's needs. In short, the LCP is wholly optional for each customer and would afford toll relief on all the routes in Haines City's original petition (and more), not just the two designated for relief in Staff's Recommendation. Haines City has not yet accepted or rejected GTEFL's LCP offer, but it stands as additional proof of GTEFL's continuing, voluntary efforts to respond to Haines City's extended calling demands.

Finally, OPC's comments on the anecdotal testimony must also be kept in perspective. There was hardly, as OPC asserts, "overwhelming" support for an EAS surcharge at the public hearing. (OPC Request at 1) Some witnesses, in fact, opposed paying anything for extended calling, either under EAS or ECS. (Tr. 55-56, 59-60, 78.) Most importantly, the Commission heard from only 51 witnesses, which represent a tiny fraction of the 25,890 residence lines in the Haines City exchange that would be affected by an EAS additive.

In any case, the Commission has already heard all of this testimony and it has been factored into the Staff's recommendation. The parties have been through the hearing process and the Commission is prepared to make a decision based on the record in this case, in the same way that it does in every other case that has been to hearing. There are

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Opposition to Request to Address Commission at Agenda Conference in Docket No. 950699-TL were sent via U.S. mail(*), facsimile(**) or hand-delivery(***) on September 8, 1997, to the parties listed below.

Cochran Keating(***)
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Charles J. Beck(**)
Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

Robert Nettleton, City Attorney(*)
P. O. Box 277
Haines City, FL 33845-0277

J. Jeffry Wahlen(*)
Ausley & McMullen
227 S. Calhoun Street
Tallahassee, FL 32301


Kimberly Caswell