



ORIGINAL

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February 10, 1999

990157-72

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

Re: Docket No.
Petition of GTE Florida Incorporated for Declaratory Statement that its
IntraLATA Customer Contact Protocol Complies with Order Number
PSC-95-0203-FOF-TP

Dear Ms. Bayo:

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

- ACK _____
- AFA _____
- APP _____
- CAF _____
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- SEC _____
- WAS _____
- OTH _____

Very truly yours,

Anthony P. Gillman
Kimberly Caswell

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

KC:tas
Enclosures

A part of GTE Corporation

DOCUMENT NUMBER-DATE

01786 FEB 10 99

FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of GTE Florida Incorporated)
for Declaratory Statement that its IntraLATA)
Customer Contact Protocol Complies)
with Order Number PSC-95-0203-FOF-TP)
_____)

Docket No.
Filed: February 10, 1999

PETITION FOR DECLARATORY STATEMENT

Pursuant to Commission Rule 25-22.020, GTE Florida Incorporated ("GTE") asks the Commission for a declaratory statement that its intraLATA customer contact protocol for new customers complies with the Commission's Order implementing 1+ intraLATA presubscription. (Order No. PSC-95-0203-TP (Feb. 13, 1995) ("IntraLATA Presubscription Order").) The way in which the Order's terms are applied to GTE will determine if the Company can fairly and effectively compete in the intraLATA toll market.

In its IntraLATA Presubscription Order, the Commission held that "when new customers sign up for service they should be made aware of their options of intraLATA carriers in the same fashion as for interLATA carriers." (IntraLATA Presubscription Order at 38.) There is no question that GTE has always complied with this directive. In fact, there have never been any complaints that any of GTE's intraLATA marketing practices are not competitively neutral.

BellSouth had, however, been the target of a 1996 complaint by several interexchange carriers (IXCs). The IXCs alleged that BellSouth had devised anticompetitive business practices that would hinder the exercise of competitive choice in the intraLATA market.

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FPSC-RECORDS/REPORTING

In response to the IXCs' complaint, the Commission imposed upon BellSouth a number of intraLATA marketing restrictions designed to remedy BellSouth's asserted departure from the competitive neutrality requirements reflected in the intraLATA Presubscription Order. Among other things, the Commission ordered BellSouth to stop marketing its intraLATA toll service to new customers, unless the customer introduced the subject.

As a result of the BellSouth docket, the Commission proposed, on its own motion, to apply to GTE and the other non-BellSouth local exchange carriers (LECs) the same restrictions that it had imposed upon BellSouth. (Proposed Agency Action Order No. PSC-97-0709-FOF-TP, June 13, 1997.) GTE and Sprint protested, pointing out that no complaints of anticompetitive conduct had been lodged against them. The protests led the Commission to schedule a hearing.

Ultimately, the hearing only addressed the narrow issue of the appropriate level of primary interexchange carrier change charges for existing customers. Because GTE and the other LECs had not engaged in the kind of conduct BellSouth had, these companies and the IXCs were able to stipulate most of the issues that had been so contentious in the BellSouth complaint proceeding.

One of the stipulations approved by the Commission concerned communicating information to new customers regarding intraLATA choices. It states:

The ILECs assert and the other parties agree not to contest in this proceeding, that their interLATA and ntraLATA procedures for communicating information about toll choices are consistent and in compliance with PSC Order No. PSC-95-0203-FOF-TP, which states that 'when new customers sign up for service they should be made aware of their

options of intraLATA carriers in the same fashion as for interLATA carriers.' The procedures are the same in that the ILEC asks each customer if he has a choice of carrier. If the customer does not, then the ILEC will read a random list of carriers. Accordingly, there is no need for Commission action at this time. However, the parties agree to brief the issue of whether Sprint's inclusion of the statement 'in addition to us' prior to reading the list complies with this requirement.

(Order No. PSC-98-0710-FOF-TP (May 22, 1998) at Att. A, page 2 ("Generic Order").)

The Commission did, in fact, find that Sprint's practice of marketing its own intraLATA service to new customers complied with the customer contact requirement set forth in the IntraLATA Presubscription Order. Consistent with this ruling, the Commission later granted BellSouth relief from its intraLATA marketing restrictions for new customers. (Petition of BellSouth Telecommunications, Inc. to Lift Marketing Restrictions Imposed by Order No. PSC-96-1569-FOF-TP, Order No. PSC-98-1469-FOF-TP (Oct. 28, 1998) ("BellSouth Order").)

Unlike Sprint and BellSouth, GTE has never marketed its own intraLATA services to new customers. However, it plans to do so now. For customers who express no intraLATA carrier preference, the GTE representative will inform the customer that he has many companies to choose from to provide intraLATA service. The representative will then offer to read the list of competing carriers, then recommend GTE's own intraLATA service.

GTE believes the Commission's interpretation of the IntraLATA Presubscription Order in the Sprint situation is controlling here. The Commission found Sprint's marketing to new customers permissible under that Order, so there should be no question that GTE's planned script change is permissible, as well. Because there was never any marketing

restriction placed on GTE (as there was on BellSouth), there is no need for GTE to file any kind of petition for elimination of a restriction. In fact, GTE believes that even this Petition is unnecessary, given the Sprint precedent, but it is seeking a declaratory statement out of an abundance of caution.

In addition to the law, the facts support the Commission's affirming the permissibility of GTE's planned intraLATA contact protocol for new customers. As noted, there was never any complaint about any of GTE's intraLATA marketing practices, so there is no concern, like there was in the BellSouth case, that remedial measures were necessary to correct any anticompetitive market effects. This was a key consideration for the Commission in reviewing Sprint's script language. It noted that "[t]he BellSouth case was generated by a complaint.... There have been no such complaints lodged against Sprint." (Generic Order at 5.)

In refusing to prohibit Sprint's marketing to new customers, the Commission also pointed to the increased competition in the intraLATA market since the IXCs had filed their complaint against BellSouth. This was an important factor in its eliminating BellSouth's marketing restrictions. (Generic Order at 5.) The Commission observed that customer awareness of competitive options had increased, and that BellSouth's market share loss statistics corroborated BellSouth's position that its marketing restrictions for new customers should be lifted. In this regard, BellSouth's motion to lift its marketing restrictions stated that the company had lost "26% of toll pic-able access lines" in the June-September 1997 period and that "an average of 34% of new residential customers chose a carrier other than BellSouth" in the January-August 1997 time frame. (Petition of

BellSouth Telecommunications, Inc. to Lift Marketing Restrictions, filed Oct. 21, 1997, at 3.)

Although GTE's market share losses should be immaterial to the declaratory statement GTE seeks from the Commission (Sprint did not have to prove such losses), it may, nevertheless, be useful for the Commission to know that GTE's intraLATA market share erosion has been even more drastic than BellSouth's. At the end of 1998, GTE had lost almost 54% of its intraLATA toll pic-able lines. This was an 18% drop from the beginning of the year, when GTE had about 64% of toll pic-able lines. For the sample month of December 1997 (the latest available statistic), 67% of new customers chose intraLATA carriers other than GTE. In October 1998, GTE had only 33% market share, measured in terms of minutes of use—a drop from 45% at the beginning of 1998.

These statistics underscore the Commission's conclusion that "competitive changes have occurred in the intraLATA market and customer awareness and sophistication have increased." (Generic Order at 5.) As the Commission has recognized, GTE's market share loss erosion indicates there have not been "any negative effects on the IXCs." (Generic Order at 7.) In this environment, it would be anti-consumer to prohibit GTE from fully informing its customers of their intraLATA options. Like Sprint's script, GTE's meets the objective "to insure that customers have an opportunity to make informed decisions regarding the choice of intraLATA toll providers." (Generic Order at 5.)

The change GTE plans in its contact protocol is thus amply justified in terms of competitive conditions in the intraLATA market and the Commission's interpretation of its IntraLATA Presubscription Order. GTE asks the Commission to affirm these conclusions.

GTE, alone among the large LECs, never affirmatively marketed its intraLATA service to new customers. It would thus be discriminatory, arbitrary, and unfair for the Commission to forbid GTE from doing so now, when BellSouth and Sprint are subject to no such restriction.

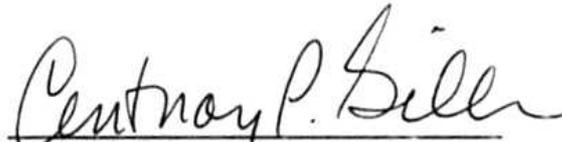
Rather than linking the Commission's declaratory statement to specific script wording, GTE asks the Commission to confirm that the IntraLATA Presubscription Order permits GTE to offer to read a list of competitive carriers while recommending GTE's intraLATA service.¹ GTE believes this approach is consistent with that Order, as well as the Commission's actions with regard to Sprint and BellSouth. The IntraLATA Presubscription Order does not require carriers to obtain Commission approval of their scripts. Moreover, the Commission did not dictate any language for Sprint; it just determined that it would not prohibit Sprint from using the language it already employed. (Generic Order at 5.) In BellSouth's case, the Commission ruled that BellSouth would have the ability to advise customers they have an option of selecting local toll carriers in addition to BellSouth. (BellSouth Order at 9.) The Order does not seem to require BellSouth to use the same script language as Sprint. In any event, GTE does not believe the Commission wishes to get into the business of dictating specific scripting for customer contacts.

¹ An example of the script GTE plans is as follows: "You have many companies to choose from to provide your local toll service. I can read from a list of the companies available for selection; however, I'd like to recommend GTE's local toll service." As noted, this language would be read only if the customer expressed no carrier preference when asked.

For all these reasons, GTE asks the Commission for a declaratory statement that GTE's above-described contact protocol for new customers complies with the IntraLATA Presubscription Order.

Respectfully submitted on February 10, 1999.

By:



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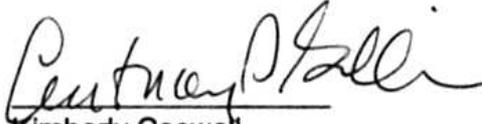
Attorney for GTE Florida Incorporated

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for Declaratory Statement
was sent via overnight mail on February 9, 1999 to:

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400


per Kimberly Caswell