

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 991376-TL
:
INITIATION OF SHOW CAUSE :
PROCEEDINGS AGAINST GTE FLORIDA, :
INCORPORATED FOR APPARENT :
VIOLATION OF SERVICE STANDARDS. :

In the Matter of : DOCKET NO. 991377-TL
:
INITIATION OF SHOW CAUSE :
PROCEEDINGS AGAINST SPRINT- :
FLORIDA, INCORPORATED FOR :
VIOLATION OF SERVICE STANDARDS. :

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PROCEEDINGS: HEARING

BEFORE: CHAIRMAN J. TERRY DEASON
Hearing Officer

DATE: Friday, July 21, 2000

TIME: Commenced at 10:15 a.m.
Concluded at 10:41 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: TRICIA DeMARTE
Official FPSC Reporter
(850) 413-6736

1 APPEARANCES:

2 CHARLES REHWINKEL, Sprint-Florida, Post Office
3 Box 2214, Tallahassee, Florida 32316, appearing on behalf
4 of Sprint-Florida.

5 KIMBERLY CASWELL, GTE Florida Incorporated, Post
6 Office Box 110, FLTC0007, Tampa, Florida 33601-0110,
7 appearing on behalf of GTE Florida, Incorporated.

8 CHARLES J. BECK, Associate Public Counsel,
9 Office of Public Counsel, c/o the Florida Legislature, 111
10 West Madison Street, Room 812, Tallahassee, Florida
11 32399-1400, appearing on behalf of the Citizens of the
12 State of Florida.

13 LEE FORDHAM and PATTY CHRISTENSEN, FPSC Division
14 of Legal Services, 2540 Shumard Oak Boulevard,
15 Tallahassee, Florida 32399-0850, appearing on behalf of
16 the Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN DEASON: Call this scheduling
3 conference to order. Do we have a notice to be read?

4 MR. FORDHAM: Pursuant to notice, this time and
5 place were set for a scheduling conference in Docket
6 Numbers 991376 and 991377, initiation of show cause
7 proceedings against GTE Florida, Incorporated and
8 Sprint-Florida, Incorporated for violation of service
9 standards.

10 CHAIRMAN DEASON: Okay. Appearances?

11 MR. REHWINKEL: Charles Rehwinkel on behalf of
12 Sprint-Florida.

13 MS. CASWELL: Kim Caswell for GTE Florida,
14 Incorporated. And, Mr. Chairman, I'd like to thank you
15 for delaying the conference, and I'd also like to thank
16 Staff and all the parties. I apologize.

17 MR. BECK: Charlie Beck, Office of Public
18 Counsel, appearing on behalf of Florida citizens.

19 MR. FORDHAM: Lee Fordham, Commission Staff.

20 MS. CHRISTENSEN: Patty Christensen, Commission
21 Staff.

22 CHAIRMAN DEASON: Okay. Well, thank you all for
23 being here. I set this conference for the purpose of
24 evaluating where we are -- where we find ourselves at this
25 particular time and trying to make an informed assessment

1 as to how to get these dockets back on track for hearing.
2 Hopefully that will not be necessary, but I'm planning
3 that it will be necessary. I think it's incumbent that we
4 have a reasonable, workable schedule to take these matters
5 to hearing, if that is the way we find ourselves.

6 But with that very brief introduction, if the
7 parties have any preliminary thoughts and comments, I'm
8 going to open it up for that, and then I'll probably have
9 some specific questions as to the appropriate way to
10 proceed from this point. So if there are any opening
11 comments or remarks, I certainly would welcome those at
12 this time.

13 MR. BECK: I think I've been nominated,
14 Mr. Chairman, to address it.

15 CHAIRMAN DEASON: Okay.

16 MR. BECK: Chairman Deason, we appreciate the
17 ways that the Commission has helped facilitate our
18 negotiations by granting our motions to delay the filing
19 of testimony and the hearing dates. We are making good
20 progress, we believe, in the negotiations. I think we are
21 hopeful that given more time that we will be able to reach
22 an agreement and bring it to the Commission. But our
23 negotiations are ongoing, and we think we're making
24 positive steps forward.

25 CHAIRMAN DEASON: Okay. Well, I -- do any of

1 the other parties have any comments? I don't mean to cut
2 you off. Was that --

3 MR. BECK: No, that's it. Thank you.

4 MS. CASWELL: I would agree with Mr. Beck. We
5 are making, I think, good progress, but at the same time,
6 I don't think we're near closure on any settlement deal,
7 at least for GTE. We have the added complication of
8 having a change of leadership with the merger with
9 Bell Atlantic. So, now, all of our proposals that we were
10 considering, some ideas we have been discussing
11 internally, have to be reevaluated by the new company. So
12 I would implore the Commission that we have as much time
13 as possible to settle the proceeding. You know, in
14 accordance with Mr. Beck's wishes, maybe we can work
15 something out.

16 MR. REHWINKEL: Thank you, Mr. Chairman. All I
17 have to say is that I concur with Mr. Beck's remarks. We
18 don't have closure in the process, but we are optimistic,
19 as he stated.

20 CHAIRMAN DEASON: Okay. I appreciate that
21 update. I need to know where we are in these dockets. We
22 can forget the negotiations from this point. I don't want
23 to hear any more about negotiations. I hope they go
24 forward, and I hope they are successful, but right now,
25 I'm planning on taking these matters to hearing. I've got

1 to set that schedule.

2 Now, I hope to build time into that schedule
3 such that negotiations can continue, and I'm not trying to
4 preclude those. I want to encourage those, but at the
5 same time, I've got a responsibility to not just
6 continually delay these matters until we reach a point to
7 where there's been undue delay and we're trying to go back
8 and reconstruct a hearing, and then take even more time
9 trying to maybe conduct discovery, try to find new
10 witnesses and that sort of thing. This has gone on a long
11 time, and I'm not being critical of the negotiations. I
12 understand that it takes a long time, but I, as Prehearing
13 Officer, cannot ignore my responsibility to see to it that
14 if we find ourselves in a hearing mode, we've got a
15 workable schedule.

16 So with that, I will begin with the GTE docket.
17 I want to know, first of all, is there any outstanding
18 discovery in the GTE docket?

19 MR. BECK: Mr. Chairman, no, at least from our
20 perspective. We had the discovery we needed to file
21 testimony. We did file testimony. It is under seal
22 because it's based on documents GTE claimed were
23 confidential. We have no pending discovery at this point.
24 We wouldn't expect to send any discovery until if and when
25 GTE files rebuttal. At that point, I expect we would

1 based on whatever was filed.

2 CHAIRMAN DEASON: Okay. So all direct testimony
3 has been filed in the GTE docket?

4 MR. BECK: No, because Staff filed and then we
5 filed, but GTE has not filed. That's been suspended.

6 CHAIRMAN DEASON: Okay. Well, I guess I was
7 referring to GTE's testimony as rebuttal --

8 MR. BECK: Yes.

9 CHAIRMAN DEASON: -- in the sense that it will
10 be -- I assume it will be responsive to --

11 MR. BECK: Yes.

12 CHAIRMAN DEASON: Okay.

13 MR. FORDHAM: Commissioner, on the CASR we have
14 called it rebuttal, but it in essence would be their
15 first testimony in response to Staff testimony and OPC
16 testimony, which both have been filed.

17 CHAIRMAN DEASON: Okay. What about depositions?
18 Are any depositions scheduled, or will there be the
19 necessity to schedule depositions? I guess you'll need to
20 see the testimony, obviously; correct?

21 MR. BECK: Yes. We took one prior to filing our
22 testimony. Again, any depositions we might take would
23 only be based on any testimony that GTE would file in
24 rebuttal.

25 CHAIRMAN DEASON: Okay. Ms. Caswell, when can

1 you file your testimony?

2 MS. CASWELL: Chairman Deason, our testimony has
3 been substantially prepared. And while we would be able
4 to file it probably in the space of two or three weeks, I
5 would ask that the testimony -- maybe we can come up with
6 a hearing date first and then work backward to the
7 testimony. The dilemma is that if we file testimony, I'm
8 afraid that might undermine our chances for settlement in
9 that our disputes with public counsel and the specific
10 nature of those disputes will become public, and that's
11 why it has been so critical to delay the filing of that
12 rebuttal testimony.

13 So I would ask you to take that into
14 consideration, because I'm afraid if that testimony does
15 become public, then the settlement discussions may need to
16 be ended. Either that -- well, yeah, that's the best
17 option.

18 CHAIRMAN DEASON: So you're saying that if we
19 issue a procedural order which requires you to file
20 testimony and you've not yet concluded a settlement, well,
21 then the settlement would be precluded, it would be off?

22 MS. CASWELL: That is what I have been told by
23 my corporate leadership.

24 CHAIRMAN DEASON: Okay. All right. Let me see.
25 Mr. Beck, do you anticipate filing surrebuttal testimony,

1 or do you need to review the rebuttal?

2 MR. BECK: Yes, I would need to review the
3 rebuttal. I would think it would be likely that we would
4 file surrebuttal.

5 Chairman Deason, I would also like to echo the
6 comments made by GTE. I think it's helpful that we not be
7 focussing on answering each other's testimony while we
8 negotiate. The negotiations, I think, are more fruitful
9 when we work forward toward a solution rather than trying
10 to answer each other's arguments.

11 MS. CASWELL: And I wholeheartedly agree with
12 that.

13 CHAIRMAN DEASON: And I'm sensitive to that as
14 well, but I hope you see my perspective on this, that I
15 just can't ignore and indefinitely put these dockets off.
16 And at some point -- and hopefully, maybe with the
17 concurrence of the parties, there needs to be for lack of
18 a better term a drop-dead date where we just say, forget
19 it, we're going to take this to hearing, and, you know,
20 that's fine with us at the Commission too.

21 I don't want to have an artificial date for the
22 filing of testimony which then would by that very action
23 necessitate the conclusion of the negotiations without
24 there being a settlement. I would hate to see there not
25 be a settlement when one was possible simply because

1 testimony had to be filed. But at the same time, I'm not
2 willing to indefinitely postpone these dockets without
3 some type of dates in place for there either to be a
4 signed stipulation in the hands of the Commission or else
5 we've got an agreed upon hearing track with dates for
6 testimony, responsive testimony, prehearing conferences,
7 and hearing.

8 And let me say this: It is not my intent to sit
9 here today and try to figure out what those dates are. My
10 purpose today is to try to get input from the parties and
11 from Staff to try to get a feel as to where we are, what's
12 workable, what hopefully will give some opportunity for
13 the negotiations to continue but with the idea that the
14 negotiations cannot continue indefinitely. And after I
15 get the input from everyone here today, I will go back and
16 I will be issuing an order. My intent probably would be
17 to try to have that order issued -- I'm not exactly sure,
18 but perhaps by the end of July or the first of August.

19 But anyway, having said that, let me ask this
20 question: Mr. Beck, knowing that you have not seen GTE's
21 testimony and that they may need some flexibility in
22 responding to that, but let me put you on the spot, and
23 ask you what would be a reasonable amount of time for you
24 to have your surrebuttal testimony prepared and filed?

25 MR. BECK: Chairman Deason, I think that would

1 depend in part on the discovery -- speed of which
2 discovery is done. What I'd like to be able to do is get
3 their testimony, we would review it quickly and send
4 discovery and/or take -- which might include document
5 requests, interrogatories, and depositions. We would want
6 to have a chance to get those responses, and then use
7 those responses in our surrebuttal.

8 CHAIRMAN DEASON: You're talking in terms of
9 filing interrogatories and conducting depositions?

10 MR. BECK: Right. In other words, I would like
11 to have an opportunity to do one round of discovery, and
12 then maybe ten days from the time that we finish the
13 discovery to have the surrebuttal done.

14 CHAIRMAN DEASON: Can the discovery be
15 expedited?

16 MR. BECK: We would -- as soon as we got their
17 testimony, we would review it and send out discovery and
18 move forward quickly on it.

19 CHAIRMAN DEASON: But you would need one round
20 of discovery before, and then you would need how long
21 after receiving a response as to file testimony?

22 MR. BECK: Ten days is about pushing it, I would
23 think, for what we could do.

24 CHAIRMAN DEASON: Okay. And after all rounds of
25 testimony have been filed, how long before prehearing

1 statements can be filed?

2 MS. CASWELL: We'd be willing to file our
3 prehearing statements with the rebuttal testimony, if
4 that's acceptable.

5 CHAIRMAN DEASON: Okay. Very well. Mr. Beck?

6 MR. BECK: We could file with our surrebuttal.

7 MS. CASWELL: But wouldn't it be filed on the
8 same date, though?

9 MR. BECK: We could.

10 MS. CASWELL: Either -- well, we could wait
11 until his surrebuttal is filed to file both.

12 CHAIRMAN DEASON: He could file his prehearing
13 statement with the filing of his surrebuttal, and you
14 could file your prehearing statement on that same date?

15 MS. CASWELL: Yes, with his surrebuttal.

16 CHAIRMAN DEASON: Okay. Let me ask the parties:
17 Do you believe that one day of hearing is sufficient?

18 MS. CASWELL: I guess it's up to Mr. Beck. I
19 believe it is, but he's going to be doing most of the
20 cross-examination probably.

21 MR. BECK: It's so hard to say without knowing
22 what the testimony is, Commissioner. We'd put up one
23 witness ourselves. We would probably have one witness in
24 surrebuttal. I don't know how many witnesses GTE would
25 intend to put up.

1 CHAIRMAN DEASON: What I hear you saying is, one
2 day may be workable, but it may be a long day, and then
3 depending on the extent of the responsive testimony -- I
4 mean, I'm not trying to hold you -- I'm just trying to get
5 a feel.

6 MR. BECK: That would be my guess, maybe one
7 long day or two normal days.

8 CHAIRMAN DEASON: Okay. Staff, do you have any
9 comments in relation to the GTE docket?

10 MR. FORDHAM: No, Commissioner, I think those
11 are our same basic questions that you've asked.

12 CHAIRMAN DEASON: All right. We'll just proceed
13 then to discuss the Sprint case unless, Ms. Caswell, is
14 there anything that you need to add at this point?

15 MS. CASWELL: No, sir.

16 CHAIRMAN DEASON: Okay. Let me ask this
17 question: And Sprint there's been no testimony at all
18 filed; is that correct?

19 MR. REHWINKEL: That is correct.

20 CHAIRMAN DEASON: Mr. Beck, what's the status of
21 your testimony in that docket?

22 MR. BECK: We have done our discovery. I think
23 we have sufficient discovery to prepare testimony. We
24 have not prepared it.

25 CHAIRMAN DEASON: Okay. What amount of time do

1 you need to prepare that testimony and file it?

2 MR. BECK: I'd like to get three weeks' notice.

3 We could probably do it in two, if we had to.

4 CHAIRMAN DEASON: Okay. Staff, what about your
5 testimony?

6 MS. CHRISTENSEN: Commissioner, Staff is able to
7 file testimony within two days of the procedural order
8 coming out.

9 CHAIRMAN DEASON: Okay. Mr. Rehwinkel, after
10 the first round of testimony is filed, I assume you will
11 be filing responsive testimony?

12 MR. REHWINKEL: Yes, if necessary, Commissioner.
13 We have devoted every bit of our efforts in the last, I'd
14 say, six months, five, six months to settle in the case.
15 And so we have not made much progress in the way of
16 preparing testimony, and the testimony is kind of a hybrid
17 of direct and responsive testimony. So it would be hard
18 for me to say, but I think we probably would need six
19 weeks from the time we knew we had to file testimony to
20 prepare it, and that might be modified based on what we
21 had to respond to.

22 But I think based on seeing what's in the --
23 been filed in the GTE case, our need to file responsive
24 testimony would probably -- we probably would be within
25 the six month, I mean, the six week time frame.

1 CHAIRMAN DEASON: That includes time for you to
2 conduct discovery on the direct testimony?

3 MR. REHWINKEL: Yes. I would anticipate that
4 there would be little or no need for discovery.

5 CHAIRMAN DEASON: GTE indicated they could do
6 theirs in two or three weeks. They're twice as efficient
7 as Sprint?

8 MR. REHWINKEL: That may be the case. That's
9 what happens when you change your name.

10 MS. CASWELL: We had a testimony date set, that
11 was the reason.

12 CHAIRMAN DEASON: Okay. You heard the
13 discussion concerning surrebuttal and the prehearing
14 statements and that sort of thing that we conducted with
15 GTE. Do you agree that those time frames are pretty much
16 workable?

17 MR. REHWINKEL: Yes, I do.

18 CHAIRMAN DEASON: Okay. And what about the
19 length of the hearing?

20 MR. REHWINKEL: We believe that we would be in
21 much the same circumstances. Barring any unforeseen turn
22 in the case, a day, maybe a long day should be sufficient.

23 CHAIRMAN DEASON: Staff, any thoughts on the
24 Sprint case from Staff's perspective?

25 MS. CHRISTENSEN: I don't know if they have

1 already answered this question, but I know Mr. Beck said
2 that he would like to engage in at least one round of
3 discovery after the company's direct testimony or rebuttal
4 testimony was filed, and I was wondering what the
5 company's position on how long it would take them to
6 respond to that discovery being -- that it would be
7 limited to what was in their rebuttal, how long the
8 company would need to respond to that discovery request,
9 if it could be done quicker than the normal allotted time.

10 MR. REHWINKEL: Yeah, I believe that we could
11 make a good faith effort to expedite testimony. The way
12 it is being done, for instance, a 20-day response period
13 is probably doable. The people in Kansas City that might
14 have to help respond wouldn't like to hear me say that,
15 but I think we could do that.

16 MS. CHRISTENSEN: Staff --

17 CHAIRMAN DEASON: Let me ask this question --
18 I'm sorry. Go head.

19 MS. CHRISTENSEN: No, I was going to say I have
20 no additional comments.

21 CHAIRMAN DEASON: Ms. Caswell indicated that for
22 purposes of their negotiations that she feels strongly
23 that the filing of their responsive testimony then would
24 result in no further negotiations taking place. Is Sprint
25 in a similar situation?

1 MR. REHWINKEL: Mr. Chairman, I cannot say it as
2 unequivocally as Ms. Caswell did because we have not -- I
3 have not been given such direction, but I can tell you
4 that -- and I think Staff and the public counsel can
5 confirm this, is that as we have been engaged in the
6 settlement process, we have -- that has been our guiding
7 principle as is that when testimony is filed and you
8 divert your efforts to an adversarial position, it greatly
9 weakens your ability to settle. And so we have the same
10 thought in mind, but I would not tell you that it would
11 make things -- we're, of course, not as far along in the
12 testimony cycle either.

13 CHAIRMAN DEASON: Okay. Is the issuance of a
14 procedural order setting out hearing dates going to
15 jeopardize the negotiations?

16 MS. CASWELL: No, sir.

17 MR. REHWINKEL: I think it would depend on when
18 it came out, but I can't say that it would.

19 CHAIRMAN DEASON: And, Mr. Beck, any thoughts on
20 that?

21 MR. BECK: No.

22 CHAIRMAN DEASON: What length of time would be
23 reasonable on -- I'm focussing now on GTE. What length of
24 time would be reasonable to allow negotiations to continue
25 before the necessity of having responsive testimony filed?

1 I know as much time as you can have, but I'm realizing
2 tempered with your responses with my desire to see to it
3 that if we find ourselves in a hearing mode, that we can
4 proceed under a schedule that is not unduly delayed.

5 MS. CASWELL: Well, we would like at least three
6 months, that would put us at the end of October.

7 CHAIRMAN DEASON: Mr. Beck?

8 MR. BECK: Mr. Chairman, I don't have a specific
9 time period. I think as long as our efforts are -- we
10 believe they are being fruitful and we're going forward,
11 you know, we would like to have as much time as long as
12 that's true, and we believe it is true now.

13 CHAIRMAN DEASON: Ms. Caswell, I can tell you
14 right now that if you need three months, you might as well
15 just go ahead and file your testimony, we're going to go
16 to hearing. That, in my mind, is not acceptable.

17 MS. CASWELL: Okay. I was just suggesting what
18 our ideal would be. Obviously, if we had to live with
19 something shorter than that, then we would.

20 CHAIRMAN DEASON: Well, you know, I'm going to
21 take everything that's been said here today under
22 advisement. I'm going to discuss it with the scheduling
23 folks. A lot of it depends on the availability of
24 Commissioners, and as everyone in this room knows, we're
25 working with -- our full Commission now is three

1 Commissioners. That situation will be changing in the
2 future, but we don't know exactly when that's going to be.
3 So scheduling is very difficult.

4 And it may be that you may get some time just
5 from the fact that the Commission does not have the luxury
6 of assigning different panels and that sort of thing,
7 because right now a panel and a full Commission is one in
8 the same. So it's going to take some assessment on my
9 part to look at the calendar and the availability of
10 hearing dates and taking into consideration some of the
11 time elements here to proceed.

12 I also want to not take action that is going to
13 unnecessarily and prematurely result in the unsuccessful
14 conclusion of your negotiations. I would like to see
15 those have an opportunity to proceed. Three months seems
16 to be an excessive amount of time, I will share that with
17 you. When I look at the calendar, though, it may get
18 built in by necessity. I don't know yet, but the
19 discussions we have had here today have been helpful for
20 me. I want to set out a realistic and workable time
21 frame, not as any type of an impedance to the processing
22 of these cases, but hopefully actually could be conducive
23 and constructive to the ultimate conclusion of these
24 cases, whatever that outcome may be.

25 And unless there are any concluding thoughts, or

1 questions, or comments, hearing none, the scheduling
2 conference is concluded. And Staff will be advising the
3 parties when a procedural order will be forthcoming.
4 Thank you all for your participation.

5 (Hearing concluded at 10:41 a.m.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4 I, TRICIA DeMARTE, Official FPSC Commission Reporter, do
5 hereby certify that the Scheduling Conference in Docket
6 Nos. 991376-TL and 991377-TL was heard by the Florida
Public Service Commission at the time and place herein
7 stated.

8 It is further certified that I stenographically
9 reported the said proceedings; that the same has been
transcribed under my direct supervision; and that this
10 transcript, consisting of 20 pages, constitutes a true
transcription of my notes of said proceedings.

11 I FURTHER CERTIFY that I am not a relative, employee,
attorney or counsel of any of the parties, nor am I a
12 relative or employee of any of the parties' attorney or
counsel connected with the action, nor am I financially
13 interested in the action.

14 DATED this 26th day of July, 2000.

15 *Tricia DeMarte*

16 TRICIA DeMARTE
17 FPSC Official Commission Reporter

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