



Public Service Commission

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DATE: AUGUST 3, 2000

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

FROM: DIVISION OF LEGAL SERVICES (KEATING) *AK Wood*
DIVISION OF COMMUNICATIONS (LEWIS) *DL Lewis*

RE: DOCKET NO. 990861-TL - COMPLAINT OF CALVIN "BILL" WOOD AGAINST GTE FLORIDA, INCORPORATED REGARDING SERVICE

AGENDA: AUGUST 15, 2000 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990861F.RCM

CASE BACKGROUND

On December 30, 1997, Mr. Calvin "Bill" Willie Wood (Mr. Wood or customer) filed a complaint with the Commission's Division of Consumer Affairs (CAF) against GTE Florida, Inc. (GTE or company). Mr. Wood asserted that he was having problems receiving telephone calls. He stated that people told him that they were unable to reach him.

In its January 15, 1998 response, GTEFL stated, "It appears that lightning has struck the line serving Mr. Wood [Mr. Wood's residence], more than once causing intermittent problems." Additionally, the company stated that the cable serving Mr. Wood's residence needed to be replaced, and that the replacement was expected to be completed within 30 days. GTEFL also stated that it had issued a \$25 Service Performance Guarantee credit to the customer's account to foster customer relations and that the credit would appear on the customer's February 1998 bill. In subsequent reports, GTEFL stated that an additional \$1.78 credit was issued to Mr. Wood's February 1998 bill for the time he had received no service and similar credits were issued in June 1998 for \$2.14 and \$1.65.

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PSC-RECORDS/REPORTING

In Mr. Wood's February 3, 1998 letters to CAF and GTEFL, he stated that Mr. Perry, his neighbor and also the person who checks on him, could not get through to his telephone number. Mr. Wood believed that the problem had started the previous summer when lightning burned up his lines. He stated that Mr. Perry had told him that he did not have any problems calling other people and gave permission for anyone to check the problem from his residence. Additionally, Mr. Wood noted that he intended to withhold payment of his telephone bills until the service problems were resolved. He stated, "I will consider them resolved when Mr. Perry can call me on a regular basis." Mr. Wood also stated, "I merely report what other people tell me when they cannot get through." Mr. Wood asserted that he was told that a \$25 credit would be applied to his account every time he reported the service not working properly and the service was not properly repaired. He also wanted to know whether he was entitled to an informal conference.

On February 20, 1998, CAF received another report from GTEFL. The company stated that Mr. Wood was contacted by a construction supervisor, and that a line crew had made a field visit to Mr. Wood's residence on February 11, 1998. GTEFL reported that it found and repaired a section of the service drop and a rusty connection at the splice connector. Additionally, the company stated that the customer-provided equipment was defective and that Mr. Wood had promised to replace it. Further, GTEFL stated that it had made a follow-up field visit to Mr. Wood's residence on February 12, 1998, and that Mr. Wood had informed the company to discuss the problem with Mr. Perry. GTEFL stated that it determined that Mr. Perry was dialing an incorrect telephone number to reach Mr. Wood. However, GTEFL reported that it issued a \$25 Service Performance Guarantee credit to Mr. Wood's March 1998 bill.

On March 9, 1998, GTEFL reported that a tornado had touched down in the Polk County area. On that same day, GTEFL reported that it had made a field visit to Mr. Wood's residence and found out that his residence was destroyed by the tornado. GTEFL stated that it asked Mr. Wood to notify the company when he had temporary or permanent facilities with power, so the company could provide him with telephone service. GTEFL stated that on March 23, 1998, it made another field visit to Mr. Wood's residence and found his private road was barricaded, indicating still no facilities. GTEFL reported that it temporarily disconnected Mr. Wood's service on March 25, 1998 for nonpayment of his \$232.27 past-due balance (\$257.27 less \$25.00). Additionally, GTEFL stated that it informed Mr. Wood of this disconnection on March 27, 1998. GTEFL also reported that it notified Mr. Wood that his outstanding balance needed to be paid prior to service reconnection. GTEFL stated that Mr. Wood informed the company that he would not pay the bill until his repair issues had been resolved. After receiving no payment, GTEFL permanently disconnected Mr. Wood's telephone service on

April 4, 1998. GTEFL later confirmed that a late notice was mailed to Mr. Wood prior to the disconnection of his service. GTEFL stated that the notice was mailed on March 10, 1998, requesting payment of \$232.27 by March 19, 1998, to prevent service interruption.

In a letter dated March 25, 1998, Mr. Woods asserted that he was still having telephone problems with other customers not being able to reach him. He stated that GTEFL had installed new underground cable on or around February 25, 1998, and had promised to return on February 27, 1998 to complete the connection to his house. Mr. Wood stated that GTEFL did not return as promised. He stated that his house was struck by a tornado on March 9, 1998, and that the company had made a field visit to his house that same day. Mr. Wood claimed that, at that time, he informed GTEFL that he was going to move into a camper behind his house, which runs completely on propane and was self-contained. Mr. Wood admitted that he was shaken up from the tornado, but still believed that GTEFL had promised to return to connect the service to his camper. On March 26, 1998, Mr. Wood notified CAF that his service was still not connected. Further, he found out that GTEFL had disconnected his service for nonpayment. CAF contacted GTEFL regarding Mr. Wood's concerns and provided them with his contact telephone number.

On April 2, 1998, Mr. Wood informed CAF that his service was still not connected. On that same day, GTEFL reported to CAF that Mr. Wood owed over \$500 on his account and that his service would not be restored until the outstanding balance was paid (See Billing Summary--Attachment 1). Additionally, CAF received Mr. Wood's request for an informal conference. Since the complaint was still pending, CAF did not act on the request.

On April 10, 1998, Mr. Wood sent CAF and the Commission's Division of Communications (CMU) a letter, wherein he stated that, during the last several months, other customers had also received inadequate service from GTEFL. Mr. Wood provided a list with the names of the eight customers, which included Mr. Perry. Mr. Wood and the other customers live in Polk County on Schaefer Lane in Lake Wales, Florida. Although Mr. Wood's correspondence was forwarded to GTEFL, the concerns of the other customers were not considered part of Mr. Wood's complaint. GTEFL stated that the information was referred to its local manager for further discussion.

CAF and CMU received reports from GTEFL on April 17, 1998. GTEFL stated that the cable splicing at Mr. Wood's residence was completed on February 26, 1998. However, Mr. Wood's service was not cut over to the new cable due to defective vacant pairs in the new cable. The company stated that Mr. Wood was notified of this

delay, and a promise was given to clear the defective cable pairs as soon as possible.

GTEFL reported that on April 17, 1998, Mr. Wood was contacted and notified that his service could be reestablished with toll blocks until the outstanding balance was paid in full. GTEFL stated that payment arrangements were offered to Mr. Wood, but that he maintained that he would not pay the bill until the repair issues were resolved. On that same day, GTEFL reported that it issued an installation order to connect Mr. Wood's service with a completion date of April 20, 1998, with toll blocks until the \$664.02 outstanding balance was paid in full. On April 17, 1998, GTEFL reported to CAF and CMU that it was reconnecting Mr. Wood's service on that day without payment until the complaint was closed. On May 19, 1999, GTEFL confirmed that the service order was completed on April 20, 1998.

Mr. Wood stated that GTEFL improperly disconnected his service and that Mr. Perry was still having problems reaching his telephone number. He stated that he could not live at his residence without a telephone due to his heart condition and that his house had been looted several times. He blamed GTEFL for the loss of over \$10,000 of property. However, Mr. Wood acknowledged that he understood that his damage claims were outside the jurisdiction of the Commission. Further, Mr. Wood stated that he mailed his payment in full to GTEFL on May 5, 1998, after he was notified by CMU that he could not escrow his payments. Mr. Wood notified CMU on May 13, 1998 that his long distance service had not been restored on his line. CMU relayed Mr. Wood's concerns to GTEFL.

On May 28, 1998, CMU stated that when it performed loop tests at Mr. Wood's and Mr. Perry's residences the tests were "acceptable." On that same day, CMU reported that it performed call completion tests from Mr. Perry's telephone number to Mr. Wood's telephone number, with 100 percent completion. However, CMU reported that when Mr. Perry tried to call Mr. Wood's telephone number during the call completion test, he dialed wrong telephone numbers three times--once to his daughter's telephone number and twice to wrong telephone numbers.

Mr. Wood notified CMU on June 3, 1998, that his long distance service had not been restored to his line. CMU contacted GTEFL again about this problem. GTEFL acknowledged this error and promised to restore the long distance service that day. In a subsequent report, GTEFL stated that the toll restriction was removed from Mr. Wood's service on June 4, 1998.

On July 2, 1998, CAF received Mr. Wood's June 29, 1998 letter which stated, "I do not consider my telephone fixed, until my neighbor, Mr. Perry, can reach me on a regular and routine basis.

Therefore, I request an informal conference." He also stated that he was due a "sizable" refund from GTEFL for not providing "minimal" service. In Mr. Wood's July 3, 1998 letter, he alleged that GTEFL told him that the Commission had directed the company to disconnect his service for nonpayment. He stated that the issue was never the payment of the bill, "but the inferior service I was and still am getting from GTEFL."

On July 22, 1998, CAF contacted GTEFL and asked if the company could provide a telephone with larger buttons to Mr. Wood's neighbor, Mr. Perry, to prevent the mis-dialing of telephone numbers. On August 18, 1998, CAF received a letter from Mr. Wood which stated that for the first time in months, his neighbor, Mr. Perry, had called him from his house on August 6, 1998. He also stated that Mr. Perry was proud of his second telephone. Mr. Wood stated that GTEFL had made a field visit to his (Mr. Wood) house on August 18, 1998, and told him that the outside wiring to his (Mr. Wood) house was improperly installed and would be corrected.

CAF continued to pursue a resolution of the complaint with GTEFL and Mr. Wood. However, Mr. Wood maintained that GTEFL owed him additional credits for the time he received no service. GTEFL stated it would not issue any more Service Performance Guarantee credits for the trouble reports. However, the company offered an additional \$25 compromise adjustment on both of Mr. Wood's telephone accounts to resolve his complaint, for a total of \$50. Mr. Wood refused this offer.

On April 22, 1999, GTEFL reported that its service area experienced 10.82 inches of rainfall in February 1998, with a total of 43.58 inches of rain from October 1997 through March 1998. The company stated that it was "severely" impacted by the 1998 El Niño weather conditions, which included lightning and strong winds. GTEFL reported that the weather conditions hindered its work force and added to the volume of trouble reports.

An informal conference was held with the parties and staff members from CAF and CMU on May 12, 1999. Mr. Wood stated that the lines in his service area were defective long before the March 9, 1998 tornado. He stated that the service problems were not resolved until the company installed new lines in his service area. Mr. Wood alleged that Mr. Perry called him in August 1998 for the first time in months after the outside wiring problem was resolved by GTEFL. Mr. Wood stated that for two years, he and other customers experienced service problems. He stated that although Mr. Perry was 72 years old, he was not aware of any mind or physical conditions that would have prevented Mr. Perry from correctly dialing his (Mr. Wood) telephone number. Mr. Wood also stated that Mr. Perry told him that the Commission's staff tried to

make it look as if he was dialing his (Mr. Wood) number incorrectly.

Additionally, Mr. Wood continued to object to the March 25, 1998 service disconnection and the delayed removal of the toll restriction from his telephone line after his account was paid in full. GTEFL responded that Mr. Wood's telephone service was repaired within 24 hours of his trouble report, unless the trouble related to another customer's service. Mr. Wood alleged that GTEFL just "patched" up the lines, resulting in more service problems. He emphasized that he wanted a \$25 credit for each trouble report. GTEFL responded that two \$25 Service Performance Guarantee credits were already issued to the customer's account in February and March 1998, and that it had not billed the customer's account for the \$55 nonrecurring charge when the service for telephone number 941-696-9542 was reestablished on April 20, 1998. The company stated that this credit was more than what Mr. Wood would have received for the time he did not receive service. The company stated that it would not agree to Mr. Wood's request to issue \$25 each for all of his trouble reports. GTEFL also stated that since Mr. Wood did not accept the previous compromise adjustment offer to resolve the informal conference request, it was no longer valid. Mr. Wood maintained that he was promised a \$25 credit for each service report not properly repaired within 24 hours. The conference was concluded without a settlement.

Based upon CAF's and CMU's file records, a letter was sent to Mr. Wood on June 4, 1999, explaining the results of the investigation. Mr. Wood, however, continued to assert that his telephone service was not repaired until August 1998. He maintained that there was a service problem on Schaefer Lane in Lakes Wales and that other customers experienced service problems. Mr. Wood stated that he was "entitled" to \$25 for each trouble report.

By Order No. PSC-99-1615-PCO-TL, issued August 17, 1999, the Commission determined that there appeared to be disputed issues of material fact in this case which were best resolved by a formal evidentiary hearing. For this reason, the Commission referred this docket to the Division of Administrative Hearings (DOAH) for fact finding pursuant to Sections 120.569 and 120.57, Florida Statutes. On December 8, 1999, an administrative hearing was conducted in Lake Wales by a DOAH administrative law judge (ALJ). The ALJ issued his recommended Order on May 10, 2000. The Recommended Order is attached to this recommendation as Attachment A.

DISCUSSION OF ISSUES

ISSUE 1: Should the ALJ's Recommended Order be adopted as the Commission's Final Order?

RECOMMENDATION: Yes. (KEATING, LEWIS)

STAFF ANALYSIS: At the formal hearing, the ALJ heard testimony from eight witnesses, and admitted 21 exhibits into evidence. After considering the weight of the evidence, the ALJ found that there was no evidence to support Mr. Wood's assertions that GTEFL has subjected Mr. Wood to undue or unreasonable prejudice or disadvantage. The ALJ also found that the Commission staff conducted the informal conference in accordance with Rule 25-22.032(4), Florida Administrative Code, and that the Commission's technical staff also acted in compliance with Commission rules. Finally, the ALJ found that there is no evidence that GTEFL acted in violation of Commission rules in disconnecting Mr. Wood's telephone for non-payment. Therefore, the ALJ recommends that the Commission enter a Final Order requiring GTEFL to provide Mr. Wood with a credit of \$10.89 in "out-of-service" credit. No exceptions were filed.

Upon review, staff recommends that the Findings of Fact are based on competent, substantial evidence. The Conclusions of Law appropriately apply the provisions of Florida Statutes and Florida Administrative Code. Therefore, the ALJ's Recommended Order should be adopted as the Commission's Final Order.

ISSUE 2: Should this Docket be closed?

RECOMMENDATION: Yes. (KEATING).

STAFF ANALYSIS: Upon issuance of the Commission's Final Order adopting the ALJ's Recommended Order, this docket should be closed.

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CALVIN "BILL" WOOD,)
)
Petitioner,)
)
vs.)
)
GTE FLORIDA, INC.,) Case No. 99-3595
)
Respondent,)
)
and)
)
PUBLIC SERVICE COMMISSION,)
)
Intervenor.)
_____)

RECOMMENDED ORDER

On December 8, 1999, a formal administrative hearing in this case was held in Lake Wales, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Calvin "Bill" Wood, pro se
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Lake Wales, Florida 33853

For Respondent: Kimberly Caswell, Esquire
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Tampa, Florida 33601-0110

For Intervenor: Donna Clemons, Esquire
Florida Public Service Commission
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STATEMENT OF THE ISSUE

The issue in the case is whether the Petitioner received appropriate compensation for telephone service interruptions and whether the Respondent and the Intervenor have acted

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

appropriately under applicable statutes and administrative rules in resolving the Petitioner's complaint.

PRELIMINARY STATEMENT

On December 30, 1997, Calvin "Bill" Wood (Petitioner) filed a complaint with the Florida Public Service Commission (PSC) alleging various problems with his residential telephone service provided by GTE Florida, Inc. (GTE). The PSC investigated the complaint, and conducted an informal conference, but the parties were unable to agree on a resolution. The PSC thereafter determined that the matter should be referred to the Division of Administrative Hearings for formal proceedings. The Division scheduled and conducted the proceeding.

At the hearing, the Petitioner presented the testimony of four witnesses, testified on his own behalf, and had Exhibits numbered 1-3 admitted into evidence. GTE presented the testimony of one witness and had Exhibits numbered 1-14 admitted into evidence. The PSC presented the testimony of two witnesses and had Exhibits numbered 1-4 admitted into evidence.

A Transcript of the hearing was filed on January 5, 2000. The parties timely filed Proposed Recommended Orders, after the Petitioner's request for extension of the filing deadline was granted.

FINDINGS OF FACT

1. Calvin "Bill" Wood resides on Schaefer Lane in Lake Wales, Florida, and receives local telephone service from GTE.
2. GTE is a telecommunications service provider doing business in Florida and regulated by the PSC under the authority

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

of Chapter 364, Florida Statutes, and Chapter 25, Florida Administrative Code.

3. In May 1997, the Petitioner began to experience telephone service problems, including line static and service outages.

4. According to GTE records reviewed by PSC personnel, GTE responded to the Petitioner's reports of telephone service problems. GTE attempted to identify and repair the causes of the problems over an extended period of time.

5. The GTE records, as reviewed by the PSC personnel, indicate that the Petitioner's problems continued and that he frequently reported the trouble to GTE.

6. GTE's "trouble reports" and summaries characterize the Petitioner's service problems as "miscellaneous" and "non-service affecting" at times when the Petitioner's complaint was a lack of dial tone. The inability to obtain a dial tone is a service-affecting problem.

7. A GTE installation and repair manager testified that technicians will identify a problem as "miscellaneous" and "non-service affecting" when they are unable to identify the cause of a problem, or when the problem is intermittent and is not active at the time the technician tests the line. Notations on records suggest that frequently the problems were not apparent at the time of testing.

8. In any event, the Petitioner's telephone service problems continued through the summer and fall of 1997. By the

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

end of 1997, the Petitioner complained that one of his neighbors was often unable to call him.

9. On December 30, 1997, the Petitioner filed a complaint with the PSC Consumer Affairs Division, alleging that his telephone service was inadequate, specifically that the neighbor could not call him, and that his phone did not ring.

10. The Petitioner's complaint was tracked in the PSC Consumer Affairs Division computer system. At the time the complaint was filed, the PSC complaint tracking systems were not integrated between PSC divisions, resulting in individual consumer complaints being routed to various PSC personnel who were unaware that the consumers problems were already being investigated by other PSC personnel. PSC consumer complaints are now handled by an integrated docketing system.

11. Beginning after the filing of the complaint of December 30, 1997, the PSC began to inquire into the Petitioner's telephone problems. In response to contact from the PSC, GTE acknowledged that service problems existed and indicated that lightning possibly damaged the Petitioner's telephone service. GTE stated that the main cable providing service to the Petitioner would be replaced.

12. By letter dated February 3, 1998, the Petitioner advised GTE and the PSC that he would withhold payment of his telephone bill until such time as his phone service was functioning and the neighbor could call him without problem.

13. On February 11, 1998, GTE made repairs to the Petitioner's "drop wire" and connection. GTE also examined the

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

Petitioner's owner-supplied telephone equipment and determined that it was defective. The Petitioner agreed to acquire another telephone.

14. On February 12, 1998, GTE personnel visited the Petitioner's home to determine whether the service had been restored. At that time, the Petitioner asked them to check with the neighbor whose calls were not being received by the Petitioner.

15. On February 12, 1998, GTE personnel visited the neighbor and determined by observation that the neighbor's calls to the Petitioner were being misdialed.

16. On February 26, 1998, GTE installed new cable to serve the Petitioner but were unable to connect his telephone to the new cable because GTE's "serving cable pairs" were defective.

17. Weather-related problems prevented the company from correcting the defective "serving cable pair" problem on February 27, and apparently on any subsequent day prior to March 9, 1998.

18. GTE provided a credit of \$1.78 on the Petitioner's February 1998 telephone bill for the time the phone was out of service. GTE also provided a \$25 credit as part of GTE's "Service Performance Guarantee."

19. The "Service Performance Guarantee" provides a \$25 credit to a GTE customer when the customer-reported service issue is not resolved within 24 hours.

20. On March 9, 1998, GTE personnel visited the Petitioner and found that earlier in the day, the Petitioner's home had been destroyed by a tornado.

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

21. The GTE personnel testified that they advised the Petitioner to contact them when his electrical service was restored and the telephone would be reconnected.

22. The Petitioner testified that he told the GTE personnel he intended to live in a camper trailer he would place next to his house and testified that the GTE personnel told him they would return to connect his phone service.

23. The GTE personnel did not hear from the Petitioner and did not immediately return to connect phone service. The Petitioner did not contact GTE to advise that his electrical service had been restored.

24. The next day, March 10, 1998, GTE notified the Petitioner that his telephone service would be disconnected for nonpayment of an outstanding balance in excess of \$600. The GTE notice established a deadline of March 19, 1998, for payment.

25. On March 11, 1998, the Petitioner requested that his calls be forwarded to his neighbor's home. GTE complied with the request and began forwarding the Petitioner's calls on March 13, 1998.

26. On March 23, 1998, GTE personnel attempted to visit the Petitioner and ascertain the situation, but the Petitioner's private drive was barricaded. The GTE representative assumed that the condition of the property was not suitable for reconnection of telephone service.

27. By letter to the PSC dated March 25, 1998, the Petitioner complained that the phone service to his property had not been restored.

28. On March 25, 1998, the Petitioner's telephone service was disconnected for nonpayment of the outstanding balance on his account.

29. On March 27, 1998, GTE advised the Petitioner that his telephone service would be "permanently" disconnected if the outstanding balance of \$664.02 were not paid.

30. GTE provided another \$25 SPG credit on the Petitioner's March 1998 bill.

31. On April 2, 1998, the Petitioner informed the PSC that he had no telephone service and requested an informal conference to resolve the matter. The Petitioner offered to escrow his telephone payments until his service was repaired to his satisfaction. On the same day, GTE notified the PSC that the Petitioner had the outstanding unpaid balance.

32. Because the Petitioner's complaint was still pending and the PSC had not proposed a resolution, the Petitioner's request for an informal conference was premature. In subsequent letters, the Petitioner continued to seek an informal conference prior to completion of the investigation. The PSC did not act on the requests.

33. There is no evidence that the Petitioner disputed the amount due on his telephone bill. The Petitioner's decision to withhold payment of the bill was service-related.

34. The PSC does not have authority to prevent a service provider from disconnecting service for nonpayment of undisputed telephone service charges.

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

35. On April 4, 1998, GTE "permanently" disconnected the Petitioner's telephone service for nonpayment.

36. By letter to the PSC dated April 6, 1998, the Petitioner requested assistance in obtaining telephone service, asserting that a heart condition required access to a telephone. There is no evidence that prior to April 6, 1998, the Petitioner had advised either GTE or the PSC of any existing heart condition.

37. By rule, GTE is required to maintain customer access to an emergency 911 communications system except where telephone service is "permanently" disconnected.

38. Other than after the "permanent" disconnection of his telephone service, there is no evidence that the Petitioner lacked access to the emergency 911 system.

39. By letter to the PSC dated April 8, 1998, the Petitioner alleged to the PSC that several of his neighbors were having telephone problems and were, for a variety of reasons, unable to contact the PSC to complain.

40. The Petitioner attempted to involve a number of his neighbors in his complaint, but none of the neighbors filed a complaint with the PSC, and there is no evidence that the neighbors complained to GTE about any service problems. There is no evidence that any resident of Schaefer Lane filed a telephone service complaint with the PSC. There is no evidence that the Petitioner is authorized to represent his neighbors or neighborhood in this matter.

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

41. On April 17, 1998, GTE offered to reconnect the Petitioner's local telephone service and block all toll calls if he would agree to arrange payment of the outstanding balance. The Petitioner apparently refused the offer, but on April 20, 1998, GTE reconnected the local service and activated the toll block. GTE waived the \$55 reconnection charge and suspended collection procedures pending resolution of the complaint the Petitioner filed with the PSC.

42. On May 9, 1998, the Petitioner made payment of the outstanding balance of his telephone bill. The toll block should have been removed from the Petitioner's telephone service at that time, but it was not. On May 13, 1998, the Petitioner notified the PSC that the toll block remained on his phone. The PSC notified GTE that the toll block was still active. GTE apparently did not act on the information.

43. On May 29, 1998, the PSC tested telephone lines at the Petitioner's home and at the home of the calling neighbor. The technicians detected no telephone line problem in any location. The PSC technician attempted to complete numerous calls from the neighbor's home to the Petitioner. The technician's calls were completed without incident.

44. The neighbor was asked to dial the Petitioner's number. The PSC technician observed that the neighbor misdialed the Petitioner's telephone number on each of three attempts.

45. GTE eventually provided and installed a "big button" telephone for the neighbor. GTE also provided speed-dialing

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

service at no charge to the neighbor and instructed him on use of the service.

46. The Petitioner asserts that the PSC technician violated PSC administrative rules by traveling with GTE personnel to the Petitioner's and neighbor's homes on May 29. The evidence fails to establish that the transportation constituted a violation of any administrative rule.

47. By June 1, 1998, with the toll block still activated, the Petitioner filed a complaint with the PSC concerning the service disconnection and the toll block. The June 1, 1998, complaint was assigned to the Telecommunications Division and the PSC again relayed the complaint to GTE. GTE removed the toll block on June 4, 1998.

48. At this point, the PSC realized that the Petitioner had filed two separate complaints and the agency combined the investigations.

49. It is unclear as to the reason GTE did not remove the toll block after the PSC relayed the matter to them on May 13, 1998; but there is no evidence that it was done to retaliate against the Petitioner.

50. Despite the toll call block, the Petitioner was able to make long distance calls by using a calling card.

51. After GTE removed the block, GTE credited the Petitioner with the difference between the cost of the calls made using his calling card and the cost of the calls that would have been made using the regular long distance carrier had the toll block not been in place.

52. GTE issued service credits of \$2.14 and \$1.65 on the Petitioner's June bill for out-of-service claims.

53. The Petitioner asserted that there were times when callers were unable to reach him, but the evidence fails to establish that failed calls were the result of service problems. The Petitioner had numerous telecommunications and computer devices attached to the line. Use of devices, including computers and fax machines, can result in an incoming call not being completed. The Petitioner also acknowledges that he sometimes does not answer the telephone.

54. The PSC technician testified that as of May 29, 1998, he considered the service problem resolved. Tests on the Petitioner's telephone lines revealed the lines to be in working order. Numerous calls placed to the Petitioner from the neighbor's house and other locations were completed without incident. In mid-June 1998, the technician recommended that the case be closed.

55. By letter dated June 17, 1998, the PSC advised the Petitioner of the informal resolution of the case and advised him of his right to request an informal conference.

56. On August 18, 1998, the Petitioner informed the PSC that the neighbor was able to complete calls to him and considered that matter resolved, but asked for an informal conference. The PSC staff, attempting to negotiate a settlement of the dispute, did not convene an informal conference until May 12, 1999.

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

57. The matter was not resolved at the May 12, 1999, conference. On July 15, 1999, the PSC staff filed its recommendation for action at the PSC's Agenda Conference on July 27, 1999, at which time the PSC referred the dispute to the Division of Administrative Hearings.

58. The Petitioner has previously asserted that he is entitled the \$25 SPG credit for each time he called GTE to complain about his telephone service. There is no evidence that the Petitioner is entitled to any SPG credits beyond those he has already received.

59. The evidence establishes that the Petitioner's service-related problems were intermittent, required extensive "troubleshooting" to locate, and were repaired as soon as was practicable.

60. The Petitioner's monthly local telephone service charge is \$10.86, or approximately 36 cents per day.

61. The PSC staff calculates that the Petitioner is due a maximum "out-of-service" credit of \$16.46 allowing for a period of approximately 46 days of credit.

62. GTE has issued total credits in the amount of \$110.57, including two \$25 SPG credits and waiver of the \$55 reconnect fee. Subtracting the \$105 attributable to the two SPG's and the reconnect fee credit from the total of \$110.57 leaves the remainder of \$5.57, which is the total of the three "out-of-service" credits (\$1.78, \$1.65 and \$2.14) the Petitioner has received.

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

63. Based on the PSC staff determination that the Petitioner was due a maximum of \$16.46 in "out-of-service" credit, it appears that the Petitioner should receive an additional credit of \$10.89.

CONCLUSIONS OF LAW

64. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Section 120.57(1), Florida Statutes.

65. The Public Service Commission has the authority to regulate telephone service providers in Florida. Chapter 364, Florida Statutes, and Chapter 25, Florida Administrative Code.

66. In this case, the Petitioner asserts that GTE has provided inadequate telephone service to his home in Lake Wales, Florida. Although clearly the Petitioner's telephone service was inadequate at times following apparently lightning-related damage to local phone cables beginning in May 1997, the evidence establishes that GTE attempted to respond to the Petitioner's complaints.

67. The Petitioner has previously asserted that he would consider the matter resolved at such time as his neighbor could call him without problem. There is no evidence that there are any remaining service-related call difficulties at the Petitioner's residence.

68. The evidence establishes that difficulties encountered by the Petitioner's neighbor were the result of inadvertent dialing errors, and were resolved by the replacement of the neighbor's telephone equipment and the activation of the speed

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

dialing function provided at no charge to the neighbor by GTE.

69. The Petitioner asserts that the GTE records fail to meet the requirements of administrative rules because they fail to identify all the times he reported problems to the company.

Rule 25-4.022, Florida Administrative Code, provides as follows:

(1) Each telephone company shall maintain for at least six (6) months a record of all signed written complaints made by its subscribers regarding service or errors in billing, as well as a record of each case of trouble or service interruption that is reported to repair service. This record shall include the name and/or address of the subscriber or complainant, the date (and for reported trouble, the time) received, the nature of the complaint or trouble reported, the result of any investigation, the disposition of the complaint or service problem, and the date (and for reported trouble, the time) of such disposition.

(2) Each signed letter of complaint shall be acknowledged in writing or by contact by a representative of the company.

70. There is no evidence to support the Petitioner's assertion that the company records fail to meet this requirement. The Petitioner identified no specific date on which allegedly unrecorded complaints were made and identified no event not reflected by the GTE records.

71. The Petitioner asserts that GTE was aware of many telephone service problems in the Schaefer Lane area and failed to notify the PSC as required by Rule 25-4.023, Florida Administrative Code. There is no evidence that any Schaefer Lane resident other than the Petitioner has filed any complaints with the PSC regarding delivery of telephone services. There is no evidence that GTE failed to respond to any service complaint registered by any Schaefer Lane resident.

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

72. The Petitioner asserts that GTE violated Rule 25-22.032(10), Florida Administrative Code, by disconnecting his service while his complaint was pending at the PSC. Rule 25-22.032(10), Florida Administrative Code, provides as follows:

(10) During the pendency of the complaint proceedings, a utility shall not discontinue service to a customer because of an unpaid disputed bill. However, the utility may require the customer to pay that part of a bill which is not in dispute. If the parties cannot agree as to the amount in dispute, the staff member will make a reasonable estimate to establish an interim disputed amount until the complaint is resolved. If the customer fails to pay the undisputed portion of the bill the utility may discontinue the customer's service pursuant to Commission rules. (Emphasis supplied)

73. There is no billing dispute at issue in this proceeding. The cited rule prohibits disconnections related to nonpayment of disputed amount. In this case, the Petitioner's complaints to the PSC were related to the quality of service provided by GTE. There is no evidence that GTE violated any administrative rule by disconnecting the Petitioner's telephone service for non-payment of non-disputed outstanding telephone charges.

74. Rule 25-4.113(1)(f), Florida Administrative Code, provides for termination of telephone services, and provides that a company may discontinue service for nonpayment of bills for telephone service. There is no evidence that GTE violated the provisions of this rule. Rule 25-4.113(5), Florida Administrative Code, provides that a company "may charge a reasonable fee to defray the cost of restoring service" where

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

service has been properly terminated. In this case, GTE waived the fee.

75. Rule 25-4.081, Florida Administrative Code, requires that emergency 911 services must "be maintained for the duration of any temporary disconnection for non-payment of a subscriber's local residential service". There is no evidence that the Petitioner's emergency 911 services were unavailable during the period preceding the "permanent" disconnection of his telephone services.

76. The Petitioner asserts that a PSC employee violated administrative rules when he rode on May 29, 1998, with GTE personnel and in GTE transportation when GTE and PSC personnel came to the Petitioner's residence to test the telephone lines.

77. Rule 25-21.050, Florida Administrative Code, provides as follows:

25-21.050 Acceptance of Gifts.

(1) This rule is adopted to implement section 112.326, Florida Statutes, authorizing agencies to impose more stringent standards of conduct upon their employees than those specified in Chapter 112, Part III, Florida Statutes. The provisions of (2) apply in addition to that part.

(2) A Commission employee shall not knowingly accept anything of value for which equal or greater consideration is not given from any entity listed below, its officers or employees. This prohibition shall further apply to any business entity that either directly or indirectly owns, controls, is an affiliate of or is a subsidiary of the listed entities. These include:

(a) An entity regulated by the Commission;

(b) An entity that is currently a party or has been a party in a Commission proceeding during the preceding 12 months; or

(c) A person or entity acting on behalf of a regulated entity or party.

(3) The provisions of (2) shall not apply:

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

* * *

(g) To the acceptance of transportation in a regulated entity's vehicle by an employee on a field visit to a site that is remote or difficult to access in a Commission vehicle.

78. The Petitioner's residence is located in a remote location accessed by a long and unpaved road. The Tallahassee-based PSC employee had been traveling on state business for six weeks, not in a commission vehicle, but in his personal car. The employee testified that he did not want to take his personal car, which rode low to the ground, down the dirt road to the Petitioner's house, so he drove to the local GTE office and rode with the technicians who were familiar with the area.

79. PSC rules permit employees to accept travel from regulated entities when the destination is remote or the access is difficult. The evidence fails to establish that the PSC technician violated PSC rules by traveling to the Petitioner's property on May 29, 1998.

80. The Petitioner asserts that the PSC improperly delayed his request for an informal conference prior to the time the PSC proposed a resolution of the complaint. The Petitioner's request of April 2, 1998, was premature. Administrative rules governing the PSC provide that a consumer may request an informal conference after the PSC completes the complaint investigation and offers a proposed resolution. The PSC investigation eventually concluded and the proposed resolution was offered to the parties by letter dated June 17, 1998.

81. Rule 25-22.032(4), Florida Administrative Code, provides as follows:

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

(4) If a party objects to the proposed resolution, he may file a request for an informal conference on the complaint. The request shall be in writing and should be filed with the Division of Consumer Affairs within 30 days after the proposed resolution is mailed or personally communicated to the parties. Upon receipt of the request the Director of the Division may appoint a staff member to conduct the informal conference or the Director may make a recommendation to the Commission for dismissal based on a finding that the complaint states no basis for relief under the Florida Statutes, Commission rules or orders, or the applicable tariffs. If a conference is granted the appointed staff member shall have had no prior contact with the complaint. After consulting with the parties, the appointed staff member shall issue a written notice to the parties setting forth the procedures to be employed, the dates by which written materials are to be filed, and the time and place for the informal conference, which shall be held in the service area, or such other convenient location to which the parties agree, no sooner than 10 days following the notice.

82. Once the proposed resolution was offered, the Petitioner's request for an informal conference was properly filed. The rule does not provide a deadline for the convening of the informal conference. The PSC asserts that the extended delay was due to attempts to resolve the case without the need for the conference. The conference eventually occurred, the parties could not resolve their differences, and the PSC forwarded the matter to the Division of Administrative Hearings. The delay in convening an informal conference does not violate the requirements of the cited rule.

83. Finally, the Petitioner has asserted that GTE violated Section 364.10, Florida Statutes, by subjecting him to "undue or unreasonable prejudice or disadvantage" in the provision of his telephone service. Specifically, the Petitioner asserts that GTE retaliated against him for filing the complaints with the PSC by disconnecting his telephone line and failing to remove the toll

block after the local service was restored. Section 364.10, Florida Statutes, provides as follows:

364.10. Undue advantage to person or locality prohibited; exception--

(1) A telecommunications company may not make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(2) The prohibitions of subsection (1) notwithstanding, a telecommunications company serving as carrier of last resort shall provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in a commission-approved tariff and a preferential rate to eligible facilities as provided for in part II.

84. There is no evidence to support the Petitioner's assertion that GTE has subjected the Petitioner to "undue or unreasonable prejudice or disadvantage."

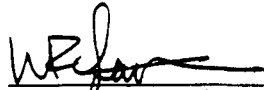
85. The Petitioner has asserted that GTE should be required to reimburse him for property allegedly stolen by looters after the tornado of March 9, 1998. There is no evidence or legal authority to support this assertion.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Florida Public Service Commission enter a final order requiring GTE to provide a credit of \$10.89 to the Petitioner.

DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

DONE AND ENTERED this 10 day of May, 2000, in
Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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this 10 day of May, 2000.

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DOCKET NO. 990861-TL
DATE: AUGUST 3, 2000

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order must be filed with the agency that will issue the final order in this case.