

KATZ, KUTTER, HAIGLER, ALDERMAN, BRYANT & YON
PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS AT LAW

www.katzlaw.com

Orlando Office

Suite 900
111 North Orange Avenue
ORLANDO, FL 32801
(407) 841-7100
fax (407) 648-0660

Tallahassee Office

12th Floor
106 East College Avenue
TALLAHASSEE, FL 32301
(850) 224-9634
fax (850) 222-0103

Miami Office

Suite 409
2999 NE 191st Street
AVENTURA, FL 33180
(305) 932-0996
fax (305) 932-0972

Washington, DC Office

Suite 750
801 Pennsylvania Avenue, NW
WASHINGTON, D.C. 20004
(202) 393-1132
fax (202) 624-0659

March 9, 2001

VIA HAND DELIVERY

Mr. Thomas D. Hall, Clerk
Supreme Court of Florida
Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32399-1925

RECEIVED FPSC
01 MAR 12 AM 10:06
RECORDS AND REPORTING

970808-TL

Re: Case No. 94,656 - GTC, Inc. v. Joe Garcia, etc., et al.

Dear Mr. Hall:

Enclosed for filing in the above referenced case are the original and seven (7) copies of GTC, Inc.'s Motion for Rehearing of Revised Opinion.

Thank you for your assistance in this matter.

Sincerely,

Patrick K. Wiggins

- APP _____
- CAF _____
- CMP _____
- COM _____
- CTR _____
- ECR _____
- LEG _____
- OPC _____
- PAI _____
- RGO _____
- SEC
- SER _____
- OTH _____

PKW:plk
Enclosures
cc: Parties of Record

01 MAR 12 11 09 AM '01

DOCUMENT NUMBER-DATE

03096 MAR 12 01

FPSC-RECORDS/REPORTING

IN THE SUPREME COURT OF FLORIDA

GTC, INC.,

Appellant, Cross-Appellee

CASE NO. SC 94656

v.

JOE GARCIA, etc., et al.,

Appellees, Cross-Appellants.

MOTION FOR REHEARING OF REVISED OPINION

Appellant, GTC, Inc. (GTC), files this Motion for Rehearing of this Court's Revised Opinion issued February 22, 2001, and states:

This Court's opinion, as written, can only be construed to hold that the election of price cap regulation is an admission of overearning. There is no evidence in the record whatsoever to support such a conclusion. Additionally, the opinion fails to recognize GTC's entitlement to \$1.2 million in annual revenue independent of the interLATA subsidy mechanism. Because of these errors, the Revised Opinion is flawed and will lead to (1) significant confusion in other cases and (2) continued, needless litigation involving the parties in this case.

This Court's Revised Opinion fundamentally misapprehends the standard used by the Florida Public Service Commission (the Commission) to eliminate the interLATA subsidy. As a result, the Court's decision subjects GTC to an unlawful stripping of entitled revenue and to unequal treatment compared to other Local Exchange Carriers (LECs).

Specifically, this Court amended text in the Revised Opinion, stating as follows:

While, admittedly, none of the Commission's prior decisions eliminating the interLATA subsidy expressly relied on "changed

circumstances” as the criterion for eliminating the subsidy, it is apparent from the face of the Commission’s prior orders eliminating the subsidy to other LECs that the elimination was based on the fact that *the LECs no longer required the subsidy*. In other words, the LECs’ earnings circumstances had changed to the effect that *they no longer relied on the subsidy*. Considered in this light, GTC’s switch to price-cap regulation is an indication that *it no longer needs to be subsidized in order to remain competitive*. Further, as the Commission noted, *section 364.051(5) offers GTC relief if it finds that its rates are too low*. Under that statute, GTC may apply for a rate increase if it demonstrates that its circumstances have now changed due to the termination of the interLATA subsidy. Accordingly, we affirm the Commission’s decision to terminate GTC’s subsidy or to employ “changed circumstances” as the criterion for eliminating the subsidy. *Emphasis added*.

Slip op. at 17-18. This Court states that GTC’s election of price-cap regulation shows that GTC no longer “needs” or “requires” the \$1.2 million in annual revenues that it previously received from the interLATA subsidy. This Court then states that, even if GTC does need this money, it has the option of filing for a rate increase if its rates are too low. This interpretation misconstrues the words “need” and “required” as defined and used in prior Commission orders. This interpretation is totally contrary to the treatment afforded every other LEC. This interpretation erroneously and improperly strips GTC of entitled revenue.

In *In re: Intrastate Telephone Access Charges for Toll Use of Local Exchange Services*, 84 F.P.S.C. 12:119, 12:123 (1984) (Order No. 13934), the Commission recognized that GTC¹ and other LECs became entitled to increase their rates for local service because of lost revenue due to the access charge changes implemented by the Commission. The Commission invited LECs such as GTC to file tariffs increasing their local rates due to this revenue loss. *Id.*

¹ That order references St. Joseph Telephone and Telegraph Company, which is now known as GTC, Inc.

Subsequently, the Commission determined that the LECs should not raise their rates due to the access charge changes rates. Instead, the Commission instituted the interLATA subsidy. *See In re: Intrastate Access Charges for Toll Use of Local Access Charges*, 85 F.P.S.C. 6:69 (1985) (Order No. 14452).

The basis for the subsidy was to prevent the local rates of GTC and other LECs *from increasing*. By providing the subsidy, the LECs' local rates were kept as low as possible. This Court's interpretation assumes just the opposite; that is, that the interLATA subsidies were implemented to prevent the LECs *from underearning*; that is, from suffering rates below their lowest authorized rate of return.

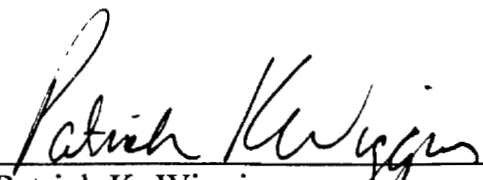
In every other case but this one, the Commission has terminated the interLATA subsidy when a LEC was overearning or to prevent the LEC from overearning; that is, the subsidy was terminated when the rates became *too high*. Now, under this Court's decision, GTC will lose its entitlement to \$1.2 million in annual revenues simply because it switched to price-cap regulation. Discontinuation of the interLATA subsidy was never before tantamount to the repudiation of the entitlement to revenues lost due to the access charge change.

There is only one consistent basis upon which the Commission can argue and this Court can affirm the election of price-cap regulation as a "changed circumstance." Only if the election of price-cap regulation is viewed as *an admission of overearning* can the Commission's definition of "changed circumstances" be consistent with its past holdings. There is, however, no evidence whatsoever in the record to support such a conclusion.

Under this Court's opinion, as written, GTC's entitlement to the \$1.2 million in annual revenues remains an open question that GTC will be forced to debate in an otherwise needless rate-increase proceeding.

WHEREFORE, GTC respectfully requests that this Court grant this motion for rehearing to address (1) the absence of any record evidence to support the conclusion that the election of price-cap regulation constituted a finding of overearning; and (2) GTC's entitlement to additional revenue under previous Commission orders. The failure to address these issues will create continued litigation and create confusion in this regard in future proceedings.

Respectfully submitted this 9th day of March, 2001.



Patrick K. Wiggins
Katz, Kutter, Haigler, Alderman, Bryant &
Yon, P.A.
12th Floor
106 East College Avenue
Tallahassee, Florida 32301
(850) 224-9634 Telephone
(850) 222-0103 Facsimile

Counsel for GTC, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed on March 9,

2001 to:

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

Christina Moore
Division of Appeals
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

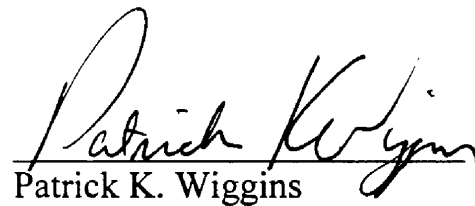
Beth Keating
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Nancy B. White
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

Charles J. Beck
Deputy Public Counsel
c/o The Florida Legislature
111 W. Madison St., Ste. 812
Tallahassee, FL 32399

John H. Vaughan
GTCOM, Inc.
502 5th Street
Suite 400
Port St. Joe, FL 32456

Raoul G. Cantero, III
Adorno & Zeder, P.A.
2601 South Bayshore Drive
Suite 1600
Miami, FL 33133


Patrick K. Wiggins