

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by GTC, Inc.
d/b/a GT Com to terminate
interLATA access subsidy and
convert to payment of access
charge revenue directly to GTC,
Inc. d/b/a GT Com.

DOCKET NO. 980498-TP
ORDER NO. PSC-01-2330-FOF-TP
ISSUED: November 30, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

FINAL ORDER DISMISSING PETITION

BY THE COMMISSION:

I. Case Background

On July 1, 1997, BellSouth Telecommunications, Inc. (BellSouth) filed a Petition to Remove InterLATA Access Subsidy received by St. Joseph Telephone and Telegraph Company, which is now GTC, Inc. d/b/a GT Com (GTC), for which we established Docket No. 970808-TL. On July 22, 1997, BellSouth filed a revised Petition in that Docket. On August 11, 1997, GTC filed an Answer in opposition to BellSouth's revised Petition. Thereafter, the matter was set for hearing.

On April 6, 1998, GTC filed its Petition to Terminate Access Subsidy and Convert to Payment of Access Charge Revenue Directly to GTC, for which we established Docket No. 980498-TL. Docket No. 980498-TP was not originally filed for consideration in conjunction with Docket No. 970808-TL, although the Dockets were briefly consolidated for consideration. The short period of time, however, between the filing of GTC's Petition in Docket No. 980498-TP and the prehearing in Docket No. 970808-TL required that Docket No. 980498-TP be removed from consideration with Docket No. 970808-TL to avoid a notice problem.

DOCUMENT NUMBER-DATE

15026 NOV 30 5

FPSC-COMMISSION CLERK

By Order No. PSC-98-0639-PHO-TL, issued May 7, 1998, AT&T Communications of the Southern States, Inc.'s (AT&T) petition to intervene in Docket No. 970808-TL was granted, and by Order No. PSC-98-0744-PCO-TP, issued May 29, 1998, its petition to intervene in this Docket was granted.

A hearing was held in Docket No. 970808-TL on May 20, 1998. By Order No. PSC-98-1169-FOF-TL, issued August 28, 1998, we rendered our decision on the issues addressed at hearing. By our Order, we determined that the interLATA access subsidy to GTC should be terminated, and that BellSouth should file a tariff to reflect a reduction in a specific rate to offset the terminated subsidy payment to GTC.

On September 11, 1998, GTC filed a Motion for Reconsideration of our Order in Docket No. 970808-TL and a Motion for Stay of the Order. Therein, GTC argued that we should reconsider our decision in Order No. PSC-98-1169-FOF-TL, because the Order addressed the subject of this Docket, Docket No. 980498-TP. GTC explained that although these dockets had, ultimately, not remained consolidated for purposes of the hearing, our Order No. PSC-98-1169-FOF-TL nevertheless resolved the issues in Docket No. 970808-TL in a way that precluded GTC from being able to obtain relief in this Docket, Docket No. 980498-TP.

On September 21, 1998, BellSouth filed its Response and Cross-Motion for Reconsideration and Motion to Hold the Subsidy Payments Subject to Refund. On September 23, 1998, AT&T filed its Response to GTC's Motion for Reconsideration and a Cross-Motion for Reconsideration. No responses to the Cross-Motions were filed.

By Order No. PSC-98-1639-FOF-TL, we granted the Motion for Stay and denied the Motions for Reconsideration. Thereafter, the decision in Docket No. 970808-TL was appealed to the Florida Supreme Court. In a revised opinion issued February 22, 2001, the Supreme Court affirmed our decision to terminate the subsidy to GTC and reversed our decision to require BellSouth to reduce rates to offset the termination of the subsidy.

Since April 27, 1999, there has been no activity in Docket No. 980498-TP.

II. Analysis

In its Petition in this Docket, GTC asks that this Commission terminate the access subsidy payment to GTC and allow GTC recoup that lost revenue by increasing its access charges. We addressed this proposal, however, in our final decision in Docket No. 970808-TL. In fact, in Order No. PSC-98-1169-FOF-TL, we considered the testimony of staff witness Mailhot, as follows:

Staff's witness Mailhot argued that the interLATA toll bill and keep subsidy should be removed if we find that it is appropriate to rely upon GTC's earnings as a criterion, and GTC's earnings support the elimination of the subsidy. Witness Mailhot asserted that using GTC's earnings as a criterion for removal of the subsidy is consistent with our prior decisions. He also suggested that an alternative may be to terminate the subsidy, allow GTC to increase its access charges, and require BellSouth to reduce its access charges by the amount of the subsidy. As witness Mailhot stated, when the subsidy pool was established, the payments made into the pool by each company, including BellSouth, came from its access charges. The witness asserted that, in effect, BellSouth collects access charges for GTC and then passes this revenue on to GTC in the form of subsidy payments. The witness stated that we could have adjusted each company's access charges to eliminate the subsidy system in a generic proceeding, once access charges became nonuniform, but did not. Witness Mailhot recommended, therefore, that we terminate the subsidy to GTC, and allow GTC to increase its access charges, and require BellSouth to reduce its access charges.

Order at pp. 11-12. We agreed that the subsidy payment to GTC should be terminated, but did not agree that GTC should be allowed to increase its access charges. Order at p. 13. In considering GTC's Motion for Reconsideration of that decision, we considered GTC's arguments that the decision in Docket No. 970808-TL improperly pre-judged the outcome of Docket No. 980498-TP.

In reaching our decision regarding this argument, we noted that witness Mailhot's testimony was nearly identical to GTC's Petition in Docket No. 980498-TP. See Order No. PSC-98-1639-FOF-TL, issued December 7, 1998. We also explained the connection between the two dockets:

We note that Docket No. 980498-TP was not originally filed for consideration in conjunction with Docket No. 970808-TL, although the Dockets were briefly consolidated for consideration. The short period of time, however, between the filing of GTC's Petition in Docket No. 980498-TP and the prehearing in Docket No. 970808-TL required that Docket No. 980498-TP be removed from consideration in this proceeding to avoid a notice problem. We emphasize that we were not required to address GTC's Petition in Docket No. 980498-TP in the proceeding in this Docket. GTC's Petition was not an issue in this case.

Order No. PSC-98-1639-FOF-TL at pp. 5-6. Although we stated that GTC's Petition in Docket No. 980498-TP had not been specifically addressed in the decision rendered in Docket No. 970808-TL, we did consider BellSouth's assertions that our decision had rendered GTC's Petition in Docket No. 980498-TP moot. We did not, however, reach a conclusion as to the status of Docket No. 980498-TP, but concluded that, "Any determination on the status of GTC's Petition in Docket No. 980498-TP shall be made in that Docket." Order at p. 6.

This Commission's decision in Docket No. 970808-TL was appealed to the Florida Supreme Court, and on February 22, 2001, the Court release its revised opinion in the case. Therein, the Court affirmed our decision to terminate the subsidy to GTC and reversed our decision requiring BellSouth to reduce rates to reflect the elimination of the subsidy mechanism. GTC, Inc. v. Joe Garcia, 778 So. 2d 923 (Fla. 2000).

III. Decision

The Petition in this Docket, Docket No. 980498-TP, addresses the same proposal that witness Mailhot made to us in Docket No. 970808-TL. We rejected that proposal, concluding that there was insufficient evidence to support it. We also stated that it

appeared that the proposal was contrary to Section 364.163, Florida Statutes. Order No. PSC-98-1169-FOF-TL at p. 13. In considering the motions for reconsideration of that decision, we also noted that GTC had only indicated that it supported witness Mailhot's proposal, but did not provide any additional evidence in that Docket to support it, although it had the opportunity to do so. Order No. PSC-98-1639-FOF-TL at p. 5. Because the Petition in this Docket, Docket No. 980498-TP addresses the same proposal addressed in Docket No. 970808-TL, and because GTC had an opportunity to provide evidence advocating that proposal in the proceedings in Docket No. 970808-TL, we hereby dismiss, with prejudice, the petition in this Docket, Docket No. 980498-TP, on our own motion as having been rendered moot by the decision in Docket No. 970808-TL.

It is therefore

ORDERED by the Florida Public Service Commission that the Petition filed in this Docket by GTC, Inc. d/b/a GT Com on April 6, 1998, is hereby dismissed with prejudice for the reasons set forth herein. It is further

ORDERED that this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 30th Day of November, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.