

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for waiver of) DOCKET NO. 930972-TL
Rule 25-4.076(9), F.A.C., to) ORDER NO. PSC-94-0600-FOF-TL
allow for minor height) ISSUED: May 19, 1994
variations for certain pay)
telephone installations, by GTE)
FLORIDA INCORPORATED.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

ORDER ACKNOWLEDGING WITHDRAWAL OF PETITION
AND DECLARING ORDER FINAL

BY THE COMMISSION:

On October 4, 1993, GTE FLORIDA INCORPORATED (GTEFL), filed a petition for a "variance" from Rule 25-4.076(9), F.A.C. to allow for minor height variations for certain pay telephone locations. By issuing a Notice of Proposed Agency Action (PAA) order (Order No. PSC-94-0020-FOF-TL) on January 5, 1994, the Commission denied GTEFL's request for a waiver of the rule, subject to a timely protest. On January 26, 1994, GTEFL timely filed a Petition on Proposed Agency Action and requested a hearing. Prior to hearing, GTEFL filed a Withdrawal of Petition on Proposed Agency Action on March 21, 1994.

GTEFL has withdrawn its protest of the PAA order. The question remains whether the withdrawal allows the original order, which denied a request to waive a rule, to be revived and declared final simultaneously, or whether a new PAA must be issued. GTEFL was the only party to protest the PAA order. Any affected person had a clear point of entry and an opportunity to request a hearing at the time the original order was issued and during the ensuing protest period. By failing to timely protest, other persons have waived the right to a hearing. Where persons have not availed themselves to a clear point of entry, they must be considered to have waived their rights to a hearing. Florida Medical Center v.

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Dept. of H.R.S., 484 So.2d 1292 (Fla 1st DCA 1986). Thus, by acknowledging GTEFL's withdrawal, reviving Order No. PSC-0020-FOF-TL, and simultaneously declaring that order final, no party's rights will be violated. The effective date of this action is May 3, 1994.

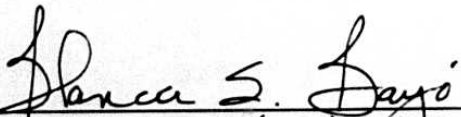
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Withdrawal of Petition on Proposed Agency Action filed by GTE Florida Incorporated on March 21, 1994, is hereby acknowledged. It is further

ORDERED that Order No. PSC-94-0020-FOF-TL is hereby declared a final order, effective May 3, 1994. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission, this 19th day of May, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 Records and Reporting 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 or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.