

FLORIDA PUBLIC SERVICE COMMISSION  
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MEMORANDUM

September 4, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (EDMONDS) *SL MCB*  
DIVISION OF COMMUNICATIONS (AUDU) *AS*

RE: DOCKET NO. 960875-TL - PETITION TO RESCIND AND DISMISS  
GTE FLORIDA INCORPORATED'S TARIFF A117 BY THOMAS MORGAN

AGENDA: SEPTEMBER 16, 1996 - REGULAR AGENDA - INTERESTED PERSONS  
MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\960875.RCM

CASE BACKGROUND

Improved Mobile Telephone Service (IMTS) is the radio telephone service which was in place before cellular service was developed. IMTS was installed in the late 1960's to provide telephone service in an automobile. The mobile service customer is charged a monthly service fee and pays for each minute of air time.

With the introduction of cellular service in the mid-1980's, demand for GTE Florida Incorporated's (GTEFL) IMTS service peaked in 1986 with approximately 1220 customers. Today, there are approximately 118 customers on the system. GTEFL is the only large LEC in Florida still offering IMTS service.

On June 14, 1996, GTEFL filed with the Commission its tariff A117. This tariff proposed discontinuing IMTS as a GTEFL service offering on October 1, 1996. This tariff was administratively approved with an effective date of June 29, 1996.

On July 11, 1996, Mr. Thomas R. Morgan filed a petition to rescind and dismiss with prejudice GTEFL's A117 tariff. This recommendation addresses Mr. Morgan's petition.

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**ISSUE 1:** Should Mr. Thomas R. Morgan's petition to rescind and dismiss with prejudice GTEFL's tariff filing A117 be granted?

**RECOMMENDATION:** No. The Commission does not have the authority to grant Mr. Morgan's petition. Therefore, the Commission need not make a ruling on Mr. Morgan's petition.

**STAFF ANALYSIS:** On July 11, 1996, Mr. Thomas R. Morgan filed a petition to rescind and dismiss with prejudice GTEFL's A117 tariff. In addition, Mr. Morgan requests that GTEFL be required to reinstate its A17 tariff and keep it in effect until at least July 31, 1998, unless the IMTS service/system is sold by GTEFL to another system operator prior to that date. Furthermore, Mr. Morgan requests that GTEFL be required to stop preempting 941 NXXs that have been accorded permissive dialing in the IMTS switch for use in the 813 NPA and restore the ability of IMTS subscribers to dial calls throughout the 813/941 NPAs as said IMTS subscribers had been able to do prior to March 2, 1996.

The basis upon which GTEFL discontinued IMTS service is because of the inability of the IMTS switch technology to recognize and complete calls to interchangeable area codes. However, the petitioner disagrees and avers that the switch, with certain upgrades, can complete calls to interchangeable area codes.

IMTS is a full duplex, direct dial mobile telephone service provided by certain communication common carriers on protected and exclusive frequencies licensed by the FCC. This places IMTS in the FCC's jurisdiction. However, GTEFL has continued to tariff and provide IMTS in its General Services Tariff with this Commission, unlike all other major LECs in Florida. This service has all the while been offered without any threats to its availability. However, with the high penetration rates of cellular technology, the availability of NXX codes has increasingly become an issue of great concern to the North American Numbering Plan Administrator. When GTEFL started offering IMTS, GTEFL installed the available technology. With the implementation of interchangeable NPAs, this technology has been limited. At the core of this petition is the fact that GTEFL's HiCom switch, manufactured by Harris Corp. in the mid-1970s, was at the time programmed to accept only NPA formats then in use. Thus, these switches are incapable of processing interchangeable NPA formats that are currently being deployed.

GTEFL has indicated that it will discontinue IMTS because of the HiCom switch's current inability to recognize and complete calls to interchangeable NPAs. While the Petitioner argues otherwise, this appears to be true. The petitioner, however,

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argues that GTEFL could have remedied this situation. Whether it was intended or a grave oversight on the part of GTEFL not to request the electronic "source code" from Harris Corp. (as Harris Corp. announced its intention to cease manufacturing and subsequently discontinue to provide technical field support of any kind), it is true that the HiCom Switch cannot currently recognize and complete calls from interchangeable NPAs.

IMTS is a direct dial mobile telephone service that was started in the 1960s to provide telephone service in cars. Since the advent of cellular technology, staff believes that cellular telephones and IMTS are functionally perfect substitutes, except for price of the wireless service. The IMTS HiCom switch's technology has not been adapted to cope with changing needs of the industry: interchangeable NPAs. However, cellular technology has the capability to handle interchangeable NPAs.

In May 1996, GTEFL implemented "permissive dialing", at the request of staff, as an interim step. With the interim step, GTEFL allowed permissive dialing in its IMTS HiCom switch using protected NXX codes in the 941 NPA for use in the 813 NPA. This was to allow IMTS customers to get alternative wireless services. However, this interim step requires the protection of NXX codes that will eventually impact the life of the 941 and 813 NPAs.

The petitioner also argues that GTEFL did not notice IMTS customers of its intent to withdraw IMTS service, and thereby denied IMTS customers any opportunity to comment and object to withdrawal of the service. However, GTEFL provided written notice of the discontinuance of IMTS service approximately 3 months in advance of the discontinuance date. Staff believes that GTEFL provided IMTS customers more than adequate notice to IMTS customers of discontinuance of the service.

Staff believes that this Commission does not have the authority to grant Mr. Morgan's petition. IMTS is wireless service, over which the Commission has limited, if any, jurisdiction. "[T]he Legislature did not intend, in 1913, to regulate any type of radio service, including the 'radiotelephone' service provided by Southeastern and RTC to their subscribers." Radio Telephone Communications, Inc. v. Southeastern Telephone Company, 170 So.2d 577, 582 (Fla. 1964). The fact that IMTS is in GTEFL's tariff does not change the Commission's jurisdiction regarding IMTS. IMTS service is within the jurisdiction of the Federal Communications Commission. Therefore, staff recommends that the Commission need not rule on Mr. Morgan's petition.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If Issue 1 is approved, there are no remaining issues to this docket, and it should be closed.

STAFF ANALYSIS: Upon the approval of Issue 1, there will be no remaining issues to this docket, and it should be closed.