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* Not Admitted in Florida

ORIGINAL FILED

April 8, 1994

Ms. Blanca Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, FL 32399-0865

Dear Ms. Bayo:

ACK ✓

AFA _____ Re: Docket No. 910529-TL
APP _____ Request by Pasco County Board of County Commissioners for
CAF _____ extended area service between all Pasco County exchanges.

CTC _____ Please find enclosed the original and 15 copies of GTE Florida Incorporated's
EOT _____ Motion for Partial Modification of Order No. PSC-92-0158-FOF-TL for filing in the
_____ above-referenced matter.

6 Service has been made as indicated on the Certificate of Service. If there are any
_____ questions with regard to this matter, please contact the undersigned at 813-228-
3094.

RCH _____
SEC / Very truly yours,

WAS _____
OTH *Kimberly Caswell*
_____ Kimberly Caswell

RECEIVED & FILED
mas
FPCSC DIVISION OF RECORDS

orig
DM
KC:tas
Enclosures

A part of GTE Corporation

DOCUMENT NUMBER-DATE
03332 APR-8 8
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by Pasco County)
Board of County Commissioners) Docket No. 910529-TL
for Extended Area Service) Filed: April 8, 1994
Between All Pasco County)
Exchanges)

**MOTION FOR PARTIAL MODIFICATION
OF ORDER NO. PSC-92-0158-FOF-TL**

GTE Florida Incorporated (GTEFL) seeks partial modification of the Commission's Order number PSC-92-0158-FOF-TL, issued on April 4, 1992. That Order required GTE Florida Incorporated and certain other LECs to institute an optional extended area service plan under which calls between all Pasco County exchanges would be rated at \$.25 each. Implementation of this plan would require GTEFL to provide service on several routes, three of which are interLATA: Dade City and Tampa-North; Hudson and Brooksville; and San Antonio and Tampa-North. GTEFL serves the Tampa-North and Hudson exchanges.

GTEFL's federal consent decree forbids it from providing service across a LATA boundary. As such, the Commission directed GTEFL to ask the U.S. District Court for the District of Columbia to authorize the Company to provide service on the Pasco interLATA routes. GTEFL did so on May 12, 1992.

GTEFL's motion seeking the specified interLATA authorization was denied in an Order dated December 22, 1993. GTEFL promptly notified this Commission that its motion had been denied and sent a copy of the Order to the Commission. (For the Commission's convenience, another copy of the Order is attached to this filing.)

DOCUMENT NUMBER-DATE
03332 APR-8 8
FPSC-RECORDS/REPORTING

GTEFL cannot implement the \$.25 plan on the above-listed interLATA routes without violating its consent decree. For this reason, GTEFL asks the Commission to partially modify its Order to relieve the Company of the obligation to provide service on these three routes.

Respectfully submitted this 8th day of April, 1994.



Kimberly Caswell
P. O. Box 110, FLTC0007
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Telephone: (813) 228-3094

Attorney for GTE Florida
Incorporated

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED

DEC 22 1993

LEGAL DEPT.
SENIOR ATTORNEY

Civil Action No. 83-1298
(RGG)

FILED

DEC 17 1993

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GTE CORPORATION,

Defendant.

Memorandum

GTE Corporation has moved the Court for an waiver Order authorizing GTE Florida Incorporated (GTE Florida) to provide what it terms InterLATA non-optional, message-rate extended area service (EAS) between the various exchanges in Florida. See GTE Corporation's Motion for an order Authorizing GTE Florida Incorporated to Provide Non-Optional, Message Rate, InterLATA Extended area Service Between the Exchanges of Dade City and Tampa-North; Hudson and Brooksville; and San Antonio and Tampa-North (May 12, 1992). The request is made in accordance with a Florida Public Service Commission (FPSC) directive for GTE to seek the Court's permission to provide such service. *Id.* at 1. The Department of Justice opposes the waiver. See Response of the United States in Opposition to GTE's Motion to Permit GTE Florida to Provide InterLATA Message-Rate Extended Area Service (Nov. 11, 1992).

Under the proposed waiver, GTE Florida would offer customers

measured-rate EAS between the Dade City and Tampa-North exchanges; the Hudson and Brooksville exchanges; and the San Antonio and Tampa-north exchanges. Customers could call anywhere within the extended local calling area for a \$.25 rate, regardless of duration.

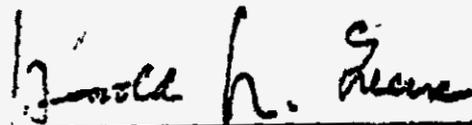
GTE's proposed plan is similar to a recent motion of BellSouth that sought permission to provide a \$.25 flat-rate charge for every interLATA call placed between various other Florida communities. Just as the Court denied that request for waiver, *see* May 18, 1993 Order, the Court today denies GTE's request for waiver.

The Court finds that the expanded local calling capabilities sought here by GTE to be of the same genre as those once sought by GTE North for various areas in the States of Ohio. The Court denied those three motions in an expansive opinion filed December 9, 1993. *See United States v. GTE Corp.*, No. 83-1298, slip op. (D.D.C. December 9, 1993). For similar reasons, the Court also denied GTE's motion requesting expanded local calling capabilities in Idaho, *see* Order (December 17, 1993), and West Virginia. *See* Order (December 17, 1993). In all these cases, the state regulatory agency authorized to make the community of interest determination did not find that a sufficient community of interest existed between the various exchanges at issue to warrant non-optional flat-rate service. Here, too, the FPSC has specifically found that a sufficient community of interest does not exist between the affected communities to warrant traditional non-optional, flat-rate, two-way calling between the exchanges

involved.¹ See, s.d., United States v. Western Electric Co., 369 F. Supp. 990, 1001-01 n.54 (D.D.C. 1983). While the FPSC found it "appropriate" for "a toll discount plan," the necessary finding of sufficient community of interest to warrant a Court waiver is absent.

As the Court iterated in its December 17, 1993 Order, "regardless of whether the proposed waiver seeks flat-rate EAS, measured-rate EAS or any combination between, if the requisite community of interest between the exchanges is lacking, the court can not, under the decree, permit such LATA boundary expansions." December 17, 1993 Order. Such arrangements are merely discounted toll rates and thus, anticompetitive. Because of the plan's anticompetitive effect and because the FPSC found an insufficient community of interest for all subscribers to pay for extended area service at a flat rate, the decree prohibits the arrangement and the court will not permit such LATA boundary expansions.

The motion is being denied contemporaneously herewith.



HAROLD H. GREENE
United States District Judge

¹ The FPSC did find that the Trillacoochee to Brooksville route did meet the threshold sufficient community of interest standard; however, this route is not included in the request by GTE's motion.

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FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
GTE CORPORATION,
Defendant.

Civil Action No. 82-1298

(HHG)

FILED

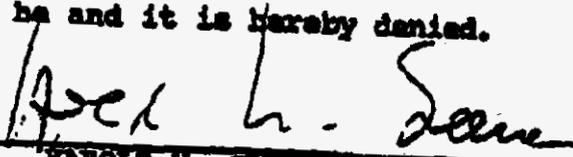
DEC 17 1993

CLERK, U.S. DISTRICT COURT
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Order

Upon consideration of GTE Corporation's Motion for an Order Authorizing GTE Florida Incorporated to Provide Non-Optional, Message Rate, InterLATA Extended area Service Between the Exchanges of Dade City and Tampa-North; Hudson and Brooksville; and San Antonio and Tampa-North (May 12, 1992), and the responsive pleading in opposition thereto, it is this 17th day of December, 1993

ORDERED that the above motion be and it is hereby denied.


HAROLD H. GREENE
United States District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of GTE Florida Incorporated's Motion for Partial Modification of Order No. PSC-92-0158-FOF-TL in Docket No. 910529-TL was sent via U.S. mail on April 8, 1994 to the parties on the attached list.



Kimberly Caswell

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Staff Counsel
Florida Public Service
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32399-0865

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Pasco County Board of
County Commissioners
7530 Little Road
New Port Richey, FL
34654

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Harold H. Greene

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United States District Judge

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