

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of) DOCKET NO. 950614-TL
tariff filing to provide) ORDER NO. PSC-95-1011-FOF-TL
Contract Service Arrangements) ISSUED: August 17, 1995
for intraLATA toll service for)
large customers by GTE Florida)
Incorporated. (T-95-293 filed)
5/9/95))
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING TARIFF

BY THE COMMISSION:

I. Background

Contract Service Arrangements (CSAs) were introduced for the first time in August, 1984. By Order No. 13603, issued August 20, 1984, we granted BellSouth Telecommunication, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell) CSA authority for Private Line, Special Access facilities, and WATS access lines. We also allowed other local exchange companies (LECs) to request CSA authority for their private line and WATS services. See Order 13830. We have granted CSA authority to other LECs since 1984.

When economical, CSAs may be furnished instead of existing tariff offerings provided there is reasonable potential for uneconomical bypass of the company's services. Uneconomic bypass occurs when an alternative service arrangement is used, instead of company services, at prices below the company's rates but above the company's incremental costs.

GTEFL proposes to provide CSAs for intraLATA (local access transport area) toll service for large business customers with a minimum of 5,000 aggregated minutes of usage per month. The two key issues are 1) whether the Company's proposal meets the

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standards for CSA authority; and 2) whether the appropriate price floor should be based on either imputation of access charges or the Company's long run incremental cost (LRIC).

II. Present Tariff

GTEFL's current tariff does not allow contract service arrangements for any toll customer segment. GTEFL asserts that the lack of contract arrangements does not permit it to compete effectively for high-volume business toll users and that CSAs are necessary to meet existing competition in the intraLATA toll market. GTEFL believes that the IXC's have more latitude in creating favorable pricing arrangements because of their ability to package interLATA and intraLATA service, and to offer large customers nationwide contracts. GTEFL argues that since the IXC's are capable of offering discounts on total toll usage, intraLATA minutes are therefore discounted the same as interLATA minutes even if the majority of the large customers' toll minutes are on the interLATA side. GTEFL believes it is disadvantaged because of this ability by the IXC's. The Company asserts that not only is it restricted from providing interLATA service, but it cannot offer intraLATA contract discounts. Although the Company understands that we have no control over its federal restrictions, GTEFL believes that we have the authority to grant additional pricing flexibility that would eliminate some of the artificial competitive disparity between the LECs and the IXC's.

GTEFL asserts that its present toll tariffs were approved with the expectation that the LECs would remain the only provider of 1+ intraLATA toll in each of their respective regions. However, with the approval of intraLATA presubscription, GTEFL believes that the present tariff is outdated and does not allow for the vast changes that lie ahead. The Company states that it, like the IXC's, must begin preparing for these changes now.

III. Proposed Tariff

GTEFL proposes to add CSAs for intraLATA toll service for business customers with a minimum of 5,000 aggregated minutes of usage per month. These arrangements would be offered to customers instead of standard tariff offerings, on a case-by-case basis, at contractual rates. The Company proposes that the toll contracts be treated like other CSAs, which require no prior Commission approval once the general authorization is granted for a particular service. However, the toll contracts would appear on the Company's quarterly CSA report and would be available for our review upon request.

The price floor for services available through CSAs is normally based on a company's long run incremental costs. However, in Order No. 24859, issued July 29, 1991, we developed imputation guidelines for establishing the competitive price floor for LEC toll services. Imputation is a measure to assure that the company's rates are covering its access rates. GTEFL asserts that its proposed CSAs would comply with our imputation guidelines.

Switched access charges are imputed on both ends for low volume services; however, for high volume services, a company is allowed to impute special access on one end and switched access on the other end. See Order 24859. Specifically, we found it appropriate to use a cross-point approach to determine the level of access rates equivalent to the high volume customer's most economic configuration. The cross-point methodology determines the appropriate point to change from imputing switched access rates on both ends to special access on one end and switched access on the other end for purposes of determining the relevant access rates to be covered. The determining factor is the point where a customer would decide to purchase a special access line instead of using switched access, based on the number of hours of toll calls that a customer anticipates making per month.

The lowest allowable aggregated toll rate that a customer could receive under the Company's proposed tariff is \$.07478 per minute, which is GTEFL's current imputation floor. Although GTEFL used certain assumptions to calculate its price floor that differ from those used in Order No. 24859, we find those modifications to be appropriate. Based on an industry-wide assumed usage that the FCC used in FCC Docket 87-339 to monitor the impact of Federal Joint Board decisions, the Order assumed 5000 minutes of use per voice grade equivalent circuit. However, in FCC Docket 91-213, released October 16, 1992, the FCC determined that 9000 minutes of use per voice grade equivalent circuit was appropriate in converting a flat rated service to a minute of use basis. We agree. Also, GTEFL believes that the original assumption of 10 miles for switched access transport is no longer appropriate. Based on its studies, GTEFL determined that the average transport for a DS1 circuit is 5 miles. We believe that this is appropriate.

GTEFL proposes to provide CSAs to its intraLATA toll customers with greater than 5,000 minutes of use per month. Although the Company believes its proposal is consistent with the methodology established in the Order, we disagree. The Company's proposed cross-point of 5000 minutes is much less than the 10,575 minutes we calculated using our methodology. Although we agree with the Company's calculation of its price floor, we believe that the qualifying usage level proposed in the Company's tariff does not

comply with the methodology specified in Order No. 24859. In other words, \$.07478 per minute is the appropriate price floor for a customer whose toll usage is 10,575 minutes or greater per month but not for a customer with only 5,000 minutes per month.

Under the policy set forth in Order No. 24859, we require that access charges should continue to be imputed to ensure that LEC toll rates cover the LEC's access charges. Due to number of changes to Chapter 364, Florida Statutes, and the potential of increased competition in the market, a question arises as to whether the current imputation requirements should continue. However, any modifications to the existing imputation policies and guidelines should be handled separately in a generic fashion.

IV. Alternative Providers for Toll Service

GTEFL believes that the requested CSA authority would enable it to respond to other IXC strategies for serving large customers. For instance, IXCs may purchase dedicated T1 facilities to run from their points of presence to particular large business' customers' premises. In this scenario, the customer has no need to go through GTEFL's switch to reach its IXC; therefore, the customer would pay high-capacity charges rather than usage. If the customer is substantially large, this arrangement would reduce the Company's effective access charges. GTEFL asserts that it lacks the pricing flexibility needed to compete with the favorable rates the IXCs can offer customers through these kinds of arrangements.

GTEFL submitted an affidavit from a potential large business customer which states that the customer would contract with GTEFL for intraLATA toll service if competitive volume toll pricing was available. The Company asserts that unless it is granted this CSA authority, GTEFL will lose this customer to a competing IXC, which can offer a contract to meet this customer's needs. The Company clearly believes that this is evidence that bypass occurs today. In addition, the Company asserts that continued loss of such customers would weaken GTEFL's ability to position itself for increased competition following the implementation of 1+ presubscription. Although we do not disagree with GTEFL's argument, the Company should follow the existing imputation policy if it seeks to provide CSAs to its large toll customers.

V. Criteria for Granting CSAs

Minimum criteria were established in Docket No. 950112-TL for granting CSAs. The criteria are:

- 1) An alternative provider can legally provide a service that is functionally similar or equivalent from the standpoint of the customer; and
- 2) There is the reasonable potential for economic harm without pricing flexibility. There is a constant threat from both potential and existing rivals.

We acknowledge that competitive alternatives to GTEFL's intraLATA toll service include direct competition from ATT-C, Sprint, and MCI, as well as smaller IXCs certificated in Florida. With the implementation of intraLATA presubscription, the customer has the option of using GTEFL for its intraLATA traffic or presubscribing to an IXC for its intraLATA traffic. Thus, we believe that the customer's ability to choose his carrier, either a LEC or an IXC, for 1+ intraLATA traffic provides an alternative to the customer.

We believe that there is a potential for economic harm to GTEFL because of the existence of functionally equivalent alternatives to the LEC's intraLATA toll service. The IXCs market their intraLATA toll services and would market these services if their intention were not to gain a larger share of the intraLATA toll market. We believe the existence and marketing of these alternatives by IXCs poses the potential for economic harm to the Company. Although GTEFL's proposed tariff meets the minimum criteria for granting contract service arrangements, we find that the Company has not complied with our imputation guidelines.

Upon review, we deny GTEFL's tariff filing to provide CSAs for intraLATA toll services for large customers. GTEFL has not complied with the methodology established in Order No. 24859. Currently, GTEFL's competitors can provide arrangements that combine interLATA and intraLATA rates and services. Although the proposed tariff could enhance GTEFL's ability to compete with its competitors, the Company should follow the existing imputation policy.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that GTE Florida Incorporated's proposed tariff to provide contract service arrangements for intraLATA toll service for large customers is hereby denied. It is further

ORDERED that if no protest is filed in accordance with the requirements set forth below, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 17th day of August, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

DLC

Commissioner Julia L. Johnson and Commissioner Joe Garcia dissent from the Commission's decision in this docket.

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.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the action proposed files a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 7, 1995.

In the absence of such a petition, this order shall become final on the day subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this Order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this Order becomes final on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the date this Order becomes final, 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.