

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Complaint of AGI Publishing, Inc. d/b/a Valley
Yellow Pages against GTE Florida Incorporated for violation
of Sections 364.08 and 364.10, Florida Statutes, and request
for relief.

DOCKET NO. 990132-TP

COPY

BEFORE:

CHAIRMAN JOE GARCIA
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JULIA A. JOHNSON
COMMISSIONER E. LEON JACOBS

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

28**

DATE:

March 30, 1999

PLACE:

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Tallahassee, Florida

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APPEARANCES:

Patrick K. Wiggins, Esquire, representing Valley Yellow Pages

Kim Caswell, Esquire, representing GTE

STAFF RECOMMENDATION

Issue 1: Should the Commission grant GTEFL's Motion to Dismiss and deny Valley's Petition for Declaratory Statement?

Recommendation: Yes. The Commission should grant GTEFL's Motion to Dismiss and deny Valley's Petition for Declaratory Statement. The complaint and petition seek relief that is beyond the Commission's jurisdiction to provide. Thus, Valley has failed to state a cause of action upon which relief can be granted. The petition is based upon the same facts alleged in the complaint.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission accepts staff's recommendation in Issue 1, this docket should be closed. The issues contained in the Request for Expedited Treatment, the Request for Prehearing Conference, the responses and oppositions contained in this docket would then be moot.

P R O C E E D I N G S

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CHAIRMAN GARCIA: Number 28.

COMMISSION STAFF: Commissioners, Chairman Garcia, Item 28 is staff's recommendation on Valley Yellow Pages' complaint against GTE regarding termination of its billing services agreement. And staff wants to start out by making one fairly major modification to the recommendation.

CHAIRMAN GARCIA: Did you say fairly major?

COMMISSION STAFF: Fairly major. And that is that we strike or modify the recommendation so that we aren't addressing the declaratory statement at this time. It has come to our attention through discussions with our appeal staff that it would be more appropriate for the appeal staff to bring back a recommendation on the declaratory statement. We have not followed the proper FAW noticing requirements. And, therefore, we would just like at this time to rule on -- the Commission to rule on the motion to dismiss on the complaint.

CHAIRMAN GARCIA: Okay.

COMMISSION STAFF: Valley is an independent yellow pages publisher that provides services in GTE's service territory. And GTE, as we understand it, has notified Valley that it will terminate the billing and

1 collection services that it provides to Valley
2 according to the parties, GTE and Valley's, billing
3 services agreement. And that will occur on March
4 31st, which is tomorrow.

5 As a result of the impending termination of
6 service, Valley has filed its complaint and filed
7 multiple requests for expedited treatment there of the
8 complaint. And Valley essentially requests that the
9 Commission ordered GTE to continue to provide its
10 billing and collection services after tomorrow. And I
11 think Valley believes that to do otherwise would be
12 discriminatory in violation of Chapter 364.08 and .10,
13 Florida statutes.

14 GTE essentially moves to dismiss the complaint on
15 the grounds that the Commission doesn't have
16 jurisdiction over this type of service that is in
17 question. And we essentially -- staff, our
18 recommendation is that we agree with GTE. The third
19 party billing and collection service is not a
20 telecommunications service for hire. And we believe
21 it's a noncommunications service that doesn't fall
22 under our jurisdiction. This may be appropriate in a
23 court of law. I'm not sure, but this is not the
24 proper venue.

25 CHAIRMAN GARCIA: Great. Thank you. Do you want

1 to hear from the parties? I was going to say that
2 before you began, so you would have to think of
3 another one on the fly. Go ahead.

4 MR. WIGGINS: All right. Thank you. Even though
5 this is on the motion to dismiss, we thought it might
6 be the most useful if I went first and then see if you
7 can demolish my arguments.

8 CHAIRMAN GARCIA: Do you want that to happen?

9 MR. WIGGINS: No, I definitely do not want that
10 to happen. But I want to focus on three major aspects
11 of this particular item before you, the jurisdictional
12 question, the legal basis for jurisdiction, and the
13 policy reasons that you do not grant the motion to
14 dismiss.

15 Let's be clear about this. This is a motion to
16 dismiss. Staff is saying and General Telephone is
17 urging that you close the door in my client's face and
18 say, no, you cannot come here for any kind of relief.
19 You have no jurisdiction. There is nothing under
20 Chapter 364 that allows you to do this, no matter how
21 offensive you might prove up General Telephone's
22 behavior to be. How inconsistent with the purposes of
23 this Chapter 364 you might be able to prove that up,
24 we can't do anything for you.

25 Now, there are certain advantages to this

1 recommendation. It's certainly efficient. You don't
2 have to deal with us. We're out. And you certainly
3 don't have to deal with -- you can also get rid of the
4 proposed rule the staff has suggested, where they are
5 suggesting that the Commission adopt rules concerning
6 billing and collection of both regulated and
7 nonregulated services.

8 When consumers call to complain about cramming or
9 what the LEC does with their new sort of police power
10 in regulating this area, you can say, I'm sorry, our
11 hands are tied. And if the legislature calls and asks
12 what's going on, you can say, well, we don't have any
13 jurisdiction, our hands are tied. I think that's
14 efficient. It possibly is required under the statute,
15 but it's certainly not in the public interest.

16 I think you are faced here with a classic -- what
17 I call overinclusive/underinclusive dilemma on
18 jurisdiction. On the one hand, you don't want to open
19 the door to everything, you do not want to be
20 overinclusive. You have to have some discipline in
21 how you look at your jurisdiction. You cannot be a
22 roving Commission looking to just do good. It has to
23 be within the framework of the chapter.

24 On the other hand, you do not want to be
25 underinclusive so that you tie your hands or exclude

1 yourself from helping in those kind of situations
2 where you should help and you were intended to help.
3 Now, I think staff suggests, and I believe General
4 Telephone's motion to dismiss suggests that accepting
5 jurisdiction would be overinclusive, that where would
6 you draw the line.

7 I just want to be clear and pragmatic here.
8 Yellow pages are not psychic hotlines. They are not
9 T-shirts. They are not any number of things that
10 could be billed through the LEC. Yellow pages has a
11 traditional integral relationship with telephone
12 service. And this goes to the legal basis for your
13 jurisdiction. Staff says that yellow pages are not
14 telecommunications services, period.

15 Were this for Alabama, that would be true. Were
16 this for Georgia, that would be true. If it were even
17 before the FCC, that would be true. That's not where
18 we are. We are in Florida. And in Section 364.037,
19 the statute provides that a certain portion of yellow
20 page revenues are above-the-line revenues. General
21 Telephone, BellSouth, Southern Bell in those days,
22 Centel, and I believe United went with Commissioners
23 Cresse and Gunter to the legislature and got that
24 section passed.

25 It provides that yellow page revenues are

1 revenues from telecommunications services because it
2 goes to the rate of return. Some doesn't. Some are
3 outside.

4 COMMISSIONER DEASON: Mr. Wiggins, let me ask,
5 does that have any relevance for a price cap? For a
6 regulated -- for a price cap regulated company?

7 MR. WIGGINS: Yes, sir, I think it does. Because
8 the issue here is whether this Commission can put its
9 arms around yellow page operations, whether yellow
10 pages are -- let me use a little Latin here,
11 telecommunications services vel non, or not. And what
12 I have pointed out in my pleadings is that we are no
13 longer in a black and white kind of environment where
14 we used to be. Even in the statute before, we had a
15 hybrid situation.

16 Now, when the LEC elected price cap regulation,
17 at that time the revenue streams, the rate of return,
18 all of that was considered to be fair, just, and
19 reasonable within those Commission's jurisdiction.
20 I'm hesitant to go down this road, but should a LEC --
21 BellSouth, for example, because I don't want to pick
22 on General Telephone -- I come in for a changed
23 circumstances case. I suspect that the Public Counsel
24 is going to want to look at what is happening with the
25 yellow page revenues, and Public Counsel would be

1 asserting that you had the ability to look at those.

2 Is this a very clean, clear kind of situation?
3 No, sir, it is not. It is definitely not. But to
4 suggest that yellow pages are not -- in Florida are
5 not telecommunications services in the way, let's say,
6 computers are not, or T-shirts are not, or psychic
7 lines are not, simply ignores the statutory basis for
8 you looking at yellow pages.

9 The next thing is historically, yellow pages
10 always --

11 COMMISSIONER DEASON: Let me ask another. Do we
12 include then under -- have we historically included
13 billing services revenue as part of regulated service?

14 MR. WIGGINS: I don't know the answer to that. I
15 think the answer is no, but I do not know. But with
16 respect to billing and collection, if I could just
17 back up one second and just say that when we divested
18 AT&T, Judge Greene placed yellow pages in the Bell
19 companies because he concluded that yellow pages are
20 so integral to the local company's operation that's
21 where it should be. But historically there has been
22 this relationship there that has always been there.

23 Now, with respect to billing and collection --

24 COMMISSIONER CLARK: Now, let me ask a question.
25 I thought that was because of the substantial revenues

1 that would go away, and that was the reason -- the
2 motivating factor for including it.

3 MR. WIGGINS: Since I actually argued that case
4 to NARUC, I think that's absolutely right. But a
5 point was made -- and if I get these numbers wrong, I
6 apologize, but if memory serves me correctly,
7 BellSouth was generating around \$64 million in revenue
8 from that on about less than \$10,000 in investment.

9 Now a lot of that was tossed in there because it
10 was all leaked out, but the idea was is that only --
11 that was such an indication of monopoly service that
12 it should go as a local telephone company.

13 Now, I just want to say that that's history. I
14 mean, in a sense, because that is -- what is this,
15 1999? That was what, 1985? I mean, we are talking
16 about a lot of water has gone under the dam since
17 then. But what I'm trying to point out here is that
18 when we bring you a complaint on yellow pages, we are
19 talking about something that has a historical
20 relationship to the local market.

21 And with respect to billing and collection, it is
22 clearly something also tied up with competition.
23 Congress recognized in the telecom act that for the
24 RBHCs to get 271 released, they had to, in fact, do
25 billing and collection for CLECs. So it may not be a

1 telecom service, but it is very, very vital to
2 competition in the local market. Because we've got
3 two things here, yellow pages, which we think are
4 important to the local market with its statutory
5 basis, and billing and collection, which is also.

6 But it's a hybrid world. This is not all clean.
7 And this is what I can say about General Telephone's
8 pleading and staff's recommendation. I don't think
9 they are exactly wrong, you know. But being not
10 exactly wrong is not the same thing as being right.
11 If that were the case, you wouldn't be able to --
12 there wouldn't be the hybrid situation with the yellow
13 pages.

14 I think there is also a policy basis for why you
15 don't want to dismiss this. You don't have to -- if
16 you dismiss this, there is a good chance your hands
17 will be tied in the future when people come to you for
18 relief. You will be closing the door to your ability
19 to address these issues. And in a sense you will be
20 delegating to the LEC the responsibility for policing
21 their own behavior in this area. To me that's a
22 little bit -- and this is no disrespect to the LECs,
23 but that's like giving a teenage kid the keys to the
24 car and the home and going off and saying have a good
25 time.

1 Companies follow their rational economic
2 interests, and it will be in their interest to
3 maximize their profits, not preserve and promote the
4 public interest. So things are not always mutually
5 exclusive, but that's the facts of life.

6 In this situation, the point has been made in one
7 of the pleadings that this is supposedly a competitive
8 market, but I think that's our whole point. If this
9 is truly a competitive market, then General Telephone
10 would be competing for Valley's services, for their
11 royalties.

12 Valley pays them \$20,000 for this contract.
13 Valley has produced no real problems for them. There
14 is no consumer complaints. And yet for some reason
15 General Telephone has pushed that money away and said
16 we don't need it. If this were a competitive market,
17 they would be competing for that. There is only one
18 way that makes sense and that is if it's worth more to
19 General Directories, GT Directories, to have them not
20 bill for General Telephone than it is to General
21 Telephone for them to bill for that.

22 That suggests to me a noncompetitive market.
23 That suggests to me that Chapter 364 says you should
24 be looking at that and that you should take the
25 authority you have in there to try to draw careful

1 lines in exercising your jurisdiction.

2 COMMISSIONER DEASON: Mr. Wiggins, in a
3 competitive environment, if a participant in that
4 market decides to walk away from some revenue, what
5 business is it of ours?

6 MR. WIGGINS: It is of no business to you unless
7 -- well, it's of no business to you. But the question
8 I would ask is, is that undermining or supporting the
9 development of competition in the local market? And
10 in this context, within the telephone context, it is
11 undermining.

12 The second thing I would ask is why did they --

13 COMMISSIONER DEASON: Undermining development of
14 competition in yellow pages?

15 MR. WIGGINS: And in the telephone market in the
16 community, yes.

17 COMMISSIONER DEASON: And telephone --
18 traditional telephone service?

19 MR. WIGGINS: Yes, because yellow pages promotes
20 the use of telephone service. And the -- if I can
21 recapture my train of thought I had there. With
22 respect to a private company saying we don't want to
23 take your money anymore, we don't want you as a
24 client, we don't want you as a customer. And I have
25 let go of clients, and I know there are some companies

1 that have let go customers. There is generally a
2 rational, economic reason for this. In this
3 situation, I'm not aware of any. That would be
4 something we get into the truth in the light.

5 But I do not want to take this too far afield
6 from the motion before you, which is a motion to
7 dismiss. I would like to address, if I could, the
8 declaratory statement only in a way of relieving some
9 procedural snafus here. We were looking for a
10 response from the Commission, a clarification of what
11 your role would be, and to the extent that we get
12 either a dismissal or not a dismissal, we are more
13 informed, and it may not be necessary to go forward
14 with the declaratory statement.

15 In addition, I can assure you if this were the
16 most black and white situation I've ever brought a
17 pleading to you on, I would not have filed a
18 declaratory statement. I do believe it's a hard call.
19 But I also believe that you are in danger of being --
20 of locking yourself into an underinclusive
21 interpretation of your jurisdiction.

22 Because if you grant this motion to dismiss, I
23 predict that before too long, you will be going to do
24 something, and you will have in front of you a
25 pleading that says, but, look, you don't have any

1 jurisdiction here. You can't do anything about it.
2 It's out of your hands. And so I think it would be
3 wiser for us not to grant the motion to dismiss, and I
4 think you have the statutory basis not to do that.
5 And I really appreciate your time.

6 COMMISSIONER DEASON: Let me ask another quick
7 question for Mr. Wiggins before Ms. Caswell begins. I
8 assume you are alluding to then that if we were to
9 follow staff's recommendation then that if we tried to
10 take some proactive stance on truth in billing and
11 that sort of thing, that we would be precluded from
12 exercising that assertion of jurisdiction?

13 MR. WIGGINS: I certainly think that would be
14 undermined. Without knowing the exact hypothetical,
15 it's hard to know. But I do know that your staff
16 draft rule in Docket Number 980170 would impose
17 specific requirements for any company that bills for
18 itself or on behalf of companies providing regulated
19 or nonregulated services.

20 So you've already had one part of your staff
21 suggesting that they could assert jurisdiction over
22 billing for nonregulated services --

23 COMMISSIONER DEASON: Doesn't that say if you are
24 going to engage in this activity, here is the way
25 you've got to do it. And what I'm hearing staff say

1 is we don't have the authority to require in this case
2 GTE to bill for your client.

3 MR. WIGGINS: But they are billing for their own
4 unregulated activity, sir. It's not that they are not
5 billing for -- they are choosing who they bill for.
6 They are billing for GTE directories, but they are
7 tossing us out. And that's the rub.

8 COMMISSIONER DEASON: It seems to me that's more
9 of an antitrust complaint than it is the jurisdiction
10 of this Commission.

11 MR. WIGGINS: It may very well be an antitrust
12 complaint, but I suggest you are drawing a very fine
13 line, maybe even finer than the one I'm drawing when
14 you say that you can adopt a rule that says we will
15 assert jurisdiction on behalf of a company of how it
16 bills providing regulated or nonregulated services
17 billings, and that's okay, even if it's billing
18 nonregulated on itself.

19 But the statute gives you no jurisdiction to
20 address the not billing for a nonregulated person,
21 when your staff is saying billing and collection
22 services themselves are not regulated. Maybe that has
23 confused the matter more, but --

24 COMMISSIONER CLARK: I guess, it strikes me that
25 the notion of how the bill is presented to customers

1 and the fact that we may regulate that is more
2 directly related to telecommunications in the sense
3 that you need to make sure you know what you have to
4 pay for, what services you are getting. But to say
5 that also gives us authority to dictate who they have
6 to allow to be on the bill, I think maybe -- I don't
7 see that our exercising jurisdiction with respect to
8 that one area necessarily is undermined by
9 (inaudible).

10 MR. WIGGINS: Or necessarily implies that you
11 would go that extra step.

12 COMMISSIONER CLARK: Right.

13 MR. WIGGINS: I can understand the observation.

14 CHAIRMAN GARCIA: Ms. Caswell.

15 MS. CASWELL: Mr. Wiggin's jurisdictional
16 arguments are very interesting, but they don't have
17 much to do with this motion to dismiss. The issue
18 here is whether the statutes that Valley has cited
19 give you any ability to grant the relief they have
20 requested.

21 First and foremost, I'd like you to remember that
22 this is a contract matter between the parties. That
23 contract says that any party, either party can
24 terminate the contract upon 180 days notice. GTE
25 complied with that notice provision. There is no

1 allegation from Valley that we did not or that we
2 somehow violated the contract. It's precisely because
3 they don't have a legitimate contract claim that
4 they've come to this Commission to seek some relief.

5 So that leads us to the statutes they have cited.
6 364.08 is a tariffing provision. Is there any
7 requirement for us to tariff billings for yellow
8 pages? No, there is not and there never has been.
9 364.10 embodies our common carrier nondiscrimination
10 obligations. Has the Commission ever interpreted that
11 statute to apply to nontelecommunications nonregulated
12 services? No, it has not. Therefore, you can't grant
13 the relief that Valley wants you to grant.

14 The motion to dismiss. We don't need to engage
15 in any factual arguments, but since Valley has raised
16 the issue of whether the billing market is competitive
17 or not, I can speak to that briefly. I have a list
18 here of forty or fifty companies which bill for
19 telecommunications services, and that's just
20 telecommunications services. We are talking about a
21 nontelecommunications service here.

22 I can pay for a yellow pages ad just the same way
23 I can pay for any classified ad or any product for
24 that matter. I can use a credit card. I can use a
25 check. You know, I can step out to a printing company

1 to send out bills. There is no rating or recording
2 here, so it's very easy to get billing for yellow
3 pages ads. And, in fact, GTE Directories publishes in
4 places like Akron and Dallas where we are not the ILEC
5 and we do not have the ILEC bill for us.

6 That is not the standard industry practice as I
7 understand it. And, in fact, I would imagine that
8 Valley has --

9 CHAIRMAN GARCIA: That addresses a broader
10 question. This is not a contractual issue. And I
11 know that you may find that where Valley wants to take
12 us is not precisely where we need to be. But about
13 the fact that, you know, we are going to have a market
14 where people can enter, yellow pages are part of that
15 market, and you are billing for his client does give
16 certain benefits to him and his client.

17 MS. CASWELL: Right. But the standard for
18 whether I have to give those benefits to him has never
19 been whether it's the most convenient or efficient or
20 best way for him to bill. It's whether that service
21 is a monopoly. And no commission anywhere has used
22 the standard that Valley advocates to you today that
23 you use.

24 And if you decide that you want to use that
25 standard, then I've got to offer my billing services

1 on a common carrier basis. That means anybody who
2 wants them, gets them. And I would submit that this
3 is going to make your cramming problem a lot worse.
4 And that would be far, far broader than any action
5 ever taken by any state commission or of the FCC.

6 (Simultaneous conversation.)

7 CHAIRMAN GARCIA: -- your argument then be used
8 against our cramming rule in saying, well, you know,
9 the Commission has no jurisdiction to enter this area.
10 We are a beeper company, we are not regulated by the
11 Commission. We provide beepers. And if GTE wants to
12 bill for beepers on its phone, that is our right, and
13 the PSC can't say anything about it.

14 MS. CASWELL: Well, I think there is a
15 fundamental distinction here between -- I would
16 disagree, first of all, that deciding this complaint
17 or issuing this motion to dismiss would somehow
18 undermine your jurisdiction in the billing area.
19 Because you have -- I do agree you do have some
20 jurisdiction in billing. We do have an access tariff
21 for billing for telecommunications services. And you
22 have engaged in some discussion about billing format
23 issues, just as the FCC has. You can regulate my
24 billing format to some degree.

25 What you can't do, it strikes me, what you have

1 never decided you can do is force me to offer
2 nonmonopoly, nontelecommunications services to anybody
3 who wants them. And that to me is a much, much better
4 question --

5 CHAIRMAN GARCIA: But we can decide what you can
6 offer to yourself? You have a right to say, you know,
7 let's say GTE tomorrow decided to sell furniture and
8 bill it through its --

9 MS. CASWELL: Well, there are a series of
10 affiliate rules, and we comply with those affiliate
11 rules, and those are FCC rules. I suppose if you want
12 to institute some affiliate rules, sure, we'd have to
13 comply with those. But this would be absolutely
14 unprecedented anywhere.

15 I mean, the FCC decided twelve years ago this was
16 a competitive market, and they were deciding about
17 telecommunications billing. This goes far, far beyond
18 to the market includes credit cards and things like
19 that. I mean, to decide that that market is a
20 monopoly would just be completely irrational.

21 CHAIRMAN GARCIA: I just go further. I mean,
22 take for example an area that I have some worry in. I
23 guess it falls out that is in telecommunications, in
24 ancillary services, and GTE made a presentation to
25 this Commission which I thought was very good about

1 how it is addressing the psychic lines and all others
2 who bill through.

3 I would hesitate to say that without you those
4 services would probably be very difficult to survive.
5 In other words, if you offer a psychic hotline and you
6 advertise in Tampa, if GTE doesn't let you get on
7 their bills, I think that that psychic hotline is
8 going to have problems as far as that area.

9 Now, I understand you've got your internal rules
10 and to make sure people don't get ripped off and
11 whatever. But then it begs the next question. What
12 if GTE started offering a psychic hotline, or GTE
13 could decide who -- which is what GTE, in essence, is
14 doing -- is who comes on and who does not come on.

15 Now, I know GTE -- I think GTE doesn't have a
16 psychic hotline, and not to say that psychic hotlines
17 are wrong, but what I'm saying is that your ability to
18 control those who participate in the market controls
19 the market. And the truth is, you are the only one
20 that can turn off someone's phone bill in your market
21 as far as the residential customer and the majority of
22 business. I guess in downtown GTE that's probably 98
23 percent, and in your territory it's about 98 percent.

24 So, it sort of begs the question, what areas you
25 can do or can't do and how you can do it. Now I

1 understand you may feel that we are going far afield
2 by saying you've got to bill for Mr. Wiggins, but I
3 wonder -- we're not saying who you have to bill or not
4 bill to, and I wonder if I don't have a problem with
5 the fact that you can decide who you bill and who you
6 don't bill when you are the monopoly power.

7 I mean, your billing service is the most
8 ubiquitous, yours is the most powerful, yours is the
9 most significant.

10 MS. CASWELL: Okay. Again, I think we're looking
11 at -- if we look at LEC billing services as the
12 relevant market here, then, yeah, I probably do have a
13 monopoly in that. But the market is not LEC monopoly
14 billing services, it's all types of billing services.

15 There are many, many companies that bill for
16 telecommunications services as well as nontelecom
17 services. In this case particularly, it would be very
18 easy to bill for these ads, just like I said on a
19 credit card. And these other companies that you
20 mentioned, now, it might be harder for them to get
21 into market psychic hotlines and things of that
22 nature. That may be true, but they do have options.

23 I have listed numerous billing companies, and
24 this list grows every day as more and more providers
25 enter the market and look for new billing options that

1 are independent of the ILEC.

2 So, you know, I would take some issue with the
3 fact of whether, you know, these markets can't grow
4 without ILEC participation. And, again, I'm going to
5 make the point that it has never been found that we
6 have to offer anything that is not a monopoly service.
7 And I have cases from this Commission that say even
8 that I don't have to offer things that are monopoly
9 services to everyone on an unconditional basis.

10 So you've never even looked at the question of
11 nonmonopoly services. No one has even ever raised
12 that because it's just so far afield of anything that
13 anybody has ever done in this country or at the FCC.

14 MR. WIGGINS: May I respond just very briefly?
15 I'd like to bring this back to the statute, since Ms.
16 Caswell said that we didn't really show how it
17 violated the statute.

18 364.10 says the telecommunications company may
19 not make or give any undue or unreasonable preference
20 or advantage to any person or locality or subject, any
21 particular person or locality to any undue or
22 unreasonable prejudice or disadvantage in any respect
23 whatsoever.

24 There is no rule adopted under this about billing
25 for yellow pages. If there was, we wouldn't be here.

1 That's why we're breaking new ground here. Yes, we
2 are. But we are saying that when General Telephone
3 uses billing and collection services to bill for its
4 unaffiliated directory services and purposefully
5 excludes Valley to not, then that conveys an undue
6 prejudice and advantage on their affiliate's behalf
7 and against us.

8 Staff and General Telephone are of the view that
9 because billing and collection services are not a
10 common carrier service, that they are not
11 traditionally viewed to be telephone services, and
12 because yellow pages are not telephone services,
13 within their understanding that you are powerless to
14 do anything about that if you feel like that practice
15 is incompatible with this requirement.

16 COMMISSIONER JACOBS: Is your --

17 MR. WIGGINS: We disagree.

18 COMMISSIONER JACOBS: Is your argument so much
19 that you are excluded, or is it that you are being --

20 MR. WIGGINS: Discriminated against.

21 COMMISSIONER JACOBS: Because if I understand it,
22 you already had a contract and the contract is now
23 being terminated. Arguably for cause.

24 MR. WIGGINS: No.

25 COMMISSIONER JACOBS: There is no provision in

1 you all's agreement on what --

2 MR. WIGGINS: It's 180 days for whatever reason.
3 No reason, good reason.

4 COMMISSIONER JACOBS: Just pursuant to that
5 agreement.

6 MR. WIGGINS: True.

7 COMMISSIONER JACOBS: But your argument is that
8 the -- that there is an underlying reason and that
9 reason is not adequate.

10 MR. WIGGINS: No, sir. Our argument is that they
11 are terminating the contract as they are allowed to
12 under the contract, which is why we haven't filed a
13 contract action, and we did not, you know, stress the
14 contract in the pleading. But at the same time, they
15 are continuing to bill for their affiliate.

16 So when they send the notice out that we are not
17 going to bill for nontelecom services anymore because
18 there is a problem with that, but they continue to
19 bill for theirs, we say we think this raises an issue
20 under 364.10(1). And what I would simply like to say
21 here is I can well understand why General Telephone,
22 staff, and maybe you would look at this and say, no,
23 you know, nice try, but billing and collection doesn't
24 rise to that level and we're not going to touch it.

25 But I do say this, that I have trouble

1 distinguishing between seeing how that can be the
2 position, when at the same time the staff is floating
3 a rule that says you are going to exercise
4 jurisdiction over billing and collection. And maybe
5 more to the point, my client has trouble understanding
6 that, as well. If it were not for that rule proposal,
7 we would not be here.

8 COMMISSIONER JACOBS: Let me ask this, and I
9 guess, the company or staff could answer this. But
10 you sent this notice out to other companies?

11 MS. CASWELL: I'm sorry, I missed that.

12 COMMISSIONER JACOBS: Is this notice going out to
13 all the companies that --

14 MS. CASWELL: Yes, and that's another good point.
15 We're not singling out Valley here. This notice has
16 gone out to all nontelecommunications providers. So
17 we're foregoing those revenues, we're cutting off all
18 those people in a nondiscriminatory fashion because
19 they are nontelecommunications providers.

20 And it's because I'm getting lawsuits like this
21 which say -- I've got a class action suit now that
22 says I'm not doing enough to stop cramming. So, you
23 know, either way I lose, I guess. But, you know, I'm
24 trying to pursue that angle while getting complaints,
25 you know, from people telling me that I have to treat

1 my billing as a common carrier service. Well, those
2 two things are seriously incompatible.

3 COMMISSIONER JACOBS: To avoid that couldn't you
4 just narrow that down to excluding people who have
5 been determined to have engaged in cramming. In other
6 words, isn't this an --

7 MS. CASWELL: The standard does not say that you
8 have to have complaints against you. We are
9 eliminating billing for all nontelecommunications
10 services, and yellow pages is a nontelecom service, so
11 they came within that category.

12 CHAIRMAN GARCIA: Are you thinking of hiring out
13 as a billing company to do yellow page ads?

14 MS. CASWELL: I can't tell you if that's true. I
15 know that we have a nonILEC billing in other states,
16 but I would, you know, I would doubt we're doing that
17 in Florida.

18 COMMISSIONER JACOBS: But if -- what you're
19 saying is that you're sure that your subsidiary would
20 never ever engage in this, and so you feel it
21 adequate --

22 MS. CASWELL: We can police our subsidiary much
23 better than we can police third parties.

24 COMMISSIONER JACOBS: Then that goes against the
25 argument, because what you're saying is you shouldn't

1 terminate people who can effectively police their
2 conduct. And you have effectively done that for your
3 subsidiary, but everybody else can't make that showing
4 to you. They can't come to you and say, we can
5 effectively police our conduct and, therefore, we
6 shouldn't be caught up in the broader scheme here.

7 MS. CASWELL: No, we don't provide for that
8 opportunity, and we don't see a need to provide for
9 that opportunity. I mean, we comply with all of the
10 affiliate rules of the FCC, we comply with all of the
11 affiliate decisions of this Commission. So, I mean,
12 our behavior is perfectly permissible under the
13 statutes and under your rules and under the FCC's
14 rules.

15 CHAIRMAN GARCIA: Well, then I guess my question
16 then goes to staff. I mean, Mr. Wiggins makes a good
17 point. I mean, here we are trying to step into this
18 area of cramming. Something that this Commission is
19 trying to be progressive on, and yet isn't this a
20 similar service? And, Ms. Caswell, I understand your
21 position, and I appreciate it, but this is a form of
22 cramming, isn't it? I mean, if I sell -- let's say I
23 put on someone's bill Joe Garcia phonebook ad. Bell
24 bills for it, to leave GTE out of it. Bell bills for
25 it. That would be cramming as we see it. What is the

1 difference between that and offering a beeper service,
2 offering all the myriad of different things we have
3 seen added onto people's bills, or crammed onto
4 people's bills? What is the difference between Valley
5 and the other cramming services that we are trying to
6 write rules on?

7 COMMISSION STAFF: I think there is a big
8 difference. I think we're mixing apples and oranges
9 all over the place here today, personally. Let me
10 start and do my best to sort it out.

11 I mean, first off, when you cited to this 337
12 statute about a ratesetting proceeding considering
13 advertising and yellow page revenues, well, that's all
14 well and good, but it's not requiring GTE to provide
15 billing and collection services to you or me or to
16 anyone.

17 Secondly, the rulemaking that Mr. Wiggins has
18 repeatedly referred to is the result of a specific
19 statutory mandate on truth in billing in 364.06, or at
20 least that's my understanding. I'm not directly
21 involved in that proceeding, but that's my
22 understanding.

23 And he said it includes communications and
24 noncommunications service, something like that, and
25 the statute does talk about addressing -- each billing

1 party must clearly identify on its bill the name and
2 toll free number of the originating party of the
3 telecommunications service or information service
4 billed and it does specifically define information
5 service as telephone calls made to a 900 or a 976 type
6 service, but does not include internet services.

7 So to me he's kind of twisting things, in my
8 opinion. And although I might sympathize with the
9 plight he is in, I just don't see it under -- coming
10 under the authority of this Commission.

11 CHAIRMAN GARCIA: Give me the difference so that
12 I can understand it between a yellow pages ad and
13 charging for a beeper company.

14 COMMISSION STAFF: What specific --

15 CHAIRMAN GARCIA: For beeper usage, or for
16 something else that is being crammed on.

17 COMMISSION STAFF: Well, if it came up in the
18 cramming context, sure. I mean, if a customer was
19 being crammed for unauthorized charges you might be
20 able to make the argument that was the case. But
21 we're talking about requiring a company to provide a
22 service that is not a telecommunications service.

23 COMMISSIONER DEASON: To me the difference is if
24 a company such as GTE or BellSouth is going to engage
25 in billing for nontelecommunications services, the

1 question is how do we regulate it? How do we let the
2 customer know what is required and educate the
3 customer and give the customer the benefit of having
4 those matters resolved.

5 But what Mr. Wiggins is saying is that he has the
6 right to have his client be billed through the
7 incumbent telephone company. And I see a distinction
8 there. And Mr. Wiggins is at the microphone --

9 MR. WIGGINS: There is one clarification. If
10 they bill for themselves -- if they bill for
11 themselves. If they don't want to bill for GTE
12 Directories, our guys go away happy.

13 COMMISSIONER DEASON: See, that has nothing to do
14 with truth in billing, that's an antitrust argument.

15 MR. WIGGINS: I understand.

16 COMMISSIONER DEASON: And the question was how do
17 we distinguish exercising jurisdiction when a company
18 engages in billing for nontelecommunications.

19 MR. WIGGINS: Well, that's why we cited 364.10,
20 and not the truth in billing statute.

21 COMMISSIONER DEASON: Well, let me ask you a
22 question, Mr. Wiggins. If we were to agree with your
23 argument and to say -- tell GTE that they have to bill
24 for your client, then it seems to me the next question
25 is going to be, okay, we have to bill at what rate?

1 Then we get into a situation, well, it's an unbundled
2 network element, and we've got to look at the
3 forward-looking costs of billing services, and it's a
4 quasi-monopolistic service, therefore we're going to
5 have an arbitration and a proceeding to determine what
6 the cost is that you're going to -- because if they
7 really don't want you as a client they'll just bill
8 you some exorbitant rate that you don't want to pay.

9 And then the next thing is you're going to be
10 filing a complaint, well, the rate is too high, and it
11 should be -- the cost should be determined on some
12 type of forward-looking, economic avoided cost base.
13 I don't know. But we're just asking for trouble, it
14 seems to me.

15 CHAIRMAN GARCIA: That said, I'll entertain a
16 motion if I can get one.

17 COMMISSIONER JOHNSON: Move staff.

18 COMMISSIONER DEASON: Second.

19 CHAIRMAN GARCIA: We have a motion and a second.
20 All those in favor signify by saying aye.

21 (Unanimous affirmative vote.)

22 MR. WIGGINS: Thank you for your attention.

23 CHAIRMAN GARCIA: Thank you, Mr. Wiggins.

24 COMMISSION STAFF: Commissioner Garcia, there is
25 one added tweak, because we did the modification to

1 not rule on the declaratory statement, therefore, we
2 should probably keep this docket open. But Mr.
3 Wiggins indicated that he might withdraw the petition
4 for the declaratory statement based on this ruling.

5 MR. WIGGINS: Well, let me be very careful with
6 my language, because I haven't checked that with my
7 client. I said any future activities will be informed
8 by the response we got from the panel today.

9 COMMISSION STAFF: Okay. So it would be staff's
10 recommendation that we keep the docket open and change
11 the issue.

12 MR. WIGGINS: We'll address that. We don't want
13 to subject you to procedural hassles you don't need.

14 CHAIRMAN GARCIA: Okay. Thank you, Mr. Wiggins.
15 All right, so the docket will be kept open and there
16 is no disagreement with that.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages number 1 through 34 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 12th day of April, 1999.

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