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AUDITING &  
FINANCIAL ANALYSIS DIV

January 19, 1998 - VIA FACSIMILE AND OVERNIGHT MAIL

Ms. Denise Vandiver  
Division of Auditing & Financial Analysis  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

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FLORIDA PUBLIC  
SERVICE COMMISSION  
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Re: Docket Numbers 960847-TP and 960980-TP-GTE Florida Incorporated Audit  
Components of the Cost Study Data Filed in Response to Order PSC-97-0064-  
FOF-TP

Dear Ms. Vandiver:

I am responding to your January 14, 1998 letter to Ms. Beverly Menard which informs  
GTE Florida Incorporated (GTEFL) that the Commission "will audit components of the  
cost study data filed in response to Order PSC-97-0064-FOF-TP." GTEFL was  
surprised to learn of the Staff's audit plans and has several concerns about them.

First, the letter does not cite the statutory authority under which the audit is to be  
conducted. GTEFL does not believe the Commission is authorized to perform this audit  
under the 1995 revisions to Chapter 364. As set forth in section 364.051(1)(c), GTEFL,  
as a price-regulated local exchange carrier, is exempt from the reporting requirements  
of section 364.17 and the Commission's general inspection powers under section  
364.18. Although the Commission is still authorized access to Company records, such  
access is limited to those records "that are reasonably necessary for the disposition of  
matters within the Commission's jurisdiction." (Section 364.183.) But the letter gives  
no clue as to what "matter" the audit is intended to "dispose" of, so it is impossible to  
know whether the records sought would be "reasonably necessary" to obtain such a  
disposition. Section 364.183 (if that is the authority under which the Commission  
purports to initiate the audit) does not give the Commission unconstrained access to  
Company records. The Commission must state some reason for the audit so that the

- ACK \_\_\_\_\_
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DOCUMENT NO.  
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A part of GTE Corporation

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Commission's jurisdiction over the matter can be determined, as well as the reasonable necessity of access to the records at issue.

Second, GTEFL is concerned that the audit is a procedurally inappropriate attempt to alter the Commission's findings in the arbitration Order in this docket. In that Order, the Commission rejected AT&T's and MCI's cost approach and used GTEFL's cost studies as a basis for setting prices, stating "we believe that GTEFL's cost studies are appropriate because they approximate TSLRIC cost studies and reflect GTEFL's efficient forward-looking costs." (Order No. PSC-97-0064-FOF-TP at 34.) GTEFL used the same methodology for the cost studies in this follow-up proceeding as it did in the original arbitration. Thus, the study methodology should not be at issue now and, in fact, is not included as an issue in the formally designated issues list in this proceeding. Although GTEFL has not been given a reason for the audit (see above), the audit would seem to improperly put the study methodology at issue, contrary to the Commission's earlier findings and the issues list in this docket.

Third, an audit within a docketed proceeding is highly irregular and, GTEFL believes, procedurally inappropriate. If the audit were to go forward, GTEFL would need to respond to Staff data requests, make its witnesses freely available, schedule site visits and the like, all while also trying to respond to discovery by the other parties and otherwise prepare for hearing. This situation would place an undue burden upon GTEFL and disadvantage it in preparing its case.

In addition, Staff contemplates issuing an audit report by the end of January. GTEFL assumes that this report would necessarily become part of the record in this case because the audit is slated to be performed in these dockets. Thus, Staff would be able to take a position in the docket without having to sponsor a witness or present testimony, and without having to be subject to cross-examination. Nevertheless, its conclusions will become part of the record for use by the Commission in its decision making and also, potentially, for use by GTEFL's opponents in their cross-examination of GTEFL's witnesses and in their briefs. There are obvious constitutional problems with the insertion into the record of, in effect, testimony that cannot be cross-examined or effectively rebutted. For this reason, cross-examination and rebuttal are not options, but rights afforded to all parties under Florida's Administrative Procedure Act. (Fla. Stat. Ch. 120.57(1)(b)(4).) Issuance of an audit report in the midst of a docketed proceeding will violate these rights afforded to GTEFL.

Even aside from these constitutional dimensions, allowing the audit would be patently unfair to GTEFL and plainly at odds with established Commission procedure. If the Staff wishes to participate in this proceeding, it may do so through the customary and permissible means of discovery--data and document requests, depositions and the like.

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(Commission Rule 25-22.034 and F. R. Civ. Pro. 1.280-1.400.) If Staff's only purpose is information gathering (and that is the only purpose that is valid), there is absolutely no reason for it to forego discovery in favor of audit procedures that are, in any case, not contemplated by the Commission's Rules.

Given the above-outlined concerns, GTEFL believes it is reasonable for the Company not to respond to the audit requests issued on January 16, at least until the Commission's authority to do the audit is clarified. GTEFL notes, in any event, that the Commission already has the cost studies sought in the January 16 requests, and has had them for months.

If you have any questions, please contact me.

Sincerely,



*for* Kimberly Caswell

KC:tas

c: Martha Brown, Staff Counsel  
Director, Division of Records & Reporting