State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: NOVEMBER 4, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF APPEALS (HELTON)
DIVISION OF COMMUNICATIONS (KENNEDY)
DIVISION OF LEGAL SERVICES (FORDHAM)

RE: DOCKET NO. 991226-TL - PETITION BY GTE FLORIDA INCORPORATED FOR DECLARATORY STATEMENT THAT THE COMMISSION'S SET USE FEE RULES DO NOT PROHIBIT GTE FROM COMPENSATING PAY TELEPHONE SERVICE PROVIDERS FOR 0- LOCAL CALLS UNDER THE FCC'S PER-CALL COMPENSATION SCHEME, OR, IN THE ALTERNATIVE, PETITION FOR VARIANCE FROM RULES 25-24.516(3) AND 25-24.630(2), F.A.C.

AGENDA: 11/16/99 - REGULAR AGENDA - DECISION ON DECLARATORY STATEMENT - INTERESTED PERSONS MAY PARTICIPATE AT DISCRETION OF COMMISSION

CRITICAL DATES: 11/25/99 - SECTIONS 120.565 AND 120.542, FLORIDA STATUTES, REQUIRE AGENCY ACTION WITHIN 90 DAYS OF FILING PETITIONS FOR DECLARATORY STATEMENT AND PETITIONS FOR VARIANCE OR WAIVER OF RULES

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\APP\WP\991226.RCM

CASE BACKGROUND

Pursuant to Section 120.565, Florida Statutes, and Chapter 28-105, Florida Administrative Code, GTE Florida Incorporated (GTE) filed a petition for declaratory statement. In the alternative, GTE seeks a rule variance pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. The Commission rules at issue are Rules 25-24.516(3) and 25-24.630(2), Florida Administrative Code, which require local exchange companies (LECs) to pay telephone service providers (PSPs) a set use fee of

$.25 for all completed 0- calls placed from a pay telephone. The Florida Public Telecommunications Association, Inc. (FPTA) filed comments in opposition to GTE's petition.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant GTE's petition for declaratory statement?

RECOMMENDATION: Yes, the Commission should grant GTE's petition in the affirmative and declare that Rules 25-24.516(3) and 25-24.630(2), Florida Administrative Code, do not apply to GTE because the company is already compensating PSPs for 0- local calls and other payphone calls under the federal scheme, as intended by the Federal Telecommunications Act of 1996 and the Federal Communication Commission's rules. This declaration renders GTE's request for a rule variance moot.

STAFF ANALYSIS:

Question Presented

GTE asks the Commission to declare that Rules 25-24.516(3) and 25-24.630(2), Florida Administrative Code, do not apply to GTE because the company is already compensating PSPs for 0- local calls and other payphone calls under the federal scheme, as intended by the Federal Telecommunications Act of 1996 (Act) and the Federal Communication Commission's (FCC's) rules. For the reasons discussed below, staff recommends that the Commission issue the declaration requested by GTE.

The Federal Requirements:

Section 276(b)(1)(A) of the Act required the FCC to establish regulations to:

> establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation.

FCC regulations implementing this section preempt any state regulations that are inconsistent with the FCC requirements. Section 276(c), Federal Telecommunications Act of 1996.

The FCC has entered a string of decisions implementing Section 276. Until the latest order was released in February of this year, it was not clear whether the FCC intended to regulate compensation for 0- calls placed from a pay telephone. The previous orders allowed states to impose reasonable requirements on the routing of 0- calls to local service providers to ensure emergency calls are handled in an appropriate and timely manner. Order on Reconsideration, CC Docket Nos. 96-128 and 91-35, FCC Order No. 96-439, released November 8, 1996, ¶ 243; Report and Order, CC Docket Nos. 96-128 and 91-135, released September 20, 1996, ¶ 262. However, the FCC made no specific mention of compensation requirements for 0- calls until this year.

In its Third Report and Order, and Order on Reconsideration of the Second Report and Order, CC Docket No. 96-128, Order No. FCC 99-7, released February 4, 1999, ¶¶ 51, 53, the FCC specifically designated 0- calls as a compensable call subject to the default per-call compensation established in the order. In doing so, all states are preempted from establishing a different compensation rate for 0- local calls. The payphone owner and carrier may negotiate a different compensation amount. Id. at ¶ 13.

The Commission's Rules:

On February 1, 1999, amendments to Rules 25-24.516 and 25-24.630 became effective that repealed set use fees for 0+ and most 0- calls. Staff recommended their repeal to comply with the FCC regulations and to preclude double compensation. (Staff Memorandum filed July 23, 1998, Docket No. 951560-TP, pp. 3, 4) However, staff evidently recommended that set use fees remain for 0- local calls because it did not believe that the FCC regulations covered these calls. Accordingly, Rule 25-24.516(3), Florida Administrative Code, requires "[a] set use fee of $.25 shall apply to all completed 0- local calls placed from pay telephones." In addition, Rule 25-24.630(2), Florida Administrative Code, provides:

> For 0- calls from pay telephone stations completed by the provider of local exchange telecommunications services, a set use fee of $.25 shall apply and shall be remitted by the local exchange company to the pay telephone service provider.

GTE's Circumstances:

According to GTE, its billing system is unable to distinguish 0- local calls from other types of pay phone calls. GTE is currently compensating PSPs for 0- local calls using the FCC blanket rate instead of following the Commission mandated rate in Rules 25-24.516(3) and 25-24.630(2). The Florida compensation rate is $.002 higher per call. Because of the small number of 0- local calls made in GTE's service area, GTE states that the difference in the FCC and Commission rate results in the entire payphone industry receiving $45 less under the federal scheme. GTE alleges that it would cost $75,000 to modify its computer system to separate out 0- local calls, which the company argues would not be cost effective given the $45 annual differential between the Commission and FCC compensation rates.

GTE also argues that the FCC orders require compensation for every type of payphone call since that was what the Act required.

FPTA's Comments:

FPTA filed comments in response to GTE's petition in which it opposes the request sought by GTE. The Commission may consider these comments in a declaratory statement proceeding. In addition, Rule 28-104.003, Florida Administrative Code, allows any interested person to submit comments on a request for rule variance or waiver.

FPTA questions certain factual assertions made in GTE's petition, such as the capabilities of GTE's billing system. However, in ruling on the petition for declaratory statement, the Commission must accept as true the statements of fact made in GTE's petition. In addition, the Uniform Rules of Procedure do not contemplate disputed issues of material fact in declaratory proceedings. Rule 28-105.003, Florida Administrative Code.

Analysis:

Since the latest FCC Report and Order clearly establishes the default compensation amount for 0- local calls, the FCC has preempted the Commission from establishing a different set use fee for these calls. Therefore, the Commission should declare that Rules 25-24.516(3) and 25-24.630(2), Florida Administrative Code, do not apply to GTE because the company is already compensating PSPs for 0- local calls and other payphone calls under the federal scheme, as intended by the Act and the FCC's rules. Any change in the facts as they are set out above may significantly alter or void

the Commission's declaratory statement. This declaration renders GTE's request for a rule variance moot.

The Commission should undertake rulemaking to repeal the set use fees for 0- local calls from Rules 25-24.516(3) and 25-24.630(2), Florida Administrative Code.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if the Commission votes to dispose of the petition for declaratory statement, the docket should be closed.

STAFF ANALYSIS: If the Commission answers the petition, a final order can be issued and the docket closed.