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DECEMBER 4, 1997

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

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI)
DIVISION OF COMMUNICATIONS (MUSSELWHITE)

RE: DOCKET NO. 970713-TL - DETERMINATION OF THE APPROPRIATENESS OF GTE FLORIDA INCORPORATED'S TARIFF FILING TO INTRODUCE ADVANCED CREDIT MANAGEMENT (T-97-474 FILED MAY 27, 1997)

DOCKET NO. 970631-TL - PETITION FOR EXEMPTION AND/OR VARIANCE FROM RULES 25-4.110(3) AND 25-4.113, F.A.C., BY GTE FLORIDA INCORPORATED.

AGENDA: DECEMBER 16, 1997 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 90 DAY PROVISION OF SECTION 120.542(7), F.S., WAIVED BY COMPANY

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\970713TL.RCM

CASE BACKGROUND

On May 27, 1997, GTE Florida Incorporated (GTEFL) filed a tariff to introduce Advanced Credit Management (ACM), a program designed to improve billing and collection performance. At the same time, GTEFL filed a Petition for Exemption and/or Variance from Rule 25-4.110(3), Florida Administrative Code, Customer Billing for Local Exchange Telecommunication Companies, and Rule 25-4.113, Florida Administrative Code, Refusal or Discontinuance of Service by Company. The company requested an exemption and/or variance in order to implement its ACM program.

Under the program, the company would establish toll credit

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limits for new and existing residential and business subscribers. The company would block all 1+ (except for 1+411, 1+800, and 1+888), all 0+ and 00, and all 10XXX+ and 101XXXX+ calls when the subscriber exceeds an assigned toll usage credit limit. All inbound collect, calling card and third number calls a caller attempts to bill to the blocked number would also be blocked. The subscriber would retain access to the local calling area, including extended area service (EAS) and extended calling service (ECS). GTEFL would not block 0- and 911 calls. If a block is initiated, the subscriber would reach a recording explaining that the call cannot be completed.

The proposed ACM tariff would have three credit levels: low risk with unlimited toll credit for both residential and business subscribers; medium risk with $300 residential and $800 business toll credit limits; and high risk with $200 residential and $500 business toll credit limits. The limits for new subscribers would be set based on credit reports issued by a commercial credit reporting service such as TransUnion, Equifax, or TRW. The limits for existing subscribers would be set based on their past payment history with GTEFL. According to GTEFL in a letter dated June 11, 1997, 88% of its subscribers are low risk, 8% are medium risk, and 4% are high risk. GTEFL stated, however, that these percentages change on a daily basis as subscribers are continually connected to and disconnected from the exchange network.

These dockets were deferred from the July 15, 1997, agenda conference, at the request of GTEFL. On July 22, 1997, an informal meeting was held with staff, Office of Public Counsel and a number of GTEFL representatives to discuss the concerns surrounding the proposed tariff. Staff suggested several ideas, one of which was to make the ACM program an optional service offering. Several subsequent discussions ensued; however, staff and GTEFL were unable to resolve their differences.

Pursuant to Section 120.542(6), Florida Statutes, notice of GTEFL's petition for exemption and/or variance was submitted to the Secretary of State on May 30, 1997, for publication in the Florida Administrative Weekly on June 13, 1997. No comments were submitted during the comment period, which ended on June 27, 1997. By letter dated August 4, 1997, GTEFL waived the provision in Section 120.542(7), Florida Statutes, that requires the Commission to grant or deny petitions for waiver or variance within 90 days of receipt, to allow discussions concerning the tariff filing to continue.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant GTEFL's petition for exemption and/or variance from Rules 25-4.110(3) and 25-4.113, Florida Administrative Code, in order to permit the company to implement its Advanced Credit Management tariff?

RECOMMENDATION: GTEFL's petition for exemption and/or variance from Rule 25-4.110(3), Florida Administrative Code, is unnecessary and should be denied because the underlying statutes applicable to GTEFL are irrelevant to its present purpose. GTEFL's petition for exemption and/or variance from Rule 25-4.113, Florida Administrative Code, however, fails to meet the requirements of Section 120.542, Florida Statutes, and should be denied. Since waiver of the latter rule would be necessary in order for the Commission to approve GTEFL's Advanced Credit Management tariff, the Commission should deny the tariff. (Pellegrini, Musselwhite)

STAFF ANALYSIS: In Order No. PSC-95-0588-FOF-TL, issued May 11, 1995, amended by Order No. PSC-95-0588A-FOF-TL, issued August 8, 1995, the Commission granted GTEFL an exemption from Rule 25-4.113, Florida Administrative Code, in order to implement the initial ACM tariff on an experimental basis from May 1, 1995, to April 30, 1996. The tariff established limits on residential and business subscribers' toll use and allowed GTEFL to block all 1+ (except 1+411, 1+800, and 1+888), and all 0+ and 00 calls when the subscriber exceeded an assigned credit limit. On November 16, 1995, GTEFL filed a proposed tariff to add 1+900/976/700, Subscriber Abbreviated Dialing (#NXX), DDD 1+, 1+555-1212, 1+NPA+555-1212, 1DDD+01+, 1DDD+011, 10XXX+1+, 10XXX+011+, and 101XXXX+011+ calls to the types of calls to be blocked. The Commission denied the tariff in Order No. PSC-96-0530-FOF-TL, issued April 15, 1996.

GTEFL filed the present proposed ACM tariff on May 27, 1997. This was docketed in Docket No. 970713-TL. At the same time, the company filed a Petition for Exemption and/or Variance from Rules 25-4.110(3) and 25-4.113, Florida Administrative Code, in order to implement the tariff. This was docketed in Docket No. 970631-TL.

The Present Tariff Filing

GTEFL stated in its petition that it has been experiencing an adverse trend in its uncollectible accounts. The ACM tariff that GTEFL presently proposes for the purpose of reversing that trend is very similar to the November 16, 1995, tariff filing. The only difference is that a blocked subscriber wanting to regain toll service would be required to pay the amount in excess of the toll limit plus at least 80% of the remaining amount due, instead of the amount in excess of the toll limit plus at least 50% of the remaining amount due. The proposed ACM tariff would establish limits on residential and business subscribers' toll use. An evaluation of a subscriber's credit status would be used to determine a subscriber's deposit requirement and set the toll credit limit.

Under the ACM tariff, GTEFL would use a commercial credit reporting service to obtain credit ratings and establish credit limits for persons applying for new service. GTEFL calls this element of the tariff "credit scoring." Subscribers who have already established service with GTEFL would be scored on a behavioral basis. GTEFL calls this element of the tariff "behavioral scoring." There is a third element to the tariff, "credit limit toll blocking." The ACM tariff would be applicable to all residential and small business accounts.

Credit scoring

Credit scoring would be established for each new subscriber's account for combined local service and toll usage. GTEFL's toll credit limit would be based initially on a credit score assigned by a credit reporting service. GTEFL would rely on information obtained from TransUnion, Equifax, and TRW. Persons establishing new service would be informed of their toll credit limit during the initial application process.

There would be three credit levels: low, medium, and high. The proposed criteria for the three credit levels and the credit limits established as a result of the scoring process are:

Low Risk - Unlimited toll credit

- No collection judgements
- No collection accounts
- No charge off accounts
- No delinquency history over 30 days past due

Medium Risk - Residence - $300 Credit Limit; Business - $800 Credit Limit

- No collection judgements
- Collection accounts have been paid
- No or minimal charge off accounts
- Various degrees of delinquency history from 30-180 days, but paid off or current at time of scoring

High Risk - Residence - $200 Credit Limit; Business - $500 Credit Limit

- Collection judgements
- Charge off accounts
- Outstanding collection accounts
- Various degrees of delinquency history from 30-180 days, with accounts delinquent at time of scoring
- Subscriber provides positive identification to GTE following a "No match/No record" on a credit inquiry

New subscribers who do not have a credit history would be assigned to the high risk category.

Behavioral scoring:

Behavioral scoring would be used for existing subscribers. Existing subscribers would be scored based on their past payment history with GTEFL. Notices would be mailed to subscribers explaining the ACM tariff, how credit limits will be assigned, and how toll blocking will be implemented. Subscribers would be notified of their initial credit limit amount and subsequent credit limit changes through credit limit notices mailed to the billing address. The behavioral score would be updated monthly, based on billing and payment behavior during the preceding six to 12 months. New subscribers would begin behavioral scoring after six months, and established subscribers would have 12 rolling months of history evaluated each month. An automated behavioral scoring model would be utilized to assign values for returned checks, payments and adjustments, new charges, dates of first and last payments, date billed, due date of bill and balance forwarded, when calculating a revised behavior score. The subscriber's behavioral score would be used as the basis for adjusting toll blocking credit limits.

Again, there would be three credit levels: low, medium, and high. The proposed criteria for the three credit levels and the credit limits established as a result of the scoring process are:

Low Risk - Unlimited Credit

- All bills during past 12 months paid in full and on time

- No dishonored checks during past 12 months
- No service denials due to non-payment during preceding 12 months
- No more than two reminder notices on account during preceding 12 months

Medium Risk - Residence - $300 Credit Limit; Business - $800 Credit Limit
- Telephone bills not paid on time and in full five or more times during the preceding 12 months
- No more than two dishonored checks for telephone bill payments during the preceding 12 months
- No more than one service denial due to non-payment during preceding 12 months
- No more than five reminder notices on account during preceding 12 months

High Risk - Residence - $200 Credit Limit; Business - $500 Credit Limit
- Six or more telephone bills not paid on time or in full during preceding 12 months
- Three or more dishonored checks for telephone bill payments during the preceding 12 months
- Two or more service denials due to non-payment during preceding 12 months
- Six or more reminder notices on account during preceding 12 months

Credit limit toll blocking

The types of calls to be blocked in this tariff would be all 1+, 0+, 00, 10XXX+, and 101XXXX+ calls. Subscribers would retain access to 1+411, 1+800 and 1+888 numbers and the relay service. Subscribers would also retain dial tone for local calling, extended area service (EAS), extended calling service (ECS), and access to emergency services.

When a subscriber exceeds the assigned toll credit limit, a five-working days notice would be sent. The notice would be separate and apart from the regular monthly bill. It would reflect the current balance, account credit limit, amount over the credit limit and the minimum payment. After the five day period, access to the toll network would be automatically blocked unless the subscriber paid the amount over the credit limit plus 80% of the credit limit. Service could be otherwise restored at the discretion of the company in special circumstances.

Rule Waivers

With the amendments made to the Administrative Procedures Act by the 1996 Legislature, agencies are required to consider requests for variances or waivers from their rules according to the requirements set forth in Section 120.542, Florida Statutes. GTEFL seeks to avoid the application of Rules 25-4.110(3) and 25-4.113(1)(f). It asks the Commission instead to recognize its ACM tariff as explication of its responsibilities as set forth in Section 364.03, Florida Statutes.

Section 120.542, Florida Statutes, provides that:

> (1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation....
>
> (2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Rule 25-4.110(3)(a), Florida Administrative Code, provides that:

> Bills shall not be considered delinquent prior to the expiration of 15 days from the date of mailing or delivery by the utility. However, the company may demand immediate payment under the following circumstances:
>
> * * *
>
> 2. Where toll service is two times greater than the subscriber's average usage as reflected on the monthly bills for the three months prior to the current bill, or, in the case of a new subscriber who has been receiving service for less than four months, where the toll service is twice the estimated monthly toll service; or
>
> 3. Where the company has reason to believe that a business subscriber is about to go out of business or that bankruptcy is imminent for that subscriber.

Rule 25-4.113(1), Florida Administrative Code, provides that:

> As applicable, the company may refuse or discontinue telephone service under the following conditions provided that, unless otherwise stated, the subscriber shall be given notice and allowed a reasonable time to comply with any rule or remedy any deficiency:
>
> * * *
>
> (f) For nonpayment of bills for telephone service, including the telecommunications access system surcharge referred to in Rule 25-4.160(3), provided that suspension or termination of service shall not be made without 5 working days' written notice to the subscriber, except in extreme cases. The written notice shall be separate and apart from the

> regular monthly bill for service. A company shall not, however, refuse or discontinue service for nonpayment of a dishonored check service charge imposed by the company. No company shall discontinue service to any subscriber for the initial nonpayment of the current bill on a day the company's business office is closed or on a day preceding a day the business office is closed.

The applicable underlying statute in this case is Section 364.19, Florida Statutes, which provides that:

> This Commission may regulate by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons.

GTEFL argues that, to implement the ACM tariff, it is necessary to obtain "exemptions and variances" from the technical requirements of Rules 25-4.110(3)(a) and 25-4.113, Florida Administrative Code. Rule 25-4.110(3)(a), Florida Administrative Code, permits GTEFL to demand immediate payment of all charges under specified conditions, including where toll service is two times greater than the subscriber average usage as reflected on the monthly bills for the three months prior to the current bill. Under its ACM tariff, when a subscriber exceeds an assigned credit limit, GTEFL would demand 80% payment of toll charges incurred plus the amount in excess of the credit limit.

Rule 25-4.113, Florida Administrative Code, prohibits disconnection of service except under specified circumstances, including a failure to make payment on a bill. Under its ACM tariff, GTEFL would suspend toll usage when a subscriber of medium or high risk reaches an assigned credit limit and fails to make payment after a five-working days notice period. GTEFL asserts that its ACM tariff "approaches" matters addressed in Rule 25-4.113, Florida Administrative Code, in a manner different only with respect to the establishment of limits on toll use.

GTEFL asserts that variances from these rules benefit its subscribers as well as the company. It points out that by taking early action under the ACM tariff, ultimate disconnection of local service may be averted. The company states that the ACM tariff would be an alternative to local service disconnection. It states further that the tariff alleviates the need for deposits, "as was intended by the Commission."

GTEFL states that variances from these rules will serve the purposes of the underlying statutes. The company notes that the rules implement Section 364.03, Florida Statutes, requiring local exchange companies to charge reasonable rates. It contends that the variances it seeks will not affect the reasonableness of its rates or its provision of services. It contends further that the same is true of the other statutes implemented under these rules, Sections 364.04, 364.05, 364.17, and 364.19, Florida Statutes. In addition, the company contends that strict application of the Commission rules would create a substantial hardship and violate principles of fairness because it would be less able to control its uncollectible expense.

Rule 25-4.110, Florida Administrative Code, implements Sections 364.03, 364.04, 364.05, 364.17 and 350.113, Florida Statutes. Of these, only Sections 364.04 and 350.113, Florida Statutes, are applicable to price regulated local exchange companies pursuant to Section 364.051(1)(c), Florida Statutes. Section 364.04, Florida Statutes, concerns schedules of rates, tolls, rentals, contracts, and charges. Section 350.113, Florida Statutes, concerns the Public Service Regulatory Trust Fund. Neither is relevant to GTEFL's request for waiver in this instance. Hence, it would not be necessary for the Commission to grant GTEFL a waiver of Rule 25-4.110, Florida Administrative Code. Therefore, staff recommends that the company's petition to this extent should be denied.

Rule 25-4.113, Florida Administrative Code, implements Sections 364.03, 364.19, and 427.704, Florida Statutes. Section 427.704, Florida Statutes, concerns the telecommunications relay services, access to which GTEFL asserts would not be blocked under the proposed tariff. Section 364.03, Florida Statutes, as noted, is not applicable here. Thus, staff concludes that the test that GTEFL must meet is to demonstrate that the purpose of the underlying statute, Section 364.19, Florida Statutes, will be achieved by means other than by Rule 25-4.113, Florida Administrative Code.

Section 364.19, Florida Statutes, authorizes the Commission to regulate the service relationship between telecommunications companies and their patrons by "reasonable rules." Rule 25-4.113, Florida Administrative Code, sets out rules that this Commission has determined reasonably govern the discontinuance of service to customers by local exchange companies.

Staff does not believe that GTEFL has demonstrated that the purpose of the underlying statute, Section 364.19, Florida Statutes, would be satisfied if the Commission were to grant GTEFL the waiver its seeks to Rule 25-4.113, Florida Administrative Code. In staff's view, to suspend a subscriber's access to locally available interexchange companies upon reaching arbitrary credit limits is not consistent with the provision of telecommunications services under reasonable rules. Rather, staff believes that the provision in Rule 25-4.113, Florida Administrative Code, permitting discontinuance of service where accounts fall delinquent adequately protects the interests of both the company and its subscribers. The rule recognizes the common and rudimentary notion that one who contracts for services is entitled to receive them only with payment according to terms. The rule specifies the remedies available to the company in the event of a subscriber's breach. As noted above, in Order No. PSC-96-0530-FOF-TL, the Commission denied GTEFL's November 16, 1995, proposed ACM tariff that was not substantively different from the present proposal.

Under its authority pursuant to Section 364.19, Florida Statutes, the Commission may regulate service contracts between telecommunications companies and their customers. Such contracts are not limited to Contract Service Arrangements, but include all arrangements stating terms and conditions for telecommunications service. Accordingly, Section 364.025(1), Florida Statutes, requires GTEFL, as a local exchange company, to furnish basic local exchange telecommunications service within a reasonable time to any person requesting such service within the company's service territory. Section 364.02(2), Florida Statutes, defines basic local telecommunications service to include access to all locally available interexchange companies. Staff believes that Rule 25-4.113, Florida Administrative Code, reasonably and sufficiently circumscribes the responsibility of local exchange companies to provide basic local telecommunications service pursuant to the applicable statutes. Rule 25-4.113, Florida Administrative Code, authorizes the companies to discontinue telephone service in nine specific circumstances. It also disallows discontinuance of service in seven other specific circumstances. The rule is enunciated in painstaking detail and it neither addresses nor alludes to a subscriber's creditworthiness as a determinant of service eligibility. Staff does not believe that it is appropriate to further limit the local exchange companies' responsibility to provide basic local telecommunications service by exposing subscribers to toll blocking when they exceed arbitrary credit limits.

Furthermore, staff does not agree that the requested waiver is necessary to avoid substantial hardship or a violation of principles of fairness, as GTEFL alleges. Some subscribers who would be affected by the ACM tariff may not have become delinquent. They would have simply exceeded an arbitrary toll credit limit established by GTEFL in a particular month. Moreover, in the case of new subscribers, the credit limit would of course reflect the subscriber's payment performance with creditors other than GTEFL. While some of these subscribers may have demonstrated credit difficulties in the past, local exchange companies can collect deposits from these subscribers to protect against the possibility of nonpayment, pursuant to Rule 25-4.109, Florida Administrative Code. Staff does not believe GTEFL should be allowed to block subscribers' access to all locally available interexchange companies when they have not missed paying their monthly bill.

Staff believes that the decision to provide or deny toll access to any person should rest with the interexchange company, not with GTEFL. Under the ACM tariff, GTEFL would be able to make a determination of a subscriber's creditworthiness that would affect all interexchange companies. Since GTEFL has entered the long distance market, staff does not believe it is appropriate for GTEFL to set itself up as a "gatekeeper" for its competitors. If an interexchange company or GTEFL doubts a person's credit, it may routinely get credit bureau reports and make a judgement whether a deposit is warranted or not, just as any other business would. Staff does not believe GTEFL should be permitted to act as an intermediary in the relationship between a subscriber and the provider of the subscriber's toll service, as it would under its ACM tariff.

Therefore, staff recommends that the Commission deny GTEFL's petition for exemption and/or variance from Rule 25-4.113, Florida Administrative Code, because GTEFL has not met the requirements set forth in Section 120.542, Florida Statutes. GTEFL has not demonstrated that what it seeks will permit the company to satisfy the underlying purposes of Section 364.19 and, by implication, 364.025, Florida Statutes, to require local exchange companies to provide basic local telecommunications services under reasonable rules. This is not to suggest that staff recommends rejecting any local exchange company proposal to control bad debt and collection expenses through credit management tariffs. Furthermore, GTEFL may avoid substantial hardship by requiring deposits of subscribers whose credit is suspect. Finally, GTEFL cannot sustain an argument that principles of fairness will be violated if the Commission denies its petition because denial does not amount to discriminatory treatment.

While staff believes that the Commission should not grant GTEFL a waiver of Rule 25-4.110(3), Florida Administrative Code, because the rule is inapplicable in this instance, that by itself is insufficient to support GTEFL's proposed tariff. Waiver of Rule 25-4.113, Florida Administrative Code, is a necessary condition enabling implementation of GTEFL's proposed ACM tariff. Since staff is unable to recommend that the Commission grant GTEFL a waiver of Rule 25-4.113, Florida Administrative Code, staff, furthermore, recommends that the Commission disapprove GTEFL's proposed ACM tariff.

ISSUE 2: Should these dockets be closed?

RECOMMENDATION: Yes. If Issue 1 is approved, and if no person, whose substantial interests are affected, files a protest within 21 days of the issuance of the Order, these dockets should be closed. (Pellegrini)

STAFF ANALYSIS: Yes. If Issue 1 is approved, and if no person, whose substantial interests are affected, files a protest within 21 days of the issuance of the Order, these dockets should be closed.