

State of Florida



# Public Service Commission

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RECORDS AND REPORTING

**DATE:** MARCH 16, 2000

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

**FROM:** DIVISION OF LEGAL SERVICES (FORDHAM) *C-FY-DC*  
DIVISION OF COMMUNICATIONS (BIEGALSKI) *UBB RD*

**RE:** DOCKET NO. 991376-TL - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST GTE FLORIDA INCORPORATED FOR VIOLATION OF SERVICE STANDARDS.

**AGENDA:** MARCH 28, 2000 - REGULAR AGENDA - PARTIES MAY PARTICIPATE - MOTION TO DETERMINE THAT GTE'S WILLFUL VIOLATION OF THE COMMISSION'S QUALITY OF SERVICE RULES SINCE JANUARY 1, 1996 WILL BE AT ISSUE IN THIS PROCEEDING AND OPC'S FIRST MOTION TO COMPEL AGAINST GTE BE GRANTED.

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\991376.RCM

CASE BACKGROUND

Pursuant to Rule 25-4.0185, Florida Administrative Code, GTE Florida, Inc. (GTE) is required to file with the Commission quarterly reports which demonstrate its measure of its quality of service. During January 1998 through September 1999, GTE's quarterly reports indicated that it has consistently not met the 95% performance standard for restoration of interrupted service (out-of-service repair) within 24 hours of report, as required by Rule 25-4.070(3)(a), Florida Administrative Code. Additionally, GTE's reports indicated that since January 1998, for nine out of 21 months, it has not complied with Rule 25-4.066, Florida Administrative Code, regarding installation of primary service (installation of new service) within three working days.

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On September 10, 1999, based upon staff's investigation of GTE's compliance record from January 1998 through September 1999, show cause proceedings were initiated against GTE for apparent service standards violations. On October 13, 1999, prior to staff filing a recommendation in this matter, GTE, the Office of Public Counsel (OPC), and staff met to discuss the concerns regarding GTE's quality of service reports that were the subject of the investigation. By letter, dated October 29, 1999, GTE submitted an offer of settlement. By Order No. PSC-99-2501-PCO-TL, issued December 21, 1999, the Commission rejected GTE's proposed offer of settlement, and set this matter for hearing. The hearing is scheduled for August 17, 2000.

On January 10, 2000, OPC filed a Motion to Determine that GTE's Wilful Violation of the Commission's Quality of Service Rules since January 1, 1996 will be at Issue in this Proceeding. On January 24, 2000, GTE filed its response in opposition.

On February 8, 2000, GTE filed its Response and Objections to Citizens' Third Set of Requests for Production of Documents. GTE objected to providing any documents relating to 1996, 1997, or 2000 in its response to requests number 24, 25, and 31 through 40. On February 10, 2000, OPC filed its First Motion to Compel Against GTE, and on February 22, 2000, GTE filed its Answer opposing OPC's First Motion to Compel.

**ISSUE 1:** Should the Commission grant OPC's Motion to Determine that GTE's Wilful Violation of the Commission's Quality of Service Rules since January 1, 1996 will be at Issue in this Proceeding?

**RECOMMENDATION:** No. The Commission should not grant OPC's Motion to Determine that GTE's Wilful Violation of the Commission's Quality of Service Rules since January 1, 1996 will be at Issue in this Proceeding. **(FORDHAM)**

**STAFF ANALYSIS:** In its motion to expand the scope of the proceeding, OPC states that GTE's violations of the quality of service standards date back to at least 1996, with 305 out-of-service repair violations and 55 installation of new service violations during 1996 and 1997. OPC argues that GTE would have the Commission ignore the 1996 and 1997 violations, and, in objections to discovery requests, has refused to provide information dating back to 1996. According to OPC, looking at GTE's full history of violating Commission rules month after month

and year after year is highly relevant in showing that the violations were wilful and in determining the amount to fine GTE.

In its response, GTE argues that OPC is attempting to reach back to 1996 to address standards that are not a part of this docket. According to GTE, Order No. PSC-99-2501-PCO-TL defines the basic parameters of this proceeding, the matters to be investigated, and the time period at issue. Specifically, GTE states, the relevant subject matter and time period to be addressed have been defined by the Commission as GTE's apparent failure to meet two service standards rules (Rule 25-4.070(3)(a), Florida Administrative Code, Restoration of Interrupted Service, and Rule 25-4.066, Florida Administrative Code, Installation of Primary Service) at various times since January 1, 1998.

GTE also argues that the Commission's focus on particular service standards and its decision to examine GTE's compliance record for the past two years, were based upon staff's review of GTE's periodic service quality reports. It states that, as such, both staff's November 18, 1999 recommendation and Order No. PSC-99-2501-PCO-TL explicitly reflect 1998 as the start of the period at issue in this docket. Therefore, GTE concludes, the Commission, rather than OPC, has defined the relevant subject matter and period to be addressed in this docket, and OPC, having missed the opportunity to address the appropriate scope of the proceeding prior to the Commission's vote to go to hearing, cannot now try to change the basic parameters of the inquiry.

Staff believes that the scope of this proceeding was set by Order No. PSC-99-2501-PCO-TL, and is, therefore, limited to GTE's compliance with service standard rules, Rule 25-4.070(3)(a), Florida Administrative Code, Restoration of Interrupted Service, and Rule 25-4.066, Florida Administrative Code, Installation of Primary Service, from January 1998 through September 1999. The content of Order No. PSC-99-2501-PCO-TL has put GTE on notice as to the time period with which this docket is concerned. Staff is not persuaded by OPC's argument to expand the scope of the time period beyond that which GTE was given notice. Staff, therefore, recommends that OPC's Motion to Determine that GTE's Wilful Violation of the Commission's Quality of Service Rules since January 1, 1996, will be at Issue in this Proceeding be denied.

**ISSUE 2:** Should OPC's First Motion to Compel Against GTE be granted?

**RECOMMENDATION:** Yes. OPC's First Motion to Compel Against GTE should be granted. **(FORDHAM)**

**STAFF ANALYSIS:** On February 8, 2000, GTE filed its Response and Objections to Citizens' Third Set of Requests for Production of Documents. GTE objected to providing any documents relating to 1996, 1997, or 2000 in its response to requests number 24, 25, and 31 through 40.

On February 10, 2000, OPC filed its First Motion to Compel Against GTE. OPC alleges that GTE's objections impede its investigation into GTE's violation of the Commission's rules on a continuing basis, which will impair its ability to show that GTE's violations were willful. Also, OPC alleges that the long history of repeated violations would be an important consideration for this Commission when determining the amount of any fine imposed on GTE.

On February 22, 2000, GTE filed its Answer opposing OPC's First Motion to Compel. GTE argues that the Order setting this Docket for hearing establishes the parameters of this investigation as January 1998 through September 1999. This is also the same time period discussed in staff's recommendation to accept GTE's settlement offer, and the same time period addressed in the Commission's vote to take this matter to hearing, as well as the same time period Commission staff used in proposing the issues for resolution in this case.

GTE, further, asserts that it is not "blocking this investigation," as OPC contends, but, rather, merely adhering to the relevant period of inquiry established by the Commission in this case. GTE, again, urges that it is this Commission, and not OPC, that determines the extent of GTE's discovery obligations and, as such, they are well within their rights not to produce material from 1996, 1997, and 2000.

Staff believes that the legal constraints controlling in Issue 1 of this Recommendation do not apply to the arguments regarding discovery. Though the actual inquiry is limited to the established parameters, discovery may be used for differing purposes and, accordingly, may be afforded greater latitude. Company conduct outside of the period of inquiry, for example, may be considered in determining appropriate sanctions for the offending conduct within

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the period of inquiry. Staff recommends, therefore, that OPC's First Motion to Compel be granted.

**ISSUE 3:** Should this Docket be closed?

**RECOMMENDATION:** No. This Docket should remain open pending resolution of the remaining issues in the Show Cause Order.  
**(Fordham)**

**STAFF ANALYSIS:** This Recommendation deals only with procedural matters in the prehearing stage of the proceedings. The Docket should remain open pending resolution of the remaining issues in the Show Cause Order.