

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CALVIN "BILL" WOOD,)
)
 Petitioner,)
)
 vs.)
)
 GTE FLORIDA, INC.,) Case No. 99-3595
)
 Respondent,)
)
 and)
)
 PUBLIC SERVICE COMMISSION,)
)
 Intervenor.)
 _____)

RECOMMENDED ORDER

On December 8, 1999, a formal administrative hearing in this case was held in Lake Wales, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Calvin "Bill" Wood, pro se
10577 Schaefer Lane
Lake Wales, Florida 33853

For Respondent: Kimberly Caswell, Esquire
Post Office Box 110, MC FLTC0007
Tampa, Florida 33601-0110

For Intervenor: Donna Clemons, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

STATEMENT OF THE ISSUE

The issue in the case is whether the Petitioner received appropriate compensation for telephone service interruptions and whether the Respondent and the Intervenor have acted appropriately under applicable statutes and administrative rules in resolving the Petitioner's complaint.

PRELIMINARY STATEMENT

On December 30, 1997, Calvin "Bill" Wood (Petitioner) filed a complaint with the Florida Public Service Commission (PSC) alleging various problems with his residential telephone service provided by GTE Florida, Inc. (GTE). The PSC investigated the complaint, and conducted an informal conference, but the parties were unable to agree on a resolution. The PSC thereafter determined that the matter should be referred to the Division of Administrative Hearings for formal proceedings. The Division scheduled and conducted the proceeding.

At the hearing, the Petitioner presented the testimony of four witnesses, testified on his own behalf, and had Exhibits numbered 1-3 admitted into evidence. GTE presented the testimony of one witness and had Exhibits numbered 1-14 admitted into evidence. The PSC presented the testimony of two witnesses and had Exhibits numbered 1-4 admitted into evidence.

A Transcript of the hearing was filed on January 5, 2000. The parties timely filed Proposed Recommended Orders, after the

Petitioner's request for extension of the filing deadline was granted.

FINDINGS OF FACT

1. Calvin "Bill" Wood resides on Schaefer Lane in Lake Wales, Florida, and receives local telephone service from GTE.

2. GTE is a telecommunications service provider doing business in Florida and regulated by the PSC under the authority of Chapter 364, Florida Statutes, and Chapter 25, Florida Administrative Code.

3. In May 1997, the Petitioner began to experience telephone service problems, including line static and service outages.

4. According to GTE records reviewed by PSC personnel, GTE responded to the Petitioner's reports of telephone service problems. GTE attempted to identify and repair the causes of the problems over an extended period of time.

5. The GTE records, as reviewed by the PSC personnel, indicate that the Petitioner's problems continued and that he frequently reported the trouble to GTE.

6. GTE's "trouble reports" and summaries characterize the Petitioner's service problems as "miscellaneous" and "non-service affecting" at times when the Petitioner's complaint was a lack of dial tone. The inability to obtain a dial tone is a service-affecting problem.

7. A GTE installation and repair manager testified that technicians will identify a problem as "miscellaneous" and "non-service affecting" when they are unable to identify the cause of a problem, or when the problem is intermittent and is not active at the time the technician tests the line. Notations on records suggest that frequently the problems were not apparent at the time of testing.

8. In any event, the Petitioner's telephone service problems continued through the summer and fall of 1997. By the end of 1997, the Petitioner complained that one of his neighbors was often unable to call him.

9. On December 30, 1997, the Petitioner filed a complaint with the PSC Consumer Affairs Division, alleging that his telephone service was inadequate, specifically that the neighbor could not call him, and that his phone did not ring.

10. The Petitioner's complaint was tracked in the PSC Consumer Affairs Division computer system. At the time the complaint was filed, the PSC complaint tracking systems were not integrated between PSC divisions, resulting in individual consumer complaints being routed to various PSC personnel who were unaware that the consumers problems were already being investigated by other PSC personnel. PSC consumer complaints are now handled by an integrated docketing system.

11. Beginning after the filing of the complaint of December 30, 1997, the PSC began to inquire into the Petitioner's

telephone problems. In response to contact from the PSC, GTE acknowledged that service problems existed and indicated that lightning possibly damaged the Petitioner's telephone service. GTE stated that the main cable providing service to the Petitioner would be replaced.

12. By letter dated February 3, 1998, the Petitioner advised GTE and the PSC that he would withhold payment of his telephone bill until such time as his phone service was functioning and the neighbor could call him without problem.

13. On February 11, 1998, GTE made repairs to the Petitioner's "drop wire" and connection. GTE also examined the Petitioner's owner-supplied telephone equipment and determined that it was defective. The Petitioner agreed to acquire another telephone.

14. On February 12, 1998, GTE personnel visited the Petitioner's home to determine whether the service had been restored. At that time, the Petitioner asked them to check with the neighbor whose calls were not being received by the Petitioner.

15. On February 12, 1998, GTE personnel visited the neighbor and determined by observation that the neighbor's calls to the Petitioner were being misdialed.

16. On February 26, 1998, GTE installed new cable to serve the Petitioner but were unable to connect his telephone to the new cable because GTE's "serving cable pairs" were defective.

17. Weather-related problems prevented the company from correcting the defective "serving cable pair" problem on February 27, and apparently on any subsequent day prior to March 9, 1998.

18. GTE provided a credit of \$1.78 on the Petitioner's February 1998 telephone bill for the time the phone was out of service. GTE also provided a \$25 credit as part of GTE's "Service Performance Guarantee."

19. The "Service Performance Guarantee" provides a \$25 credit to a GTE customer when the customer-reported service issue is not resolved within 24 hours.

20. On March 9, 1998, GTE personnel visited the Petitioner and found that earlier in the day, the Petitioner's home had been destroyed by a tornado.

21. The GTE personnel testified that they advised the Petitioner to contact them when his electrical service was restored and the telephone would be reconnected.

22. The Petitioner testified that he told the GTE personnel he intended to live in a camper trailer he would place next to his house and testified that the GTE personnel told him they would return to connect his phone service.

23. The GTE personnel did not hear from the Petitioner and did not immediately return to connect phone service. The Petitioner did not contact GTE to advise that his electrical service had been restored.

24. The next day, March 10, 1998, GTE notified the Petitioner that his telephone service would be disconnected for nonpayment of an outstanding balance in excess of \$600. The GTE notice established a deadline of March 19, 1998, for payment.

25. On March 11, 1998, the Petitioner requested that his calls be forwarded to his neighbor's home. GTE complied with the request and began forwarding the Petitioner's calls on March 13, 1998.

26. On March 23, 1998, GTE personnel attempted to visit the Petitioner and ascertain the situation, but the Petitioner's private drive was barricaded. The GTE representative assumed that the condition of the property was not suitable for reconnection of telephone service.

27. By letter to the PSC dated March 25, 1998, the Petitioner complained that the phone service to his property had not been restored.

28. On March 25, 1998, the Petitioner's telephone service was disconnected for nonpayment of the outstanding balance on his account.

29. On March 27, 1998, GTE advised the Petitioner that his telephone service would be "permanently" disconnected if the outstanding balance of \$664.02 were not paid.

30. GTE provided another \$25 SPG credit on the Petitioner's March 1998 bill.

31. On April 2, 1998, the Petitioner informed the PSC that he had no telephone service and requested an informal conference to resolve the matter. The Petitioner offered to escrow his telephone payments until his service was repaired to his satisfaction. On the same day, GTE notified the PSC that the Petitioner had the outstanding unpaid balance.

32. Because the Petitioner's complaint was still pending and the PSC had not proposed a resolution, the Petitioner's request for an informal conference was premature. In subsequent letters, the Petitioner continued to seek an informal conference prior to completion of the investigation. The PSC did not act on the requests.

33. There is no evidence that the Petitioner disputed the amount due on his telephone bill. The Petitioner's decision to withhold payment of the bill was service-related.

34. The PSC does not have authority to prevent a service provider from disconnecting service for nonpayment of undisputed telephone service charges.

35. On April 4, 1998, GTE "permanently" disconnected the Petitioner's telephone service for nonpayment.

36. By letter to the PSC dated April 6, 1998, the Petitioner requested assistance in obtaining telephone service, asserting that a heart condition required access to a telephone. There is no evidence that prior to April 6, 1998, the Petitioner

had advised either GTE or the PSC of any existing heart condition.

37. By rule, GTE is required to maintain customer access to an emergency 911 communications system except where telephone service is "permanently" disconnected.

38. Other than after the "permanent" disconnection of his telephone service, there is no evidence that the Petitioner lacked access to the emergency 911 system.

39. By letter to the PSC dated April 8, 1998, the Petitioner alleged to the PSC that several of his neighbors were having telephone problems and were, for a variety of reasons, unable to contact the PSC to complain.

40. The Petitioner attempted to involve a number of his neighbors in his complaint, but none of the neighbors filed a complaint with the PSC, and there is no evidence that the neighbors complained to GTE about any service problems. There is no evidence that any resident of Schaefer Lane filed a telephone service complaint with the PSC. There is no evidence that the Petitioner is authorized to represent his neighbors or neighborhood in this matter.

41. On April 17, 1998, GTE offered to reconnect the Petitioner's local telephone service and block all toll calls if he would agree to arrange payment of the outstanding balance. The Petitioner apparently refused the offer, but on April 20, 1998, GTE reconnected the local service and activated the toll

block. GTE waived the \$55 reconnection charge and suspended collection procedures pending resolution of the complaint the Petitioner filed with the PSC.

42. On May 9, 1998, the Petitioner made payment of the outstanding balance of his telephone bill. The toll block should have been removed from the Petitioner's telephone service at that time, but it was not. On May 13, 1998, the Petitioner notified the PSC that the toll block remained on his phone. The PSC notified GTE that the toll block was still active. GTE apparently did not act on the information.

43. On May 29, 1998, the PSC tested telephone lines at the Petitioner's home and at the home of the calling neighbor. The technicians detected no telephone line problem in any location. The PSC technician attempted to complete numerous calls from the neighbor's home to the Petitioner. The technician's calls were completed without incident.

44. The neighbor was asked to dial the Petitioner's number. The PSC technician observed that the neighbor misdialed the Petitioner's telephone number on each of three attempts.

45. GTE eventually provided and installed a "big button" telephone for the neighbor. GTE also provided speed-dialing service at no charge to the neighbor and instructed him on use of the service.

46. The Petitioner asserts that the PSC technician violated PSC administrative rules by traveling with GTE personnel to the

Petitioner's and neighbor's homes on May 29. The evidence fails to establish that the transportation constituted a violation of any administrative rule.

47. By June 1, 1998, with the toll block still activated, the Petitioner filed a complaint with the PSC concerning the service disconnection and the toll block. The June 1, 1998, complaint was assigned to the Telecommunications Division and the PSC again relayed the complaint to GTE. GTE removed the toll block on June 4, 1998.

48. At this point, the PSC realized that the Petitioner had filed two separate complaints and the agency combined the investigations.

49. It is unclear as to the reason GTE did not remove the toll block after the PSC relayed the matter to them on May 13, 1998; but there is no evidence that it was done to retaliate against the Petitioner.

50. Despite the toll call block, the Petitioner was able to make long distance calls by using a calling card.

51. After GTE removed the block, GTE credited the Petitioner with the difference between the cost of the calls made using his calling card and the cost of the calls that would have been made using the regular long distance carrier had the toll block not been in place.

52. GTE issued service credits of \$2.14 and \$1.65 on the Petitioner's June bill for out-of-service claims.

53. The Petitioner asserted that there were times when callers were unable to reach him, but the evidence fails to establish that failed calls were the result of service problems. The Petitioner had numerous telecommunications and computer devices attached to the line. Use of devices, including computers and fax machines, can result in an incoming call not being completed. The Petitioner also acknowledges that he sometimes does not answer the telephone.

54. The PSC technician testified that as of May 29, 1998, he considered the service problem resolved. Tests on the Petitioner's telephone lines revealed the lines to be in working order. Numerous calls placed to the Petitioner from the neighbor's house and other locations were completed without incident. In mid-June 1998, the technician recommended that the case be closed.

55. By letter dated June 17, 1998, the PSC advised the Petitioner of the informal resolution of the case and advised him of his right to request an informal conference.

56. On August 18, 1998, the Petitioner informed the PSC that the neighbor was able to complete calls to him and considered that matter resolved, but asked for an informal conference. The PSC staff, attempting to negotiate a settlement of the dispute, did not convene an informal conference until May 12, 1999.

57. The matter was not resolved at the May 12, 1999, conference. On July 15, 1999, the PSC staff filed its recommendation for action at the PSC's Agenda Conference on July 27, 1999, at which time the PSC referred the dispute to the Division of Administrative Hearings.

58. The Petitioner has previously asserted that he is entitled the \$25 SPG credit for each time he called GTE to complain about his telephone service. There is no evidence that the Petitioner is entitled to any SPG credits beyond those he has already received.

59. The evidence establishes that the Petitioner's service-related problems were intermittent, required extensive "troubleshooting" to locate, and were repaired as soon as was practicable.

60. The Petitioner's monthly local telephone service charge is \$10.86, or approximately 36 cents per day.

61. The PSC staff calculates that the Petitioner is due a maximum "out-of-service" credit of \$16.46 allowing for a period of approximately 46 days of credit.

62. GTE has issued total credits in the amount of \$110.57, including two \$25 SPG credits and waiver of the \$55 reconnect fee. Subtracting the \$105 attributable to the two SPG's and the reconnect fee credit from the total of \$110.57 leaves the remainder of \$5.57, which is the total of the three

"out-of-service" credits (\$1.78, \$1.65 and \$2.14) the Petitioner has received.

63. Based on the PSC staff determination that the Petitioner was due a maximum of \$16.46 in "out-of-service" credit, it appears that the Petitioner should receive an additional credit of \$10.89.

CONCLUSIONS OF LAW

64. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Section 120.57(1), Florida Statutes.

65. The Public Service Commission has the authority to regulate telephone service providers in Florida. Chapter 364, Florida Statutes, and Chapter 25, Florida Administrative Code.

66. In this case, the Petitioner asserts that GTE has provided inadequate telephone service to his home in Lake Wales, Florida. Although clearly the Petitioner's telephone service was inadequate at times following apparently lightning-related damage to local phone cables beginning in May 1997, the evidence establishes that GTE attempted to respond to the Petitioner's complaints.

67. The Petitioner has previously asserted that he would consider the matter resolved at such time as his neighbor could call him without problem. There is no evidence that there are any remaining service-related call difficulties at the Petitioner's residence.

68. The evidence establishes that difficulties encountered by the Petitioner's neighbor were the result of inadvertent dialing errors, and were resolved by the replacement of the neighbor's telephone equipment and the activation of the speed dialing function provided at no charge to the neighbor by GTE.

69. The Petitioner asserts that the GTE records fail to meet the requirements of administrative rules because they fail to identify all the times he reported problems to the company.

Rule 25-4.022, Florida Administrative Code, provides as follows:

(1) Each telephone company shall maintain for at least six (6) months a record of all signed written complaints made by its subscribers regarding service or errors in billing, as well as a record of each case of trouble or service interruption that is reported to repair service. This record shall include the name and/or address of the subscriber or complainant, the date (and for reported trouble, the time) received, the nature of the complaint or trouble reported, the result of any investigation, the disposition of the complaint or service problem, and the date (and for reported trouble, the time) of such disposition.

(2) Each signed letter of complaint shall be acknowledged in writing or by contact by a representative of the company.

70. There is no evidence to support the Petitioner's assertion that the company records fail to meet this requirement. The Petitioner identified no specific date on which allegedly unrecorded complaints were made and identified no event not reflected by the GTE records.

71. The Petitioner asserts that GTE was aware of many telephone service problems in the Schaefer Lane area and failed

to notify the PSC as required by Rule 25-4.023, Florida Administrative Code. There is no evidence that any Schaefer Lane resident other than the Petitioner has filed any complaints with the PSC regarding delivery of telephone services. There is no evidence that GTE failed to respond to any service complaint registered by any Schaefer Lane resident.

72. The Petitioner asserts that GTE violated Rule 25-22.032(10), Florida Administrative Code, by disconnecting his service while his complaint was pending at the PSC. Rule 25-22.032(10), Florida Administrative Code, provides as follows:

(10) During the pendency of the complaint proceedings, a utility shall not discontinue service to a customer because of an unpaid disputed bill. However, the utility may require the customer to pay that part of a bill which is not in dispute. If the parties cannot agree as to the amount in dispute, the staff member will make a reasonable estimate to establish an interim disputed amount until the complaint is resolved. If the customer fails to pay the undisputed portion of the bill the utility may discontinue the customer's service pursuant to Commission rules. (Emphasis supplied)

73. There is no billing dispute at issue in this proceeding. The cited rule prohibits disconnections related to nonpayment of disputed amount. In this case, the Petitioner's complaints to the PSC were related to the quality of service provided by GTE. There is no evidence that GTE violated any administrative rule by disconnecting the Petitioner's telephone service for non-payment of non-disputed outstanding telephone charges.

74. Rule 25-4.113(1)(f), Florida Administrative Code, provides for termination of telephone services, and provides that a company may discontinue service for nonpayment of bills for telephone service. There is no evidence that GTE violated the provisions of this rule. Rule 25-4.113(5), Florida Administrative Code, provides that a company "may charge a reasonable fee to defray the cost of restoring service" where service has been properly terminated. In this case, GTE waived the fee.

75. Rule 25-4.081, Florida Administrative Code, requires that emergency 911 services must "be maintained for the duration of any temporary disconnection for non-payment of a subscriber's local residential service". There is no evidence that the Petitioner's emergency 911 services were unavailable during the period preceding the "permanent" disconnection of his telephone services.

76. The Petitioner asserts that a PSC employee violated administrative rules when he rode on May 29, 1998, with GTE personnel and in GTE transportation when GTE and PSC personnel came to the Petitioner's residence to test the telephone lines.

77. Rule 25-21.050, Florida Administrative Code, provides as follows:

25-21.050 Acceptance of Gifts.
(1) This rule is adopted to implement section 112.326, Florida Statutes, authorizing agencies to impose more stringent standards of conduct upon their employees than those specified in Chapter 112, Part

III, Florida Statutes. The provisions of (2) apply in addition to that part.

(2) A Commission employee shall not knowingly accept anything of value for which equal or greater consideration is not given from any entity listed below, its officers or employees. This prohibition shall further apply to any business entity that either directly or indirectly owns, controls, is an affiliate of or is a subsidiary of the listed entities. These include:

- (a) An entity regulated by the Commission;
- (b) An entity that is currently a party or has been a party in a Commission proceeding during the preceding 12 months; or
- (c) A person or entity acting on behalf of a regulated entity or party.

(3) The provisions of (2) shall not apply:

* * *

(g) To the acceptance of transportation in a regulated entity's vehicle by an employee on a field visit to a site that is remote or difficult to access in a Commission vehicle.

78. The Petitioner's residence is located in a remote location accessed by a long and unpaved road. The Tallahassee-based PSC employee had been traveling on state business for six weeks, not in a commission vehicle, but in his personal car. The employee testified that he did not want to take his personal car, which rode low to the ground, down the dirt road to the Petitioner's house, so he drove to the local GTE office and rode with the technicians who were familiar with the area.

79. PSC rules permit employees to accept travel from regulated entities when the destination is remote or the access is difficult. The evidence fails to establish that the PSC technician violated PSC rules by traveling to the Petitioner's property on May 29, 1998.

80. The Petitioner asserts that the PSC improperly delayed his request for an informal conference prior to the time the PSC proposed a resolution of the complaint. The Petitioner's request of April 2, 1998, was premature. Administrative rules governing the PSC provide that a consumer may request an informal conference after the PSC completes the complaint investigation and offers a proposed resolution. The PSC investigation eventually concluded and the proposed resolution was offered to the parties by letter dated June 17, 1998.

81. Rule 25-22.032(4), Florida Administrative Code, provides as follows:

(4) If a party objects to the proposed resolution, he may file a request for an informal conference on the complaint. The request shall be in writing and should be filed with the Division of Consumer Affairs within 30 days after the proposed resolution is mailed or personally communicated to the parties. Upon receipt of the request the Director of the Division may appoint a staff member to conduct the informal conference or the Director may make a recommendation to the Commission for dismissal based on a finding that the complaint states no basis for relief under the Florida Statutes, Commission rules or orders, or the applicable tariffs. If a conference is granted the appointed staff member shall have had no prior contact with the complaint. After consulting with the parties, the appointed staff member shall issue a written notice to the parties setting forth the procedures to be employed, the dates by which written materials are to be filed, and the time and place for the informal conference, which shall be held in the service area, or such other convenient location to which the parties agree, no sooner than 10 days following the notice.

82. Once the proposed resolution was offered, the Petitioner's request for an informal conference was properly filed. The rule does not provide a deadline for the convening of

the informal conference. The PSC asserts that the extended delay was due to attempts to resolve the case without the need for the conference. The conference eventually occurred, the parties could not resolve their differences, and the PSC forwarded the matter to the Division of Administrative Hearings. The delay in convening an informal conference does not violate the requirements of the cited rule.

83. Finally, the Petitioner has asserted that GTE violated Section 364.10, Florida Statutes, by subjecting him to "undue or unreasonable prejudice or disadvantage" in the provision of his telephone service. Specifically, the Petitioner asserts that GTE retaliated against him for filing the complaints with the PSC by disconnecting his telephone line and failing to remove the toll block after the local service was restored. Section 364.10, Florida Statutes, provides as follows:

364.10. Undue advantage to person or locality prohibited; exception--

(1) A telecommunications company may not make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(2) The prohibitions of subsection (1) notwithstanding, a telecommunications company serving as carrier of last resort shall provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in a commission-approved tariff and a preferential rate to eligible facilities as provided for in part II.

84. There is no evidence to support the Petitioner's assertion that GTE has subjected the Petitioner to "undue or unreasonable prejudice or disadvantage."

85. The Petitioner has asserted that GTE should be required to reimburse him for property allegedly stolen by looters after the tornado of March 9, 1998. There is no evidence or legal authority to support this assertion.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Florida Public Service Commission enter a final order requiring GTE to provide a credit of \$10.89 to the Petitioner.

DONE AND ENTERED this 10th day of May, 2000, in Tallahassee, Leon County, Florida.

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of May, 2000.

COPIES FURNISHED:

Calvin "Bill" Wood
10577 Schaefer Lane
Lake Wales, Florida 33853

Kimberly Caswell, Esquire
Post Office Box 110, MC FLTC0007
Tampa, Florida 33601-0110

Donna Clemons, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

William D. Talbott, Executive Director
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Rob Vandiver, General Counsel
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Blanca Bayo
Director of Records and Reporting
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order must be filed with the agency that will issue the final order in this case.