IN THE SUPREME COURT OF FLORIDA

GENERAL TELEPHONE COMPANY OF FLORIDA Appellant, v. JOHN R. MARKS, III, et al. Appellee.	CONSOLIDATED CASES Case No. 66,633
UNITED TELEPHONE COMPANY OF FLORIDA Appellant, v. JOHN R. MARKS, III, et al. Appellee.	Case No. 66,673

On Appeal From The Florida Public Service Commission

INITIAL BRIEF OF APPELLANT GENERAL TELEPHONE COMPANY OF FLORIDA

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GLOSSARY OF TERMS

In deciding the appeal presented, the Court will encounter certain acronyms and terms that are, for the most part, only used by the telephone industry and its regulators. The following pertinent terms are defined.

Access Charges: Those charges paid by Interexchange Carriers to Local Exchange Companies in order to originate and terminate long-distance calls. These charges are necessary to compensate the Local Exchange Company for the role its local network plays in the transmission of a long-distance call.

AT&T Communications (AT&T-C): That entity which, as a result of divestiture, is entitled to handle intrastate interLATA long-distance toll calls (other Interexchange Carriers also compete in this market).

AT&T Information Systems (ATTIS): That entity which, as a result of divestiture, received the Bell Operating Companies' Customer Premises Equipment.

Customer Premises Equipment (CPE): Terminal equipment which attaches to a line, such as a regular hand set, key system, PBX, etc. This equipment has been found by the Federal Communications Commission to be subject to competitive pressures and is being deregulated. As a result of divestiture, Southern Bell transferred its CPE to ATTIS on

January 1, 1984, before the Local Exchange Carriers were required to deregulate their CPE.

Interexchange Carrier (IXC): A long distance toll carrier.

Intrastate Access Charge Pool: A pool established by the Florida Public Service Commission in which statewide access charge revenues are collected in a pool and redistributed to companies based upon investment and expenses.

IntraLATA/Territory Toll Pool: A statewide pool established by the Florida Public Service Commission in which all Local Exchange Carriers' intraLATA toll revenues are collected in a pool and redistributed to companies based upon investment and expenses.

LATA (Local Access and Transport Area): A geographic area created by the Modified Final Judgment.

Local Exchange Carrier (LEC): A local telephone company, such as General Telephone Company of Florida, which provides local telephone service in its franchised area. In addition, LECs provide intraLATA long distance service and access to Interexchange Carriers.

Pooling: A generic term describing the arrangements whereby all LEC access charges and intraLATA toll revenues are gathered into two

statewide funds, or pools, and then redistributed to LECs based on each company's proportional investment and expense.

Separations and Settlements: The specific process used to allocate and redistribute the pooled funds. Separations divides toll revenues, expenses and investment between the various jurisdictions and account classifications. Settlements divides up the pooled monies and returns it to the various companies in the proper amount.

I. INTRODUCTION

General Telephone Company of Florida (hereinafter referred to as "GTFL") appeals from interim Order No. 13179 issued by the Florida Public Service Commission (hereinafter referred to as "Commission") on April 9, 1984, and from Commission Order No. 14047 issued on January 30, 1985, which is the final order in this docket. (A. 1 and A. 8)[1] This appeal challenges the Commission's jurisdiction and authority to allow Southern Bell Telephone and Telegraph Company (hereinafter referred to as "Southern Bell") to remove $9,700,000 from the IntraLATA/Territory Toll Pool and the Intrastate Access Charge Pool to recover monies for expenses which no longer exist due to Southern Bell transferring its Customer Premises Equipment (CPE) to AT&T Information Systems. This transfer of CPE was made as a result of the divestiture of the Bell System pursuant to the entry of the Modified Final Judgment.

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[1] "R.__" refers to pages of the record. "Tr.__" refers to pages of the Hearing Transcript. "A.__" refers to pages of Appellant's Appendix submitted herein pursuant to the provisions of Fla. R. App. P. 9.220. Said Appendix contains relevant portions of the record for the Court's convenience.

II. STATEMENT OF THE CASE[2]

The United States Department of Justice (DOJ) commenced an anti-trust action against American Telephone and Telegraph Company (AT&T) in 1974, which ultimately precipitated the breakup and divestiture of the Bell System. The case resulted in a settlement in August, 1982, which contained the following three items among other matters: 1) AT&T would divest its ownership of the Bell Operating Companies (BOC); 2) the BOCs were limited to providing toll service only within a LATA; and 3) the BOCs could not participate in the provisioning of embedded Customer Premises Equipment (CPE). United States v. American Telephone and Telegraph Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd. sub nom. Maryland v. United States, 460 U.S. 1001 (1983).

As a result of the settlement, the Florida Public Service Commission (Commission) initiated the docket under review to study the effects of the settlement upon Florida telephone companies and ratepayers (R. 1). The docket provided the Commission with the necessary information to study the impact of divestiture. However, on November 23, 1983, the complexion of the case changed from analyzing the effects of divestiture on the industry in general, to studying the effects on Southern Bell in particular. This change occurred when

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[2] Due to the complexity of the underlying subject matter of this appeal, GTFL has elected to divide the "Statement of the Case and Facts" required by Fla. R. App. P. 9.210(b)(3). This section of the brief will cover the procedural history of the docket and the recent divestiture of the Bell System. The "Statement of Facts" infra, will delve into the evidence of record and issues decided by the Commission.

Southern Bell requested the assistance of the Commission in dealing with the significant asset, revenue and expense shifts resulting from divestiture (R. 22). Divestiture, according to Southern Bell's Vice President Alford, was causing shifts that were "dangerously deleterious to the Company's financial health" (R. 22). A clear and specific analysis of the effects of deregulation, divestiture and access charges was to be provided to the Commission.

Southern Bell submitted the aforementioned information to the Commission on January 5, 1984. Mr. Alford attributed his company's financial problems to the following factor.

> "A complete analysis of the transfer of assets, expenses, and revenues to AT&T Communications and AT&T Information Systems (ATTIS) as a result of divestiture was then performed to determine the specific cause of this revenue shortfall. This analysis reveals that the only significant cause is the transfer of Customer Premises Equipment (CPE) to ATTIS. Indeed, the net difference in intrastate earnings attributable to factors other than CPE amounts to only seven basis points." (R. 24-25)

Thereafter, on February 17, 1984, Southern Bell filed a Petition for Immediate Rate Relief in the amount of $92,500,000 (R. 62). Southern Bell proposed to obtain the $92.5 million from its own ratepayers (R. 67).

An informal hearing was held on March 20, 1984, which resulted in the Commission issuing Order No. 13179 entitled "Order Suspending Implementation of Permanent Rates and Granting Interim Award." (A. 1). Said order authorized partial interim relief, but claimed further proceedings were necessary to investigate the costs of divestiture. In reaching its interim decision, the Commission stated:

> "After considering the foregoing, we find that Southern Bell has established a prima facie entitlement to interim relief. We are mindful of the fact that one reason for opening this docket was to determine the divestiture-related costs to the Bell Operating Company in Florida, Southern Bell, and to assure to the best of our ability that none of those divestiture-related costs were in fact absorbed by the ratepayers. As such it is not a general rate proceeding, but a unique proceeding to determine the impact of the court-approved voluntary agreement between AT&T and the Department of Justice - which we term for convenience, "divestiture" - upon intrastate telephone service in Florida." (A. 4) (Emphasis added.)

The Commission ultimately allowed Southern Bell interim rates to collect $35.9 million on an annual basis. $26.2 million of the foregoing amount was to be obtained from AT&T-C as a divestiture related surcharge. The remaining $9.7 million was to be obtained from the independent telephone companies by placing divestiture related charges on the IntraLATA/Territory Toll Pool and the Intrastate Access Charge Pool. These surcharges were levied based on the Commission's belief that the independents were recovering more in revenues from the pools, as a result of divestiture, than they would have had divestiture not occurred. AT&T-C and the independent telephone companies bore the brunt of the interim rate relief because divestiture was designed not to have an adverse impact on ratepayers. Thus, the status quo was supposedly maintained while the Commission looked at the impact of divestiture (A. 4). GTFL and United Telephone Company of Florida filed timely Motions for Reconsideration which were denied (R. 284, 289 and 311).

The case proceeded to hearing pursuant to the Commission's schedule. The Prehearing Order contained the following issues which are pertinent to the matters on appeal (R. 381):

> Issue 53 What refund, if any, of the interim increase should be made and to whom?
>
> Issue 53c Does Southern Bell's withdrawal of $9.7 million from the intrastate pools result in a violation of the division of revenue agreements and Florida law?

GTFL submitted its Brief to the Commission on the above issues which contained arguments stating that the Commission was without statutory authority to implement the charges on the various state pools; that the Commission's decision, in part, constituted retroactive ratemaking; that existing settlements contracts did not authorize the Commission's action; that the decision was discriminatory; and that the decision resulted in a windfall to Southern Bell (R. 411). The Commission's order of January 30, 1985, produced a final decision.[3]

The Commission agreed with GTFL and United that Section 364.07, Fla. Stat. did not give the Commission the authority to implement the divestiture surcharges on the two state pools (A. 22). However, the Commission was of the belief that the settlements contracts entered into by Southern Bell, GTFL, United and other independent companies did give the Commission authority to implement the surcharges (A. 22-23). As a result of this decision, GTFL filed its appeal with this Court.

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[3] The Commission totally ignored GTFL's argument concerning whether their decision constituted retroactive ratemaking. The issue was not addressed.

III. STATEMENT OF FACTS

All telephone companies had been engaged in the joint provision of long-distance telephone service for a number of years previous to the divestiture of the Bell System. In order to function in this manner, methods had to be devised in order to compensate each company for its portion of the business. The process utilized was separations and settlements. Separations divides the monies between the respective federal and state jurisdictions and is also used to allocate investment and expenses between toll and local. Settlements returns the monies in the proper amount to each company. Basically, all of the toll related revenues from each company are "pooled" into one large amount with the toll related expenses of each individual company being paid first. The remainder of the money in the pool is paid out as profit or return to each company based upon its relative toll investment (Tr. 77). Naturally, a process as complicated as the one involved required the execution of agreements and contracts to structure and control the flow of monies. These contracts required that settlements be made based on investment and expenses determined in accordance with the Separations Manual which has been adopted by the Federal Communications Commission as Part 67 of its Rules and Regulations.

The Separations Manual has historically allocated a substantial portion of the investment and expenses associated with Customer Premises Equipment (CPE) to interstate and intrastate toll to be recovered through toll rates and distributed through the toll settlements process. Due to the requirements of the Separations Manual, approximately

60% of CPE investment and expenses have been assigned to be recovered through toll rates. However, local rates for CPE were set at compensatory levels. Thus, CPE provided a substantial contribution to local rates. However, beginning on January 1, 1983, the Federal Communications Commission directed that selected embedded CPE costs be "phased out" of toll separations at the rate of one-sixtieth per month (Tr. 576). This FCC directive recognizes the need to remove extraneous costs from being included in toll rates to allow cost-based pricing as the telecommunications industry moves toward competition. This "phase out" continues whether the CPE is retained or sold.

Accordingly, all telephone companies have been reducing the amount of certain CPE costs recovered from toll settlements due to the FCC's order. However, Southern Bell eliminated additional costs before the rest of the industry due to the divestiture of the Bell System and the transfer of Southern Bell's CPE to AT&T Information Systems. Thus, divestiture sped up for Southern Bell a process which all telephone companies have been experiencing due to the sale of CPE.

Because of the divestiture of the Bell System, the old separations and settlements contracts had to be replaced with new contracts due to the change in the manner toll service is provided. In Re: Intrastate Telephone Access Charges for Toll Use of Local Exchange Services, 83 F.P.S.C. 12 100 (1983), the Florida Public Service Commission established the IntraLATA/Territory Toll Pool and the Intrastate Access Pool. The foregoing two pools replaced the predivestiture pools. New contracts were entered into to govern the conduct of business.

In establishing the amount of toll revenues to be recovered from the new pools, Southern Bell's additional CPE costs (excluding the phase out) was included. However, after the transfer of Southern Bell's CPE to AT&T Information Systems on January 1, 1984, Southern Bell no longer retained these additional costs and, appropriately, had not been receiving compensating revenues from the intrastate pools. Divestiture and the transfer of Southern Bell's CPE to ATTIS did, however, produce less revenue for Southern Bell. Predivestiture CPE as aforementioned had been priced in such a manner as to make a substantial contribution to holding down local rates. When Southern Bell's CPE was transferred, this support for Southern Bell's local rates was lost and a loss in revenue was experienced.

The Commission found that the independent telephone companies were receiving $9.7 million more than they would have received if divestiture had not occurred. Accordingly, the Commission implemented the $9.7 million pool surcharges and transferred these monies to Southern Bell even though these CPE expenses no longer exist. In other words, the Commission imputed $9.7 million of "phantom" expenses to the pool to increase Southern Bell's share to the detriment of the independent companies.

IV. SUMMARY OF ARGUMENT

While the underlying subject matter of this appeal is complicated, the legal issue presented is not. Basically, this appeal presents a single issue:[4]

> **"Did the Florida Public Service Commission act properly when it authorized Southern Bell to remove $9.7 million from the IntraLATA/Territory Toll Pool and Intrastate Access Charge Pool to recover expenses related to Customer Premise Equipment which no longer existed due to the transfer of Southern Bell's CPE to AT&T Information Systems?"**

GTFL submits the answer to the foregoing question is no.

The subject matter of this appeal concerns the Division of Revenues contracts. This Court held, as recently as 1977, that the Commission had no authority to regulate or change these contracts. However, a subsequent statutory change gave the Commission jurisdiction under certain circumstances. The Commission found in its final decision that those circumstances were not present in this case. Rather, the Commission based its authority to change the Division of Revenues contracts upon language contained in those contracts.

The problem presented is that the only evidence of record is testimony from individuals who actually negotiated those contracts stating that the language used was not meant to allow a company to recover expenses which do not exist. Thus, there is no competent and substantial evidence or statutory authority to support the Commission's decision.

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[4] If the Court should affirm the Commission's action, then a second issue arises concerning whether a portion of the Commission's decision constitutes retroactive ratemaking.

GTFL is cognizant of the revenue problem Southern Bell was experiencing as a result of the transfer of its CPE to ATTIS. It was a problem which had to be solved. However, it had to be handled in the proper manner. In its zeal to avoid placing a rate increase on Southern Bell's ratepayers, the Commission overstepped its authority. The result was an arbitrary and unlawful decision.

V. ARGUMENT

A. The Florida Public Service Commission acted in an arbitrary and capricious manner in finding that the Division of Revenues contracts contain provisions which allow the Commission to impute phantom expenses to the IntraLATA/Territory Toll Pool and Intrastate Access Charge Pool because there is absolutely no competent and substantial evidence or statutory authority to support such a finding. The only evidence of record on this point proves the exact opposite point.

It is cardinal principle of regulatory law that the Public Service Commission's "powers and duties are only those inferred expressly or impliedly by statute ....And any reasonable doubt as to the existence of a particular power of the Commission must be resolved against it." Department of Transportation v. Mayo, 354 So.2d 359, 361 (Fla. 1977). Accord, City of West Palm Beach v. Florida Public Service Commission, 224 So.2d 322 (Fla. 1969); City of Cape Coral v. GAC Utilities Inc. of Florida, 281 So.2d 493 (Fla. 1973). In this case, the issue concerns the ability of the Commission to be involved with and to change the Division of Revenues contracts.

Prior to 1980, the Commission possessed no authority to regulate or change Division of Revenues contracts. This conclusion is based on the Florida Supreme Court's decision in Florida Telephone Corp. v. Mayo, 350 So.2d 775, 778 (Fla. 1977). In such case, there was a dispute between Southern Bell and Florida Telephone Corporation regarding the treatment of certain taxes for settlement purposes. Florida Telephone was no longer content with the agreement it had negotiated and had sought relief before the Public Service Commission. The Commission had granted the relief in part which had the effect of amending the

contract. The Supreme Court specifically held that "...the Commission has no statutory authority to regulate the contractual division of long-distance toll revenues between telephone companies." (350 So.2d at 778). Accordingly, the Commission had no authority whatsoever to regulate or change Division of Revenues contracts as of October 6, 1977, the date of the Supreme Court's opinion.

Section 364.07, Florida Statutes, was amended by the Legislature in 1980 (Laws 1980, C.80-36, §8) to add Section 2 discussed in detail infra. Thus, the Florida Telephone case has effectively been reversed in part. However, it still stands for the proposition that the only authority the Commission has in the area of settlement contracts is that set forth by Section 364.07, Florida Statute, as amended in 1980. No implied authority exists.

Section 364.07, Florida Statutes, entitled **"Joint Contracts; Intrastate Interexchange Service Contracts"** provides in its entirety as follows:

> "(1) Every telephone company shall file with the commission, as and when required by it, a copy of any contract, agreement, or arrangement in writing with any other telephone company, or with any other corporation, association, or person relating in any way to the construction, maintenance, or use of a telephone line or service by, or rates and charges over and upon, any such telephone line.
>
> (2) The commission is authorized to review contracts for joint provision of intrastate interexchange service and may disapprove any such contract if such contract is detrimental to the public interest. The commission may also require the filing of all necessary reports and information pertinent to joint provision contracts. The commission is also

> authorized to adjudicate disputes among telephone companies regarding such contracts or the enforcement thereof. In such disputes, the commission may assess interest at a rate it shall determine."

The foregoing statute gives the Commission authority to do only certain things when matters of contract are involved regarding the joint provision of intrastate interexchange service. First, the Commission can disapprove the contract if it is not in the public interest. Second, it may require the filing of necessary reports. Finally, the Commission may adjudicate disputes between telephone companies who are parties to such contracts.

Section 364.07, Florida Statutes, specifically sets forth the conditions which give the Commission jurisdiction over intrastate interexchange contracts. None of the conditions which give rise to its jurisdiction are present in the instant case. The Commission expressly agreed with the foregoing statement in Order No. 14047 when it stated:

> "United and General argued that this Commission is without jurisdiction to authorize the removal of $9.7 million from the pools because we are limited by Section 364.07, Florida Statutes, to disapproving settlement contracts which are not in the public interest or resolving settlement disputes, neither of which are involved here.
>
> We agree with that interpretation of what Section 364.07, Florida Statutes, states. However, that argument is not germane because the settlements contracts themselves contemplate the course of conduct taken by the Commission." (A. 22). (Emphasis added.)

Thus, whether the Commission's action was proper rests solely on the language of the contracts and the evidence of record. The proper

review standard in this sort of situation has been delineated by this Court on many occasions.

> "The Court's responsibility is not to reweigh or reevaluate conflicting evidence, but only to ascertain whether the Commission's order is supported by competent substantial evidence."

Jacksonville Sub. Utilities Corp. v. Hawkins, 380 So.2d 425 (Fla. 1980). See also: Gulf Coast Motor Lines, Inc. v. Hawkins, 376 So.2d 391 (Fla. 1979).

GTFL submits that this appeal presents the very rare situation where an appellant will not be rearguing why its evidence should have been adopted in light of other evidence of record. In this case, there is no evidence to support the Commission's decision.

GTFL's and United's settlement contracts for the most part contain similiar provisions. In particular, GTFL's contract with Southern Bell states in Annex 1, Exhibit A, paragraph 4 that:

> "In addition, the FPSC may issue orders that direct certain telephone companies to adjust intrastate interLATA/intermarket investment, revenue, expense or tax items in settlements." (Exhibit No. 161a)

There were only two witnesses who testified regarding the proper interpretation of the foregoing contractual provision. Southern Bell and the Commission failed to present any witnesses on this point.

GTFL witness Beverly Menard was asked to give the proper interpretation of the foregoing portion of the contract during cross-examination. Mrs. Menard was personally involved in the contract negotiations

(Tr. 587). Mrs. Menard's answers to questions from Commissioner Marks illustrate why the Commission's contract interpretation is wrong:

> "COMMISSIONER MARKS: Let me ask one other question, probably along that same line.
>
> The contract indicates that Florida Public Service Commission may issue orders that direct certain Florida telephone companies to adjust intrastate intraLATA/intramarket investment revenue expenses -- expense, rather, or tax items in settlement.
>
> It appears that that sentence allows the Commission to make adjustments. It appears that what we have done is an adjustment. And my opinion, as I look at it, are you just disagreeing with the adjustment that the Commission made, Ms. Menard?
>
> WITNESS MENARD: What I am disagreeing with is the interpretation of that sentence as we have meant it when we negotiated a contract, is if you order us to do something to our books to reflect it in settlements, I have no problem with it. If you tell us to increase our depreciation expense by $10 million and include that effect in settlements, I have no problem. The problem I have with this 9.7 million is it's phantom expenses. There are no expenses there. You know, Southern Bell is not making an adjustment to their total company expenses by x-amount and including the appropriate portion in toll. It is phantom money. That's where I have the problem with it.
>
> COMMISSION MARKS: It's phantom what?
>
> WITNESS MENARD: Phantom money. And that's why, in my interpretation and in my negotiation of this contract, that type thing was not covered by this sentence." (Tr. 601-603). (Emphasis added.)

Mrs. Menard's testimony demonstrates the ludicrous nature of Commission's interpretation of the contract. If the Commission is correct, then the Commission could decide that GTFL's local service

rates were too high and impute a fictional amount to toll. The end result would be that all other ratepayers in the state would be underwriting GTFL's customers. In the case under review, GTFL is supporting Southern Bell's ratepayers. Surely, this is not what the above section of the contract was meant to accomplish.

The only other witness testifying on this point was United's Mr. Reynolds. United's settlement contract provides in pertinent part as follows:

> "V. STATE REGULATORY MATTERS
>
> From time to time, the Florida Public Service Commission (FPSC), after due process, may issue orders relating to generic matters that direct all or certain telephone companies to make changes that affect intrastate investment, revenue, expense, or tax items. Compensation between the United Company and the Bell Company reflecting such changes will be effective prospectively or at a date mutually agreed upon between the Companies, unless otherwise ordered by the FPSC." (Ex.2-222) (Emphasis added.)

Mr. Reynolds testified that the above sentence from the contract concerns items that would have an effect on all telephone companies in a generic matter. In Mr. Reynolds opinion, divestiture was not a generic matter affecting all telephone companies (Tr. 679). Furthermore, the above sentence applies to telephone companies (plural), not a single telephone company. No other telephone company has been authorized to remove a CPE related charge from the pool even though each telephone company is losing one-sixtieth of its CPE investment and expense each month (Tr. 629-630).

The soundness of the testimony given by witnesses Menard and Reynolds is illustrated by the following provision from the contract which states that GTFL and Southern Bell will receive:

> "...the same compensation ratio (return) on the average net book costs of its property devoted to intrastate intraLATA/intramarket toll communication services as the statewide toll services revenue pools achieved return on the average net book costs of property devoted to intrastate intraLATA/intramarket toll communication services."

GTFL witness Menard testified that the removal of the $9,700,000 increased Southern Bell's return over that received by all other pool participants (Tr. 576). Mr. Reynolds, on behalf of United Telephone, testified that such Commission action violated the contracts by affording Southern Bell a higher return than the independents (Tr. 611). Last, but certainly not least, Southern Bell witness Turner testified that the additional $9.7 million out of the toll pool results in Southern Bell receiving a higher rate of return than the other participants in the pool (Tr. 272-273).

Based on the foregoing, there can be no doubt that the Commission's order violates duly executed settlement contracts by giving Southern Bell a higher return than other pool participants and by using a contractual provision to impute phantom expenses. The Commission was faced with a situation where Southern Bell was experiencing a revenue shortfall due to the transfer of its CPE. The Commission wanted to remedy the problem without changing rates that would effect Southern Bell's ratepayers. A surcharge on the two state pools appeared to be a solution. It was obvious that the statutes did not give the Commission

authority to act in this manner. Thus, an attempt was made to make the contracts themselves provide the authority. However, there was no competent and substantial evidence or statutory authority to support this action.

B. The Commission's authorization for Southern Bell to retroactively book the Commission-initiated change to January 1, 1984 or March 20, 1984, is contrary to established case law.

On March 20, 1984, this Commission authorized Southern Bell to remove $9.7 million from the intrastate access charge and toll pools. Southern Bell has retroactively applied the Commission's authorization back to January 1, 1984 (R. 275; A. 28). Such treatment is in blatant violation of the Florida Supreme Court's recent decision in Southern Bell Telephone and Telegraph Company v. Florida Public Service Commission, 453 So.2d 780 (Fla. 1984). In such case, GTFL had properly brought a dispute before the Commission concerning whether five-day studies or seven-day studies should be used for settlement purposes. The Commission ruled in GTFL's favor and found that $33,000,000 should be returned to GTFL, of which $3,000,000 represented intrastate revenues. The foregoing revenues were determined by directing the refund to accrue from the date GTFL first made the change.

In deciding the case, the Court upheld the Commission's power to adjudicate disputes that are brought before it, but held that retroactive effect could not be given to the order, as the following shows:

> "We simply hold that the Commission properly has the power to adjudicate the dispute, but may not retroactively adjust the distribution of revenues made pursuant to the telephone companies' arrangement prior to the Commission's order." 453 So.2d 784

GTFL does not concede in any manner that the Commission has the authority to change settlements contracts except when there is a dispute between the companies.[5] However, assuming arguendo that the Commission did have such authority, it could only exercise the power on a prospective basis.

Pursuant to Southern Bell's submission of March 22, 1984, the $9,752,534 was divided by twelve months to compute the resulting $812,711 to be removed from the pool each month. Accordingly, from January 1, 1984, through March 20, 1984, Southern Bell owes the independents $2,149,752. Of the foregoing amount, $1,024,617 should be directly returned to GTFL. Even if the Commission had the authority to act as it did in Order No. 13179, which it does not, this amount would have to be returned with interest. Any contrary action would represent a total disregard of existing law.

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[5] No dispute was properly presented pursuant to Section 364.07, Florida Statutes, in this case.

VI. CONCLUSION

General Telephone Company of Florida requests the Court to reverse the Commission's decision herein and to direct the Commission to order Southern Bell to refund those monies already received as a result of the surcharges placed on the IntraLATA/Territory Toll Pool and Intrastate Access Charge Pool. General Telephone Company of Florida is cognizant of the revenue shortfall Southern Bell was experiencing as a result of the transfer of its CPE to AT&T Information Systems. It was a problem which had to be dealt with. However, it had to be handled in the proper manner. The Commission possessed no statutory authority to modify the settlement contracts. The settlement contracts did not give the Commission authority to impute phantom expenses to the pools. In the Commission's quest for Southern Bell's ratepayers to avoid a local rate increase, the Commission overstepped its authority. The end result was an arbitrary and unlawful decision which placed the cost of divestiture upon GTFL and the other independent telephone companies.

The Commission's decision should be reversed.

Respectfully submitted this the 13th day of May, 1985.

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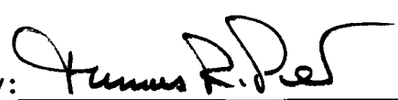
By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of General Telephone Company of Florida's Initial Brief in Supreme Court Case Nos. 66,633 and 66,673 (FPSC Docket No. 820263-TP) has been furnished by United States mail this 13th day of May, 1985 to the following:

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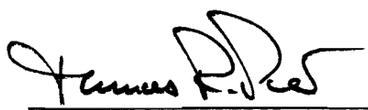

THOMAS R. PARKER

IN THE SUPREME COURT OF FLORIDA

GENERAL TELEPHONE COMPANY OF FLORIDA Appellant, v. JOHN R. MARKS, III, et al. Appellee.	CONSOLIDATED CASES Case No. 66,633
UNITED TELEPHONE COMPANY OF FLORIDA Appellant, v. JOHN R. MARKS, III, et al. Appellee.	 Case No. 66,673

APPENDIX