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IN THE SUPREME COURT OF FLORIDA

MANATEE COUNTY, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 FLORIDA PUBLIC SERVICE COMMISSION, )  
 )  
 Appellee. )

Case No. 68,657

On Appeal From The Florida Public Service Commission

ANSWER BRIEF OF APPELLEE  
GENERAL TELEPHONE COMPANY OF FLORIDA

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## I. INTRODUCTION

General Telephone Company of Florida (hereinafter referred to as "GTFL") submits this Brief in response to the Initial Brief filed by Manatee County on or about June 24, 1986. This proceeding concerns Manatee County's petition filed before the Florida Public Service Commission (hereinafter referred to as "Commission"), requesting that GTFL be required to change the existing service arrangements currently utilized to serve an undeveloped area of Manatee County, for reasons totally unrelated to the provision of good and adequate telephone service. Specifically, Manatee County sought an order of the Commission directing GTFL to serve such area from the Bradenton Bay exchange instead of the Sarasota exchange. The relief requested by Manatee County was denied by Order No. 15857 issued on March 19, 1986. Order No. 15857 discussed Manatee County's evidence in detail and ultimately concluded that: "Simply put, we do not believe that the concerns of Manatee County are a function of telephone exchanges." (A.2)<sup>1</sup> Thus, the Commission made the finding that Manatee County's evidence in support of its request for a change in telephone exchanges was not pertinent to the issue of whether GTFL is providing good and adequate telephone service.

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<sup>1</sup> "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.

Manatee County has submitted a twenty-nine (29) page Brief in this proceeding, which does nothing more than reargue the evidence and reasons it submitted in support of its request which was denied by the Commission. As will be discussed in detail infra, such an approach does not meet the criteria for successful judicial review, as this Court will not substitute its opinion for the decision rendered by the trier of fact, based upon a resolution of conflicting evidence. Furthermore, the Court should note that the evidence submitted by Manatee County at the hearing and as reargued in its Brief, has absolutely no applicability or relevance to this proceeding, since it does not pertain to the jurisdiction of the Commission which is set forth in Section 364.14(2) Fla. Stat. (1985).<sup>2</sup> said section gives the Commission authority to order equipment and service changes if inadequate service is being provided by the telephone utility. Section 364.14(2) does not allow the Commission to order service changes based on political motives unrelated to telephone service.

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<sup>2</sup> All further references are to Fla. Stat. (1985) unless otherwise indicated.

## II. STATEMENT OF THE CASE AND FACTS

GTFL has reviewed the "Statement of the Case and Statement of the Facts" submitted by the Manatee County and finds it to be argumentative and biased. Therefore, GTFL will submit a short and concise Statement of Facts for the Court's consideration. In addition, GTFL will take the Statement of Facts as submitted by Manatee County and will supply the necessary omissions.<sup>3</sup>

### A. GTFL Statement of Facts

This proceeding commenced on April 12, 1985, when Manatee County filed a resolution with the Commission requesting that an undeveloped and uninhabited<sup>4</sup> area of Manatee County which is presently served by the GTFL Sarasota Exchange be transferred to the GTFL Bradenton exchange. (R.1) By Order No. 14545 issued on July 8, 1985, the Commission denied the requested relief through the issuance of a Proposed Agency Action. (A.4) Manatee County filed a timely protest to the Commission's order and the matter proceeded to hearing. (R.9)

Manatee County presented the following testimony in support of its position that telephone service should be rendered from a different exchange. First, Manatee County alleged that there is confusion among residents of Manatee County as to where they live. (Tr.24) The

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<sup>3</sup> The Court should note that the Commission included specific citations to the transcript in its Order No. 15857. Those specific record references are all the Court need refer to in order to resolve this matter. However, GTFL will respond to all facts raised by Manatee County in order to place a full presentation of evidence before the Court.

<sup>4</sup> At the time of hearing there was one person living in the area. (Tr.36)

County realizes that this confusion comes from people who live in Manatee County but have Sarasota mailing addresses. (Id.) This confusion allegedly resulted in some \$20,000 in sales tax being misreported to Sarasota County. (Tr.16) In addition, there have been a few isolated instances of a Sarasota 911 surcharge (50¢) being misapplied to Manatee County residents. (Tr.25) Manatee County also takes exception to the fact that a business in the affected area will be listed in the Sarasota yellow pages. (Tr.30) This will allegedly divert business from Manatee County. (Tr.31) Manatee County also claims that tourists do not know what county they are in when they are visiting the area. (Tr.50) Manatee County seeks a different exchange to end the alleged confusion and economic losses from spreading to future developments. Finally, Manatee County claims that 911 service is not adequate for this undeveloped area.<sup>5</sup>

GTFL opposed the relief requested by Manatee County. GTFL presented testimony pertaining to the general factors and objectives it considers in establishing central offices and telephone exchanges. (Tr.100) The fundamental objective in providing telephone service is to consider the telephone service requirements and preferences of the

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<sup>5</sup> Manatee County's position on emergency 911 service is a prime example of the type of evidence it presented in this matter. Manatee County claims that existing 911 is inadequate on the one hand and on the other excepts out the developed area from the relief requested herein. The end result under Manatee County's own requested relief is that existing residents will have allegedly inadequate 911 service, but the undeveloped and uninhabited area will have adequate protection.

customers in any particular area. (Tr.101) Indeed, the establishment of exchange boundaries entail the following elements: 1) adequacy of service; 2) service requirements; 3) local calling scope and 4) customer preferences. (Id.) GTFL considered all of the foregoing factors in deciding to provide service to South Manatee County from the Sarasota exchange. GTFL conducted a customer survey of Southern Manatee County residents living in Whitfield Estates which is immediately adjacent to the area which is the subject matter of this proceeding. (Tr.102) The Whitfield Estates residents were unanimous in favoring Sarasota telephone service from the Sarasota exchange over telephone service from the Bradenton exchange. (Id.) GTFL performed this study because at one time Manatee County indicated that they wanted all of Southern Manatee County transferred into the Bradenton exchange service area. (Id.) This request was also denied by the Commission.

GTFL also considered the cost of providing service to Manatee County through the Bradenton exchange. It was determined that this cost would be in excess of \$200,000 over and beyond providing the service out of the Sarasota exchange. (Exhibit A)<sup>6</sup>

Based on the foregoing evidence, the Commission concluded that Manatee County's requested relief should not be granted.

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<sup>6</sup> Manatee County is totally incorrect when it alleges that GTFL could provide service from the Bradenton Bay exchange through a development known as Tara. (MC.25) The basic problem with Manatee County's argument on this point is that Tara does not exist at the current time. (Tr.144-145) Therefore, Manatee County's argument has no basis in fact.



**B. GTFL Additions to Manatee County's  
Statement of Facts**

Manatee County directs the Court's attention to the fact that it has a concern that its future citizens will encounter certain problems in the currently undeveloped area similar to problems encountered in the developed portions of Manatee County. (MC.2)<sup>7</sup> However, Manatee County fails to mention that the developed portion of Manatee County (Whitfield Estates and Palm Aire) support having service from the Sarasota exchange. (Tr.36) Furthermore, Manatee County omits the fact that the land and business developers in this area have not supported the County's position. (Tr.38) Indeed, the letters and telephone calls from property owners in the affected area support the retention of the current telephone designation. (R.18) Therefore, the citizens of Manatee County do not perceive any problems with the existing arrangement.

Next, Manatee County claims that residents are being charged a one percent (1%) Sarasota sales tax on telephone bills. Initially, Manatee County fails to point out that only a limited number of people have experienced this problem. (Tr.26, 179) Further, Manatee County ignores the evidence of record that any such problem associated with the wrongful billing of taxes is solely due to the physical location of

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<sup>7</sup> GTFL will make citation to Manatee County's Initial Brief as follows: (MC.\_\_\_\_)

the property. (Tr.39) Manatee County testified that the application of a sales tax has no association with the business' telephone listing. (Id.) Finally, Manatee County omits the fact that it is currently undergoing a process of renumbering and reassigning addresses to resolve this problem. (Tr.178) Some Manatee County residents have Sarasota addresses. GTFL uses official maps which are provided by Manatee County to determine the applicability of taxes. (Tr.179) GTFL cannot be found at fault if Manatee County cannot correctly prepare their own maps regarding the physical location of the properties within its boundaries. (Id.)

Manatee County next raises some concerns with the provision of yellow page advertising. (MC.3) However, Manatee County fails to point out that whether a business places a yellow page ad is a discretionary business decision. Therefore, any business proprietor is free to place yellow page ads in any directory when it is deemed prudent to do so. Manatee County also omits the fact that the business and residential listings for Manatee County residents are listed in both the Bradenton and Sarasota white pages. (Tr.40)

Manatee County also makes several arguments regarding confusion among residents of Manatee County as to where they reside. (MC.3-5) GTFL points out that Manatee County witness Starner admitted that people do not consult phone numbers to determine where they live. (Tr. 39)

Manatee County also alleges that there is a problem with the calling scope from the Sarasota central office. (MC.5) Again, Manatee

County fails to point out to the Court that the Commission already ruled on this matter in another proceeding. An Extended Area Service (EAS) petition was filed before the Commission requesting toll free service from Sarasota to Palmetto (North Manatee County). The Commission went through its usual procedures pursuant to Commission Rule 25-4.42 to obtain the opinions of the public as to the need for such service. The EAS petition for service between Palmetto and Sarasota was denied by the Commission because of an insufficient community of interest between Palmetto and Sarasota. (Tr.36) Therefore, there is no problem with the calling scope provided by the Sarasota exchange.

Manatee County next alleges that it wants to stop the confusion and economic losses which currently exist in the Whitfield Estates, Ballentine Manor, and Palm Aire areas of the county. (MC.6) However, Manatee County fails to point out that these residents and the developers of the uninhabited area of Manatee County are perfectly happy with the service they receive. The foregoing developed areas in Manatee County were excluded from this petition because the residents explicitly did not want to be served from another central office. (Tr.35) Therefore, the population of the developed portion of Manatee County does not concur in the County's position in this matter.

Finally, Manatee County sets forth a lengthy dissertation concerning the provision of 911 service in Manatee County. (MC.7-10) It is Manatee County's position that the existing provision of 911 as it is rendered today is not sufficient. Therefore, Manatee County

asserts that service has to be rendered from the Bradenton Bay central office to correct this problem. The Court should note one inherent defect in Manatee County's position on this issue. First, it should be noted that the requested change to the Bradenton Bay central office for 911 will have no effect on the provision on 911 service to the developed portion of Manatee County based on the County's own request. Therefore, Palm Aire and Whitfield Estates will continue receiving 911 service from the Sarasota central office which is alleged to be deficient by Manatee County. Only the undeveloped portion of Manatee County will be protected. One cannot help wondering about the credibility of Manatee County's position since the inhabited area will not be affected - only the undeveloped and uninhabited area will receive the allegedly proper service.

GTFL will be installing a digital switch in the Sarasota central office before the affected area will be developed. Accordingly, since the area is currently uninhabited except for one individual, the area will be served by digital equipment allowing for enhanced 911 in the manner requested by Manatee County at the time it is needed. (Tr.181)

### III. SUMMARY OF ARGUMENT

GTFL submits two basic arguments in response to Appellant's Brief for the Court's consideration. First, GTFL demonstrates that contrary to the contentions of the Appellant that there is indeed competent and substantial evidence to support the Commission's decision. This Court has ruled on many occasions that it will not reweigh decisions based on competent and substantial evidence. Second, GTFL argues that Section 364.14(2) permits changes in telephone utility plant only when service is inadequate or insufficient. Manatee County never presented any evidence to bring the foregoing statute into play. Rather, Manatee County submitted testimony which requested a change in telephone service based on political motives. Such evidence is not sufficient to invoke the Commission's authority to act upon the request.

#### IV. ARGUMENT

- A. The Order of the Public Service Commission is supported by competent and substantial evidence and this Court cannot substitute its opinion for that of the Commission.

It is well settled that the Commission's decisions must be supported by competent and substantial evidence. Duval Utility Company v. Florida Public Service Commission, 380 So.2d 1028 (Fla. 1980); Citizens of Florida v. Hawkins, 356 So.2d 254 (Fla. 1978); City of Plant City v. Mayo, 337 So.2d 966, 974 (Fla. 1976).

In the Duval case, supra, the Court defined competent and substantial evidence as follows:

"Competent substantial evidence is 'such evidence as will establish a substantial basis of fact from which the fact at issue can reasonably be inferred [or]... such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.' De Groot v. Sheffield, 95 So.2d 912, 916 (Fla. 1957)" 380 So.2d at 1031 (Fla. 1980)

GTFL submits that the twenty-nine (29) page Brief of Manatee County which does nothing except reargue the evidence in this matter is uncontrovertible proof that the Commission's decision is supported by competent and substantial evidence. The only fact which Manatee County cannot accept is the ultimate conclusion which the Commission reached after considering all the evidence in this matter.

Now, Manatee County is asking this Court to reach a different decision based on the exact same facts. This, the Court cannot do. It is well established in Florida that the Court will not substitute its

opinion for that of the Commission merely because a different result could have been reached based on the evidence. This Court recently stated its position on this issue in Gulf Power Company v. Florida Public Service Commission, 453 So.2d 799, 803 (Fla. 1984) as follows:

"We have repeatedly stated the standard of judicial review by which we are guided when we review PSC orders. We will not overturn an order of the PSC because we would have arrived at a different result had we made the initial decision and we will not reweigh the evidence. Our task is to determine whether competent substantial evidence supports a PSC order. Citizens v. Public Service Commission, 435 So.2d 784 (Fla. 1983); Citizens v. Public Service Commission 425 So.2d 534 (Fla. 1982); Shevin v. Yarborough, 274 So.2d 505 (Fla. 1973).

The PSC was presented with conflicting evidence. It understood Gulf's proposal, identified its concerns, and gave Gulf every opportunity to explain why its customers should support more of Plant Daniel than the pro rata share of those units committed to their service. Gulf did not provide an answer that was satisfactory to the PSC."

See also: Citizens v. Public Service Commission, 448 So.2d 1024 (Fla. 1984) and General Telephone Company of Florida v. Florida Public Service Commission, 446 So.2d 1063, 1067 (Fla. 1984).

Here, the Commission did not accept Manatee County's evidence that there should be a boundary change. Manatee County simply did not present evidence that was satisfactory to the PSC. The ultimate finding made by the Commission was as follows:

"To summarize, we find that retention of the current telephone exchange boundaries will

not result in a negative economic, legal or social impact upon the citizens of Manatee County. The problems that may have existed concerning confusion over county of residence have been lessened by other recent events. Simply put, we do not believe the concerns of Manatee County are a function of telephone exchanges."(A.2)

Manatee County's evidence was analyzed and rejected by the Commission. The Commission found that Manatee County's evidence was not relevant or germane to the issue of telephone service. Pursuant to numerous opinions on this topic, this Court will not reweigh that decision on review.

**B. The Public Service Commission's ultimate finding that the concerns of Manatee County are not a function of telephone exchanges is a correct interpretation of Section 364.14(2) Fla. Stat. (1985)**

It is a cardinal principle of regulatory law that the Public Service Commission's "powers and duties are only those inferred expressly or impliedly by statute..." State, 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) and City of Cape Coral v. GAC Utilities, Inc., of Florida, 281 So.2d 493 (Fla. 1973). In this case, the Commission derives its authority to hear this matter pursuant to the provisions of Section 364.14(2) which reads in pertinent part as follows:

"Whenever the Commission finds ... that the equipment, facilities, or service of any telephone company are inadequate, inefficient, improper, or insufficient, the Commission shall determine the just, reasonable, proper, adequate and



efficient ... equipment, facilities, and service to be thereafter installed, observed, and used and shall fix the same by order or rule as hereinafter provided."

Thus, pursuant to the above statute, the evidence presented for an equipment or facilities change must relate to inadequate or improper service being rendered to the public. In this case, Manatee County has not presented a single shread of evidence regarding any deficiency in the existing telephone service provided in Southern Manatee County. Manatee County witness Starner testified during cross-examination that the people who reside in Whitfield Estates and Palm Aire are content with their existing telephone service. Mr. Starner further testified that Manatee County is satisfied with the calling scope of its telephone service. (Tr. 35-36) No service complaints have been received from Manatee County regarding GTFL's telephone service. (Tr. 36-37) Based on the foregoing testimony of Mr. Starner, Manatee County has admitted that GTFL is providing good and adequate telephone service.

Therefore, Manatee County has not presented sufficient evidence to invoke the Commission's jurisdiction under the above statute. Rather, Manatee County has presented evidence concerning sales tax; 911 surcharges; discretionary business advertising expenditures; alleged domicile confusion; alleged confusion between Sarasota and Manatee Counties; tourists; alleged economic losses; and problems in attracting businesses. The problem is that none of the foregoing items have anything to do with the provision of good and adequate telephone service.

Based on the evidentiary presentation of Manatee County it must be concluded that the reason for Manatee County requesting a change in exchanges is for reasons totally unrelated to telephone service. A reading of the entire record in this matter reveals that Manatee County's real motive in this case is to establish an identity for itself in this southern geographic area of the County which is separate and distinct from Sarasota County. However, that desire is not related to the Commission's jurisdiction which pertains to telephone service.

V. CONCLUSION

The Florida Public Service Commission issued its order deciding this matter after a complete review and analysis of all the evidence presented in this proceeding. The Commission even placed specific transcript citations after each finding to indicate the specific evidence it was utilizing in making its decision. There can be no question regarding the fact that competent and substantial evidence existed to support the Commission's order. Therefore, the Commission's order should be affirmed in all respects.

Respectfully submitted this the 14th day of July, 1986.

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