

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for declaratory) DOCKET NO. 950890-TP
statement regarding designation) ORDER NO. PSC-95-1270-FOF-TP
as telecommunications company) ISSUED: October 17, 1995
for providing proposed carrier-)
to-carrier, POP-to-POP transport)
to telecommunications companies)
by Interstate FiberNet.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

BACKGROUND

On July 27, 1995, Interstate Fibernet (IFN) filed a Petition for Declaratory Statement (petition). The petition requests that we declare that IFN's proposed provision of carrier-to-carrier, pop-to-pop transport will not render it a "telecommunications company" within the meaning of Section 364.02(12), Florida Statutes (1995).

IFN proposes to construct, own, and operate a fiber-optic telecommunications network, thereby to provide transmission capacity only to telecommunications companies and commercial mobile radio service providers, the former certificated by us and the latter licensed by the FCC.

IFN notes that part of Section 364.02(12) may exempt it from the need to be certificated as a "telecommunications company":

The term telecommunications company does not include an entity which provides a telecommunications facility exclusively to a certificated telecommunications company... [e.s.]

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IFN also notes that the telecommunications facility it plans to provide is not "non-functional", in the sense that an electric company leasing its dark fiber to a certificated company may be said to qualify for the Section 364.02(12) exemption. IFN's facility will instead be "functional" in that multiplexing and management of the facility will also be provided. IFN reasons that the functional nature of the proposed facility should not disqualify it from the Section 364.02(12) exemption which it believes is applicable.

DISCUSSION

We agree with IFN that the functional nature of its proposed telecommunication facility would not disqualify it from the Section 364.02(12) exemption, if that exemption otherwise applied. Moreover, we agree with IFN's reasoning that the policy behind the exemption -- where a certificated telecommunications company is serving the public, there is an absence of regulatory need to certificate a telecommunications facility exclusively serving that certificated company -- is not offended by applying that principle to federally licensed commercial mobile radio service providers as well.

Though the policy would not be offended, however, the statutory language would be. IFN itself acknowledges that a literal reading of the statute would preclude the result it seeks:

The Section 364.02(12) exception allows IFN to provide its facility to a "certificated telecommunications company". The definition of "telecommunication company" found in Section 364.02(7)(sic),¹ however, specifically excludes commercial mobile radio service providers. [e.s.]

Petition, p. 5-6. IFN argues, however, that, just as its provision of telecommunications facilities to a certificated telecommunications company is not service to the public, its provision of such facilities to commercial mobile radio service providers is not service to the public either, and therefore there would be no regulatory purpose in requiring IFN's certification.

¹ Section 364.02(12) was obviously intended.

We considered this argument, but found the obstacles in the statutory language daunting. First, the Section 364.02(12) exemption is only available to those who provide telecommunications facilities "exclusively to a certificated telecommunications company..." [e.s.] Since commercial mobile radio service providers are licensed by the FCC, rather than certificated by us, the statutory language would have to be interpreted to include these FCC-licensed entities in the definition of "certificated telecommunication companies", without any certainty that the legislature intended to do so. Assuming that reasoning is satisfactory, however, the statutory language then creates a catch-22. The very next entity listed in Section 364.02(12) as not being a "telecommunications company" is "commercial mobile radio service provider". Hence, one finds oneself arguing against the explicit terms of the statute in favor of results which the legislature might well have agreed with, but plainly had not provided for. Under these circumstances, we believe that amending the statute, if that result is called for, is preferable to interpreting the statute contrary to its plain meaning, even though the end achieved by that interpretation may be unobjectionable.²

In view of the above, it is

ORDERED that Interstate Fibernet's Petition For Declaratory Statement is denied. It is further

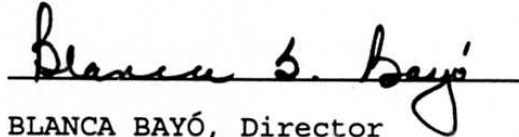
ORDERED that this docket is closed.

² Ross v. Gore, 48 So. 2d 412 (Fla. 1950). (Where language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to rules of statutory interpretation and construction and statute must be given its plain and obvious meaning).

Addison v. Holly Hill Fruit Products, 64 S.Ct. 1215, 322 US 607, 88 L.Ed. 1488, rehearing denied 65 S.Ct. 27, 323 US 809, 89 L.Ed 645 (1944). (While judicial function in construing legislation is not a mechanical process from which judgment is excluded, it is nevertheless different from the legislative function and construction must avoid retrospective expansion of meaning).

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By ORDER of the Florida Public Service Commission this 17th
day of October, 1995.



BLANCA BAYÓ, Director
Division of Records and Reporting

(S E A L)

RCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.