

ORIGINAL

Supreme Court of Florida

MONDAY, MAY 7, 2007

CASE NO.: SC06-1828

Lower Tribunal No.: 060308-TP

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NUVOX COMMUNICATIONS, INC., ET AL.

vs. LISA POLAK EDGAR, ETC. ET AL.

Appellant(s)

Appellee(s)

NuVox Communications, Inc., Time Warner Telecom of Florida, L.P., XO Communications Services, Inc., Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC, competitive local exchange carriers (collectively Joint CLECs), appeal the Florida Public Service Commission's "Order Denying Protests," PSC-06-0711-FOF-TP. We have jurisdiction. See art. V. § 3(b)(2), Fla. Const.

Section 364.33, Florida Statutes (2006), gives the Public Service Commission (PSC) authority to approve an application for transfer of control. On June 23, 2006, the PSC issued Order No. PSC-06-0531-PAA-TP (PAA Order), approving the "Joint Application for Approval of Indirect Transfer of Control of Facilities" filed by AT&T Inc., BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. In approving the transfer of control, the PSC noted that section 364.33 does not provide specific standards to follow in making the decision. It determined, however, consistent with the approach it has taken in numerous other transfer of control proceedings, that section 364.01, Florida Statutes, implies a "public interest" standard and reviewed the "financial, management, and technical capabilities" of the companies. The PSC concluded that "based upon the Applicants' management, technical, and financial capability, the transfer of control is in the public interest."

The Joint CLECs filed petitions protesting the PAA Order and seeking an evidentiary hearing. They argued that the PSC erroneously narrowed its public interest review and that the review must include an analysis of the impact on competition. The Joint CLECs essentially alleged effects on their substantial interests as both competitors and customers. Through its Order Denying Protests, the PSC denied the protests for lack of standing and rendered the PAA Order final. The PSC concluded that the Joint CLECs failed to meet either prong of AgriCo

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Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981), because: (1) alleged injuries of future economic harm are too remote to establish an injury in fact of sufficient immediacy; and (2) a transfer of control proceeding is not designed to protect the competitive injuries alleged. The PSC also concluded that the defects in the petitions could not be cured. This appeal followed.

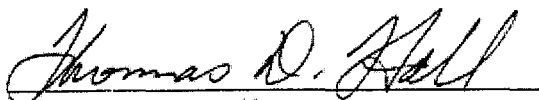
We scheduled this case for oral argument on January 8, 2007, but later removed the case from the oral argument calendar and issued an Order to Show Cause why the case should not be dismissed in view of the approval of the merger by the United States Department of Justice and the Federal Communications Commission. Having reviewed the briefs, the responses to the Order to Show Cause, and other record materials, we affirm the PSC's determination that the Joint CLECs lack standing to challenge the transfer of control approval, and that the defects in the petitions could not be cured.

It is so ordered.

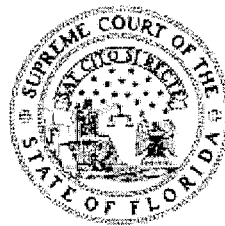
LEWIS, C.J., and WELLS, ANSTEAD, PARIENTE, QUINCE, CANTERO, and BELL, JJ., concur.

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Test:



Thomas D. Hall
Clerk, Supreme Court



mc

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