

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Declaratory	)	Docket No. 900049-TI
regarding lease of "dark fiber"	)	
and other facilities from Tampa	)	Order No: 22883
Electric Company by Intermedia	)	
Communications of Florida, Inc.	)	Issued: 5-2-90
	)	

The following Commissioners participated in the disposition of this matter:

MICHAEL WILSON, CHAIRMAN  
 THOMAS M. BEARD  
 BETTY EASLEY  
 GERALD L. GUNTER

ORDER DENYING PETITION FOR DECLARATORY STATEMENT

Intermedia Communications of Florida, Inc. (Intermedia) entered into an agreement with Tampa Electric Company (Tampa Electric) by which Tampa Electric agreed to install and maintain Intermedia's fiber optic cable in its conduits and on its poles in the Tampa area. Tampa Electric also agreed to lease to Intermedia certain runs of "dark fiber" from its private telecommunications network for use in the development of Intermedia's Tampa area interexchange network. (Intermedia defines "dark fiber" as fiber optic cable without any electronic conditioning).

Intermedia has filed this Petition for Declaratory Statement asking whether Tampa Electric is a telephone company under the provisions of Section 364.02(4), Florida Statutes by the lease of dark fiber from its internal communications network to an interexchange carrier.

We will make no determination here regarding the substance of the question presented, because we cannot answer this question for Intermedia. Under the provisions of section 120.565, Florida Statutes, an agency may not issue a declaratory statement to one person for the purpose of determining the rights and duties of another person. Section 120.565 states unequivocally that "[a] declaratory statement shall set out the agency's opinion as to the applicability of a specified statutory provision or of any rule or order of the agency as it applies to the petitioner in his particular set of circumstances only." It does not say that an agency can

DOCUMENT NUMBER-DATE

03764 MAY -2 1990

FPSC-RECORDS/REPORTING

Docket No. 900040-TI  
Order No.: 22883  
Page 2

determine the applicability of statutes, rules, or orders to a third party.

The First District Court of Appeal has approved this interpretation of section 120.565 in Manasota-88, Inc. v. State Department of Environmental Regulation, 481 So.2d 948, (Fla. 1st DCA 1986). The Court held that the agency was correct in denying appellants' petitions for declaratory statement, because they sought DER's opinion as to the applicability of statutory provisions to a third party, contrary to the "unambiguous statutory language" of section 120.565, F.S.

Our rules regarding the issuance of declaratory statements, Rules 25-22.020, and 25-22.021, Florida Administrative Code, track the language of the declaratory statement statute, and clearly require that a statement be issued to the petitioner regarding his or her particular circumstances only.

Furthermore, we believe it would be particularly inappropriate to grant Intermedia's petition here, because Tampa Electric now has a petition before the Commission which asks for a declaratory statement on the same question.

For the reasons stated above, it is

ORDERED by the Florida Public Service Commission that the Petition for Declaratory Statement filed by Intermedia Communications of Florida is denied.

It is further

ORDERED that the petitions to intervene in this Declaratory Statement procedure by GTE-FL and Southern Bell are also denied.

It is further

ORDERED that this docket be closed upon issuance of this Order.

Docket No. 900040-TI  
Order No.: 22883  
Page 3

By Direction of the Florida Public Service Commission  
this 2nd day of MAY, 1990.

  
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STEVE TRIBBLE, Director  
Records and Reporting

( S E A L )

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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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.