

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the FLORIDA PAY)	DOCKET NO. 900720-TP
TELEPHONE ASSOCIATION and THE FLORIDA)	
CABLE TELEVISION ASSOCIATION to commence)	ORDER NO. 23958
an investigatory proceeding to permit a)	
comprehensive review of the revisions to)	ISSUED: 1/4/91
Chapter 364, Florida Statutes, enacted)	
during the 1990 Legislative session)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

ORDER DENYING PETITION TO INVESTIGATE
REVISIONS TO CHAPTER 364

BY THE COMMISSION:

The Sunset review of Chapter 364, Florida Statutes occurring during the 1990 legislative session culminated in Chapter 90-244, Laws of Florida, which became effective October 1, 1990. On August 24, 1990, the Florida Pay Telephone Association (FPTA) and the Florida Cable Television Association (FCTA) petitioned the Commission to "commence an investigatory proceeding to permit a comprehensive review of the revisions to Florida Statutes Chapter 364 enacted during the 1990 legislative session."

The FCTA and FPTA identify the two major areas on which they believe the Commission should focus its attention. The first is the guidelines in Section 364.036, F.S., dealing with alternative regulatory plans for local exchange companies. The second is the categorization of competitive and monopoly LEC service and the implementation of safeguards to prevent cross-subsidization.

With respect to alternative regulatory plans, the Commission considered this issue in a generic investigation in Docket No. 871254-TL. That docket dealt with such issues as modifying existing rate base regulation, sharing of earnings arrangements, both rate and earnings flexibility and criteria used to determine whether a service is competitive or discretionary. All through that proceeding and again at the beginning of the hearing in that docket "...the parties struggled with the viability of a generic

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a result of the discussions at the beginning of the hearing regarding the types and status of alternative regulatory plans the Commission determined to close the docket without further action. As the Commission stated in Order No. 20412:

Based upon the hearings recently completed in Docket No. 880069-TL, and by the prefiled testimony in this docket, we find that a broad-based implementation of regulatory alternatives for LECs in Florida is impractical. The clear diversity in the LECs' markets and market shares requires a discrete analysis of the operations of each in order to change their respective regulatory environments in such a drastic manner as proposed in this docket.

While the addition of Section 364.036 to the Statutes is a significant change that has occurred since Docket No. 871254 was closed, the rationale for declining to proceed on a generic basis still holds true.

The second major area which the petition argues should be addressed generically is the categorization of competitive and monopoly LEC services, the implementation of safeguards to prevent cross-subsidization and the development of a comprehensive cost study methodology. By Order No. 23474, in Docket No. 900633-TL, we initiated an investigation into the development of LEC cost study methodologies. Thus, the Commission already has open a docket dealing with issues relating to the cross subsidy issue. Further, a rule-making project is in progress to address the categorization of LEC services that are effectively competitive.

The Petition also identifies numerous additional areas warranting investigation: modified minimum filing requirements under Section 364.035(3), procedures for confidential information, certificate application fees, alternate access vendors, regulatory assessment fees for PATS providers, LEC disclosure of consumer information, new requirements for PATS providers, requirements for alternative operator services, limited proceedings, inspection of affiliated company records, shared tenant service providers, the Commission biennial report to the legislature, and a "one-call" notice system for underground excavation.

The petition is a veritable catalog of the changes to Chapter 364. As with the two major areas of concern identified above, the majority of the other areas are the subject of proceedings in other

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dockets, have been resolved, or are scheduled for some developmental activity (see e.g., Dockets Nos. 900633-TL - LEC Cost Study Methodologies, 900655-TL - Modified Minimum Filing Requirements, 890183-TL - Alternate Access Vendors, 900644-TL - Regulatory Assessment Fee Rules and Rule 25-22.006, Florida Administrative Code - Confidentiality). Moreover, the petition asks us to address issues without having a proper contextual framework with which to make a reasonable determination.

Since the amendment of Chapter 364, our Staff has been reviewing amendments to Chapter 364 and has initiated the changes necessary to implement the new law. It is our belief that our time would be best spend dealing with any remaining changes as specific issues arise. There will certainly be differences of opinion in interpretation of the new statute. However, it is unlikely that a generic investigation would produce solutions that could be applied across the board as the need arises for interpretation of the statutes. Each of the current as well as the anticipated proceedings dealing with the new statutes will offer sufficient opportunities for parties to argue the implementation of the new statutory provisions.

An investigation to address all the changes to Chapter 364 in one generic proceeding would be overwhelming. An attempt to investigate all issues at one time will diminish the time and consideration that can be given to each individually. Our resources would not be well spent in conducting such a proceeding. These areas of concern will be addressed on an issue-by-issue basis where they can be given full consideration within a proper contextual framework. Further, the most important issues are already being addressed. Accordingly, we find that the Petition should be denied without prejudice.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the petition by the Florida Pay Telephone Association and the Florida Cable Television Association for a generic investigation of all the revisions to Chapter 364, Florida Statutes, as set for in Chapter 90-244 Laws of Florida (1990), is denied as set forth in the body of this Order. It is further

ORDERED that this docket be closed.

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By ORDER of the Florida Public Service Commission, this
4th day of JANUARY, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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

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