

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement interpreting provisions of Sections 364.052(2) and 364.337(1), F.S. by Quincy Telephone Company d/b/a TDS Telecom/Quincy Telephone.

DOCKET NO. 000798-TP
ORDER NO. PSC-00-1790-DS-TP
ISSUED: October 2, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ

ORDER GRANTING TDS TELECOM/QUINCY TELEPHONE COMPANY'S PETITION FOR DECLARATORY STATEMENT

By the Commission:

BACKGROUND

On June 30, 2000, TDS Telecom/Quincy Telephone Company (TDS) filed a petition for a declaratory statement interpreting the application of Sections 364.052(2) and 364.337(1), Florida Statutes, to Petitioner.

In pertinent part, TDS alleges that it is a small local exchange telecommunications company which had fewer than 100,000 access lines in service when certified by us prior to July 1, 1995. TDS is currently regulated pursuant to rate base, rate of return regulation and has not elected price regulation. TDS has not provided either cable television programming services directly or as video dial tone applications authorized under 47 U.S.C.s. 214.

TDS asks that we resolve what it believes are conflicting statements in Section 364.052(2) and state whether TDS will be rate base, rate of return regulated or subject to price regulation as of January 1, 2001 and thereafter. If the former, TDS then inquires as to the circumstances that would trigger the shift to price regulation after January 1, 2001. Finally, TDS inquires as to whether it could voluntarily allow an ALEC to resell basic service

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prior to January 1, 2001 while remaining rate base, rate of return regulated.

DISCUSSION

It is appropriate that we issue a declaratory statement to explain how the referenced statutes apply to TDS. As stated by the Court in Florida DBR Division of Pari-Mutuel Wagering v. Investment Corp. (Pari-Mutuel), 747 So. 2d 374 (Fla. 1999),

... in enacting section 120.565, the Legislature created an important tool to vindicate the individual rights of individual citizens. The citizen has a right under the statute to get a clear, binding answer from the agency on how the agency's statute and rules apply to that individual citizen.

As to the interpretation sought by TDS, under the facts as alleged, TDS will be rate base, rate of return regulated as of January 1, 2001 and thereafter (absent an ALEC providing basic telecommunications service in TDS' territory). Though not a model of clarity, the two sentences presented by TDS as conflicting do not appear to us as conflicting.

Section 364.052(2), Florida Statutes, states as follows:

(2) A small local exchange telecommunications company shall remain under rate base, rate of return regulation until the company elects to become subject to s. 364.051, or January 1, 2001, whichever occurs first. After July 1, 1996, a company subject to this section, electing to be regulated pursuant to s. 364.051, will have any overearnings attributable to a period prior to the date on which the company makes the election subject to refund or other disposition by the commission. Small local exchange telecommunications companies not electing the price regulation provided for under s. 364.051 shall also be regulated pursuant to ss. 364.03, 364.035(1) and (2), 364.05, and 364.055 and other provisions necessary for rate base, rate of return regulation. If a

small local exchange telecommunications company has not elected to be regulated under s. 364.051, by January 1, 2001, the company shall remain under rate base, rate or return regulation until such time as a certificated alternative local exchange company provides basic local telecommunications service in the company's territory. At such time, the small local exchange telecommunications company shall be subject to s. 364.051. (Emphasis supplied)

The first underlined sentence in Section 364.052(2) describes a pre-January 1, 2001 regime in which TDS may decline price regulation and remain rate base, rate of return regulated. That regime ends January 1, 2001. The second underlined sentence describes a different regime commencing January 1, 2001 and governing thereafter, in which TDS may remain rate base, rate of return regulated only unless and until a certificated ALEC provides basic local telecommunications service in TDS' territory. In short, as of January 1, 2001, TDS loses its ability to decline price regulation in the event an ALEC commences basic local service there. Conversely, absent commencement of such service by an ALEC, TDS may remain rate base, rate of return regulated.

We note further that only the provision of stand-alone basic telecommunications service by an ALEC would trigger TDS' being subject to price regulation. In the absence of competition, our regulation of TDS' monopoly protects consumers. That monopoly would end at the point when competing, stand-alone basic telecommunications service actually became available to customers from an ALEC serving in TDS territory, either through a resale or facility-based offering. That would also eliminate the need for rate base, rate of return regulation and trigger the application of price regulation to TDS.

Finally, we note that TDS cannot decline price regulation during the pre-January 1, 2001 regime and permit an ALEC to resell basic service. Section 364.337(1) only permits two exceptions to the absolute prohibition therein against ALECs' offering basic local telecommunications services prior to January 1, 2001 in the territory served by small local exchange companies like TDS. The first exception would apply if TDS elected price regulation. The second exception would apply if TDS provided cable television programming services directly or as video dial tone applications

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authorized under U.S.C. s. 214. Since neither exception applies, the statute does not offer the option TDS has presented, i.e., to voluntarily allow an ALEC to resell its basic local telecommunications service prior to January 1, 2001 while TDS remains rate base, rate of return regulated.

In view of the above, it is

ORDERED that the declaratory statement explaining the application of Sections 364.052(2) and 364.337(1), Florida Statutes, to petitioner TDS Telecom Quincy Telephone Company is granted. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission this 2nd day of October, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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RCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

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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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater 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.