

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Declaratory) DOCKET NO. 910470-TP
Statement Regarding Exemption from Public)
Service Commission Regulation for Cellular) ORDER NO. 25799
Radio Telecommunications Carriers by)
Cellular World, Inc.) ISSUED: 2/24/92
)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

ORDER DENYING PETITION FOR INTERVENTION, MOTION FOR RECONSIDERATION OR CLARIFICATION, AND REQUEST FOR ORAL ARGUMENT AND REJECTING AMICUS MEMORANDUM

On October 28, 1991, this Commission issued Order No. 25264 in response to a petition for declaratory statement filed by Cellular World, Inc. (Cellular World). In that order, we found that the cellular pay phone services proposed by Cellular World, such as banks of cellular phones at sporting events, would be subject to the Commission's jurisdiction under Chapter 364, Florida Statutes. We found specific authority for regulation of these services in Section 364.3375, Florida Statutes, which provides for the regulation of persons providing pay telephone service. We did not extend this analysis to Cellular World's proposal to provide credit card cellular service in rental cars. We concluded that this service would be provided for the exclusive use of the individual renting the car and not subject to our regulatory jurisdiction.

The petitioner, Cellular World, did not file for reconsideration of the Commission's declaratory statement. However, on November 12, 1991, within the time for reconsideration under Rule 25-22.060, Florida Administrative Code, McCaw Cellular Telecommunications, Inc. (McCaw) filed a Petition for Intervention, Motion for Reconsideration or Clarification of Order No. 25264 and a Request for Oral Argument. McCaw was not a party to the original proceeding initiated by Cellular World and did not participate in the proceeding in any way. On January 7, 1992, BellSouth Mobility, Inc. (BMI) filed an Amicus Memorandum in Support of Motion for Reconsideration or Clarification by McCaw Cellular Telecommunications, Inc. BMI was likewise not a party to the original proceeding and did not participate in any way in the Commission's disposition of Cellular World's petition.

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Rule 25-22.039, F.A.C., on intervention provides that petitions for intervention "must be filed at least five days before the final hearing, must conform with Commission Rule 25-22.036(7)(a), F.A.C., must include allegations sufficient to demonstrate that the intervenors are entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding."

While no hearing was held in this case, it is obvious that the intent of the rule is to limit the ability of a party to intervene to the period prior to a decision by the Commission. It would at the very least invite a chaotic situation, if the Commission were to allow non-parties to participate and make their arguments after the Commission had made its final decision in a case. Moreover, the Commission has granted intervention in declaratory statements only in extremely limited circumstances where more than one party is necessarily involved. We, therefore, find that McCaw's Petition for Intervention, Motion for Reconsideration or Clarification and Request for Oral Argument are improper and should be denied. We likewise find that BMI's amicus filing should not be entertained in this proceeding.

The cellular providers who have come forward in this proceeding, including Cellular World, have expressed concern about the nature and effect of the Commission's assertion of jurisdiction over cellular payphone services. In recognition of those concerns, we believe that it would be appropriate to investigate the regulation of cellular payphone services on a wider basis. Accordingly, we will direct our staff to conduct an investigation into cellular payphone regulation and provide us with their recommendations for further action in this area.

It is, therefore,

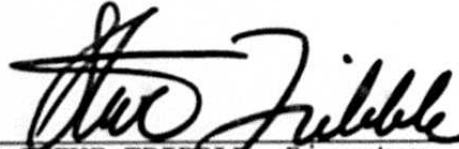
ORDERED by the Florida Public Service Commission that the Petition for Intervention, Motion for Reconsideration or Clarification of Order No. 25264 and Request for Oral Argument of McCaw Cellular Telecommunications, Inc. are hereby denied. It is further

ORDERED that the Amicus Memorandum in Support of Motion for Reconsideration or Clarification of McCaw Cellular Telecommunications, Inc. filed by BellSouth Mobility, Inc. will not be entertained. It is further

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ORDERED that this docket be closed.

By Order of the Florida Public Service Commission this 24th
day of FEBRUARY, 1992.



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 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.