BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for certificate to provide interexchange telecommunications service by ATLAS COMMUNICATION CONSULTANTS, INC.	DOCKET NO. 930396-TI ORDER NO. PSC-94-0114-FOF-TI ISSUED: January 31, 1994

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

ORDER GRANTING MOTION FOR SUMMARY FINAL ORDER

AND

DECLARING ORDER NO. PSC-93-1066-FOF-TI IS FINAL AND EFFECTIVE

By the Commission:

I. BACKGROUND

On April 16, 1993, Atlas Communication Consultants, Inc. (Atlas) filed and application to provide interexchange communications service. By Order No. PSC-93-1066-FOF-TI, issued July 21, 1993, the Commission issued a proposed agency action (PAA) proposing to grant a certificate to Atlas. On August 10, 1993, Best Telephone Company, Inc. (Best) filed a Petition on Proposed Agency Action protesting the grant of the certificate to Atlas. Atlas filed its answer to the petition on September 7, 1993. On October 14, 1993, Atlas filed a Motion for Summary Final Order. Best filed a Memorandum in Opposition to Motion for Summary Final Order on October 21, 1993.

This Order is directed to Atlas's Motions for Summary Final Order. By separate order we have addressed the subject matter of the allegations of rule violations raised by Best's protest of the PAA.

II. MOTION FOR SUMMARY FINAL ORDER

Atlas's Motion for Summary Final Order asks that we deny Best's protest of the PAA and enter a final order granting a certificate to provide interexchange service. In support of its Motion, Atlas states that there is one uncontroverted material fact: "the application for IXC certificate filed by Atlas correctly reflected the fact that Atlas was not providing telecommunications services in Florida AT the time the application was executed and submitted to the Commission." This statement is premised on the affidavits of the president of Atlas and two customers. Atlas further states that there are no other disputed issues of material fact. Based on these factual allegations, Atlas argues that Best lacks standing to protest because there is no injury-in-fact other than potential economic injury and this interest does not fall within the zone of interests recognized and protected by Florida law and for which the proceeding was designed to protect. In support of its standing argument, Atlas relies on Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2nd 478 (Fla. 2d DCA 1981); pet. for reh. denied, 415 So.2d 1359, 1361 (Fla. 1982) ASI, Inc. v. Florida Public Service Commission, 334 So.2d 594 (Fla. 1976) and Microtel v. Florida Public Service Commission,464 So.2d 1189 (Fla. 1985).

Best responds in its Memorandum stating that Atlas' fitness to be an IXC is in dispute because of the allegations that Atlas falsely stated on its application that Atlas had not previously provided service. Best further argues that Atlas cannot argue mistake or misunderstanding since Atlas' president, Ms. Robertson, previously participated in the preparation of Best's IXC application while employed by Best. With respect to the standing issue, Best argues that it has a protectable interest in being protected from unlawful competition and that it has sustained injury-in-fact because Atlas has targeted and signed-up customers of Best prior to certification. Moreover, Best argues that if it does not have standing to protest an application on the basis of fitness, then the Commission's proposed agency action process used to determine whether to grant a certificate is meaningless.

In this instance, we agree with Atlas on the question of standing. As the Court stated in Agrico Chemical, "before one can be considered to have a substantial interest in the outcome of the proceeding he must show 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect." Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2nd 478, 482.

Under this standard Best lacks standing to protest this application. Best does not articulate an injury of the type or nature that this proceeding is designed to protect.

Nothing in Chapter 364, Florida Statutes, grants or implies that competitive long distance carriers have a legally cognizable interest in being free from competitive injury. The actions of Atlas about which Best complains are those of any normal competitor in a competitive market. The targeting of customers of one company by another is what economic competitors do. This is precisely the sort of economic injury that fails to form the basis of standing under ASI and Agrico Chemical. But for Atlas' lack of certification, Best would not nor could not complain of the competitive behavior of Atlas. Nor does Best have a substantial interest in whether Atlas is "fit" to hold a certificate. This is simply another slant to the notion that competitive harm is sufficient to confer standing. That Best has provided information that bears on the fitness of Atlas is important to the Commission's determination of whether Atlas should possess a certificate or whether a penalty should be imposed on Atlas, but Best's substantial interests cannot be affected by the Commission's decision in either case.

We are also unpersuaded by Best's argument that, if it has no standing in this case, the PAA process is meaningless because no one will have standing in a certification case. Best's failure to establish standing is in no way an indictment of the PAA process. Simply because Best can make no showing of injury beyond the vague notion that it is entitled to be free from "unlawful competition"[1] does not mean that no one could ever legitimately protest a PAA granting certification.

The public interest standard gives latitude and discretion to the Commission to legislate regulatory rules of behavior and fashion appropriate remedies to fix regulatory problems. It is effectuated principally in fashioning protective mechanisms to prevent abuse of consumers. To the extent that a person can allege sufficient injury in fact within the strictures imposed on IXCs, then a protest may be appropriate.

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[1]. The only difference between lawful and unlawful competition in this instance is the existence of a certificate. The actual competitive activities are identical in either case. The lack of certification does not transmute the lack of standing in one instance into standing in the other within the context of the test to establish injury sufficient to confer standing.

Accordingly, we find it appropriate that Atlas' Motion for Summary Final Order be granted and that Best's Petition on Proposed Agency Action be dismissed for lack of standing. Having granted the Motion, we also find it appropriate to declare that Order No. PSC-93-1066-FOF-TI, issued July 21, 1993, becomes final and effective as of January 4, 1994.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Summary Final Order filed by Atlas Communication Consultants, Inc. is hereby granted as set forth in the body of this Order. It is further

ORDERED that the Petition on Proposed Agency Action filed by Best Telephone Company, Inc. protesting the grant of the certificate to Atlas is hereby dismissed for lack of standing as set forth in the body of this Order. It is further

ORDERED that Order No. PSC-93-1066-FOF-TI, issued July 21, 1993, shall be final and effective as of January 4, 1994.

By ORDER of the Florida Public Service Commission, this 31st day of January, 1994.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

TWH

Commissioners J. Terry Deason and Julia L. Johnson dissent from the Commission's decision as to the appropriate effective date for Order No. PSC-93-1066-FOF-TI.

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