

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 950755-TX
certificate to provide) ORDER NO. PSC-95-1296-FOF-TX
alternative local exchange) ISSUED: October 19, 1995
telecommunications service by)
TCG America, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER GRANTING CERTIFICATE TO PROVIDE
ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER ACKNOWLEDGING ASSIGNMENT OF CERTIFICATE AND
REQUIRING EQUIVALENT 911 SERVICE

BY THE COMMISSION:

I. BACKGROUND

Section 364.337 (6) (b), Florida Statutes, provides that any alternative access vendor (AAV) certificated as of July 1, 1995, and wishing to provide alternative local exchange telecommunications service may do so effective January 1, 1996, upon furnishing to the Florida Public Service Commission written notice of its intention.

On September 6, 1995, TCG America, Inc. filed a Notice of Intent to provide alternative local exchange telecommunications services pursuant to the above-referenced statute. In the same filing, TCG America, Inc. filed an Application for Approval of Assignment of its anticipated certificate as an Alternative Local Exchange Company (ALEC) to TCG South Florida. This order addresses both the Notice of Intent to provide alternative local exchange telecommunications services and the Application for Approval of Assignment of ALEC certificate.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

II. ALEC CERTIFICATE

Section 364.337(6)(b), Florida Statutes, provides that any alternative access vendor (AAV) certificated as of July 1, 1995, and wishing to provide alternative local exchange telecommunications service, may do so effective January 1, 1996, upon furnishing written notice to the Commission.

TCG America, Inc. was certificated as an AAV before July 1, 1995 and has furnished written notice of its intention to provide alternative local exchange telecommunications service in Florida. This notice satisfies the requirements of Section 364.337(6)(b), Florida Statutes. Therefore, we acknowledge certificated Alternative Access Vendor TCG America, Inc.'s (PSC Certificate No. 3519) notification of intention to provide alternative local exchange telecommunications service within the State of Florida. TCG should retain this order as evidence of its authority to provide alternative local exchange telecommunications service within the State of Florida.

As an AAV, this company was granted statewide authority by this Commission to provide approved AAV services. Therefore, we conclude that the ALEC authority should also be statewide except for those areas of the state (territories of earnings regulated small LECs) that are precluded by Section 364.337(1), Florida Statutes.

III. TRANSFER OF ALEC CERTIFICATE

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed in this section is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

In pertinent part, Section 364.337(1), Florida Statutes provides: "The commission shall grant a certificate of authority to provide alternative local exchange service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served." As an entity eligible to obtain an ALEC certificate by notification (grandfathered) pursuant to Section 364.337(6)(b), Florida Statutes, TCG America, Inc. was not required to show that it had "sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served."

It is the intent of the Legislature that the commission act expeditiously to grant certificates of authority under this section and that the grant of certificates not be affected by the application of any criteria other than that specifically enumerated in this subsection.

We believe that because the assignment of this "grandfathered" ALEC certificate is requested to an entity under the same majority organizational control, no demonstration of "sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served" should be required. This is consistent with the legislative intent to grant certificates expeditiously, and limited in scope to assignments between entities subject to the same majority organizational control.

Therefore, we find that TCG America's Application for Approval of Assignment of its ALEC certificate to TCG South Florida should be and is granted.

To ensure that Florida end users are allowed high quality access to emergency services, Section 364.337(2), Florida Statutes, provides that each alternative local exchange telecommunications company that provides basic local telecommunications service must provide access to 911 services.

TCG South Florida derives its ALEC authority by operation of Section 364.337(1), Florida Statutes. We believe it is appropriate to clarify that TCG South Florida shall be required to comply with Section 364.337(2), Florida Statutes, which mandates that basic ALEC service include access to 911.

The Commission does not yet have specific rules on what a local exchange company (LEC) or an ALEC must provide in terms of 911 service access. Section 364.337(2), Florida Statutes, requires that an ALEC must include access to 911 in its basic service but does not define what type of 911 services must be provided. This could result in an ALEC offering access to 911 service which is inferior in some way to the 911 service access provided by the LEC in that same area. For example, a LEC might provide both automatic number identification (telephone number) and automatic location (address) information to the public safety answering point while the ALEC might only provide the telephone number of the calling party.

Inferior 911 access could result in loss of life which is not something that can be corrected at a later date. The issue of 911 access will, to some extent, be addressed in the number portability docket (Docket No. 950737-TP) and the individual local

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interconnection agreements (Docket No. 950985-TP). The issue of 911 access may ultimately be resolved elsewhere. In the interim we believe that TCG South Florida's 911 service should be at a level equivalent to that provided by the LEC serving that same area.

Therefore, we find that TCG South Florida shall provide access to 911 service at a level equivalent to the 911 access services of the incumbent local exchange company serving in the same area, effective on the date the company begins to provide basic local telecommunications service.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we acknowledge certificated Alternative Access Vendor TCG America, Inc.'s (PSC Certificate No. 3519) notification of intention to provide alternative local exchange telecommunications service. It is further

ORDERED by the Florida Public Service Commission that TCG America Inc.'s Application for Approval of Assignment of its ALEC certificate to TCG South Florida should be and is granted. It is further

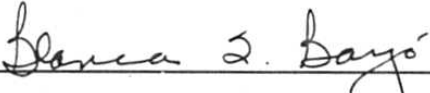
ORDERED by the Florida Public Service Commission that TCG South Florida shall provide access to 911 service at a level equivalent to the 911 access services of the incumbent local exchange company serving in the same area, effective on the date TCG South Florida begins to provide basic local telecommunications service. It is further

ORDERED that the provisions set forth in Section III of this Order shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event Section III of this Order becomes final, this Docket should be closed.

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By ORDER of the Florida Public Service Commission, this 19th
day of October, 1995.



BLANCA S. BAYÓ, 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.

As identified in the body of this order, our action in Section III of this Order is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 9, 1995. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the action in Section III of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.

Any party adversely affected by the Commission's final action in Section II of this Order 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 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.