BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by GTE Florida Incorporated for establishment of hearing schedules and procedures for data gathering for legislative reports, due to HB 4785.	DOCKET NO. 980647-TL ORDER NO. PSC-98-0917-FOF-TL ISSUED: July 7, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER DISMISSING PETITION

BY THE COMMISSION:

BACKGROUND

On April 29, 1998, the Legislature passed HB 4785, without amendment. The bill was presented to Governor Chiles on May 12, 1998, and became law without signature on May 27, 1998 (Chapter 98-277). On May 12, 1998, GTE Florida Incorporated (GTEFL) filed a Petition for Establishment of Hearing Procedures. On May 18, 1998, the Attorney General also filed a Petition for Initiation of Formal Proceedings pursuant to Section 120.57, Florida Statutes. At our May 19, 1998, Agenda Conference we deferred a decision these petitions, pending a meeting between our staff and interested persons to review and discuss staff's proposed procedures to accomplish the tasks required in the bill. We also scheduled a special Internal Affairs meeting for June 2, 1998, to review staff's proposals. At the Internal Affairs meeting, GTEFL stated that it would consider withdrawing its petition, and the Attorney General's representative indicated that he would probably not withdraw his petition. By letter dated June 8, 1998, GTEFL withdrew its petition. On Friday June 5, 1998, the Attorney

General's office confirmed that he would not withdraw his petition. We considered the Attorney General's petition at our June 16, 1998, Agenda conference. On that date, the Sugarmill Woods Civic Association, Marco Island Taxpayers Association, and Rainbow Springs Homeowners Association, Inc. filed a Joinder in the Attorney General's petition. Since GTEFL has withdrawn its petition, we need only address the Attorney General's petition.

DECISION

In his petition, the Attorney General asserts that we must hold a formal evidentiary proceeding under the provisions of Section 120.57(1), Florida Statutes, for the major studies required by HB 4785. The Attorney General argues that his substantial interests "will or potentially will be affected by the actions of the Commission in implementing the directives of the Legislature," and therefore a formal proceeding is necessary. The Attorney General also argues that since the term "intervenors" is used in the legislation, a formal hearing is required. Further, at our Agenda conference the Attorney General argued that his unique right to intervene in proceedings and initiate litigation to protect the public interest created his substantial interest that would be affected here and permitted him to demand a formal proceeding. We disagree with this argument and with the Attorney General's view of what the statute requires.

The legal maxim of "expressio unius est exclusio alterius," the expression of one thing is the exclusion of another, is applicable in interpreting this statute. The Legislature in Section 1 of the statute, Section 364.025(4)(b), clearly and directly requires that the Commission:

> shall determine and report to the President of the Senate and the Speaker of the House of Representatives the total forward-looking cost, based upon the most recent commercially available technology and equipment and generally accepted design and placement principles, of providing basic local telecommunications service on a basis no greater than a wire center basis using a cost proxy model to be selected by the Commission after notice and opportunity for hearing.

We believe that we must hold a hearing on this report, since the language is clear on the face of the statute. A hearing has been scheduled for week of October 12, 1998.

When we review the other portions of the statute requiring studies, however, we find no such language requiring the Commission to determine and report after notice and opportunity for hearing. Section 1, paragraph (4)(d) requires the Commission to "determine and report" the amount of support necessary to provide residential basic local service to low income customers (Report #2). There is no language in this paragraph stating any requirement for notice and opportunity for hearing.

Specifically, in Section 2(1) of the statute, the Legislature uses the following language regarding the study of the relationships among costs and charges:

> (1) The Legislature has determined that charges for intrastate switched access and other services may be set above costs and may be providing an implicit subsidy of residential basic local telecommunications service rates in this state. Therefore, the Public Service Commission shall, by February 15, 1999, study and report to the President of the Senate and the Speaker of the House of Representatives the relationships among the costs and charges associated with providing basic local service, intrastate access, and other services provided by local exchange telecommunications companies. (Emphasis supplied.)

Similarly, paragraph (2)(a) of Section 2, regarding fair and reasonable residential basic local telecommunications service rates requires the Commission to "report" its conclusions ..." (Emphasis supplied.) This provision does require the Commission to hold at least one public hearing in each LEC's service territory, but those public hearings are specifically to "elicit public testimony about such rates." We do not believe that this requirement for public testimony equates to a formal evidentiary hearing.

Section 5 of the statute requires that the Commission "study" ... and shall report its conclusions" regarding issues associated with telecommunications companies serving customers in multi-tenant

environments. Here too there is no language requiring notice and opportunity for hearing. If the Legislature had intended the other reports to be based on information adduced at a formal evidentiary hearing, it would have used the express language for all the required reports. Instead, it used that language only for the first enumerated report, the cost model report.

Further, we believe that the Attorney General's arguments that hearings are required because the Commission's actions will affect substantial interests, as the use of the term "intervenor" shows, are incorrect. The studies will not affect substantial interests. They will not have the force and effect of law. At the conclusion of these studies, no company will be ordered to file a tariff complying with the study results. The studies the Commission will conduct and the reports it will produce from those studies are preliminary, fact-gathering exercises. The reports will be presented to the Legislature for their subsequent use in deciding what actions may or may not be taken in the future. A formal hearing is not required under these circumstances, and the Attorney General's right to intervene in a proceeding does not create a substantial interest where, as here, no substantial interest would otherwise exist.

When the language in a statute is plain on its face, one does not look behind that plain language to determine legislative intent. We find that the language here is very clear, and it means that we should hold a formal hearing only to determine the total forward-looking cost of providing basic local telecommunications service using a cost proxy model. At best, the use of the word "intervenor" in the legislation indicates an ambiguity, and we note that a specific Senate amendment to HB 4785, which would have required a formal hearing on the reasonable rate study, was debated on the Senate floor and was defeated. There were strong statements from the bill's sponsors in the House and the Senate during the debates that the bill did not contemplate a formal hearing and that this was only a study. It is clear to us that if the term "intervenor" creates a doubt about whether the Legislature intended the Commission to hold formal hearings for these reports, that doubt is erased by the legislative history of the bill. Legislative intent aside, in view of the plain meaning of the language in the statute and the express requirement of notice and opportunity for hearing for the cost proxy study only, we find that the Attorney General's petition for a formal hearing on the other studies should be dismissed.

The statute creates a very heavy workload, all of which must be completed and reported to the Legislature by February 15, 1999. All actions in this process must be expedited, and time periods for various activities must necessarily be truncated in order for the Commission to comply with the mandated reporting date. That is not to say, however, that interested persons will not have the opportunity to participate in the Commission's studies.

Upon consideration, we dismiss the Attorney General's Petition. The statute only provides for a formal evidentiary hearing for the determination and report on the total forward-looking costs of providing basic local telecommunications services.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Attorney General's Petition for Initiation of Formal Proceedings is hereby dismissed. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 7th day of July, 1998.

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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 120.569(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.

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.