

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

Petition of GTC Inc. for a Declaratory Statement regarding Section 364.051, Florida Statutes)
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_____)

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RECORDS AND REPORTING

PETITION OF GTC INC.
FOR DECLARATORY STATEMENT

GTC Inc., through its undersigned counsel, pursuant to Section 120.565(1), Florida Statutes, and Rule 28-105.001, Florida Administrative Code, hereby files this petition for declaratory statement regarding the applicability of Section 364.051, Florida Statutes.

- 1. The exact name and address of the Petitioner is:

GTC Inc.
502 5th Street
Port St. Joe, Florida 32456

- 2. All notices, pleadings, orders and documents in this proceeding should be provided

to the following on behalf of GTC:

Patrick Knight Wiggins
Susan Davis Morley
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Crawfordville, Florida 32327

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FPSC-RECORDS/REPORTING

3. The statutory provision that is the subject of this petition is as follows:

Section 364.051(5) Notwithstanding the provisions of subsection (2), any local exchange telecommunications company that believes circumstances have changed substantially to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances. The costs and expenses of any government program or project required in part II shall not be recovered under this subsection unless such costs and expenses are incurred in the absence of a bid and subject to carrier-of-last-resort obligations as provided for in part II. The commission shall act upon any such petition within 120 days of its filing.

4. Petitioner GTC is substantially affected by this statute because its rates are regulated¹ pursuant to Section 364.051, Florida Statutes, and, as further explained below, has experienced changed circumstances created by a Commission order.

5. On August 28, 1998, this Commission issued Order No. PSC-98-1169-FOF-TL ("Final Order") in Docket No. 970808-TL, In re: Petition of BellSouth Telecommunications, Inc. to remove interLATA access subsidy received by St. Joseph Telephone & Telegraph Company. In the Final Order, the Commission concluded that GTC's election of price regulation under Section 364.051 constituted a "changed circumstance" justifying the termination of the interLATA access subsidy mechanism by which GTC receives significant revenues to support its low² local rates. In eliminating

¹ Petitioner GTC is an incumbent local exchange carrier whose service area includes the following: Alligator Point, Altha, Apalachicola, Blountstown, Bristol, Carrabelle (including Dog Island), Chattahoochee, Eastpoint, Hosford, Port St. Joe, The Beaches, Tyndall and Wewahitchka.

² Petitioner's residential basic local exchange rate for the Apalachicola, Blountstown, Eastpoint, Port St. Joe and the

the subsidy, the Commission signaled that GTC may seek relief from the significant adverse impact of the Final Order under Section 364.051(5), Florida Statutes. For example, the Final Order embraces BellSouth witness Lohman's opinion that the elimination of the subsidy mechanism was not tantamount to depriving GTC of revenues it was entitled to under Section 364.051:

Witness Lohman also explained that under Section 364.051(5), Florida Statutes, if a price regulated company still receives a subsidy, the company may use changed circumstances as the reason to restructure its rates to cover the subsidy elimination and petition us for a rate increase. *Final Order at page 4.*

The Commission reiterates this view in its central holding:

Based on the record and the arguments presented, we find that GTC has experienced a changed circumstance, its election of price regulation. We find that this changed circumstance warrants termination of the subsidy to GTC. Furthermore, we find no support in the record for increasing GTC's access charges. Again, we emphasize that GTC may seek relief as provided in Section 364.051(5), Florida Statutes, if necessary. *Final Order at page 13.*

6. There can be neither doubt nor argument that when enforced, the Final Order will subject GTC to changed circumstances, by virtue of an immediate loss of revenue by the Company. However, a resulting application for relief by GTC pursuant to Section 364.051(5), Florida Statutes, would be a case of first impression for the Commission. Thus, there are ambiguities that GTC needs to have resolved before determining how to proceed. Accordingly, GTC seeks clarification of the following by the Commission:

- (a) Does the Commission's removal of the interLATA subsidy constitute grounds under Section 364.051(5), Florida Statutes, for the Commission to grant GTC authority to raise rates for basic local service?

Beaches is \$6.30 per month. Basic residential rates for other service areas range from \$7.30 - \$9.15.

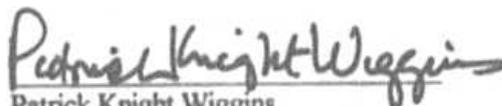
- (b) In determining whether to grant authority to raise rates for basic local service under Section 364.051(5), Florida Statutes, may the Commission inquire beyond the narrow issues of (1) the amount of subsidy eliminated and (2) the adjustments to basic local rates necessary to generate the subsidy amount?
- (c) In a proceeding to determine whether to grant authority to raise rates for basic local service, may any party seek discovery from GTC beyond (1) the amount of subsidy eliminated and (2) the adjustments to basic local rates necessary to generate the subsidy amount?

7. Stated briefly, GTC believes that under Section 364.051(5) it is entitled to raise rates for basic local service to generate the amount of revenues previously received through the interLATA access subsidy. When GTC elected price regulation, the Company was not overearning, but was entitled under statute to the revenues it was receiving. Under the new regulatory approach, GTC continued to be entitled to those revenues while it repositioned itself to deliver in its service territory telecommunication services for the new millenium. GTC has relied on this new regulatory pact in moving forward to improve its facilities and services. If the Commission fails to grant the relief contemplated under Section 364.051(5) to offset the loss of intraLATA subsidy, then it will have deprived GTC of revenues to which the Company is entitled under statute, and departed from both its legislative charge and its stated rationale in the Final Order. Moreover, in obtaining the relief to which GTC is entitled under that section, the Company may not be subjected to the burdens of a rate case, limited or otherwise. Such a burden would be an additional departure from the essential requirements of law and the legislative intent as contemplated in Section 364.051, Florida Statutes.

WHEREFORE, GTC Inc. requests that the Commission issue a declaratory statement clarifying that :

- (a) the removal of the interLATA subsidy effected by the Final Order constitutes grounds under Section 364.051(5), Florida Statutes, for the Commission to grant GTC authority to raise rates for basic local service;
- (b) in determining whether to grant authority to raise rates for basic local service the Commission may not inquire beyond the narrow issues of (1) the amount of subsidy eliminated and (2) the adjustments to basic local rates necessary to generate the subsidy amount; and
- (c) in determining whether to grant authority to raise rates for basic local service, no party to the proceeding may seek discovery from GTC beyond (1) the amount of subsidy eliminated and (2) the adjustments to basic local rates necessary to generate the subsidy amount.

Respectfully submitted this 11th of March, 1999.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served
by U.S. Mail this 11th day of March 1999, to the following:

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