IN THE SUPREME COURT
STATE OF FLORIDA

CHESTER OSHEYACK, pro se Appellant vs PUBLIC SERVICE COMMISSION STATE OF FLORIDA Appellee	CASE NO. 96,439

APPEAL FROM THE
PUBLIC SERVICE COMMISSION
STATE OF FLORIDA

APPELLANT'S REPLY BRIEF

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(1) IN THE BEGINNING.....

...of the Appellee's Answer Brief (ref pg 1), the commission launches a recital of criticisms of the Appellant's Initial Brief, which prove the maxim that "it is far easier to criticize than to correct". The commission proclaims a lack of a "separate statement of facts", and, asserts that the Statement of the Case includes "numerous factual assertions, allegations, and opinions that are not a part of the record on appeal". The commission also characterizes the Appellant's description of "procedural history" as being "unclear". Additionally, (ref pg 4), and in other places, the commission insists that "the Appellant's factual allegations are largely unsupported by the record in this case". The commission then instructs the court "not (to) consider them." It is apparent that, while engaging in the tactic of assigning remedies based upon generalities, the commission also favors the continuous use of the device of pretending to misunderstand as a means of denigrating the work-product of the Appellant in order to strengthen its case. I most respectfully suggest to this court that these ploys may well give testimony to weakness in the commission's case, however, it is important that a response be placed in the record.

(2) THE CRITERION

The commission persists in measuring my submissions against law school standards. Be it here stipulated, therefore, that I am not a lawyer, and although I have made a good faith effort to learn "legaleze", my backgound and training as an administrator in the magazine publishing industry, imbued in me a predilection for the use of plain language and the components of reportage. Those of us who come of a backgound in business, feel far more at ease narrating in

journalistic manner, which offers the latitude to present authentic historical information in a context and with a perspective. Absent this kind of support, decision-making cannot be truly efficacious. This court should know, that while admittedly unschooled in the protocols and acronyms of the legal trade, this Appellant is neither uneducated in the strategies consistant with marketing of a service (sic editorial) to subscribers, nor uninformed as to the complexities indigenous to the telecommunications industry.

(3) THE APPELLATE RULES (AR) (1996)

I will now go to the Appellate Rules for additional support. Ref AR 9.210 (b)(3) "A statement of the case and of the facts which shall include the nature of the case, the course of proceedings, and the disposition in the lower tribunal". I believe that I have met those requirements by providing a single statement covering all appropriate subjects.
Ref AR 9.210 (c)"The Answer Brief shall be prepared in the same manner as the Initial BRief; provided that the statement of the case shall be omitted unless there are areas of disagreement, which should be clearly specified". Nowhere in these instructions is there a mandate that the best recollections of my personal experiences; the work-product of my intensive research; and, my seasoned analysis of facts, circumstances and events, should be summarily disregarded on the basis of a predictible disagreement between the parties. Moreover, it appears from an analysis of the substitutions made by the commission, that the major point of disagreement might be with the narrative form of presentation. In other words, the conflict appears to lie with the commission's belief that I have revealed too much. In any case, it should be apparent that the commission has not clearly and with particularity, identified what its disagreements are and why. Ref AR 9.200 (a)(1) which defines the content of the record

as consisting "of the original documents, exhibits and transcripts of proceedings (if any) filed in the lower tribunal, except summonses, returns, notices, depositions, other discovery and physical evidence". Ref to "other discovery" and consider such in conjuction with the right to introduce "supplimentary authority" [ref AR 9.210 (g)], it appears that information and or authority that is not a part of the original record, but which is relevant to the subject issues of the case and might be of assistance to the reviewing court, may be admissible so long as it contributes to the pursuit of truth and justice in the case at the bar. Now, with respect to "transcripts" of the proceeding, they do exist, although they were never offered by the commission and never sought by the Appellant. The reason, from my perspective, is that there were no arguments on the issues made by the parties...just short statements of support or opposition. This is due to the abbreviated nature of an Agenda Conference which has as its sole purpose to determine whether or not a petition should be argued rather than to argue it. Thus a transcript would be of little value to this court in its deliberations. Moreover, [ref AR 9.200 (b)(4)] which indicates approval of substitutions for a transcript from "best available" means. I have met those requirements. Thus, the commission's criticisms are without merit. It should be added here that I presented constitutional issues in my original petition to the PSC in order to preserve them for review by this court, despite the fact that they could not be considered by the commission...and the proposed standard for review of "reasonability" of the commission's interpretation of "facts and law" was discovered after the commission hearing, so it could not possibly be a part of the record prior to the Initial BRief.

(4) FORM V SUBSTANCE

What remains then, as an issue for this court, is the matter

of "form" as opposed to "substance, and the pregnant question that this court must address which is, "should the rather sweeping and ill-defined rationale offered by the commission to disregard my narrations from consideration, be given deference in deliberating a case involving constitutional rights of a pro se litigant who is a non-lawyer in an administrative action?"It would be my suggestion that submissions by both parties in this case be given equal status, thereby permitting the court to take what it needs from each and enabling it to make intelligent and informed decisions on fundamental issues.

(5) ADMINISTRATIVE PROCEDURES ACT (APA) (1999)

On pages (5)(6) and (7), the commission defends its alleged compliance with the APA §120.536. My position on this issue is well covered in my Initial Brief, Title III (A) entitled STANDARDS FOR REVIEW, JURISTICTION AND AUTHORITY, under ARGUMENTS. I believe that the law has been misinterpreted.

(6) FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

On page (8) (ref Summary of Argument) of the commission's Answer Brief, and in other places, the commission decries the suggestion that the principles of debt collection practices as set forth in the state and federal FDCPAs, can be used as a model for amendment of the current rule. The commission's position is detailed on pages (15)(16) and (17) of its Answer Brief, which includes citations from what it believes might be a controlling authority [Ruthene Whitaker v Ameritech Corp., 129 F 3d 952 (7th Cir 1997)]. The key element in this decision is the question of whether or not the "debt" was in default at the time it was assumed. It is a fact that, in accordance with the FDCPA §803(6)(F)(iii), what is defined as a "debt collector" **may**" collect a debt which was not in default at the time of assumption. However, the use of the word "**may**" in the statute, leaves room to

consider an exception under which assignment of a debt is conditioned upon recourse when, as and if the debt falls into default, at which time, either the ownership will transfer back to the original owner, or alternatively, the assignment will remain with the assignee solely for the purpose of facilitating collection . (Ref FDCPA §803 (4) which excludes such assignment). However, one must look to the record in the State of Florida to determine the applicability of this authority in this case. [Ref Initial Brief, Exh V, Cit (A),(B) and (C)].

In PSC Order No 12765 dtd 12/9/83, the commission found that the purchase of accounts receivable was unecessary, and that partial payments should be prorated in a specific manner. On 12/22/83, the commission issued Order No 12765-A in which it released the LECs from partial payment proration if the LECs billing system was unable to implement same. The commission again addressed this issue in Order No 13091 dtd 3/16/84, finding that further hearings should be held to resolve the problems associated with this issue in a timely manner. The result was a Joint Stipulation and Agreement (ref Intrastate Telephone Access et al in Docket No 820537-TP filed 5/17/84). Now it should be remembered that the mandate of the commission at that time was "protection of monopoly" in accordance with the Doctrine of Special Circumstances. In this "agreement" among representatives of government and industry, approved by the commission in PSC Order No 13429 dtd 6/18/84, the parties agreed as follows: The LECs should be allowed to purchase accounts receivable of the IXCs with recourse, if true-up procedures for bad debts or uncollectibles are utilized. The stated purpose of the purchase of receivables was to eliminate the need to prorate partial payments on active accounts and thus, the need to modify LEC billing systems. The stated intention of the "true-up" procedure was to realize the result that actual uncollectibles would be

paid by the IXC which delivered the service. Now therefore, it should be apparent to even the most skeptical, that it was never the intent of the commission that the LECs should "own the debt", since the purchase of receivables was preconditioned upon the recourse of uncollectibles to the IXC in the event that, and as soon as, they became liabilities. Thus, the LECs never had a secured interest or a risk of loss in the transactions, even before the debt was in default, and in fact, even at the time it was purchased. Moreover, the transaction was designed specifically to accomodate a mechanical need of the LECs which is no longer vital. The appropriate technology and software is currently available and in use by telecommunications companies. Thus, the reason for retaining this procedure, can now only be "to facilitate the collection of a debt for another"...a matter that is addressed in the FDCPA §803 (4) which defines the term "creditor" and provides for "exclusion" in the above noted circumstance. Let me also interject at this point, the fact that the commission, within the authority granted to it, has the power to amend its rule to incorporate the tried and time-proven principles of proper debt collection practices as contained in the FDCPA without submitting to the "ACT" itself...and there is ample reason to consider such an action.

(7) THE COMMISSION'S WINNING WAYS

In a footnote of the commission's Answer Brief (ref pg 9), there is displayed an apparent strategy designed to narrow the scope of the case to what is the commission's jurisdiction, which is "policy". The commission attempts to divert the court's attention from the real issues, which are: the propriety of the plain language of the law; the questions of constitutional relevance; and, the principles of proper conduct associated with debt collection, as defined in law. In this page, and in subsequent pages, the

commission makes light of the serious question of "separation of powers" which it invokes as a cover for unbridled discretion. But,the commission is not an elected body, and it is not, in my view, authorized to preempt the laws made by duly elected representatives of the people by misappropriation of intent.

One way to win an argument, is to eliminate or artificially limit the scope of your adversary's case. The second way, is to fully engage the issues and seek the truth. I respectfully urge this court to impose the second option on both parties to this case before the bar.

Insofar as the "ancillary issues" identified in the footnote on page 9 of the Answer BRief; (1) The decision of the 5th DCA in the "Texas v FCC" case is relevant because of its treatment of the constitutional question of agency juristiction in matters specifically associated with billing and collection of telephone charges. It is also a reliable source of case law which is highly relevant to other questions before this court. (2) Statuatory construction, including statuatory silence is relevant because the associated rules thereof, address one of the key issues in this case which is the manner in which decisions on rules are made. (3) Standing is relevant because in Osheyack v Clark (cited by the commission on pg 3 of its Answer Brief), the commission specifically attacked Osheyack's "standing" before this court. (4) Mootness is relevant to accomodate the needs of this court (or any court) as indicated by the 5th DCA in its decision in the "Texas v FCC" case. (5)Ripeness is relevant to any decision-making process whether in the court room or the board room, as any Judge or Administrator will acknowledge.

The commission, in its Answer Brief (ref pgs 9,11 and 14) complains of a lack of "clarity" in articulating the Appellant's issues and the relief expected from the court. I will take the commission's point and accomodate their needs.

The issues involve a challenge of the commission's right to disregard constitutional mandates and prohibitions to define and/or extend its juristiction beyond the scope of the statuatory grant; and, a challenge of the commission's right to disregard the rules of statuatory construction and statuatory silence to define and/or extend its juris-tction and authority beyond the scope of statuatory grant. What I am asking of the court is that they remand the case back to the commission with their rulings on the above described issues and instructions to bring the disconnect policy and its implementing rule into compliance. I am not asking the court to amend the rule. The commission knows what needs to be done. It just needs a reason to do it.

(8) A TIME FOR SKEPTICISM

The constitutional questions are addressed in my original petition directed to the commission and in the Initial Brief, however, there are a few related points that should be brought to the attention of the court. Ref to the "rule" (commission's Answer Brief pg 4). It is apparent that, other than a "5-day notice" there are no provisions for debtor protection; no mention of a process for negotiation or settlement of disputes; prior to the infliction of punishment for non-payment of a telephone bill. The lang-uage of the rule presumes that the bill submitted is true and accurate unless proven otherwise by the customer. But the fact is that since 1995, the FCC has become more and more sensitive to the problem of unauthorized and erroneous billing (now called "cramming") practices, and their inv-estigations have brought the attention of the FTC*(as well as the states), where non-regulated, telephone billed purchases (sic 900 number services, misleading advertising, and fraudulent operation of pay-per-call services) are involved. Accordingly, dispute resolution of certain telephon e charges are now a major concern of both the

*footnote: Federal Trade Commission, ref FPSC Annual Report (1998) pg 21, para (1)

federal and state agencies...and this raises a question of the reliability of all billing, whether for regulated or non-regulated telephone billed charges. A flawed billing process can and does have a negative impact on bill collection. The same clerks and the same computers and the same companies that aggregate information for the billing agents which bill non-regulated services, also perform the same functions for regulated services.They are the companies which make mistakes that concern the state and federal regulators with respect to non-regulated billing. They should not be considered unimpeachable where their bills for regulated services are involved. But under the current disconnect policy, they are so considered.

(9) A CONTROLLING PRECEDENT ??

The commission has chosen to invoke what it considers as a governing authority to prove its case (ref Osheyack v Public Service Commission, DOAH Case No 97-1628RX, pgs 7,10 and 15 of its Answer Brief), and it includes the Final Order in this case as evidence. I included mention of this case in my Initial Brief as an historical reference, **not as evidence**, for reasons that will become apparent for this court. For the record, however, let me state that the inclusion of this case as evidence, and the submission of the Final Order in this case as evidence, is deliberately misleading and prejudicial to the Appellant, absent the submission of the entire record for review by this court. However,this should not be necessary.
I call attention to the first Order issued by the ALJ in the above noted DOAH Case, dtd April 29, 1997 (ref herein Appendix 1). Note that "....the grounds asserted by the petitioner for invalidating the rule are shielded...until November 1, 1997"; "the DOAH has no juristiction in this proceeding to decide constitutional grounds asserted by the petitioner for invalidating the rule"; and, the ALJ

recognizes possible merit in the petitioner's case, subject to his ability to prove it "by a preponderance of evidence". Now, if the court will visit the Final Order (ref commission's Appendix 1) , it will find the following (ref § 44) "petitioner has failed to prove by a preponderance of evidence that (the rule) is arbitrary and capricious"; and, (ref § 22) "the burden of proof in this proceeding is on the petitioner....." Thus,the petitioner's failure under the conditions imposed (vis a vis the commission's assumed right to define "reasonability" in accordance with its own interpretation of "facts and law") can hardly be construed as "validation" of this rule, but is rather a testimony to the incompetance of the petitioner in the face of insurmountable odds. The commission, in its "validation annotation" (ref Appendix 2 of the Answer Brief) is deceiving this court. The simple fact is that the testimony that was presented by the witnesses, who were characterized by the commission counsel as experienced but not "expert", was misleading, speculative and replete with critical omissions. It was however, consistant with the interpretations of "facts and law" upon which the commission has relied in making its decisions. The ALJ, therefore, had no option but to make his determination based upon this testimony and the lack of effective offerings by the petitioner. However, there was never a consideration by DOAH in this case, of the standard raised by Harris v USA, which replaces reliance on "facts and law" with a focus on the "reasonability" of the decision-making process in the determination of what is "arbitrary and capricious". This standard was not discovered by the petitioner until August, 1999, and it was subsequently made a part of the Appellant's Initial Brief in this appeal.

Now therefore, since my appeal is based in a challenge of the commission's misinterpretation of "facts and law"

to define its authority; in the commission's disregard of the constitutional mandates and prohibitions to define both its juristiction and authority; and, in a standard of review for "reasonability" which is under challenge herein, the DOAH Case No 97-1628RX is irrelevant to this appeal. However, because this case has been introduced as evidence by this commission, it compels at least, limited rebuttal. Four-pages have been added for this purpose.

(10) A FLAWED AUTHORITY

"Two separate pertinent contracts" (ref Answer Brief, Appendix 3, Final Order in Case No 97-1628RX, §§8,9,10) The commission here attempts to establish a "rationale" for its disconnect policy by inventing an implied "contract" for service between the company providing the billing service and the subscriber (aka patron). This is a sham! There is no "contract" other than, perhaps, a tacit oral agreement that the customer will pay for the services that he receives from the company that provides it, and that the company, in turn, will render a true and accurate bill for their services directly or through a third party. Example: To initiate basic local telephone service, the prospective customer contacts the local exchange company, by phone if convenient; he provides his name, address, and social security number; his credit history is checked against the company's credit scoring criteria; if satisfactory, and if he lives in an apartment or house that is pre-wired, he can receive basic local telephone service the next day. There may be discussion of the cost of service and of installation, but no other information is exchanged. A bill is rendered which includes installation cost and one month's service in advance. The "patron" then decides how he wants to handle his intralata, intrastate toll, and interstate toll service which he may purchase from one or more carriers of his choice. He may be billed by his local exchange company, or in some cases

he may elect to be billed directly from the toll carrier of his choice. In selecting a carrier for these other services, he calls an 800 number, discusses price and service options, makes his selection based on price and convenience, and his choice is verified by an independant resource. Then if he elects to be billed by the local exchange carrier, either the service provider of his choice, the customer, or both, advise the local carrier of the selections made. There are no discussions of contracts or contract terms. The commission's attempt to support its unlawful regulatory policy with a "phantom" contract borders on the absurd. (ref herein Appendix 2) "Annotations in re Validity" of the Rule (ref Answer Brief, Appendix 2) : "If power to disconnect was not granted, uncollectible expense of companies, rates, deposit requirements, all would rise...Rule prevents increase in costs for good customers who pay their bills which would be a barrier to increasing subscribership and competition." According to the commission staff in PSC Docket 951123-TP (1996), eleven (11) states had eliminated disconnect policies prior to 1996 (ref herein Appendix 3), and Ohio was added to the list in 1996. The commission staff also reported that US West and SW Bell, two local exchange carriers which serve the western and southwestern states had voluntarily terminated their disconnect policies without state action. The commission staff also reported that an analysis of telephone penetration in households in Florida, measured against the states that eliminated disconnect policy, revealed that Florida, one of the fastest growing states in the nation with respect to population and households, showed an increase of 0.6% as compared to the household penetration in the other states, in which growth was static, of 6% (ref herein Appendix 3). Florida was also below the national average in household penetration of telephone service. (ref herein Appendix 3)

Moreover, none of the states which had eliminated the disconnect policy reported any negative consequences and none have reversed course to this date. Additionally, the telephone company revenues, profits and stock values have continued to grow without interruption. All indications point to the fact that the markets are being driven by expanding technology and competition, not by "bad debts" ; and if there is any negative impact on the toll companies' cost of doing business, it is the cost of access to the local markets imposed by the local carriers with the full support of the commission. This court should also know, that the petitioner's attempt to introduce this information into evidence in the DOAH case was thwarted by the commission. It was not allowed.

(11) THE LEGISLATIVE SCHEME

The rules of statuatory construction point up the importance of the legislative strategy in interpreting silent or ambiguous statutes. (ref Appellant's Initial Brief, Appendix, Exhibit 3)

Cit H, FS 364.245 Statute permitting discontinuation of telephone used for unlawful purpose requires judicial action in compliance with "due process" mandate of the constitution.

Here is a Florida Statute which deals specifically with "termination of telephone service" associated with the use of a telephone for unlawful purposes. In this case the legislature carefully established the need for due process prior to punishment (sic termination of telephone service). In other words, if you pay your telephone bills and violate the law, you are entitled to the protection of the constitution, but if you are a law-abiding citizen, and for some reason you cannot pay your interstate toll charges, or you are involved in negotiating a dispute with your interstate carrier, you are not entitled to such protection....according to the commission's rule.

Cit J, FS 364.1657 Statute prohibiting intrastate use of fax equipment for unsolicited advertising on telephone network. Due process recognized by authorizing State Attorney General to "seek injunctive relief and impose civil penalty". Juristiction limited to intrastate acts.

Cit I, FS 364.161 Statute prohibiting certain obscene phone calls, describing same and penalties therefor. §3 of this statute "exempts" such calls that cross state lines.

Here we have two statutes which define and prohibit certain activities using telephones or telephone lines as unlawful, but which clearly negate judicial or punitive action except for cases that involve such use within the borders of the state. Again we have persons who use telephones or telephone lines for unlawful purposes being protected by the constitutional prohibition of state intervention in interstate commerce, while law-abiding citizens who don't pay their interstate telephone charges have no such protection ....according to the commission's rule.

Also refer to Appellant's Initial Brief, Appendix Appendix, Exhibit 3, Cit D, FS 364.07(2); Cit(s) K, FS 364.32, 364.33 and 364.337; and Cit L, 350.113, which clearly illustrate that, in addressing the powers and responsibilities of the commission, the legislature is explicit in defining what is a "regulated company". It should be apparent, that the legislature never intended to include interstate telecommunications in the overall regulatory scheme...even to the extent of the funding of the commission. The legislature has been diligent in its efforts to avoid conflict with the constitution. The commission has ignored the constitution.

(12) THE CONSTITUTION

I come of a generation that stood and recited the Pledge of Allegiance to the flag as an opening ceremony in 1st grade of elementary school. By 4th grade we knew of the constitution and the bill of rights; and shortly thereafter, we learned of the impact that this historic document had on our nation and our lives as individuals. In 1942, at age 18-years, I took my first oath to "protect and defend the constitution against all enemies, foreign and domestic...", and as I recall, I repeated that oath at least twice thereafter. At no time subsequent, did I ever forswear that oath. Perhaps this is the reason why I tend to assume that everyone else has the same kind of attachment and sensitivity as I have to that extraordinary document. But the commission charges that my assertions of "constitutional infirmities" are vaguely articulated. I will take their point.

Article I, §VII(3) gives Congress the power to regulate commerce with foreign nations and "among the several states". In my Initial Brief, pgs 11,16, ref Title III, §§A(1)(b), and (3)(a); in this Reply Brief, pgs 13,14, Cit(s) H,I,J; and, in Appendix to Initial Brief, Exh 8, Cit(s) D,I; direct support is provided for the thesis that by preestablishing conditions for access to interstate and foreign markets, the commission is "regulating" interstate and foreign commerce. Moreover, there is no specific statuatory grant which supports blocking or termination of access to such markets for the purpose of debt collection. Such "regulation" by states, is prohibited by the above noted constitutional amendment; and, such regulation by the commission is prohibited by the Telecommunications Act of 1934. (ref Appendix to Initial Brief, Exh 8, Cit D, pgs 13-1st para, 14 first para et al.)

Amendment V and Amendment XIV, both address the prohibition of any denial of "due process of law" to any citizen of the United States. Amendment XIV, further prohibits any State from making or enforcing any law "which shall abridge the privileges or immunities of citizens" of that State, sic denial of "due process of law". Now there are no references in the commission's "rule" to any form of "due process", other than a 5-day notice", prior to the punitive act of blocking or terminating access to all telephone carriers in all markets in order to collect a third party bill submitted by one carrier, whether that bill is all or partially in dispute or all or partially in default. Here again, the commission has maintained that it is merely approving an industry practice. But, there is no statuatory grant which supports the commission's right to approve a denial of a citizen's right to "due process of law", notwithstanding what may or may not be "industry practice". If the State cannot "make or enforce" a law which denies "due process", it should be self-evident that it cannot do so with a "wink and a nod".

Amendment I (Bill of Rights), provides for protection against "unreasonable....seizures" of "effects" or "things". This Appellant believes that a "paid-for" telephone service provided by one carrier, under this Amendment, cannot be taken away by a third party to collect a bill rendered by a fourth party....without an express statuatory grant. The statute, FS364.19 does not provide such grant. The sole limitation on this protection, is "without probable cause". This Appellant cannot accept the premise that a dispute of one bill submitted by one carrier, or alternatively, non-payment of one bill submitted by one carrier, can support

an argument that would nullify the fact that others have been paid.

Amendment VII, provides a right to trial by jury where disputes or other matters relating to indebtedness cannot be resolved between the parties. It is the Appellant's observation that, because of the commission's interpretation of its "rule", which has the force of law, and barring a decision of constitutional relevance, the lower courts are helpless to decide the above described issues except as shielded by the commission's approval of the industry practices. Thus the right to a trial by jury is effectively nullified by a discrectionary act of the commission.

(13) IN ITS CONCLUSION....

...the commission refers to the "Appellant's repeated attacks on the commission's rule which have taken a variety of procedural and legal forms...." My young adversaries need to learn that the pursuit of democracy is a never ending task. The search for the true meaning of our nation's cherished ideals must be ceaseless. They must not be lost by default. Accordingly, if my efforts seem to be relentless, let them take comfort in the fact that I am 77-years old and they will surely outlive me. But for the present, I am here...though the results of my good faith efforts, even if successful, will impact to a greater extent on those who inherit the future. What the "Appellant's repeated attacks" are about, is a "challenge of the commission's disregard of constitutional mandates and prohibitions to define and/or extend its juristiction beyond the scope of statuatory

grant; and, a challenge of the commission's disregard of the rules of statuatory construction and statuatory silence to extend its juristiction and authority beyond the scope of statuatory grant". (ref herein pg 8, para 1)

The commission's "rule" stands as evidence of these transgressions. The principles of proper debt collection practices as set forth in state and federal law, offer a remedial option for the commission which they stubbornly refuse to recognize without reason.

These are the issues in the Appellant's case before this bar.

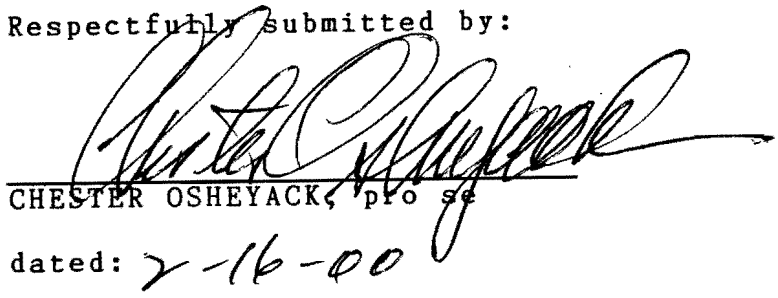
(14) THE NATURE OF POWER

I want to make it abundantly clear that I neither assert nor do I infer any maliscious motive on anyones part...nor is it my intention or desire to deny government or its agents the right to engage in their own perquisitions. However, in examining the nature of power or abuse thereof, one cannot avoid scrutinizing the source from which the power originates. The exercise of power, also carries with it the responsibility to avoid doing harm to those who are most vulnerable, and there should be accountability for error, misuse or abuse thereof. In the case before this bar, the key questions that arise, lie with the manner in which decisions on rulemaking are made. This should focus the attention of this court on the applicability of proper standards. Among those standards are the existing laws including but not limited to the Constitution,

citations of governing authorities, and the rules of statuatory construction and statuatory silence, which impact on the interpretation of those standards.

WHEREFORE, this court should review the entire record as submitted by both parties; decide the questions associated with the applicability of standards and the interpretation thereof; and remand the case back to the commission with their decisions. It is also appropriate for this court to instruct the commission to bring its disconnect policy and its implementing rule into compliance with appropriate standards in order to provide a precedent for future regulatory policy.

Respectfully submitted by:



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APPENDIX

Exhibit	I	Order Dismissing petition With Leave To Amend, Continuing Final Hearing And Amending Pre-Hearing Order in DOAH CASE No 97-1628RX (1997) 3-pages
Exhbit	II	GTE Bill NOTICE" regarding "service suspension" for "non-payment". Note there is no acknowledgement by the company of a "contract" with the "patron"...only a reference to "state regulatory and notice requirements". (1999) 1-page
Exhibit	III	PSC staff generated statistics as presented to the full commission in PSC Docket No 951123 (1996) (1996) 1-page

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHESTER OSHEYACK,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. 97-1628RX
	)	
PUBLIC SERVICE COMMISSION,	)	
	)	
Respondent.	)	
	)	

ORDER DISMISSING PETITION WITH LEAVE TO AMEND, CONTINUING FINAL HEARING (By Televideo Conferencing), AND AMENDING PREHEARING ORDER

The Respondent Florida Public Service Commission's Motion in Opposition to Petition for Recision [sic] of the Disconnect Authority Rule and the Petitioner's response in opposition were considered, in addition to further oral argument, at a telephone hearing on April 21, 1997. Based on those arguments, it is

CONCLUDED:

A. The grounds asserted by the Petitioner for invalidating F.A.C. Rule 25-4.113(1)(f) which come under Section 120.52(8)(b), Fla. Stat. (Supp. 1996), are "shielded" under Section 120.536(3), Fla. Stat. (Supp. 1996), until November 1, 1997.

B. The Division of Administrative Hearings (DOAH) has no jurisdiction in this proceeding to decide the constitutional grounds asserted by the Petitioner for invalidating F.A.C. Rule 25-4.113(1)(f). See Dept. of Revenue v. Magazine Publishers of America, Inc., 604 So.2d 459, 462 n.3 (Fla. 1992); Butler v.

Dept. of Ins., 680 So.2d 1103, 1107 (Fla. 1st DCA 1996); Long v. Dept. of Administration, 428 So.2d 688, 692-693 (Fla. 1st DCA 1983); and Cook v. Parole and Probation Commission, 415 So.2d 845 (Fla. 1st DCA 1982).

C. It appears that one or more of the bases for invalidating F.A.C. Rule 25-4.113(1)(f) asserted in the remainder of the Petition for Rescission of the Disconnect Authority Rule may fall within the grounds for invalidating a rule described in under Section 120.52(8)(c), (e) or (f), Fla. Stat. (Supp. 1996). However, the Petition for Rescission of the Disconnect Authority Rule does not focus on those grounds and does not clearly and concisely explain the facts and grounds for alleged invalidity. See Section 120.56(1)(b), Fla. Stat. (Supp. 1996).

Based on the foregoing conclusions, it is

ORDERED:

1. The Respondent Florida Public Service Commission's Motion in Opposition to Petition for Recision [sic] of the Disconnect Authority Rule is granted in part, the Petition for Rescission of the Disconnect Authority Rule is dismissed with leave to amend, and the Petitioner shall have 15 days in which to file an amended petition focusing on the allegations supporting the Petitioner's contentions that the rule is invalid under Section 120.52(8)(c), (e) and (f), Fla. Stat. (Supp. 1996).

2. Final hearing is continued until 9:00 a.m., or as soon thereafter as the matter can be heard, **on Monday, June 23, 1997. One day** has been set aside for the hearing, which will be held by

DONE AND ORDERED this 29th day of April, 1997, in Tallahassee, Florida.

J. LAWRENCE JOHNSTON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(904) 488-9675 SUNCOM 278-9675
Fax Filing (904) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of April, 1997.

COPIES FURNISHED:

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CONFIRMATION COPY

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GTE

TELEPHONE NUMBER	813 672-3823 980618
ACCOUNT NUMBER	151314067844306806
STATEMENT ENDING	Nov 28, 1999

About Your Bill

It's our privilege to serve you.

Mail payments to:
GTE Florida
P.O. Box 31122
Tampa, FL
33631-3122

How to pay your bill

Please mail your payment using the return envelope. Include the payment stub to ensure proper credit.

If you pay in person, bring your entire bill, including the payment stub, to an authorized payment location.

Be sure to write your area code and telephone number on your check.

Questions about your bill

If you have questions concerning your bill, please call the appropriate "billing questions" number which appears in the yellow band on your bill.

Previous payments

You may have sent us a payment not processed in time to be reflected on your current billing statement. Please deduct any amount already paid before sending your current payment.

Past due amounts

The due date on your bill only applies to the current charges. Any past due amount should be paid immediately.

Service suspension for non-payment

Based on the state regulatory and notice requirements, once your bill is past due, some or all of your service may be suspended. Charges may apply to suspend and reconnect service. A deposit to reestablish your service may also be required.

Returned checks

In some states, a returned check charge may apply for each check returned for any reason.

Additional information

Please consult your local Directory for additional billing and service information.

Exhibit KDL - 2

DISCONNECT AUTHORITY RULE
DKT No. 951123-TP

STATES WITH DN POLICY IN PLACE	% OF HOUSEHOLDS w/ TELEPHONE AS OF 1992	% OF HOUSEHOLDS w/ TELEPHONE AS OF MARCH 1995		% CHANGE IN PENETRATION
Colorado	95.5	96.9		1.4
Delaware	96.5	96.1		-0.4
Hawaii	95.3	95.6		0.3
Idaho	93.0	94.5		1.5
Massachusetts	96.8	96.0		-0.8
Montana	93.2	96.2		3
Nevada	93.7	92.3		-1.4
New York	93.4	93.2		-0.2
North Dakota	95.8	97.6		1.8
Pennsylvania	96.9	96.6		-0.3
Wyoming	92.7	93.8		1.1
% CHANGE FOR ALL STATES WITH POLICY IN PLACE			+	6.0
United States	93.8	93.9		
% CHANGE FOR UNITED STATES			+	0.1
% CHANGE FOR FLORIDA			+	0.6

Appendix E .ibit 3, page 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of this MOTION has been furnished by US Mail this 16th day of Feb, 2000 to:

Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, Florida 32399-0850

In ref PSC Doc 990869
SCA Case No 96,439

Chester Osheyack
Appellant

for:
Catherine Bedell
Acting General Counsel for PSC

and

Martha C. Brown
Associate General Counsel for PSC