

ORIGINAL

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June 30, 2000

Blanca S. Bayo, Director
Division of Records & Recording
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32327

000798-TL

In re: Petition by TDS TELECOM/Quincy Telephone Company for declaratory statement interpreting the provisions of Sections 364.052(2), and 364.337(1), Florida Statutes, as they apply to Petitioner.

Dear Ms. Bayo:

Enclosed please find the original and 15 copies of the Petition for Declaratory Statement of TDS Telecom/Quincy Telephone Company.

Copies have been provided to the Commission's General Counsel and to Public Counsel in accordance with the Certificate of Service.

Sincerely,



David B. Erwin

DBE

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by TDS TELECOM/Quincy)	
Telephone Company for declaratory statement)	DOCKET NO.
interpreting the provisions of Sections 364.052(2),)	
and 364.337(1), Florida Statutes, as they apply to)	Filed:
Petitioner.)	
_____)	

PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

TDS TELECOM/Quincy Telephone Company (herein after "TDS TELECOM"), through its undersigned attorney, pursuant to Rule 28-105.002, F. A. C., petitions for a declaratory statement interpreting the provisions of Sections 364.052(2) and 364.337(1), Florida Statutes, as they apply to Petitioner, in petitioner's particular set of circumstances.

FACTS

1. TDS TELECOM is defined by Florida Statutes as a small local exchange telecommunications company, since it was certificated by the Florida Public Service Commission before July 1, 1995, and since the company had fewer than 100,000 access lines in service on that date.

2. Name and address of Petitioner:

TDS TELECOM/Quincy Telephone Company
107 W. Franklin Street
Quincy, Florida 32351
Telephone: 850.875.5207
Facsimile: 850.875.5225

3. The persons authorized to receive notices, communications and other documents in connection with this petition are:

David B. Erwin
127 Riversink Road
Crawfordville, Florida 32327
Telephone: 850.926.9331
Facsimile: 850.926.8448

Tom McCabe
Quincy Telephone Company
107 W. Franklin Street
Quincy, Florida 32351
Telephone: 850.875.5207
Facsimile: 850.875.5225

4. TDS TELECOM is currently regulated by the Commission pursuant to rate base, rate of return regulation.
5. TDS TELECOM has not filed an election pursuant to Section 364.052(3), Florida Statutes, to be regulated under price regulation, pursuant to Section 364.051, Florida Statutes.
6. TDS TELECOM has not at any time provided cable television programming services directly or as video dial tone applications authorized under 47 U.S.C.s.214.
7. No certificated alternative local exchange company (ALEC) has provided local exchange telecommunications services within the territory of TDS TELECOM.
8. TDS TELECOM, as a small local exchange telecommunications company, is subject to the provisions of Section 364.052(2), Florida Statutes, but petitioner is doubtful as to the meaning of said section as it relates to petitioner, and petitioner has an immediate need to have the Commission interpret the law, so petitioner can adopt a future course of action best suited to petitioner and its customers.

LAW TO BE INTERPRETED

9. Section 364.052(2), Florida Statutes, states as follows:
 - (2) A small local exchange telecommunications company shall remain under rate

base, rate of return regulation until the company elects to become subject to s. 364.051, or January 1, 2001, whichever occurs first. After July 1, 1996, a company subject to this section, electing to be regulated pursuant to s. 364.051, will have any overearnings attributable to a period prior to the date on which the company makes the election subject to refund or other disposition by the commission. Small local exchange telecommunications companies not electing the price regulation provided for under s. 364.051 shall also be regulated pursuant to ss. 364.03, 364.035(1) and (2), 364.05, and 364.055 and other provisions necessary for rate base, rate of return regulation. If a small local exchange telecommunications company has not elected to be regulated under s. 364.051, by January 1, 2001, the company shall remain under rate base, rate of return regulation until such time as a certificated alternative local exchange company provides basic local telecommunications service in the company's territory. At such time, the small local exchange telecommunications company shall be subject to s. 364.051. (Emphasis supplied to those provisions to be interpreted.)

10. Petitioner submits that there is a conflict in the provisions of Section 364.052(2), Florida Statutes, which are emphasized above. In the first reference to remaining under rate base, rate of return regulation, that method of regulation would appear to end abruptly on January 1, 2001, without any affirmative act required by petitioner. Under that first reference, if petitioner has not elected price regulation by January 1, 2001, it is arguable that petitioner will not remain under rate base, rate of return regulation and that price regulation will thereafter be imposed on petitioner by operation of law. On the other hand, the second reference to rate base, rate of return regulation suggests another course of action altogether, in the event petitioner fails to elect price regulation before January 1, 2001. Under the second reference, it would appear that if petitioner has not elected price regulation by January 1, 2001, petitioner must remain under rate base, rate of return regulation until a specific competitive event occurs, which event is outside the control of petitioner, i.e., the provision of basic local telecommunications service in petitioner's territory.

11. The two provisions of Section 364.052(2), Florida Statutes, relating to the duration of rate base, rate of return regulation are in apparent conflict. Without a clear perception of the meaning of this crucial section of Chapter 364, Florida Statutes, TDS TELECOM cannot plan for the

future with any degree of certainty. If TDS TELECOM does not make an affirmative election to be subject to price regulation before January 1, 2001, will the company be regulated pursuant to rate base, rate of return regulation on and after January 1, 2001, or will the company be subject to price regulation?

12. There is, in addition, another question that is not clear, in the event that the statute means that TDS TELECOM will continue to be regulated pursuant to rate base, rate of return regulation by virtue of not having affirmatively elected price regulation before January 1, 2001. That question concerns the meaning of the following provision of Section 364.052(2), Florida Statutes:

. . . the company shall remain under rate base, rate of return regulation until such time as a certificated alternative local exchange company provides basic telecommunications service in the company's territory. (Emphasis supplied.)

For petitioner's purposes under such a scenario of continuing rate base, rate of return regulation, what exactly would constitute the provision of "basic telecommunications service in the company's territory" and when exactly would that eliminate rate base, rate of return regulation? For example, if a certificated alternative local exchange company resells TDS TELECOM's service to discontinued TDS TELECOM former customers, or if a competitor offers a bundled package such as cable or internet service along with local exchange service, would the ALEC be providing "basic telecommunications service"? It is reasonable to imagine that a competitor could compete for some telecommunications services but not offer "basic local exchange service" on a stand alone basis. Also, exactly when would TDS TELECOM be moved to price regulation? Upon notification of intent to compete? Upon signing up the first customer? Upon the occurrence of some other event? Would some particular act by a potential competitor

catapult TDS TELECOM into price regulation, or would TDS TELECOM still need to make an election or provide notification to the Commission?

13. Finally, TDS TELECOM seeks clarification as to whether or not the Company can, prior to January 1, 2001, voluntarily permit an ALEC to resell basic service, if the Company has not chosen to be regulated pursuant to s. 364.051. Section 364.337(1) states:

...In no event may an alternative local exchange telecommunications company offer basic local telecommunications services within the territory served by a company subject to s. 364.052 prior to January 1, 2001, unless the small local exchange company elects to be regulated under s. 364.051 or ...

It appears based on this section that an ALEC could not provide basic local exchange service within the territory served by TDS TELECOM even if TDS TELECOM voluntarily were to allow the ALEC to resell service. Can TDS TELECOM allow an ALEC to resell basic service to disconnected customers prior to January 1, 2001 without becoming subject to price regulation?

WHEREFORE, AND IN SUMMARY OF THE ABOVE, TDS TELECOM requests a response to the following questions:

- a. If TDS TELECOM does not make an affirmative election to be subject to price regulation before January 1, 2001, will the company be regulated pursuant to rate base, rate of return regulation on and after January 1, 2001, or will the company be subject to price regulation?
- b. If TDS TELECOM does not elect price regulation before January 1, 2001, and it is determined that the company will consequently be regulated pursuant to rate base, rate of return regulation, what exactly would constitute the provision of basic telecommunications service in the company's territory so as to subject TDS TELECOM to price regulation,

and when exactly would TDS TELECOM become price regulated?

- c. Can TDS TELECOM voluntarily permit, and could an ALEC resell basic service before January 1, 2001, while TDS TELECOM remains subject to rate base, rate of return regulation and before TDS TELECOM has elected price regulation?

Dated this 30th day of June, 2000.

Respectfully submitted,



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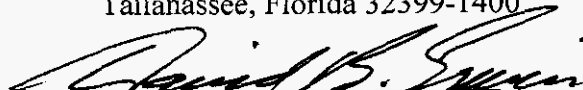
Attorney for Quincy Telephone Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for Declaratory Statement was delivered by hand or by U. S. Mail on June 30, 2000 to:

Catherine Bedell, General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Jack Shreve, Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, Florida 32399-1400



David B. Erwin