



# Public Service Commission

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RECORDS AND REPORTING

**DATE:** SEPTEMBER 14, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF APPEALS (BELLAK) *RCB for DES*  
DIVISION OF COMPETITIVE SERVICES (DOWDS) *RCB* 

**RE:** DOCKET NO. 000798-TP - PETITION FOR DECLARATORY STATEMENT INTERPRETING PROVISIONS OF SECTIONS 364.052(2) AND 364.337(1), F.S., BY QUINCY TELEPHONE COMPANY D/B/A TDS TELECOM/QUINCY TELEPHONE.

**AGENDA:** SEPTEMBER 26, 2000 - REGULAR AGENDA - DECISION ON DECLARATORY STATEMENT - PARTIES MAY PARTICIPATE AT THE COMMISSION'S DISCRETION

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\APP\WP\000798.RCM

**CASE BACKGROUND**

On June 30, 2000 TDS/Telecom/Quincy Telephone Company (TDS) filed a petition for a declaratory statement interpreting the application of Sections 364.052(2) and 364.337(1), Florida Statutes, to Petitioner.

In pertinent part, TDS alleges that it is a small local exchange telecommunications company which had fewer than 100,000 access lines in service when certified by the Commission prior to July 1, 1995. TDS is currently regulated pursuant to rate base, rate of return regulation and has not elected price regulation. TDS has not provided either cable television programming services directly or as video dial tone applications authorized under 47 U.S.C.s. 214.

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TDS asks that the Commission resolve what it believes are conflicting statements in Section 364.052(2) and state whether TDS will be rate base, rate of return regulated or subject to price regulation as of January 1, 2001 and thereafter. If the former, TDS then inquires as to the circumstances that would trigger the shift to price regulation after January 1, 2001. Finally, TDS inquires as to whether it could voluntarily allow an ALEC to resell basic service prior to January 1, 2001 while remaining rate base, rate of return regulated.

### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission issue a declaratory statement to explain how the referenced statutes apply to TDS?

**RECOMMENDATION:** Yes. The Commission should issue a Declaratory Statement as requested by TDS.

**STAFF ANALYSIS:** As stated by the Court in Florida DBR Division of Pari-Mutuel Wagering v. Investment Corp. (Pari-Mutuel), 747 So. 2d 374 (Fla. 1999),

... in enacting section 120.565, the Legislature created an important tool to vindicate the individual rights of individual citizens. The citizen has a right under the statute to get a clear, binding answer from the agency on how the agency's statute and rules apply to that individual citizen.

**ISSUE 2:** Under the facts as alleged, will TDS be rate base, rate of return regulated or subject to price regulation as of January 1, 2001 and thereafter (absent an ALEC providing basic telecommunications service in TDS' territory)?

**RECOMMENDATION:** TDS will be rate base, rate of return regulated, under those facts.

**STAFF ANALYSIS:** Though not a model of clarity, the two sentences presented by TDS as conflicting do not appear to staff as conflicting.

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 or 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)

The first underlined sentence in Section 364.052(2) describes a pre-January 1, 2001 regime in which TDS may decline price regulation and remain rate base, rate of return regulated. That regime ends January 1, 2001. The second underlined sentence describes a different regime commencing January 1, 2001 and governing thereafter, in which TDS may remain rate base, rate of return regulated only unless and until a certificated ALEC provides basic local telecommunications service in TDS' territory. In short, as of January 1, 2001, TDS loses its ability to decline price regulation in the event an ALEC commences basic local service there. Conversely, absent commencement of such service by an ALEC, TDS may remain rate base, rate of return regulated.

**ISSUE 3:** Would the ALEC's provision of basic telecommunications service on either a stand-alone or bundled basis trigger TDS' being subject to price regulation? When would the triggering event occur?

**RECOMMENDATION:** Only the provision of stand-alone basic telecommunications service by an ALEC would trigger TDS' being subject to price regulation.

**STAFF ANALYSIS:** In the absence of competition, Commission regulation of TDS' monopoly protects consumers. That monopoly would end at the point when competing, stand-alone basic telecommunications service actually became available to customers from an ALEC serving in TDS territory, either through a resale or facility-based offering. That would also eliminate the need for rate base, rate of return regulation and trigger the application of price regulation to TDS.

**ISSUE 4:** Could TDS, prior to January 1, 2001, voluntarily permit an ALEC to resell basic service, if TDS has not chosen to be price regulated?

**RECOMMENDATION:** No. TDS cannot decline price regulation during the pre-January 1, 2001 regime and permit an ALEC to resell basic service.

**STAFF ANALYSIS:** Section 364.337(1) only permits two exceptions to the absolute prohibition therein against ALECs' offering basic local telecommunications services prior to January 1, 2001 in the territory served by small local exchange companies like TDS. The first exception would apply if TDS elected price regulation. The second exception would apply if TDS provided cable television programming services directly or as video dial tone applications authorized under U.S.C. s. 214. Since neither exception applies, the statute does not offer the option TDS has presented, *i.e.*, to voluntarily allow an ALEC to resell its basic local telecommunications service prior to January 1, 2001 while TDS remains rate base, rate of return regulated.

**ISSUE 5:** Should this docket be closed?

**RECOMMENDATION:** Yes. This docket should be closed.

**STAFF ANALYSIS:** With the issuance of the declaratory statement, this docket may be closed unless further motions or notices are filed.

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