IN THE SUPREME COURT OF FLORIDA

MICROTEL, INC.,

Appellant,

v.

FLORIDA PUBLIC SERVICE COMMISSION, Et Al.,

Appellees.

Case No. 64,801

(Consolidated with Case Nos. 65,307 65,351 65,449)

FILED
SID J. WHITE
AUG 31 1984
CLERK, SUPREME COURT
By
Chief Deputy Clerk

ANSWER BRIEF OF APPELLEE MCI TELECOMMUNICATIONS CORPORATION

Richard D. Melson
HOPPING BOYD GREEN & SAMS
Post Office Box 6526
Tallahassee, Florida 32314
(904) 222-7500

Attorneys for MCI Telecommunications Corporation

TABLE OF CONTENTS

Page

CITATION OF AUTHORITIES ii

PREFACE iii

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 2

REGULATORY BACKGROUND 8

ARGUMENT

I. THE COMMISSION'S GRANT OF A CERTIFICATE TO MCI WAS BASED ON COMPETENT, SUBSTANTIAL EVIDENCE THAT THE PUBLIC INTEREST WOULD BE SERVED THEREBY, AFTER INQUIRY INTO EACH OF THE AREAS SPECIFIED IN SECTION 364.335, FLORIDA STATUTES 12

II. THE COMMISSION WAS NOT REQUIRED TO CONSIDER THE FACTORS LISTED IN SECTION 364.337(2) IN DETERMINING WHETHER THE BASIC GRANT OF A CERTIFICATE OF AUTHORITY TO MCI IS IN THE PUBLIC INTEREST 19

A. THE COMMISSION CORRECTLY CONSTRUED SECTION 364.337(2) TO APPLY ONLY TO THE DETERMINATION OF WHAT REGULATORY REQUIREMENTS TO APPLY TO A COMPETITIVE CARRIER AFTER IT HAS BEEN CERTIFIED 19

B. THE COMMISSION'S INTERPRETATION OF SECTION 364.337(2) DOES NOT RENDER THE CERTIFICATION PROVISIONS OF CHAPTER 364 UNCONSTITUTIONAL FOR LACK OF ADEQUATE STANDARDS 21

III. CHAPTER 364 DOES NOT PROTECT MICROTEL FROM COMPETITION PENDING COMPLETION OF ITS OWN NETWORK 24

CONCLUSION 27

CERTIFICATE OF SERVICE 28

APPENDIX A-1

CITATIONS OF AUTHORITY

Page

Cases:

Albrecht v. Department of Environmental Regulation
353 So.2d 883 (Fla. 1st DCA 1978)
cert. den. 359 So.2d 1210 (1978)....................22, 23

Delta Truck Brokers, Inc. v. King
142 So.2d 273 (Fla. 1962)..............................24

Department of Insurance v. Southwest Volusia Hospital District
438 So.2d 815 (Fla. 1983)
cert. den. 104 S.Ct. 1673 (1984)........................23

Ft. Pierce Utilities Authority v. Florida Public Service Commission, 388 So.2d 1031 (Fla. 1980).25..................21

Wetmore v. Bevis
312 So.2d 722 (Fla. 1974)..............................25

Florida Constitution

Article X, Section 11....................................23

Statutes

Chapter 364, Florida Statutes.......................Passim
Section 253.124, Florida Statutes (1973)..................22
Section 364.33, Florida Statutes (1983)..............12, 18
Section 364.35(2), Florida Statutes (1979)................8
Section 364.335, Florida Statutes (1983)............Passim
Section 364.335(1), Florida Statutes (1983)..........Passim
Section 364.335(4), Florida Statutes (1981)...............8
Section 364.335(4), Florida Statutes (1983)..........Passim
Section 364.337, Florida Statutes (1983).............Passim
Section 364.337(2), Florida Statutes (1983)..........Passim
Section 364.345, Florida Statutes (1983).................25
Section 364.345(2)(a), Florida Statutes (1983)...........23
Section 367.051, Florida Statutes (1983).................23
Section 367.071(1), Florida Statutes (1983)..............23
Section 768.54(c)(3), Florida Statutes (1981)............23
Chapter 82-51, Laws of Florida........................8, 9

PREFACE

In this brief, MCI Telecommunciations Corporation will be referred to as "MCI"; Microtel, Inc. will be referred to as "Microtel"; and the Florida Public Service Commission will be referred to as the "Commission." The appellees in the consolidated appeals will be referred to as follows: GTE Sprint Communications Corporation (Case No. 65,351) as "GTE Sprint"; Satellite Business Systems (Case No. 65,307) as "SBS"; and United States Transmission Systems, Inc. (Case No. 65,449) as "USTS."

Throughout the brief, MCI's Appendix will be referred to as (App.___); Microtel's Appendix to the initial Brief of Appellant, Microtel, Inc. will be referred to as (AB. ___); Microtel's Appendix to its Supplemental Brief will be referred to as (SB. ___); the Record will be referred to as (R. ___); and the Transcript of the hearings below will be referred to as (Tr. ___).

STATEMENT OF THE CASE

MCI accepts the Statement of Case contained in the initial brief of Microtel with two additions:

1. Although the Commission granted Microtel's petition to intervene in MCI's certification proceeding, the hearing below was held on the Commission's own motion. The Commission simiarily held a hearing on its own motion to consider GTE Sprint's application. In the later certification proceedings for SBS and USTS, the Commission concluded that such hearings were no longer necessary, and denied Microtel's requests for hearing. For example, in Order No. 12912 in the SBS certification proceeding, the Commission stated:

> In the past, we have conducted hearings on our own motion when considering whether to grant interexchange carrier's applications. We have done so, in part, because we wanted to move cautiously into the competitive environment for interexchange carriers. Microtel has been a participant in every one of the hearings held to date. Because we do not feel there is anything further to gain from conducting a hearing to consider SBS's application and because we are not required to do so by Section 364.335, we deny Microtel's request for a hearing.
>
> (SB. 11)

2. In its Order Denying Reconsideration in MCI's certification proceeding [Order No. 12824] the Commission also denied Microtel's Motion to Stay the effectiveness of MCI's certificate. (AB. 54) No similar stay has been sought from this Court. MCI has therefore been providing intrastate long distance telephone service since January 1, 1984 under the certificate of public convenience and necessity granted by the Commission.

For a history of Microtel's own certificate proceeding, and a procedural history of the consolidated appeals, MCI respectfully refers the Court to the Answer Briefs filed by SBS and the Commission.

STATEMENT OF FACTS

Microtel's Statement of Facts is incomplete in that it omits many of the facts presented the hearing concerning MCI's financial and technical capability to provide high quality telecommunications service to the public, and MCI's proposed service locations and facilities in the state. Microtel also omitted reference to much of the expert economic testimony regarding the benefits that Florida telephone users would gain from the grant of a competitive certificate to MCI. MCI therefore provides the following counter-statement of facts.

MCI, a wholly owned subsidiary of MCI Communications Corporation, is a domestic common carrier which operates a nationwide interstate telecommunications system under authorizations granted by the Federal Communications Commission. (Tr. 25-27, 36; R. 4, 175)

MCI'S Interstate Experience

MCI's interstate network consists of over 15,000 route miles of transmission facilities that are integrated with additional facilities leased from other common carriers to form a single communications network. MCI uses this system to provide interstate telephone service to over a million customers located in approximately 257 cities in 42 states, including customers in Florida. With this interstate network and over 4,000 employees, MCI is the nation's second largest long distance telephone company.[1/] (Tr. 24, 36-38; R. 4-5)

MCI's network employs state-of-the-art technology, is designed to meet or exceed industry standards, and is maintained 24 hours a day, 7 days a week. MCI employs over 200 telephone and transmission engineers and nearly 850 skilled technicians in connection with the design and maintenance of its network. (Tr. 88, 91-95) Even

---

1/ MCI has continued to expand since the March, 1983 hearing below. The specific numbers recited throughout this Statement of Facts are now almost 18-months old.

Microtel's president readily acknowledged that: "We do recognize MCI as a very large, capable, knowledgeable provider of interstate service. There is no doubt about that." (Tr. 282)

MCI's nationwide network represented an investment of about $1.5 billion at the time of the hearing, and an additional $1 billion was planned to be invested in expansion of that network during the succeeding year. (Tr. 36) The facilities that will be used to provide intrastate service in Florida are the same facilities that are being or will be used to provide interstate service to Florida customers. (Tr. 29, 37-39, 97) In the administrative proceeding below, MCI sought authority to provide intrastate service throughout Florida, with initial service planned in eight metropolitan areas. (Tr. 140)

MCI'S Financial Capability

The funds for construction of MCI's facilities in Florida will be generated internally or as part of the parent MCI Communications Corporation's overall financing activities. As of February, 1983, MCI Communications Corporation had raised over $900 million from outside sources. (Tr. 35; Ex. 2) This history of successful financing, coupled with the financial strength shown in the various financial exhibits, demonstrates that MCI possesses

the financial capability to provide the services for which it sought authorization. (Tr. 39; Exs. 1, 2, 8)

Public Interest Considerations

As discussed below, the record further shows that granting a certificate to MCI would serve the public interest by promoting competition in intrastate telecommunications; by making available to the public the benefits of a unitary interstate and intrastate communications service offered by a single carrier; and by enabling MCI to make more efficient use of its existing and proposed facilities.

Promoting competition in intrastate telecommunications through the grant of the MCI certificate serves the public interest in several respects. First, the authorization of MCI as an intrastate carrier provides an additional choice for the customer seeking to procure telecommunications services, both in terms of simply having an alternative carrier available and in terms of additional service features. (Tr. 37) The public desire for additional alternatives is shown by the fact that some of MCI's current interstate customers have indicated that they would like to see MCI offer intrastate service as well. (Tr. 80)

Second, granting a certificate of authority to MCI provides the Florida consumer with lower cost intrastate

long distance calling. (Tr. 22-23, 37, 130, 253) The existence of competition will also give other telecommunications providers an incentive to produce and offer their services at the least possible cost. (Tr. 244-246)

Third, competition will encourage innovation in the provision of telecommunications services, both technological innovation and innovation in meeting customer demands for new services. (Tr. 243-244, 246, 253) The presence of MCI and other competitors in the intercity communications market has already resulted in numerous technological innovations. (Tr. 92-93, 246-248)

Fourth, by creating competition in telecommunications, the public can ultimately reduce the amount spent on regulatory processes. (Tr. 246-247, 248-249)

The record shows that the benefits of competition will be fully realized only when any firm having the ability to provide intercity telecommunications can enter the market if it chooses do to so. (Tr. 249, 251-252, 331-333) Thus granting a certificate to MCI is consistent with the goal of bringing the full benefits of competition to Florida.

MCI is the first carrier in Florida to use an integrated interstate and intrastate network to provide long distance service to its customers. (Tr. 30-31, 37; R. 5-6) From the customers' perspective, an integrated interstate and intrastate network will enable a customer to

use a single competitive carrier for all of its long distance telecommunications needs. (Tr. 30, 37, 251-252) Moreover, because MCI's system has been built during the 1970s, it consists of state-of-the-art equipment which, together with other factors, enables MCI to provide service in a highly efficient manner. (Tr. 31-32, 54-55, 56A-57, 91-93)

Because the facilities MCI proposes to use to provide intrastate service are the same facilities that are being used, or will be used, to provide interstate service, the granting of MCI's application for intrastate authority enables MCI to make more efficient use of those existing and planned facilities and thereby realize lower costs for both types of services. (Tr. 28-29, 37-38, 251-252)

REGULATORY BACKGROUND

The telephone industry has undergone substantial change in the 1980s, including the break-up of AT&T and increased competition in the provision of interexchange (long distance) telephone services. These changes in the industry have been coupled with changes in the statutory and regulatory framework governing providers of telephone service in Florida.

Under the statutes in force in Florida prior to 1982, the Commission took the position that it could not grant a certificate for competitive intrastate telephone service unless it first determined that existing facilities and services were inadequate to meet the reasonable needs of the public. See § 364.35(2), Fla. Stat. (1979); § 364.335(4), Fla. Stat. (1981)

During the 1982 legislative session, the Commission supported legislation to permit the granting of certificates to telephone companies for competitive intrastate interexchange service. On March 19, 1982, the Governor signed into law Senate Bill 868 [Chapter 82-51, Laws of Florida] which amended Section 364.335(4) to permit the granting of certificates for competitive intrastate telephone service, other than local exchange services:

364.335 Application for certificate.--

(4) The commission may grant a certificate, in whole or in part or with modifications in the public interest, but in no event granting authority greater than that requested in the application or amendments thereto and noticed under subsection (1); or it may deny a certificate. The commission shall not grant a certificate for a proposed telephone company or for the extension of an existing telephone company, which will be in competition with~~,~~ or ~~which will~~ duplicate the local exchange services provided by~~,~~ any other telephone company, unless it first determines that the existing facilities are inadequate to meet the reasonable needs of the public and it first amends the certificate of such other telephone company to remove the basis for competition or duplication of services.

(Section 3, Chapter 82-51, Laws of Florida)

That legislation also created a new Section 364.337 which reads as follows:

364.337 Duplicative or competitive services.

(1) When the commission grants a certificate to a telephone company for any type of service that is in competition with or that duplicates the services provided by another telephone company, the commission, if it finds that such action is consistent with the public interest, may:

(a) Prescribe different requirements for the company than are otherwise prescribed for telephone companies; or

(b) Exempt the company from some or all of the requirements of this chapter.

(2) In determining whether the actions authorized by subsection (1) are consistent with the public interest, the commission shall consider:

(a) The number of firms providing the service;

(b) The geographic availability of the service from other firms;

(c) The quality of service available from alternative suppliers;

(d) The effect on telephone service rates charged to customers of other companies; and

(e) Any other factors that the commission considers relevant to the public interest.

Microtel, the Appellant herein, was the first competitive telephone company to be licensed under the revised provisions of Chapter 364, receiving a certificate by Commission Order No. 11095, issued August 23, 1982. (AB. 29-42) That certificate authorized Microtel to construct and operate a system to provide long distance service anywhere within the state, in competition with the existing telephone companies. (AB. 34, 40)

In late 1982 the Commission entered two other orders setting forth the terms and conditions on which it would license competitive telephone companies to provide long distance service through the resale of intrastate Wide Area Telephone Service (WATS) obtained from the existing telephone companies. (App. 1-28) While "resellers" must install their own switches, they rely on the resale of other carriers' services, rather than their own long distance networks, to provide intercity transmission. Microtel's

certificate was amended in January, 1983, to allow it to provide service through resale of WATS, as well as through use of its own transmission facilities. (AB. 43-44)

Since early 1983, the Commission has licensed five additional long distance providers--MCI, Satellite Business Systems, GTE Sprint Communications Corporation, United States Transmission Systems, and AT&T Communications of the Southern States (successor to AT&T). Except in the case of AT&T Communications, Microtel intervened, or attempted to intervene, in opposition to each of these certificate applications. The Commission has also licensed over 40 WATS resellers, none of whom have been opposed by Microtel.

The underlying issues in these appeals by Microtel concern the scope of the Commission's authority to grant certificates to additional long distance carriers under the procompetitive amendments enacted by the Legislature in 1982, and the legal standards the Commission must apply in granting such certificates.

ARGUMENT

I. THE COMMISSION'S GRANT OF A CERTIFICATE TO MCI WAS BASED ON COMPETENT, SUBSTANTIAL EVIDENCE THAT THE PUBLIC INTEREST WOULD BE SERVED THEREBY, AFTER INQUIRY INTO EACH OF THE AREAS SPECIFIED IN SECTION 364.335, FLORIDA STATUTES.

Chapter 364, Florida Statutes, establishes standards and procedures to govern the licensing of competitive telephone companies. Although the Commission is given broad discretion to grant, modify, or deny certificate applications based on its determination of the public interest, the Legislature has established specific areas of inquiry that the Commission should pursue in making such determinations.

Section 364.33, Florida Statutes (1983), establishes the basic certification requirement for telephone companies. That section requires the Commission to find that the present or future public convenience and necessity will be served before licensing a proposed system:

> **364.33 Certificate of necessity prerequisite to construction, operation or control of telephone line, plant, or system.**--No person shall hereafter begin the construction or operation of any telephone line, plant, or system, . . . without first obtaining from the commission a certificate that the present or future public convenience and necessity require or will require such construction, operation, or acquisition. . . .

Section 364.335, Florida Statutes (1983), specifies the

general contents of an application for a certificate, and subsection (1)(a) of that section authorizes the Commission to make detailed inquiry into three specific areas relevant to the application and to its required public interest determination:

> **364.335 Application for certificate.--**
>
> (1) Each applicant for a certificate shall:
>
> (a) Provide all information required by rule or order of the commission, which may include a detailed inquiry into the ability of the applicant to provide service, a detailed inquiry into the territory and facilities involved, and a detailed inquiry into the existence of service from other sources within geographical proximity to the territory applied for. . . .

Finally, the Commission is given authority to grant, modify or deny an application for a certificate based on its determination of the public interest. Section 364.335(4), Florida Statutes (1983), provides in relevant part:

> (4) The commission may grant a certificate, in whole or in part or with modifications in the public interest, but in no event granting authority greater than that requested in the application or amendments thereto and noticed under subsection (1); or it may deny a certificate. . . .

The Commission has not yet adopted any rules under Section 364.335(1) governing the content of applications by competitive intrastate telephone companies. However, in the proceeding below, the Commission inquired into and made

findings of fact concerning each of the areas specified by the Legislature in Section 364.335. Moreover, consistent with its prior order granting a certificate to Microtel [Order No. 11095] (AB. 33-35), the Commission also considered and made findings regarding the benefits that additional competition by MCI will bring to the public.[2/] (AB. 45-46; 48-49)

The evidence in the record related to each of the areas of inquiry specified in Section 364.335(1), supplemented by information related to the standards developed in the Commission's Microtel order, supports the Commission's determination that the grant of a certificate to MCI serves the public interest.

A. ". . . THE ABILITY OF THE APPLICANT TO PROVIDE SERVICE . . . ." § 364.335(1)(a), FLA. STAT. (1983).

As indicated in the Statement of Facts, MCI is the nation's second largest long distance telephone company, providing service to over a million customers throughout the

---

2/ The Commission held full evidentiary hearings on the first three applications for competitive certificates, those of Microtel, MCI and GTE Sprint. In the later applications by SBS and UTS, and in the applications by the over 40 WATS resellers, the Commission has relied in part on its experience in these earlier proceedings to grant applications without conducting a full hearing. This is an appropriate refinement in regulatory approach given a licensing statute which contemplates full and fair competition.

country over a network employing state-of-the-art technology. At the time of the hearing, MCI's network represented an investment of over $1.5 billion, with an additional $1 billion expansion planned by early 1984. As part of the MCI family of companies, which at the time of the hearing below had raised over $900 million in capital from outside sources, MCI has the financial resources necessary to provide intrastate service within Florida.

The evidence of MCI's technical, operational, and financial capability is uncontroverted, and provides competent, substantial evidence to support the Commission's finding, consistent with the first clause of Section 364.335(1)(a):

> 3. That MCI appears to be technically and financially capable of providing intrastate long distance telephone communications service within the State of Florida.
>
> (A.B. 49)

B. ". . . THE TERRITORY AND FACILITIES INVOLVED . . . ." § 364.335(1)(a), FLA. STAT. (1983).

The Commission's order made specific findings as to the initial territory proposed to be served by MCI and the facilities to be used in providing such service.

> Regarding its interexchange common carriage, MCI proposes to serve initially Miami, Ft. Lauderdale, Orlando,

Jacksonville, Pensacola, Clearwater, St. Petersburg, and Tampa through its leased or owned terrestrial and satellite facilities presently used to provide interstate telephone service to its current Florida interstate customers. The facilities will be augmented by the investment of approximately $18 million in Fiscal Year 1984 for additional construction of its network.

(AB. 45)

This finding was supported by detailed testimony as to MCI's existing and proposed facilities in Florida. (Tr. 86-115) In addition, the Commission demonstrated its intention to continue to monitor the territory served and facilities used by MCI, by requiring MCI to make subsequent informational filings when it adds service locations, and to provide quarterly reports of construction progress to the Commission. (AB. 46, 50)

C. ". . . THE EXISTENCE OF SERVICE FROM OTHER SOURCES WITHIN GEOGRAPHICAL PROXIMITY TO THE TERRITORY APPLIED FOR . . . ." § 364.335(1)(a), FLA. STAT. (1983).

The record reflects the Commission's knowledge that basic long distance telephone service is available throughout the State of Florida from the existing local telephone companies. (Tr. 41) The record also shows that Microtel had previously been granted a certificate to provide service throughout Florida; that many of its initial service locations were the same as MCI's; and that construction of its facilities had not yet commenced at the time of the hearing. (Exs. 6, 9)

The Commission's inquiry did not stop there, however. The Commission also heard expert testimony that while the facilities to be provided by MCI would partially duplicate the facilities that Microtel is authorized to provide, such duplication would not be wasteful in an economic sense. (Tr. 249-252; 256-258) Instead, the market for intercity communications, which is neither a natural nor statutory monopoly, should be able to support further competitive carriers. In this situation, the Commission properly found that Microtel was not entitled to be protected from competition, and that:

> [t]o delay entry of qualified intrastate interexchange carriers would serve to deprive the people in this State of a competitive service.
>
> (AB. 48)

D. ". . . IN THE PUBLIC INTEREST . . . ." § 364.335(4), FLA. STAT. (1983).

In its prior order granting a certificate to Microtel, the Commission recognized that the procompetitive 1982 amendments to Chapter 364 made the impact of a new applicant on competition an additional area of inquiry relevant to its public interest determination. (AB. 33-34) As indicated in the Statement of Facts, the record shows that grant of a certificate to MCI will promote further competition in the

provision of intrastate long distance telephone service. Uncontroverted expert testimony demonstrated that increased competition would bring a variety of benefits to Florida telephone users. These benefits include the consumer's ability to choose from among a number of long distance providers, increased efficiency and technological innovation, lower cost service, and innovation in meeting customer demand for new types of service.

In summary, after making detailed inquiry into each of the areas specified in Section 364.335(1), as well as into the overall impact that increased competition would have on consumers in the State of Florida, the Commission made the ultimate finding of fact required by Sections 364.33 and 364.335(4):

> 1) That it is in the public interest to grant MCI authority to provide intrastate long-distance telecommunications service within the State of Florida. . . .
>
> (AB. 48)

That finding is fully supported by the record.

II. THE COMMISSION WAS NOT REQUIRED TO CONSIDER THE FACTORS LISTED IN SECTION 364.337(2) IN DETERMINING WHETHER THE BASIC GRANT OF A CERTIFICATE OF AUTHORITY TO MCI IS IN THE PUBLIC INTEREST.

A. THE COMMISSION CORRECTLY CONSTRUED SECTION 364.337(2) TO APPLY ONLY TO THE DETERMINATION OF WHAT REGULATORY REQUIREMENTS TO APPLY TO A COMPETITIVE CARRIER AFTER IT HAS BEEN CERTIFIED.

Microtel contends that the Commission erred in granting a certificate to MCI by failing to make specific findings on the factors enumerated in subsections (a) through (d) of Section 364.337(2), Florida Statutes (1983). (Microtel's Brief, Argument I) This contention ignores the plain language of the statute.

Section 364.337(2) does not purport to establish guidelines for determining whether or not a certificate of authority should be granted to a competitive telephone company. Instead, as indicated in the preamble to that section, its guidelines apply only <u>after</u> the initial grant of authority has been decided, when the Commission is engaged in the subsidiary consideration of whether the new competitive certificate holder should be regulated differently than are telephone companies generally.

> **364.337 Duplicative or competitive services.--**
>
> (1) When the commission grants a certificate to a telephone company for any type of service that is in competition with or that duplicates the services provided by another telephone company, the commission, if it finds that such

> action is consistent with the public interest, may:
>
> (a) Prescribe different requirements for the company than are otherwise prescribed for telephone companies; or
>
> (b) Exempt the company from some or all of the requirements of this chapter.
>
> (2) <u>In determining whether the actions authorized by subsection (1) are consistent with the public interest</u>, the commission shall consider:
>
> (a) The number of firms providing the service;
>
> (b) The geographic availability of the service from other firms;
>
> (c) The quality of service available from alternative suppliers;
>
> (d) The effect on telephone service rates charged to customers of other companies; and
>
> (e) Any other factors that the commission considers relevant to the public interest.
>
> (Emphasis added)

This straightforward construction of the statute was specifically adopted by the Commission in its Order Denying Reconsideration [Order No. 12824], in which the Commission stated:

> Our reading of that subsection [§ 364.337(2)] is that we are to consider those items in determining whether to prescribe different requirements for the

> competing company or exempt it from some or all of the requirements of Chapter 364. In determining the basic grant of authority, we are governed by Section 364.335, Florida Statutes.
>
> (AB. 54)

This specific interpretation by the Commission of a regulatory statute it is responsible for administering is entitled to deference by this Court. Ft. Pierce Utilities Authority v. Florida Public Service Commission, 388 So.2d 1031, 1035 (Fla. 1980).

B. THE COMMISSION'S INTERPRETATION OF SECTION 364.337(2) DOES NOT RENDER THE CERTIFICATION PROVISIONS OF CHAPTER 364 UNCONSTITUTIONAL FOR LACK OF ADEQUATE STANDARDS.

Microtel contends that despite the plain language of Section 364.337(2), the Court must nevertheless construe that section to govern the Commission's decision on the basic grant of authority in order to avoid an unconstitutional delegation of legislative authority.

Microtel's strained construction is not necessary to preserve the constitutionality of the certification scheme. The certification provisions of Section 364.33 and 364.335 themselves contain adequate legislative guidelines to govern the Commission in its consideration of certification applications. In particular, Section 364.335(1) identifies specific areas of inquiry that the Commission should explore in

making its public interest determination. In this respect, the provisions of Section 364.335 are similar to the provisions of Section 253.124, which have been held to provide adequate criteria to guide the exercise of administrative discretion to grant or deny permit applications. Albrecht v. Department of Environmental Regulation, 353 So.2d 883 (Fla. 1st DCA 1978), cert. den. 359 So.2d 1210 (1978).

In Albrecht the First District Court of Appeal considered the delegation to DER of authority to base permit decisions on whether the grant of a permit would interfere with the conservation of wildlife or natural resources "to such an extent as to be contrary to the public interest." This delegation was held to be constitutional because the statute contained criteria directing the agency's attention to specific areas of inquiry relevant to its public interest determination. 353 So.2d at 886. Similar criteria for the exercise of the Commission's discretion in this case are present in Section 364.335(1), wherein the Commission's attention is directed to specific areas of inquiry that should be considered in making its public interest determination; namely, the applicant's ability to provide service, the territory and facilities involved, and the existence of service from other sources. As discussed in Part I above, the Commission made inquiries and findings in each of these areas in reaching its ultimate conclusion that the grant of authority to MCI was

in the public interest.

This Court's recent decision upholding the constitutionality of Section 768.54(c)(3), Florida Statutes, relating to the Florida Patients Compensation Fund, likewise supports the conclusion that the "public interest" standard in Section 364.335 is constitutionally sufficient. Department of Insurance v. Southwest Volusia Hospital District, 438 So.2d 815 (Fla. 1983) cert. den 104 S.Ct. 1673 (1984). In that case, the phrase "actuarily sound basis" was held to sufficiently limit the Fund's discretion in setting base fees for certain health organizations to avoid an unlawful delegation of legislative power. In so holding, the Court considered several factors: that Florida courts had previously found concepts of actuarial soundness to be a meaningful standard; that the Florida Constitution employed the comparable standard of "sound actuarial basis"; and that similar principles are also incorporated in other statutes. 438 So.2d at 819.

The "public interest" standard at issue in this case withstands the same type of scrutiny. A "public interest" standard has been previously upheld by Florida courts (see the discussion of Albrecht v. DER, supra); is employed in the Florida Constitution, Article X, § 11; and is employed in other statutes, e.g., Sections 364.345(2)(a), 367.051, 367.071(1), Florida Statutes (1983).

This case differs from the situation presented to the

Court in Delta Truck Brokers, Inc. v. King, 142 So.2d 273 (Fla. 1962), relied upon by Appellant in its brief. The statute overturned in Delta Truck Brokers contained absolutely no legislative guidance as to the areas to be inquired into by the Commission in making the determination of public interest. In contrast, the statute here focuses the Commission's public interest inquiry. Moreover, the Court in Delta Truck Brokers was careful to limit its holding to the specific statutes then under consideration, and to point out that its ruling "should not be construed as passing on the validity of the [public interest] language of any other section of the statutes which if employed in a different context might not be subject to the same constitutional infirmities that condemned the language in the instant case." 142 So.2d at 276.

III. CHAPTER 364 DOES NOT PROTECT MICROTEL FROM COMPETITION PENDING COMPLETION OF ITS OWN NETWORK.

As outlined above under "Regulatory Background," the 1982 amendments to Chapter 364 clearly give the Commission authority to authorize multiple carriers to provide interexchange telecommunications service in a single geographic area. Thus the mere existence of duplication or competition is no longer grounds to deny a certificate of public convenience and necessity to an applicant who is qualified to provide service and whose entry into the market provides benefits to the public.

Microtel contends in Argument III of its Brief that Section 364.345, Florida Statutes (1983), (which was not amended by the 1982 Legislature) implicitly entitles it to a reasonable opportunity to commence operations before any other carrier is authorized to provide competitive intrastate long distance services. An examination of Section 364.345 shows absolutely no support for Microtel's position. Section 364.345(1) provides in pertinent part:

> (1) Each telephone company shall provide adequate and efficient service to the territory described in its certificate within a reasonable time as prescribed in the commission order. If the telephone company fails or refuses to do so, for whatever reason, the commission, in addition to other powers provided by law, may amend the certificate to delete the territory not served or not properly served, or it may revoke the certificate.

On its face, this section does three things: (i) it requires each telephone company to provide adequate and efficient service; (ii) it gives a newly authorized telephone company a reasonable time to commence providing such service; and (iii) it provides a mechanism for the Commission to enforce this duty to serve. It does not, however, contain any language even to suggest that a newly authorized telephone company has a right to be protected from competition during the "reasonable time" period in which it is commencing to provide services.

This Court's decision in Wetmore v. Bevis, 312 So.2d 722 (Fla. 1974), cited in Microtel's brief for a different propo-

sition, does not lead to a different result. The Wetmore case held that a newly organized radio common carrier was entitled to a reasonable time to commence providing service before a competitor could be licensed, where the licensing statute prohibited the Commission from licensing a competitive or duplicative carrier unless it first determined that existing service was inadequate. This case was thus decided under the same type of restrictive statutory framework which was abolished by the Legislature in 1982 for all telecommunications services other than local exchange service. It simply does not apply under the new statutory framework for telecommunications that no longer requires the Commission to find that existing service is inadequate as a prerequisite to granting additional certificates of authority.

CONCLUSION

The Commission properly construed and applied the provisions of Chapter 364 in granting a certificate of authority to MCI, and its decision is supported by competent, substantial evidence. Microtel's attempt to subvert the procompetitive provisions of Chapter 364 and prevent or delay the introduction of additional competition by asserting a strained construction of Section 364.337 should be rejected, and the Commission's orders should be affirmed.

Respectfully submitted this 31st day of August, 1984.

HOPPING BOYD GREEN & SAMS

By [signature]
Richard D. Melson
420 Lewis State Bank Building
P.O. Box 6526
Tallahassee, Florida 32314
(904) 222-7500

Attorneys for MCI
Telecommunications Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copy of the foregoing Answer Brief has been furnished by U.S. mail this 31st day of August, 1984, to the following:

James E. Wharton
Lucerne Plaza, Suite 300
100 W. Lucerne Circle
Orlando, FL 32801

William S. Bilenky
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301-8351

Hugh J. Turner
Smathers & Thompson
1301 Alfred I. DuPont Building
Miami, FL 33131

Kevin H. Cassidy, Esq.
Satellite Business Systems
8283 Greensboro Drive
McLean, VA 22102

Patrick K. Wiggins
Messer & Rhodes
P.O. Box 1876
Tallahassee, FL 32301

John K. Aurell,
Robert L. Hinkle
Holland & Knight
P.O. Drawer 810
Tallahassee, FL 32302

William B. Barfield
Southern Bell Telephone &
Telegraph
Room 680
666 N.W. 79th Avenue
Miami, FL 33126

James V. Carideo
General Telephone Company
P.O. Box 110, MC 7
Tampa, FL 33601

Ben E. Girtman
B. Kenneth Gatlin
Madigan, Parker, Gatlin,
Swedmark & Skelding
P.O. Box 669
Tallahassee, FL 32302

Richard D. Melson

Attorney