

BEFORE THE FLORIDA SUPREME COURT

MICROTEL, INC.,

Appellant,

vs.

Case No.: 64,801

CHAIRMAN GERALD GUNTER,
COMMISSIONER JOSEPH CRESSE,
COMMISSIONER JOHN MARKS III,
COMMISSIONER KATIE NICHOLS, and
COMMISSIONER SUSAN LEISNER, as and constituting
the FLORIDA PUBLIC SERVICE COMMISSION,

Appellees.

FILED

SID J. WHITE

MAY 18 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

Reply of Microtel, Inc., Appellant, to

Motion to Dismiss Filed by MCI Telecommunications Corporation

The Appellant, Microtel, Inc., files this its Response to the Motion to Dismiss the Appeal filed by MCI Telecommunications Corporation, here-in-after referred to as MCI, and would show unto the Court as follows:

1. MCI has not intervened in this appellate proceeding before the Florida Supreme Court until the filing of this Motion to Dismiss and it would therefore seem inappropriate for MCI to file a Motion to Dismiss without having been made a party to the appeal. However, MCI, being an applicant before the Commission

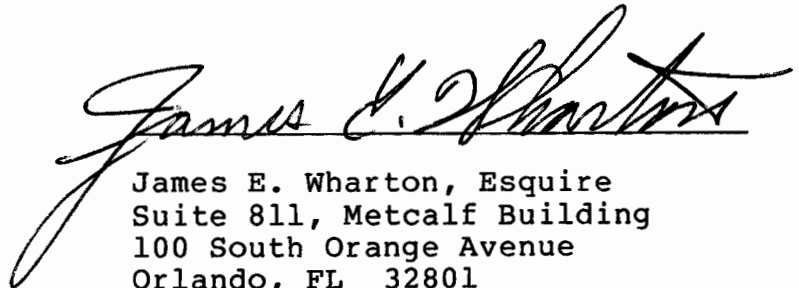
in the proceeding below, may be automatically made a party appellee to any appeal taken from the proceeding where MCI was granted a certificate under Chapter 364.

2. The Motion to Dismiss filed by MCI simply reiterates the same arguments made by the appellee, Florida Public Service Commission (FPSC), in its Motion to Dismiss dated April 20, 1984. Microtel has simultaneously filed a Reply to the Motion to Dismiss filed by the Commission and will not reiterate its response herein.

3. Both the Commission's and MCI's Motion to Dismiss cite various decisions of the District Court of Appeals and of this Court that pertain to other statutes and other agencies, but not one decision has been cited that refers to the FPSC acting upon a matter involving telephone service. The statute involved in this proceeding was substantially amended in 1982 and there have been no decisions under said statute pertaining to the right of a participant in such a proceeding before the Commission to exercise the right of appeal to this Court. Microtel has referred the Court to the relevant provisions of the Florida constitution, the Florida Appellate Rules, and the appropriate Florida Statute that directly address the proposition that appeals concerning matters involving telephone services are directly and exclusively in the Florida Supreme Court. There is a substantial issue of law presented by this appeal which

involved the constitutionality of the interpretation that the FPSC has made on section 364.335(4) and 364.337, FL Stats. 1982. There is no other forum or procedure available to a party such as Microtel to challenge the constitutionality of the interpretation made by the FPSC in reaching the conclusions it reached in the final orders under appeal in this cause.

Respectfully submitted,

A handwritten signature in cursive script, reading "James E. Wharton". The signature is written in black ink and is positioned above the typed name and address.

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been furnished to the parties stated below on this 2th day of May, 1984:

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