BEFORE THE FLORIDA SUPREME COURT

Microtel, Inc.,

Appellant,

vs. Case No.: 64,801

Florida Public Service Commission,

Appellee.

Microtel, Inc.,

Appellant,

vs. Case No.: 65,307

Florida Public Service Commission,

Appellee.

Microtel, Inc.,

Appellant,

vs. Case No.: 65,351

Florida Public Service Commission,

Appellee.

Microtel, Inc.,

Appellant,

vs. Case No.: 65,449

Florida Public Service Commission,

Appellee.

Supplemental Brief of Appellant, Microtel, Inc.

Appeals from Orders of Florida Public Service Commission Granting to MCI Telecommunications Corporation, Satellite Business Systems, GTE Sprint Corporation, and United States Transmission Systems certificates of public convenience and necessity to provide telecommunications services for-hire intrastate between points in Florida.

Due Date: July 25, 1984

Dated: July 24, 1984

Submitted by:

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Authorities Cited

Florida Statutes

Cases

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The above four appeals have been consolidated for briefing purposes by order of this Court dated June 18, 1984. The first appeal that was filed pertains to MCI Telecommunications Corporation proceeding before the Appellee Commission and appears as Case No. 64,801 in this Court. The Appellant timely filed its initial brief in that appeal April 4, 1984.

Only minor supplemental matters will be discussed in this brief as Appellant relies upon the legal arguments presented in its initial brief as supplemented by this brief since all four cases before the Florida Public Service Commission (FPSC) concern common essential issues of law.

For convenience of the Court, there is set forth in the Appendix to this supplemental brief copies of the orders of the FPSC entered in the application of GTE Sprint Corporation (GTE), Satellite Business Systems (SBS), and United Transmission Systems (USTS). The original Microtel order and the orders entered in the MCI proceeding before the Commission have previously been attached in the Appendix to the main brief of Appellant.

Statement of the Case

As indicated previously, Appellant filed its main brief in this cause on April 4, 1984 and served same upon the Appellee Commission. In that brief, detailed legal argument is set forth as to how and why the construction placed upon Chapter 364, Florida Statutes, 1982 by the Appellee Commission is unconstitutional and unwarranted under the decisions of this Court and constitutional law. In this supplemental brief, Appellant would further point out that in the application of SBS, Order Nos. 12912 and 12912-A, the PSC, without any hearing granted the certificate over the objections of Microtel and again indicated that they were under no guidelines or constraints whatsoever in granting such a certificate, but that to the contrary, the guidelines set forth in Section 364.337(2) only applied in determining what different requirements and exemptions from Chapter 364 are consistent with the public interest.

In the application of GTE Sprint, there was a hearing held, but only company witnesses appeared, no members of the public appeared, nor did any other telephone companies present testimony except for Microtel and that application was granted from the bench and subsequently embodied in Order No. 12913 and reaffirmed in Order No. 13237. Here again, the Commission states that it has no statutory guidelines that it must follow in granting or denying certificates of public convenience and necessity to an applicant for same in telecommunications in Florida.

In the application of USTS, by Order No. 13015, the Commission granted the application without a hearing over objections of Microtel and reaffirmed that holding by Order No. 13284.

Copies of these orders appear in the Appendix on Pages 7 through 36.

It was the position of Appellant in its main brief and it is still the position of Appellant that the FPSC, being an administrative agency, only has such powers as are properly and appropriately delegated to it by the Florida Legislature. In construing Section 364.337(1) as not requiring the PSC to follow any guidelines in determining public interest, such is an improper and unconstitutional construction of said statute. In fact, a reading of Section 364.337 states that the PSC can grant a certificate for a type of service that is in competition or that duplicates the services provided by another telephone company <u>if it finds that such action is consistent with the public interest</u> and that it may also prescribe different requirements for the company than are prescribed for other telephone companies or exempt the company from some or all the requirements of the chapter. Then 364.337(2) states: "in determining whether the <u>actions</u> authorized by Subsection (1) <u>are consistent with the public interest, the PSC **shall** consider:</u>" then there are five criteria listed i.e. the number of firms providing the service; the geographic availability of the service from other firms; the quality of

service available from alternative suppliers; the effect on telephone service rates charged to customers of other companies; and any other factors that the Commission considers relevant to the public interest.

To construe the foregoing statute, in the manner which the Florida Commission has done, violates the total principles of delegation of powers and constitutional safeguards of parties litigants before administrative agencies. The PSC is telling this Court that there is absolutely no criteria whatsoever that it must follow in determining whether or not public convenience and necessity require the grant of a certificate to a particular applicant before it. Moreover, the PSC is telling this Court that it need not take or produce testimony from any members of the public or other telephone companies in order to arrive at the conclusions under the statute. A clear unbiased reading of this statute in Paragraphs (1) and (2) clearly reflects that the Legislature has delineated guidelines that the agency must follow in taking action in deciding whether or not to grant duplicative telephone company certificates. To construe it otherwise is to defeat the statute, whereas to to construe it as is contended by Appellant preserves the validity of the statute and is consistent with proper legislative instruction.

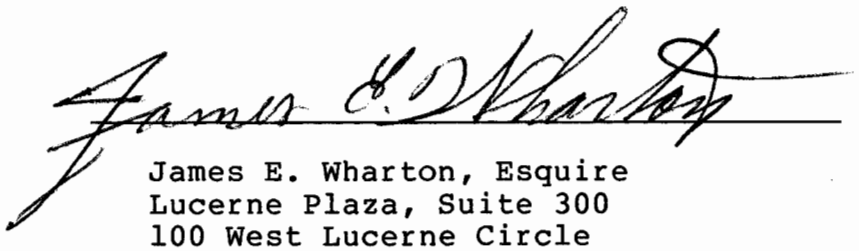
This Court in Florida State Board of Architecture vs. Wasserman, FL 377,So 2nd 653 (1979), was faced with a similar choice of action and this Court stated clearly as follows:

"When the constitutionality of a statute is questioned and it is reasonably suspectible of two interpretations by one of which would be unconstitutional and by the other valid, a court must adopt the interpretation that will render the statute valid. State vs. Gail Distributors, 349 So2nd 150 (FL 1977); Levine vs. Hamilton, 66 So2nd 266 (FL 1953)..."

C O N C L U S I O N

The Appellee Commission has misconstrued Chapter 364 in concluding that it has been given no standards under which it must make findings in granting a certificate of public convenience and necessity. Such interpretation violates the consistent holdings of this Court concerning adherance to the practice of disapproving the unlawful delegation of legislative authority. To construe the statute as Appellant contends before this Court would continue to render the statute valid. Appellant accordingly respectfully requests this Court to reverse the Commission and remand all of these causes that are before the Court for further proceedings consistent with the judgement of this Court.

Respectfully submitted,



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Certificate of Service

I hereby certify that a true and correct copy of the Supplemental Brief of Microtel, Inc. and Appendix has been forwarded to the following parties of record on this 24th day of July, 1984:

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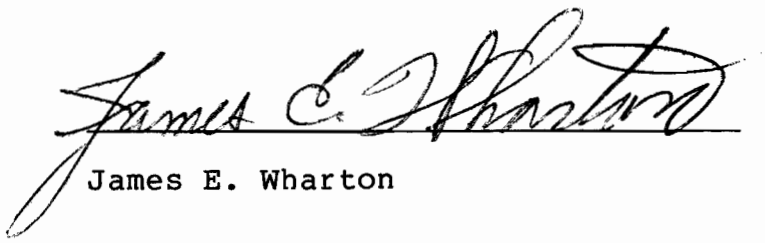

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