IN THE SUPREME COURT OF FLORIDA

MICROTEL, INC., et al., Appellants, v. FLORIDA PUBLIC SERVICE COMMISSION, et al. Appellees.	CONSOLIDATED CASES Case No. 66,125
GTE SPRINT COMMUNICATIONS CORP., et al., Appellants, v. FLORIDA PUBLIC SERVICE COMMISSION, et al. Appellees.	Case No. 66,403
MCI TELECOMMUNICATIONS CORP., et al., Appellants, v. FLORIDA PUBLIC SERVICE COMMISSION, et al. Appellees.	Case No. 66,404

On Appeal From The Florida Public Service Commission

ANSWER BRIEF OF APPELLEE GENERAL TELEPHONE COMPANY OF FLORIDA

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STATEMENT OF THE CASE AND FACTS

General Telephone Company of Florida (hereinafter referred to as "GTFL") has reviewed the various "Statement of the Case and Facts" sections contained in the respective briefs of the Appellants.[1] Basically, GTFL has no objection to the specific facts that were mentioned by the parties. However, GTFL does have a serious problem with the manner in which those facts were presented.

Each Appellant (interexchange carrier) states that it cannot transport toll traffic over its own facilities within an equal access exchange area (EAEA). This is true. Commission Order No. 13750 established toll transmission monopolies for all local exchange carriers. What the interexchange carriers soft-pedal or fail to mention entirely is the fact that they are free to provide service within an EAEA by reselling the facilities of the local exchange carrier. In particular, Order No. 13750 issued on October 5, 1984, states as follows:

> "The LECs shall generally have toll transmission monopolies in EAEAs, with EAEA toll competition limited to WATS and MTS resale." Order No. 13750, page 5.

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[1] GTFL will refer to Appellants as follows: AT&T-C = AT&T Communications of the Southern States, Inc.; Sprint = GTE Sprint Communications Corporation; MCI = MCI Telecommunications Corporation; Microtel = Microtel, Inc.

The foregoing finding of the Commission is basically ignored in the briefs of the interexchange carriers. A reading of Microtel's brief would leave the impression that there is no competition at all within an EAEA. For example:

> "Thereafter, various petitions for reconsiderations and modifications were filed by several parties, including Microtel, before the Commission and on December 11, 1984, the Commission entered Order No. 13912 (App. B) denying the petitions for reconsideration and clarification and affirmed its determination of the establishment of EAEAs prohibiting competition within such EAEAs by interexchange carriers and among other things, granted to General Telephone Company of Florida a complete monopoly within the counties of Hillsborough, Polk, Sarasota and Pinellas prohibiting interexchange competition between exchanges within said territories." (Microtel Brief, p. 5)

MCI and AT&T-C relegate the Commission's decision to allow competition within EAEAs on a resale basis to mere footnotes in their briefs (MCI Brief, p. 7; AT&T-C Brief, p. 4).

The Court should be aware that competition to the customer does exist within the EAEAs created by the Commission. The Court should further be aware that the interexchange carriers' briefs have been carefully structured to state that because they cannot build facilities within an EAEA, a monopoly is created and competition does not exist. No mention is made of whether competition exists from the eyes of the consumer. In fact, an interexchange carrier can carry all the traffic it wants within an EAEA on the local exchange carrier's facilities on a resold basis. Thus, when Microtel states on the cover page of its

brief that "...and more specifically, would prohibit an interexchange carrier such as Microtel, Inc. from handling any interexchange traffic between any territory served by General Telephone Company of Florida," such statement is totally misleading.

Finally, GTFL takes exception to the interexchange carriers' "Statement of the Case and Facts" in regard to their elimination of the Commission's reasons for establishing EAEAs. In Order No. 12765 issued on December 9, 1983, the Commission presented its plan for establishing intrastate access charges in Florida. The Commission's mission was to protect the ratepaying public:

> "From the outside, the primary goal in this proceeding has been to set access charges that would adequately compensate the LECs for the use of their local facilities for originating and terminating traffic and to encourage competition while maintaining universal service." (Order No. 13750, p. 2)

In the pursuit of the foregoing goals which essentially translate to viewing competition from the ratepayer or consumer perspective, the Commission held further hearings regarding EAEAs. The whole purpose of EAEAs and the corresponding interim toll transmission monopoly is to allow competition into the market on favorable terms to the ratepayer. The purpose of allowing competition is not for the sole benefit of the interexchange carrier. Competition exists for the benefit of the consumer. The Commission's plan of establishing EAEAs was to introduce competition into the interexchange market in a manner which balances both the interests of the interexchange carrier, the LEC and the consumer.

Summary of Argument

GTFL submits two basic arguments in response to the briefs of the Appellants for the Court's consideration. First, GTFL demonstrates that contrary to the contentions of the Appellants there is indeed competition allowed within the EAEAs established by the Commission. Thus, GTFL takes exception to Appellant's posturing that a toll monopoly has been created by the Commission's order under review. Second, GTFL argues that the creation of EAEAs and toll transmission requirements is permissible under pertinent statutes which authorize the Commission to implement competition in such a manner as to satisfy the public interest.

ARGUMENT

I. THE 1982 AMENDMENT TO SECTION 364.335(4), FLORIDA STATUTES DOES NOT PRECLUDE THE ESTABLISHMENT OF TOLL MONOPOLY AREAS WITHIN AN EQUAL ACCESS EXCHANGE AREA.

A. Competition is allowed within the EAEAs created by the Florida Public Service Commission

Prior to 1982, Florida law protected the local exchange carrier from competition in either the local or toll markets unless certain requirements were met. In particular, Section 364.335(4) provided in pertinent part as follows:

> "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 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."

Thus, the Commission could not grant a certificate prior to 1982 unless a finding was made that existing facilities were inadequate and the certificate of the existing carrier was amended. These requirements resulted in the substitution of one carrier for another. In 1982, the Legislature adopted Chapter 82-51, Laws of Florida, which amended Section 364.335(4) as follows:

> "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."

There can be no doubt that the above statutory amendment was a clear indication by the Legislature that there should be competition in the toll end of the telecommunications business in the State of Florida. In fact, this honorable Court recently found that the Legislature made the "fundamental and primary policy decision" that there would be competition in the long distance market in Microtel, Inc. v. Florida Public Service Commission, ____ So.2d _____10 F.L.W. 141 (Fla. Feb. 28, 1985) Case Nos. 64,801; 65,307; 65,351; and 65,449.

The fundamental difference between the parties herein is whether the Commission's decision allows competition. In order to decide this issue, the Court has to resolve why the statutory change was made and for whom it was made. The interexchange carriers seem to be arguing that the Legislature enacted the statutory amendment for the sole benefit of interexchange carriers. All of their arguments are based solely on the transmission arrangements ordered by the Commission with little or no reference to the consumers' views. GTFL submits that limiting the discussion to only interexchange carriers and the

corresponding transmission arrangements with local exchange carriers results in an erroneous interpretation of whether the Commission allowed competition in its EAEA decision. The statutory change made to Section 364.335 was made for the benefit of the consumer. Thus, any statutory interpretation must include the consumer.

From the eyes of the consumer there is indeed toll competition within an EAEA. Previous to the amendment of the foregoing statute, a customer could only receive toll service from his/her local exchange company. Thus, previous to 1982, a customer in Tampa desiring to make a long distance telephone call within GTFL's certificated territory (LATA or EAEA) would have no option except to place that call through GTFL. The customer had no other carrier to provide the service. Subsequent to the statute's amendment and the entry of competitive carriers into the market, that same customer can now make the same long distance telephone call through either GTFL, AT&T-C, MCI, Sprint, Microtel or Satellite Business Systems, not to mention the virtual multitude of resellers who operate in GTFL's service territory. Indeed, those calls would be physically hauled over GTFL transmission facilities. However, the customer making the long distance call would not contact GTFL nor would most of the customers have any idea that GTFL transmission facilities were involved. The price set for the call would be established by the interexchange carrier and the cost could be completely different than that charged by GTFL for the same call. The bill for that call would be rendered in the name of the particular interexchange carrier. In fact, an MCI customer who used

MCI for all his/her long distance needs would never receive a bill from GTFL except for local service. None of the foregoing could have occurred before competition was allowed. Thus, in the eyes of the consumer, there is toll competition within the EAEA's created by the Commission.

B. The Legislature gave the Florida Public Service Commission the Discretion to Implement Competition in a Manner Consistent with the Public Interest.

The resolution of this appeal depends on this Court's interpretation of why Section 364.335(4), Florida Statutes was amended and the discretion given to the Florida Public Service Commission to implement competition into the toll market.

Section 364.335(1) provides that an applicant for a certificate must show that it has the technical and financial ability to provide the service; the territory in which the applicant will operate; the facilities that will be provided; and a detailed statement as to the existence of service from other sources within geographical proximity to the territory applied for. Section 364.335(4) provides that the Commission may grant a certificate "...in whole or in part or with modifications in the public interest."

GTFL submits that the foregoing statute demonstrates that the Legislature was concerned about competition and the effect it would have upon the public interest. At a minimum, the Legislature gave the Commission authority to control the entry and development of competition. The statute specifically provides the certificate can be granted in whole or in part or with modifications. This power to

change the authority requested during the granting process is only subject to the condition or standard that such action be in the public interest.

In Microtel, Inc. v. Florida Public Service Commission, cited supra, this Court found that the Sections 364.335 and 364.337 work in concert with each other.

> "As the Commission urges, we find that sections 364.335 and 364.337, taken together, provide for a two-step certification process. The first step, governed by section 364.335, requires the Commission to make an initial decision whether to issue a certificate, guided by the discretionary proviso that certification be in the public interest. Only after the Commission has decided to certify do the provisions of section 364.337 come into play. The innumerated critiera of section 364.337(2) are to be considered in determining what special requirements and exemptions from regulation should govern the certified company." 10 F.L.W. at 141 (Emphasis added).

Section 364.337(2) provides that the Commission can consider the number of firms providing the service; the geographic availability of the service from the other firms; and "...the effect on telephone service rates charged to customers of other companies" and any other factors that the Commission deems relevant to the public interest. The foregoing statutory provisions are ample authority for the Commission's decision to establish a toll transmission monopoly within an EAEA. The Commission to date has granted all comers a certificate to provide toll services. However, in exercising its authority the Commission has limited the physical manner in which the service is offered. Such is obviously within the Commission's statutory authority as set forth in

Section 364.337(2)(d) in order to reduce the effect on telephone service rates charged to customers of other telephone companies.

To argue otherwise would necessitate the assumption that the Legislature enacted the foregoing statute for the sole benefit of the interexchange carriers without any regard for the consuming public of this jurisdiction. This Court in the Microtel case found that Section 364.345(1) was intended to protect consumers and not telephone companies. GTFL submits that the same result should be reached herein. The Court should hold that the statutes permit the Commission to exercise its discretion in granting authority and defer to the Commission's determination that the EAEAs currently implemented are in the public interest.[2]

II. REGULATORY RESPONSES OF OTHER COMMISSIONS REGARDING INTRALATA COMPETITION BY INTEREXCHANGE CARRIERS

The issue which is the subject matter of this appeal is not limited to the state of Florida. As a result of the Department of Justice antitrust suit against AT&T, the divestiture of the Bell System resulted. One effect of divestiture was to limit that aspect of the

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[2] In granting interexchange certificates the Commission specifically put the interexchange carriers on notice that such authority was subject to amendment as a result of the access charge docket. See: Re: Application of Microtel, Inc., 82 F.P.S.C. 8:201, 211 (1982); Re: Petition of MCI Telecommunications Corporation, 83 F.P.S.C. 7:415, 420 (1983); Re: Application of AT&T Communications of the Southern States, Inc., 83 F.P.S.C. 12.209, 210 (1983); Re: Application of Satellite Business Systems, 84 F.P.S.C. 1:262, 266 (1984); Re: Application of GTE Sprint Communications Corp., 84 F.P.S.C. T:270, 275 (1984); and Re: Application of United States Transmission Systems, 84 F.P.S.C. 2:164, 168 (1984).

toll business in which the local exchange company portion of the Bell System could engage. The District Court for the District of Columbia approved a decree which only allowed the remaining Bell local exchange companies to provide toll service within a LATA. United States v. American Telephone & Telegraph Company, 552 F.Supp. 131 (DDC 1982), affirmed sub. nom. Maryland v. United States, 103 S.Ct. 1240 (1983).

The LATAs approved by the Court in the antitrust suit are very similar in physical scope to the EAEAs created by the Florida Commission. In particular, other jurisdictions throughout the United States have been faced with the question of whether interexchange carrier competition with the local exchange carriers should be allowed within the LATA.

GTFL submits for the Court's consideration and information the following summary of where the 50 states stand in regard to intraLATA competition. At present, 41 states either prohibit intraLATA competition or are in the process of studying the question. Of particular interest is the fact that Florida is listed as allowing intraLATA competition contrary to the positions of the interexchange carriers in this proceeding.

COMPETITION DECISIONS[3]

State	InterLATA	IntraLATA
Alabama	yes	no
Alaska	n/a	pending
Arizona	yes	no

[3] The foregoing chart was obtained from the Report on AT&T, March 18, 1985 (TeleCom Publishing Group, 1300 North 17 Street, Arlington, Virginia 22209). "Pending" means the issue is under consideration. "No Action" means no applications have been received from an interexchange carrier.

COMPETITION DECISIONS (Cont.)

State	InterLATA	IntraLATA
Arkansas	pending	pending
California	yes	no
Colorado	yes	no
Connecticut	n/a	no
Delaware	n/a	pending
Florida	yes	yes
Georgia	yes	yes
Hawaii	n/a	no action
Idaho	no action	no action
Illinois	yes	no
Indiana	yes	no
Iowa	yes	yes
Kansas	yes	pending
Kentucky	yes	no
Louisiana	yes	no
Maine	n/a	no
Maryland	yes	yes
Massachusetts	yes	pending
Michigan	yes	no
Minnesota	yes	pending
Mississippi	pending	pending
Missouri	yes	pending
Montana	no action	no action
Nebraska	pending	pending
Nevada	yes	pending
New Hampshire	n/a	no action
New Jersey	yes	no
New Mexico	n/a	no action
New York	yes	yes
North Carolina	yes	no
North Dakota	no action	no
Ohio	yes	yes
Oklahoma	yes	no
Oregon	illegal	illegal
Pennsylvania	yes	pending
Rhode Island	n/a	no action
South Carolina	yes	yes
South Dakota	n/a	no
Tennessee	yes	no
Texas	yes	yes
Utah	n/a	pending
Vermont	n/a	pending
Virginia	yes	no
Washington	yes	yes
West Virginia	yes	no
Wisconsin	yes	no
Wyoming	n/a	pending

GTFL submits the above chart to show the reasonableness of the Florida Commission's order in regard to EAEAs and that such action is not an isolated event. As the above chart illustrates, the Florida Public Service Commission allows competition on an intraLATA or intraEAEA basis whereas the overwhelming majority of other states do not. Thus, Florida is in the forefront of the intraLATA competition issue and is being as progressive as possible in allowing competition while protecting the public interest.

Conclusion

In 1982 the Florida Legislature determined that competition should exist in the intrastate long distance market. In making the necessary statutory amendments and additions to permit such a change, the Legislature gave the Florida Public Service Commission the necessary tools to implement competition in such a manner as to be in the public interest. In exercising its authority under the new statutes the Commission permitted statewide competition by all certificated interexchange carriers, but limited the physical manner in which these new competitive services were provided. This interim restriction on the manner in which the service was provided is permitted under the Commission's statutory authority. The Court should affirm the Commission's order.

Respectfully submitted this the 15th day of April, 1985.

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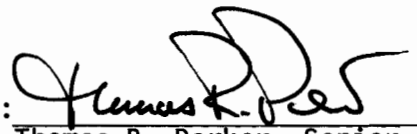
By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Answer Brief of Appellee General Telephone Company of Florida in Case Nos. 66,125, 66,403 and 66,404, has been served on the following by depositing the same in the United States mail, postage prepaid, this 15th day of April, 1985:

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