IN THE SUPREME COURT OF FLORIDA

US SPRINT COMMUNICATIONS COMPANY, Appellant, vs. JOHN R. MARKS, et al., Appellees.	)	CONSOLIDATED CASES Case No. 69,169
MICROTEL, INC., et al., Appellants, vs. JOHN R. MARKS, et al., Appellees.	)	 Case No. 69,159

INITIAL BRIEF OF APPELLANT AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.

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Statement of Facts and Case

This is the second time that an order of the Florida Public Service Commission ("PSC") relating to the establishment of toll monopoly areas has been appealed to this Court. On the first occasion, the Court upheld the establishment of toll monopoly areas until September 1, 1986, as an interim measure during the transition to full competition. The PSC now has made the toll monopoly areas permanent, notwithstanding its earlier representations to the contrary. AT&T Communications of the Southern States, Inc. ("AT&T") joins this appeal of the PSC's order establishing permanent toll monopoly areas.

The facts here are essentially the same as those summarized by this Court in the first appeal, except that the PSC has now retained the toll monopoly areas permanently.[1] Likewise, the issue now presented for resolution is: "Whether the PSC has authority to create permanent toll monopoly areas that protect a favored set of carriers from competition." Appellants were invited to return to the Court if the toll monopoly areas were retained beyond September 1, 1986, and if the PSC changed its position with respect to its authority to make the toll monopoly areas permanent. This invitation was extended on the basis that the Court viewed the PSC's toll monopoly areas to be interim and transitional in nature, and that the PSC was not claiming it had authority to maintain permanent toll monopoly areas.[2]

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1 Fla. PSC Docket No. 820537-TP, Order No. 16343.

2 Microtel, Inc. v. Fla. PSC, 483 So.2d 415, 419 (Fla. 1986).

The focal point of this controversy is the amendment to Section 364.335(4), Florida Statutes, Chapter 82-51, Laws of Florida, and the PSC's authority thereunder.[3] Prior to 1982, all local and toll services within the State of Florida were provided by the local telephone companies, exclusively. In 1982, the Legislature, at the prompting of the PSC and a number of incipient toll carriers -- most notably Microtel, Inc. -- amended Section 364.335(4) to remove the prohibition against any competition with the local telephone companies, so as to permit the introduction of toll competition within the State of Florida. Thereafter, only local exchange services were to be free of competition. The significance of this change is readily apparent. Local exchange service is the provision of calling between subscribers within a limited geographical area (e.g. a city or local calling area) for which no distance sensitive charges are imposed. Toll service, on the other hand, is the provision of calling between those areas that are defined as

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[3] Section 364.335, Florida Statutes, as amended by Chapter 82-51, §3, Laws of Florida, now reads as follows:

> "(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 duplicate the local exchange services provided by any other telephone company, unless it first amends the certificate of such other telephone company to remove the basis for competition or duplication of services."

local exchange areas and for which a distance sensitive (or toll) charge is generally imposed on the calling party. Thus, permitting competition for toll services means that a customer can choose one of several certificated carrier to handle its toll calls, while the local telephone companies remain the exclusive provider of local services.

In recognition of the functional separation of local and toll services, and in order to implement on the intrastate level that which was already occurring in the interstate jurisdiction, the Legislature made "the primary and fundamental policy decision" that there was to be competition in the long distance telephone business in Florida.[4] In October 1984, however, the PSC issued its Order which restricted the scope of the interexchange carriers' toll operations to areas other than the toll monopoly areas created by the PSC.[5] The PSC offered no statutory authority for establishing these toll monopoly areas, but acknowledged that the sole purpose of its action was to insulate the local telephone companies from competition within the toll monopoly areas. The PSC ordered that "toll transmission monopoly areas are hereby established on a transitional basis until September 1, 1986."[6] It was also provided that the monopoly areas could be continued if the parties advocating

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4 Microtel, Inc. v. Fla. PSC, 464 So.2d 1189, 1191 (Fla. 1985).

5 Fla. PSC Docket No. 820537-TP, Order No. 13750.

6 Id. p.11.

continuation sustain the burden of demonstrating it is in the public interest to do so.[7]

The interexchange carriers who were excluded from providing toll services within the toll monopoly areas appealed Order No. 13750 to this Court, contending that the PSC was without authority to create toll monopoly areas in favor of the local telephone companies. In response, the PSC told this Court that:

> "[T]his limitation on the method of providing competitive service within an EAEA [toll monopoly area] is an interim measure, lasting only until September 1, 1986."[8]

Further, the PSC assured this Court:

> "To allow LECs [local exchange companies] time to adjust to changes already required and to prepare for competition in intraLATA toll led the Commission to maintain the toll transmission within the EAEAs at least temporarily."[9]

In deciding to uphold the PSC's action, this Court ultimately relied upon these representations that the toll monopoly areas were for an interim period only, "during which the transition is made from total monopoly on all services to monopoly in local services only."[10] The Court further noted, that:

> ". . . we do not believe that it is PSC's position that it has authority to maintain permanent toll monopolies. If that position changes and is challenged

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7 Id.

8 Answer Brief, Florida Public Service Commission, Microtel v. Fla. PSC, 483 So.2d 415 (Fla. 1986), p.11.

9 Id. at p.15.

10 Microtel, Inc. v. Fla. PSC, 483 So.2d 415, 419 (Fla. 1986).

after September, 1986, we will examine the issue on its merits."[11]

In partial compliance with its commitment to the Court, the PSC commenced a proceeding in advance of September 1, 1986, to determine whether toll monopoly areas ought to be retained. However, despite the concerns expressed by this Court concerning the PSC's authority to maintain toll monopoly areas for longer than a transitional period, and in spite of admittedly inconclusive evidence in support of retention, the PSC issued Order No. 16343 on July 14, 1986, in which it not only retained the toll monopoly areas, but it retained them indefinitely.[12]

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11 Id.

12 Fla. PSC Docket No. 820537-TP, Order No. 16343, p.16.

Summary of Argument

In 1982, the Florida Legislature, through an amendment to Section 364.335(4), Florida Statutes, made the "fundamental and primary policy decision that there be competition in the long distance market."[13] Notwithstanding the fact that the Legislature did not delegate authority to the PSC to implement or withhold toll competition as it saw fit, the PSC chose to implement that "fundamental and primary policy decision" on a staged basis by permitting competition between the toll monopoly areas it created, but prohibiting it within the toll monopoly areas until September 1, 1986, unless the beneficiaries of the toll monopoly areas (i.e., the LECs) could, prior to that date, justify their further retention.[14] That approach was affirmed by this Court in Microtel, Inc. v. Florida PSC, 483 So.2d 415 (Fla. 1986), on the condition that it was an interim plan only, and on the basis that the PSC was not contending "it has authority to maintain permanent toll monopolies."[15] Now, however, the PSC has chosen to repudiate its prior course of action by ordering that toll monopoly areas are to be continued indefinitely.

The PSC's decision is without statutory authority, is inconsistent with a plan this Court only conditionally approved, and must be overturned. In view of the Legislature's clear and

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13 Microtel, Inc. v. Fla. PSC, 464 So.2d 1189, 1191 (Fla. 1985).

14 Fla. PSC Docket No. 820537-TP, Order No. 13750, p.11.

15 Microtel, Inc. v. Fla. PSC, 483 So.2d 415, 419 (Fla. 1986).

unequivocal preference for competition in the interexchange market, the PSC is without legal authority to create permanent toll monopoly areas based upon its current view that competition is not in the public interest. But even if the PSC has authority to implement the Legislature's mandate by transitioning over time to a fully competitive environment, that is a narrowly drawn authority. The PSC cannot unilaterally expand that authority to restrain competition permanently on the basis that toll monopolies are in the public interest while toll competition is not: That is a policy decision resident in the Legislature alone and which the Legislature has made in favor of competition.

Having failed to justify permanent toll monopolies there is, likewise, no basis for retaining the toll monopoly areas for an additional interim period. The standard imposed by the PSC and this Court for retaining the toll monopoly areas was that those in favor of retention had the burden of justifying retention. The record clearly establishes that the local exchange carriers, who are the beneficiaries of the toll monopoly areas, have failed to provide evidence sufficient to sustain that burden of proof. Having failed to sustain the burden of proof with competent substantial evidence, the LECs are not entitled to a retention of the toll monopoly areas, and the PSC's decision to retain toll monopolies is arbitrary and capricious and cannot be sustained.

ARGUMENT

I. THE FLORIDA PUBLIC SERVICE COMMISSION HAS NO AUTHORITY TO CREATE PERMANENT "TOLL MONOPOLY AREAS" FOR THE LOCAL TELEPHONE COMPANIES IN WHICH IT PROHIBITS COMPETITION FOR INTEREXCHANGE SERVICE BY ADMITTEDLY QUALIFIED CARRIERS, SOLELY IN ORDER TO PROTECT THE LOCAL TELEPHONE COMPANIES FROM TOLL COMPETITION.

This appeal addresses for the second time whether the Florida Public Service Commission has authority to permanently prohibit toll competition by admittedly qualified interexchange carriers for the express purpose of protecting the local telephone companies from toll competition within arbitrarily drawn geographic areas. The Legislature, and not the PSC, has the constitutional authority to establish public policy and having declared in favor of toll competition, the PSC is without authority to establish toll monopoly areas in contravention of that policy.

A. The PSC Is A Creature Of The Legislature And Only Has Such Authority As Has Been Granted To It By The Legislature.

The PSC has no specific or inherent authority to restrict toll competition. First, it is settled law that the PSC is a creature of statute and only has such authority as is conferred by statute. Moreover, any reasonable doubt as to the lawful existence of a particular power must be resolved against the exercise thereof. This Court noted in City of Cape Coral v. GAC

Utilities, Inc., 281 So.2d 493, (Florida 1973):

> [T]he Commission's powers, duties and authority are those and only those that are conferred expressly or impliedly by statute of the State. . . . Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof, . . . and the further exercise of the power should be arrested . . . . The legislature of Florida has never conferred upon the Public Service Commission any general authority to regulate public utilities.

281 So.2d at 496 (citations omitted; emphasis added). See also Aloha Utilities, Inc. v. Florida Public Service Commission, 376 So.2d 850, 851 (Fla. 1979); Florida Bridge Company v. Bevis, 363 So.2d 799, 802 (Fla. 1978); Deltona Corporation v. Mayo, 342 So.2d 510, 512 (Fla. 1977); Radio Telephone Communications, Inc. v. Southeastern Telephone Company, 170 So.2d 577, 582 (Fla. 1964).

Second, lacking any specific authority to create toll monopoly areas, the PSC cannot justify its action on the basis of some roving commission to protect the public interest.[16] This is especially true when the Legislature has already made a determination that toll competition is in the public interest. In reaching its decision to permit toll competition, the Legislature specifically considered the impact upon consumers

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16 State Department of Transportation v. Mayo, 354 So.2d 359 (Fla. 1977).

from the existence of toll competition.[17] The Legislature found that toll competition is in the public interest because it provides the consumer with alternative sources of service as well as rates for those services which reflect competitive pressures.[18]

Furthermore, the PSC has previously assured this Court that it was foreclosed from restricting toll competition by the 1982 legislation. The PSC told this Court that the 1982 legislation:

> "limits the statutorily mandated monopoly solely to local exchange telephone service, thereby opening interexchange and other intrastate services to full competition."[19]

The PSC also stated in that same pleading:

> "At the time of the adoption [of the 1982 amendment], all proponents of the legislative revisions . . . intended the changes to initiate full competition in intrastate telecommunications other than local exchange service. The provisions were conceived to bring about a vigorous competitive environment with many companies providing service."[20]

Finally, the PSC has told this Court that the 1982 amendments "permit competition in all but the provision of local exchange

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17 The Senate Staff noted the advantage of competition:

> With normal market forces at work, increased competition fosters better service at a lower cost to consumers. It is assumed that this will occur in the telecommunications field.

Senate Staff Analysis and Economic Impact Statement, Committee Substitute for Senate Bill 868, paragraph II.A.

18 Id.

19 PSC Motion to Dismiss, Microtel v. Fla. PSC, 464 So.2d 1189 (Fla. 1985) p.2. (Emphasis added.)

20 Id. at 5.

service."[21] Having acknowledged correctly the broad, sweeping scope of the 1982 amendments, and the unequivocal preference of the Legislature for toll competition, the PSC's claim that it now has authority to bar toll competition is simply wrong and cannot be sustained.

B. The Legislature's Amendment of Section 364.335(4), Florida Statutes, By Chapter 82-51, Laws of Florida, Did Not Grant the PSC Authority to Create Permanent Toll Monopoly Areas.

By amending Section 364.335(4) to authorize monopolies only for local exchange services, thereby removing the restriction against toll competition, the Legislature exercised its authority and made the primary and fundamental policy decision that there be toll competition. The PSC, however, was not delegated authority simultaneously to prohibit toll competition if the PSC found toll monopolies to be in the public interest. Thus, the PSC's authority to withhold or condition a certificate is limited to those situations where the PSC finds either the applicant to be unqualified or the proposed service or facility would not promote competition.

The PSC's reference to the "public interest" does not allow it to go beyond its statutory authority. Indeed, the PSC's action is inconsistent with the "public interest" standard of Section 364.335(4). In Microtel, Inc. v. Fla. PSC, 464 So.2d 1189, 1191 (Fla. 1985), the Court stated that:

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[21] Id. at 5.

> "The clear legislative intent to foster competition also illuminates the public interest standard of Section 364.335(4). We are of the opinion that adequate standards and guidelines are provided in this statute in light of the legislative objective to bring competition into this business area which had not heretofore existed."

But, instead of using the "public interest" standard to advance the Legislature's clear and unequivocal declaration in favor of toll competition, the PSC is now using that same standard to foreclose such competition permanently. If the "public interest" standard can be used to eviscerate the legislative policy as well as promote it, then it is no standard at all, and Section 364.335(4) would constitute an unlawful delegation of unrestrained legislative authority.[22]

Had the Legislature intended for the PSC to have the authority to introduce or prohibit toll competition, as the PSC wishes, then the Legislature should have specified the criteria to be considered in permitting or restraining competition. The Legislature, instead, has intended that the "public interest" standard of Section 364.335(4) will govern the PSC's actions to insure that competition is promoted, not prohibited.

C. The PSC Has No Authority to Repudiate Its Prior Assertions To This Court That The Toll Monopoly Areas Were An Interim Plan And Would Terminate on September 1, 1986.

This Court previously approved the toll monopoly areas created by the PSC on the basis that the toll monopolies will not

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22 Askew v. Cross Key Waterways, 372 So.2d 913 (Fla. 1978).

continue beyond an interim period "during which the transition is made from total monopoly on all services to monopoly in local services only."[23] In its Order issued on July 14, 1986, however, the PSC has stated that "retention of toll transmission monopoly areas is in the public interest and the same are hereby continued," and "the local exchange companies shall continue to be the sole supplier of transmission facilities within the existing equal access exchange areas subject to exceptions previously established."[24] No transitional language is mentioned in the Order, nor is any date included by which the toll monopoly areas would be opened to competition. As was discussed at its Special Agenda Conference, the PSC's intention is that toll monopoly areas would remain in effect permanently, or until such time as it could be demonstrated by parties seeking their termination to demonstrate that it would be in the public interest to do so.[25]

Thus, it is clear that the PSC has made the toll monopoly areas permanent and has repudiated its prior position that these toll monopoly areas are interim and transitional in nature only.[26] Not only is the PSC's action inconsistent with its previous position, the basis for its action is inconsistent with

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23 Microtel, Inc. v. Fla. PSC, 483 So.2d 415, 419 (Fla. 1986).

24 Fla. PSC Docket No. 820537-TP, Order No. 16343, p.16.

25 Transcript, Docket No. 820537-TP, Special Agenda Conference of June 24, 1986, pages 81 - 88.

26 See Answer Brief of Appellee, Florida Public Service Commission, Microtel v. Fla. PSC, 483 So.2d 415 (Fla. 1986), pp. 11-15.

the fundamental public interest determination of the Legislature. Moreover, this action of the PSC is inconsistent with the conditional approval granted by this Court that "we do not believe that the PSC is contending it has authority to maintain permanent toll monopolies."[27] There is, of course, a substantial difference between a temporary, transitional toll monopoly area and one in which competition is banned permanently. Thus, the Court can no longer condone the PSC's deliberate attempt to act inconsistently with the Legislature's mandate.

The PSC seeks to avoid the appearance of inconsistency by redefining the "public interest" standard to include an alleged adverse impact of toll competition on the ratepayers. Previously, the PSC contended that the toll monopoly areas were temporarily required to give the local telephone companies time to prepare for competition. The PSC now contends that the possibilities associated with the abolition of the toll monopoly areas "could cause great harm to most ratepayers in Florida."[28] This contention is 180 degrees out of phase with the Legislature's "fundamental and primary policy decision" that toll competition benefits the ratepayers and ought to be encouraged. The Legislature's determination in favor of competition specifically took into consideration the impact on

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27 Microtel, Inc. v. Fla. PSC, 483 So.2d 415, 419 (Fla. 1986).

28 Fla. PSC Docket No. 820537-TP, Order No. 16343, p.15.

ratepayers.[29] Indeed, contrary to the position now being espoused by the PSC, the PSC has told this Court previously,

> "Clearly Chapter 364 is intended to encourage competition in areas of telecommunications which had traditionally been considered monopolistic. The very foundation of competition is ease of entry (from a regulatory and not necessarily an economic standpoint). To permit a company to have a head start in the provision of a service acts as a clear signal to potential competitors that there are regulatory obstacles and that the opportunity to compete is restricted. This restriction of an opportunity to compete clearly enures to the benefit of the businesses that were first to receive their authority.... Competition is underpinned by consumer awareness and the availability of choice in the marketplace. To restrict entry restricts choice. To restrict choice denies potential competitors equal protection of the law and denies the public the ability to maximize its service potential."[30]

The foregoing analysis by the PSC correctly addressed the thrust of the Legislature's public policy decision. Yet, the PSC fails to justify why that analysis is no longer valid and why the Legislature's mandate should be ignored. If the PSC believes that the public policy must be changed, then it must return to the Legislature, but it cannot engage in self-help in the meantime.

Any redefinition of the "public interest" standard is the Legislature's province alone. The PSC's asserted "public interest" in protecting the ratepayers from the alleged "great harm" from toll competition is a far less substantial concern than the asserted public interest in promoting motor carrier

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29 See footnote 17, supra.

30 Answer Brief of Appellee, Florida Public Service Commission, Microtel Inc. v. Florida Public Service Commission, August 31, 1984, page 19. (Emphasis added.)

safety that underlay the PSC's action in State Department of Transportation v. Mayo, 354 So.2d 359 (Fla. 1977). This Court's response to the PSC's "public interest" argument in that case is equally applicable here. To the PSC argument that unlimited price competition would impair public safety, this Court responded:

> If such a result is undesirable, then it is up to the Legislature to clearly provide the Commission with the power to fix minimum rates for the aggregate carriers. Until then the Commission may not set rates for the aggregate carriers since it does not have the power to do so.[31]

Further, the Court recognized in that case that the competitive marketplace, through its unrestricted operation, was the appropriate mechanism for responding to the asserted "public interest".

D. The PSC Has Acted Arbitrarily And Without Sufficient Competent Evidence In Retaining Permanent Toll Monopoly Areas.

In Order No. 16343, the PSC concluded that the local exchange carriers met the burden of proof imposed upon them by the PSC, by demonstrating that retention of the toll monopoly areas is in the public interest.[32] This conclusion, contrary to the PSC's assertion and by any objective standard, is not supported by the record. Without requiring an exhaustive review of the entire record, it is clearly evident from reading Order

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31 Id. at 362.

32 Fla. PSC Docket No. 820537-TP, Order No. 16343, p.15.

No. 16343 that the evidence submitted by the proponents of toll monopoly areas is comprised of testimony that was conclusory, vague, speculative, and inconclusive. In fact, the PSC rejected MCI's proposed findings of fact -- which analyzed in detail that the local exchange companies would not suffer significant economic impact from intraEAEA toll competition -- on the basis that the evidence submitted by the local exchange companies as to the revenue impact from eliminating the toll monopoly areas was inadequate, insufficient and incomplete to support the proffered findings. Yet, that same unacceptable evidence was used by the PSC to support its conclusion that the local exchange companies had sustained their burden of proof that eliminating toll monopoly areas would adversely impact the local exchange companies' revenues.[33]

The PSC erroneously concludes that the possibilities associated with abolition of the toll monopoly areas could cause great harm to most ratepayers in Florida.[34] The evidence, however, shows quite the opposite. It is important to recognize that even where a local exchange company loses toll traffic to a competing carrier, the local exchange company -- due to its position as the provider of local access facilities -- nonetheless collects "access charges" from the competing carrier. As a result, the local exchange company seldom suffers any serious financial impact because access charges are almost

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33 Id., pp.11-15.

34 Id., p.15.

equivalent to the relatively short-haul intraEAEA toll charges that the exchange company would otherwise collect. For example, it was demonstrated from several different local telephone company sources at hearing, that those companies, on average, would receive more access revenues from the interexchange companies than the local telephone companies would receive if they handled the same toll calls themselves. An exhibit submitted by Southern Bell Telephone and Telegraph Company ("Southern Bell") shows that access service returns 3.06 times Southern Bell's cost of providing access, whereas intrastate toll returns only 2.83 times cost.[35] Based on information made available to it by Southern Bell, AT&T's witness was able to calculate that Southern Bell, in fact receives more revenue per minute from access than it does from intraEAEA toll calls on average. Faced with that evidence, Southern Bell declined to come forward with any evidence on this relationship.[36] Analysis of other local telephone company data shows that access revenues would either closely approximate or exceed toll revenues.[37] Additionally, these toll revenue figures are gross amounts which

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35 Exhibit 6-264-D.

36 Based upon evidence adduced at hearing, Southern Bell's access revenue per minute is 23.27¢ compared to 23.54¢ average intraLATA toll revenue per minute T. 224-226. Additionally, Southern Bell conceded that intraEAEA toll revenue per minute would be lower. T. 233-234.

37 T. 122; Exhibit 6-80-C, p.26 (General Telephone Company of Florida ("General Telephone") - 75¢ access revenues per three minute call versus 60¢ average toll revenue per three minute call); T.295-296 (United Telephone Company of Florida ("United Telephone") - 80.5¢ access revenue per three minute call versus 82¢ average toll revenue per three minute call).

do not take into account internal cost savings to the local telephone company if it were providing only access service rather than the complete toll service. According to General Telephone's testimony, its cost savings would be approximately twelve percent of toll revenues.[38] Thus, adjusting the gross toll revenue figures furnished by Southern Bell, General Telephone, and United Telephone, by these cost savings, would show that the local exchange companies' access revenues actually would exceed average toll revenue per minute.

Moreover, real-life experience demonstrates that the "possibilities associated with" toll competition in similar situations have not happened nor has "great harm" to the ratepayers occurred anywhere.[39] These same predictions of great harm were made when toll competition was introduced on the interstate level and when statewide toll competition was introduced in other states. Yet, none of these calamitous predictions have proved correct.[40] Because the local exchange companies' "predictions" of harm caused by competition are inconsistent with <u>all</u> prior experience, and inconsistent even with their own documents comparing access to toll revenues, the local exchange companies' claims here exhibit an "overwhelming . . . sense of unreality."[41]

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38 T.94.

39 T. 539.

40 T. 569-573.

41 T. 560.

The PSC was willing to rely upon speculative and unsupported evidence from the local exchange companies that toll competition will result in financial harm and harm to the ratepayers. However, the PSC ignored the interexchange carriers' unrebutted evidence that the local exchange companies are in a far stronger competitive position within the toll monopoly areas than any interexchange carrier is, or has been, in the interLATA market, and that the local exchange companies and the local ratepayers will actually benefit from toll competition.[42] Moreover, the PSC ignored the fundamental fact that even with toll competition, the PSC retains the ability to safeguard the local exchange companies by allowing them to retain exclusive 1+ dialing on an intraLATA basis for a further transition period, if deemed necessary, and by appropriate adjustment of the level of toll rates and access charges so that the local exchange companies receive the same contribution to support local service from access charged the interexchange carriers as they do from the provision of their own toll services.[43] Thus, the ratepayers can be protected by a variety of ways less restrictive than the PSC's outright retention of monopoly areas, allowing satisfaction of the PSC's public interest concerns without frustrating the legislative mandate of competition. There is, therefore, no support in the record, or in experience, to justify the PSC retaining the toll monopoly areas any longer.

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42 T. 566.

43 T. 189; 424; 560. Exclusive retention of 1+ dialing would mean that all regularly dialed toll traffic would remain with the local exchange companies, and that customers wanting to access a competitive carrier would have to dial extra digits.

CONCLUSION

In its first Order establishing toll monopoly areas, the PSC concluded that competition must be restrained temporarily to give the local telephone companies an opportunity to prepare for toll competition.[44] In any event, these twenty-two arbitrarily drawn toll monopoly areas were to terminate on September 1, 1986. This Court, thereafter, found that the PSC imposed delay in introducing full toll competition was consistent with the Legislature's public policy determination in favor of toll competition because it was temporary and part of a transition.[45] Now, however, the PSC has made the toll monopoly areas permanent using a "public interest" standard which is inconsistent with the legislative mandate. The PSC has no authority to redefine the "public interest" standard. That is especially true when the PSC's redefinition of "public interest" permits a finding that ratepayers will not benefit from toll competition when the Legislature's public policy decision concludes that toll competition will benefit the ratepayers. Thus, the PSC's decision to restrain toll competition is inconsistent with "the primary and fundamental policy decision that there be competition in the long distance market" and must be reversed.

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44 Fla. PSC Docket No. 820537-TP, Order No. 13750, p.11.

45 Microtel, Inc. v. Fla. PSC, 464 So.2d 1189 (Fla. 1985).

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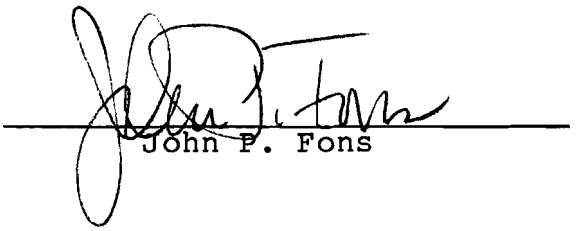

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