

BEFORE THE FLORIDA SUPREME COURT

TELECO COMMUNICATIONS COMPANY)
)
 Appellant,)
)
 v.)
)
 SUSAN F. CLARK, J. TERRY DEASON,)
 JOE GARCIA, JULIA L. JOHNSON, and)
 DIANE K. KIESLING, as the)
 FLORIDA PUBLIC SERVICE COMMISSION,)
)
 Appellees.)
)

CASE NO. 87,316

APPEAL FROM FLORIDA PUBLIC SERVICE COMMISSION
FINAL ORDERS IN DOCKET NO. 911214-TP

REPLY BRIEF OF APPELLANT
TELECO COMMUNICATIONS COMPANY

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF CITATIONS ii

SUMMARY OF ARGUMENT 1

ARGUMENT 2

I. THE FPSC HAS EXCEEDED ITS JURISDICTION IN ADJUDICATING
BASIC CONTRACT ISSUES PROPERLY BEFORE THE CIRCUIT COURT... 2

II. THE FPSC'S DECISION THAT THE CONTRACT AT ISSUE WAS NOT
AN INSTALLMENT SALES CONTRACT IS NOT SUPPORTED BY
COMPETENT SUBSTANTIAL EVIDENCE OF RECORD 7

III. THE POLICY DECISIONS OF CHAPTER 95-403, LAWS OF FLORIDA,
AND THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, ARE
CONTROLLING AND REQUIRE REVERSAL 8

CONCLUSION 11

CERTIFICATE OF SERVICE 12

APPENDIX A-1

TABLE OF CITATIONS

UNITED STATES SUPREME COURT CASES

Powell v. McCormack,
395 U.S. 486; 89 S.Ct. 1944, 1951; 23 L.Ed.2d 491 (1969)10

FLORIDA CASES

Charlotte County v. General Development Utilities Corp.,
653 So.2d 1081 (Fla. 1st DCA 1995)*****.....***..... 4

Cherry Communications, Inc. v. Deason,
652 So.2d 803 (Fla. 1995)8

Florida Public Service Comm. v. Bryson,
569 So.2d 1253 (Fla. 1990).....4

General Telephone Co. v. Florida Public Service Comm.,
446 So.2d 1063 (Fla. 1984) 7

Hill Top Developers v. Holiday Pines Service Corp.,
478 So.2d 368 (Fla. 2d DCA 1985)4, 5

Miller & Sons, Inc. v. Hawkins,
373 So.2d 913 (Fla. 1979).....4

Northwest Airlines, Inc. v. Weiss,
113 So.2d 884 (Fla. 3d DCA 1959)5

Sandpiper Homeowners Association, Inc. v. Lake Yale Corp.,
667 So.2d 921, 360 (Fla.5th DCA 1996)5

Southern Bell Telephone and Telegraph Co. v. Florida Public
Service Comm.,
443 So.2d 92 (Fla. 1983) 7

Southern Bell Telephone and Telegraph Co. v. Mobile
America Corp.,
291 So.2d 199 (Fla. 1974).....5

State ex rel. Department of General Services v. Willis,
344 So.2d 580 (Fla. 1st DCA 1977)5

State ex rel. Shevin v. Tampa Electric Company,
291 So.2d 45, 46 (Fla. 2d DCA 1959)5

State v. Willis,
310 So.2d 1 (Fla. 1975)4

United Telephone Co. v. Mann,
403 So.2d 962 (Fla. 1981) 7

Winter Springs Development Corp. v. Florida Power Corp.,
402 So.2d 1225 (Fla. 5th DCA 1981) 5

FLORIDA STATUTES (references to 1995 unless noted).

1120.68 11
§364.02(7) (1993) 4
5364.14 (1993) 1, 6, 7
8364.285 (1993) 1, 6, 7

LAWS OF FLORIDA

Ch. 95-403 8, 10

FEDERAL STATUTES

Telecommunications Act of 1996,
Public Law No, 104-104; 110 Stats. 56 (1996) 8. 10

FLORIDA PUBLIC SERVICE COMMISSION ORDERS

94 F.P.S.C. 10:365-73 (1994) (Order 94-1304) 3
95 F.P.S.C. 9:79-81 (1995) (Order 95-1114) 8, 9

In re: Application for certificate to provide alternative
local exchange telecommunications service by Teleco
Communications, Ltd., Docket No. 951512-TX, Order No.
PSC-96-0649-FOF-TX, issued on May 10, 1996 (Order 96-0649) A-4

REFERENCES TO THE RECORD

References are referenced by: to the record "[R page - page]";
to the exhibits by "[EX number and page(s)]"; to the August 23,
1993 transcript of the prehearing conference "[T.PHC page.line -
page.line]"; and to the transcript of the oral argument held on
September 1, 1993 "[T. page-line -page.line]".

SUMMARY O F A R -

The Florida Public Service Commission (FPSC) and Regency Towers Owners Association (RTOA) have failed to support the orders rendered by the FPSC at issue in this case. The FPSC has made decisions regarding the contract between RTOA and Teleco Communications Company (Teleco) which are beyond the statutory authority granted to the FPSC and within the exclusive jurisdiction of the courts. Even should the Court find that the FPSC has the ability to reach the contract issues which form the heart of this case, the FPSC's decision that the contract at issue was not an installment sales contract is contrary to the only evidence of record on this point and therefore is not supported by competent, substantial evidence of record. Without this determination, the FPSC's decision that Teleco is a telecommunications company must also fail and the FPSC's decision to that effect be reversed.

The remedy proposed by the FPSC - the divestiture of the inside wire by Teleco - is neither "rate setting" under §364.14, Fla. Stat. (1993) nor the imposition of a penalty under 5364.285, Fla. Stats. (1993). Rather, this action is tantamount to a damages award and as such is within the exclusive jurisdiction of the courts. Finally, this decision is clearly at odds with the Florida Telecommunications Act of 1995, the Federal Telecommunications Act of 1996 and the FPSC's decision in Royal Oaks and should be dismissed as moot.

ARGUMENT

I. **THE PPSC HAS EXCEEDED ITS JURISDICTION IN ADJUDICATING BASIC CONTRACT ISSUES PROPERLY BEFORE THE CIRCUIT COURT.**

In its Answer Brief, the Florida Public Service Commission states that it did not address the contract issues properly before the circuit court since it did not make a finding on whether there was a valid contract between RTOA and Teleco. [FPSC Answer Brief at 71 While this is a true statement¹, it begs the jurisdictional question at hand.

The FPSC has exceeded its jurisdiction and adjudicated contract issues in three ways: by determining the nature of the contract between RTOA and Teleco; by determining the "ownership" of the inside wiring under the contract; and by fashioning a remedy which preempts the circuit court's ability to resolve the basic contract breach issues before it.

¹ In fact, the FPSC did not have to make a finding on whether an oral contract existed between RTOA and Teleco for the purchase of the inside wire since for the purposes of this proceeding, both parties stipulated that there was such an agreement and stipulated to the basic terms and conditions of that agreement. [R. 84; Stipulations 13, 18 and 19] That these stipulations constitute agreement that a contract existed is evidenced by RTOA's carefully worded disclaimer found at the end of Stipulations 13 and 18 that RTOA "is stipulating to this fact only for purposes of this docket." [R. 84] Likewise, the affidavits of former members of the Board of Directors of RTOA establishing the terms and conditions of the Teleco/RTOA agreement were admitted into evidence without objection as Exhibit 2 at the September 1, 1993 informal hearing and are properly part of the record on appeal before this Court. [Ex.2]

In its Final Order, Order PSC-94-1304-FOF-TP², the FPSC states:

The essential facts in this case are that Paultronics negotiated the sale of the inside wire of Regency Towers presumably to itself at the request of RTOA. . . . Teleco entered into a lease purchase agreement with RTOA whereby RTOA would pay Teleco \$1,072 per month for 84 months. At the end of the 84 months, title would pass to RTOA."

[R. 88; Citations omitted.]

The FPSC then goes on to explicitly rule on the nature of this stipulated contract by finding that this contract is not a "financing arrangement", i.e., is not the "lease purchase agreement" it has just acknowledged but one paragraph before. [R. 88-89] Under these circumstances it is difficult to understand how the FPSC can state that no contract issues were dealt with in its orders and suggest that this argument should be reserved for the circuit court. [FPSC Brief at 81 By this statement does the FPSC concede that the circuit court could find in subsequent proceedings that this contract is a financing agreement and thereby reverse the decision of the FPSC on this point? Surely not.

This line of argument by the FPSC reveals the essential problem with the FPSC's decisions in this case: that a determination of the basic contract issues - the existence of a contract; the nature of the contract, if found to exist; the

² In re: Initiation of show cause proceedings against Teleco Communications Company for violation of Rule 25-4.004, F.A.C., certificate of public convenience and necessity required, Docket No. 911214-TP, Order No. PSC-94-1304-FOF-TP (Order 94-1304), issued on October 21, 1994; 94 F.P.S.C. 10:365-73 (1994).

rights, duties and obligations of the parties under the contract must be made before the FPSC can determine whether Teleco is a "telecommunications company" pursuant to §364.02(7), Fla. Stats. (1993). Once the FPSC realized this fact, the FPSC should have stayed its own show cause proceedings and let the circuit court make these basic contract findings.

This approach would have made sense and would have properly preserved the relationships between the court and the agency. If no contract existed between Teleco and RTOA, there could be no contract breach and RTOA would not be required to make payments. The court could then determine who "owned" the inside wiring in that circumstance and the nature of that ownership: legal or equitable. Likewise, the circuit court could have established the agency relationship, if any, between the parties. None of these questions are within the legal or statutory jurisdiction or expertise of the FPSC but are within the exclusive jurisdiction of the court. However, each of these issues needs to be decided in order to determine the status of Teleco as a telecommunications company.

There is a well established line of cases which upholds the FPSC's exclusive jurisdiction over rate issues³ and an equally long

³ Hill Top Developers v. Holiday Pines Service Corporation, 478 So. 2d 368 (Fla. 2d DCA 1985); State v. Willis, 310 So.2d 1 (Fla. 1975); Charlotte County v. General Development Utilities, Inc., 653 So.2d 1081 (Fla. 1st DCA 1995); Richter v. Florida Power Corporation, 366 So.2d 798 (Fla. 2nd DCA 1979); Miller & Sons, Inc. v. Hawkins, 373 So.2d 913 (Fla. 1979); Florida Public Service Commission v. Brvson, 569 So.2d 1253 (Fla. 1990).

line of cases which upholds the doctrine of primary jurisdiction⁴ where resolution of issues over which there is concurrent judicial and administrative jurisdiction turn upon highly technical or specialized criteria peculiarly within the expertise of an administrative agency. The case at hand does not fit either category.

Here the administrative agency does not have the expertise or the authority to decide the fundamental contract issues necessary for the agency to make its technical determination. The situation of the court and the agency is reversed from the classic primary jurisdiction situation. Just as courts have been admonished not to exercise jurisdiction which would impinge on the exclusive jurisdiction of the FPSC, so should the FPSC be prohibited from venturing into areas outside of its own narrow area of expertise.⁵

Finally, the remedy imposed on Teleco once a finding that Teleco was a telecommunications company was made - divestiture of

⁴ 478 So. 2d at 370-71; State ex rel. Shevin v. Tampa Electric Company, 291 So.2d 45, 46 (Fla. 2d DCA 1974); Northwest Airlines, Inc. v. Weiss, 113 So.2d 884 (Fla. 3d DCA 1959); State ex rel. Department of General Services v. Willis, 344 So.2d 580 (Fla. 1st DCA 1977).

⁵ And courts have done so. Winter Springs Development Corporation v. Florida Power Corporation, 402 So. 2d 1225 (Fla. 5th DCA 1981) (Plaintiff sought money damages for failure to install underground facilities); Southern Bell Telephone and Telegraph Co. v. Mobile America Corporation, Inc., 291 So.2d 199 (Fla. 1974) (Circuit court could properly hear suit for money damages for failure to comply with the statutory standards for telephone service); Sandpiper Homeowners Association, Inc. v. Lake Yale Corporation, 667 So.2d 921 (Fla. 5th DCA 1996) (Circuit court could properly hear mobile home park owners suit for breach of contract caused by increase in rental rates due to increase in water rates approved by FPSC.)

the inside wire without further compensation to Southern Bell and RTOA - completely preempts the circuit court on the basic contract issues being litigated there. What contract issues are left to the circuit court to decide once the FPSC has ordered that Teleco could not have entered into an agreement to provide the inside wiring to RTOA and can not retain equitable or legal title to the wire?

Make no mistake about the actions taken by the FPSC in this case: it is characterizing the nature of the contract between RTOA and Teleco as a sales agreement; voiding the contract as prohibited by law; assessing the services rendered by Teleco pursuant to the agreement and awarding compensation for those services (the \$29,176 already paid) and awarding both equitable and legal title to RTOA without further compensation. As argued in Teleco's Initial Brief⁶, these actions are simply beyond the authority of the FPSC pursuant to the statutory authority granted by §364.285, Fla. Stat. (1993).

The FPSC's Answer Brief asserts that this remedy is not based on the authority granted in 8364.285, Fla. Stat. (1993), to penalize companies operating without the proper certification, but rather on its ability to set just and reasonable rates for telecommunications companies pursuant to 8364.14, Fla. Stat. (1993). [FPSC Answer Brief at 16-71

Teleco accepts that the FPSC has been given wide latitude in

⁶ Initial Brief at 20-24.

setting rates for *certificated* telecommunications companies⁷. However, this proceeding is a show cause proceeding, and therefore the exercise of the FPSC's quasi-judicial function, not its rate setting, regulatory function.⁸

There is something absolutely incongruous in the FPSC's simultaneous arguments that Teleco can not be a "legal" telecommunications company because it can not be certificated and thus can not charge RTOA for the purchase of inside wire while also arguing that the fact that Teleco is an "illegal" telecommunications company allows the FPSC to "set" its "charges" under its contract with RTOA. No. The FPSC can only set the rates and charges for certificated telecommunications companies under 5364.14, Fla.Stat. (1993). The remedies available to the FPSC here are those found in 8364.285, Fla. Stat. (1993), and those alone.

II. THE FPSC'S DECISION THAT THE CONTRACT AT ISSUE WAS NOT AN INSTALLMENT SALES CONTRACT IS NOT SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE.

In its Answer Brief, RTOA states that there is no competent, substantial evidence in the record to support a finding that the contract at issue was an installment sales contract. [RTOA Answer Brief at 4-51 On the contrary, there is no evidence in the record to support any other decision. The only evidence in the record of

⁷ Southern Bell Telephone and Telegraph Co. v. Florida Public Service Comm., 443 So. 2d 92 (Fla. 1983); United Telephone Company v. Mann, 403 So.2d 962 (Fla. 1981); General Telephone Co. V. Florida Public Service Comm., 446 So.2d 1063 (Fla. 1984).

⁸ Cherry Communications, Inc. v. Deason, 652 So.2d 803 (Fla. 1995).

the nature of the contract is uncontested and is found in the affidavits of the former Board Members of RTOA. [Ex. 2] These affidavits clearly state the terms of the agreement and are reflected in both the stipulations found in Order 94-1304 and the subsequent discussions by the FPSC found in that order. [R. 84-85, 87-891] The FPSC had no facts at all on which to base its decision that the agreement between Teleco and RTOA was not an installment sales contract and it should be reversed on this point.⁹

III. THE POLICY DECISIONS OF CHAPTER 95-403, **LAWS** OF FLORIDA, AND THE FEDERAL TELECOMMUNICATIONS ACT OF 1996 ARE CONTROLLING AND REQUIRE REVERSAL.

In its Answer Brief the FPSC states that the FPSC's action in the Royal Oaks¹⁰ decision is inapposite here on the issue of mootness since: the parties in Royal Oaks "terminated providing service after the issuance of the show cause order" and Royal Oaks did not involve the "ownership and operation" of "third party facilities". [FPSC Brief at 14-5] Petitioner disagrees on both

⁹ The FPSC based on its determination that the agreement between RTOA and Teleco was not an installment sales contract on its belief that "[i]t does not seem rational or logical that RTOA would enter into a "loan" of this nature". [R. 891] The details of the contract between RTOA and Teleco were uncontested in this proceeding, in these circumstances the FPSC does not have the ability to disregard the facts before it. Neither the circuit court nor the FPSC has the ability to simply disregard the terms of an agreement, or rewrite its intent simply because one of the parties made what it perceives as a "bad deal".

¹⁰ In re: Investigation of Central Telephone Company of Florida's provision of Centrex Service to Royal Oaks Apartment in violation of Section 364.339(1)(b), F.S., Order No. 17111, Rule 25-24.560, F.A.C., and General Customers Services Tariff 23.8.3 (Royal Oaks), Order No. PSC-95-1114-FOF-TP (Order 95-1114), issued on September 6, 1995; 95 F.P.S.C. 9:79 (1995).

counts.

Order 95-1114 states as follows in pertinent part:

Central Telephone Company did not protest the Order and notified the affected entities that it would be discontinuing the provision of centrex service as required by the Order. Service to all affected parties was discontinued, with the exception of two parties, Leon County Educational Facilities Authority and Professional Food Service Management d/b/a Southgate Campus Centre, and R.J. Allen & Associates, d/b/a Regent's Club. On June 29, 1994, these two parties filed petitions for a formal proceeding and seeking clarification of Order PSC-94-0696-FOF-TL.

[R. 174-75; Order 95-1114 at 1-2; Appendix at 1; Emphasis added.]

Given the very specific language of its own order, it is difficult to understand why the FPSC continues to state that the contested shared tenant services provided by Southgate Campus Centre and Regent's Club stopped when the show cause order was issued by the FPSC in June of 1994. In fact, the complexes continued to provide the contested shared tenant services throughout the entire time the show cause order was pending before the FPSC. This is evidenced by the invitation of the FPSC for the complexes to apply for the appropriate certification. Order 95-1114 at 2. Royal Oaks and Teleco are in the same posture.

The distinction that there was no "third party provider" in the Royal Oaks case is also bogus. As in the instant case, there was a third party interposed between the end-user, the apartment tenants, and the local exchange company, Centel: the apartment complexes themselves. The regulatory treatment given Royal Oaks and Teleco is not consistent and can not be distinguished.

The FPSC also cites Powell v. McCormack, 395 U.S. 486; 89 S.Ct. 1944, 1951; 23 L.Ed. 2d 491 (1969), for the proposition that cases are moot if the issues presented are no longer "live". [FPSC Brief at 151 It is hard to imagine issues which are "deader" than those presented by this case. Not only has the Florida Legislature given its blessing to competition in the provision of previously restricted, monopoly telecommunication services via the enactment of the Florida Telecommunications Act of 1995¹¹ (Florida Act), but Congress has followed suit by enacting the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stats. 56 (1996).

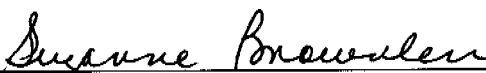
Pursuant to the provisions of the Florida Act, Teleco has applied for and been granted an ALEC Certificate No. 4426 by Order No. PSC-96-0649-FOF-TX, issued on May 10, 1996. [Appendix at 41 As Teleco's application reveals, the service to be provided by Teleco pursuant to this certificate is exactly that at issue here: the lease/purchase of complex inside wiring. [Appendix at 101 Surely the FPSC's legal interest in enforcing its rules and statutes is extinguished where those rules are contrary to existing, fundamental policy changes such as those at issue here.

¹¹ Chapter 95-403, Laws of Florida.

CONCLUSION

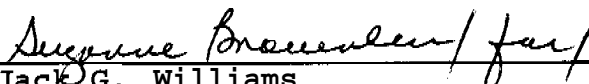
Pursuant to 8120.68, Fla. Stats. and for the reasons stated in this Brief and Teleco's Initial Brief, this Court should reverse the FPSC orders under review, or in the alternative, strike the ordering paragraphs which require Teleco to divest itself of the inside wire installed at the Regency Towers.

Respectfully submitted,



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CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Appellant Teleco Communications Company was furnished by Hand Delivery (*) or United States Mail on this 31st day of May, 1996 to the following parties of record:

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Appendix

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation of Central Telephone Company of Florida's provision of Centrex Service to Royal Oaks Apartments in violation of Section 364.339(1)(b), F.S., Order No. 17111, Rule 25-24.560, F.A.C., and General Customer Services Tariff 23.8.3.) DOCKET NO. 940139-TL) ORDER NO. PSC-95-1114-FOF-TL) ISSUED: September 6, 1995))))))))))

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER CLOSING INVESTIGATION

BY THE COMMISSION:

By Order PSC-94-0696-FOF-TL, issued on June 8, 1994, this Commission proposed to require Central Telephone Company of Florida to discontinue the provision of centrex service to Royal Oaks Apartments and other entities where residential service was being to residents in certain apartments through the resale of centrex service. Our decision was based upon a determination that Royal Oaks, through the resale of centrex service, was competing with service provided by the local exchange company and providing shared tenant service to non-commercial tenants not within a single building. At the time we entered the Order, all of these actions were prohibited by Sections 364.33 and 364.335(3), Florida Statutes and Rule 25-24.560, Florida Administrative Code.

Central Telephone Company did not protest the Order and notified the affected entities that it would be discontinuing the provision of centrex service as required by the Order. Service to all affected parties was discontinued, with the exception of two parties, the Leon County Educational Facilities Authority and Professional Food Service Management d/b/a Southgate Campus Centre, and R. J. Allen & Associates, d/b/a Regent's Club. On June 29,

ORDER NO. PSC-95-1114-FOF-TL
DOCKET NO. 940139-TL
PAGE 2

1994, these two parties filed petitions for a formal proceeding and seeking clarification of Order PSC-94-0696-FOF-TL.

During the pendency of our investigation the Florida Legislature began consideration of major substantive changes to Chapter 364, Florida Statutes. Effective July 1, 1995, Sections 364.33 and 364.335(3), Florida Statutes, were amended to allow competition in the provision of local exchange service subject to compliance with the requirements set forth therein. These substantive changes obviate the need for any further investigation in this docket. Accordingly, we find it appropriate to terminate our investigation and to close this docket.

The Leon County Educational Facilities Authority and Professional Food Service Management d/b/a Southgate Campus Centre, and R. J. Allen & Associates, d/b/a Regent's Club may apply for appropriate certification if they wish to provide telecommunications services.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the investigation into the activities of the Leon County Educational Facilities Authority and Professional Food Service Management d/b/a Southgate Campus Centre, and R. J. Allen & Associates, d/b/a Regent's Club is terminated as set forth in the body of this Order. It is further

ORDERED that this docket be and the same is hereby closed.

By ORDER of the Florida Public Service Commission, this 6th day of September, 1995.

/s/ Blanca S. Bay6

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-904-413-6770.

(S E A L)

TWH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 951512-TX
certificate to provide) ORDER NO. PSC-96-0649-FOF-TX
alternative local exchange) ISSUED: May 10 , 1996
telecommunications service by)
Teleco Communications, Ltd.)
_____)

The following Commiseionera participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER GRANTING CERTIFICATE TO PROVIDE ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES AND NOTICE OF PROPOSED AGENCY ACTION ORDER MANDATING LEVEL OF 913 SERVICE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed in this Order is preliminary in nature and will become final unless a person whose interests are eubetantially affected files a petition for a formal proceeding, pureuant to Rule 25-22.029, Florida Administrative Code.

I. Granting of Certificate to Provide Alternative Local Exchange Telecommunications Service

Teleco Communications, Ltd., filed an application for a certificate to provide alternative local exchange telecommunication6 service in the State of Florida. This application was filed pureuant to Section 364.337(1), Florida Statutes, which provides that no person may provide alternative local exchange telecommunications service without first obtaining from this Commiesion a certificate authorizing the provision of such service. Upon review of the application, the Commiseion hae determined that the company has sufficient technical, financial, and managerial capability to provide such service.

Accordingly, pursuant to Section 364.337(1), Florida Statutes, we grant to Teleco Communications, Ltd., Certificate No. 4426 permitting them to provide alternative local exchange telecommunications services statewide - except for those areas of the state (territories of earnings-regulated small LECs) that are precluded by Section 364.337(1), Florida Statutes.

This Order, if it becomes final and effective, will serve as Teleco Communications, Ltd.'s certificate. Teleco Communications, Ltd., should retain this Order as evidence of certification by this Commission.

Alternative local exchange telecommunications providers (ALECs) are required to comply with Chapter 364, Florida Statutes, Chapters 25-22 and 25-24, Florida Administrative Code, and other Rules and Orders lawfully promulgated by this Commission.

II. 911 Service

To ensure that Florida end users are allowed high quality access to emergency services, section 364.337(2), Florida Statutes, provides that each ALEC which provides basic local telecommunications service must provide access to 911 services. We find that the statute requires that ALECs providing basic local telecommunications services must provide access to 911 services at the same level as access provided by the local exchange company (LEC) serving the same area.

At this time, we have no specific rules on what a LEC or an ALEC must provide in terms of 911 service access. This could result in an ALEC offering access to 911 service which is inferior in some way to the 911 service access provided by the LEC in that same area. For example, a LEC might provide both automatic number identification (telephone **number**) and automatic location (address) information to the public service answering point while the ALEC might only provide the telephone number of the calling party. Inferior 911 access could result in death or serious injury. Although the issue of 911 access may be resolved in the number portability docket and the individual local interconnection agreements, we believe ALECs should be put on notice that 911 service must be at a level equivalent to that provided by the LEC serving that same area.

ORDER NO. PSC-96-0649-FOF-TX
DOCKET NO. 951512-TX
PAGE 3

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we hereby grant, to Teleco Communications, Ltd., certificate number 4426 to provide alternative local exchange telecommunications service, pursuant to Section 364.337(1), Florida Statutes, and as described in Section I of this Order. It is further

ORDERED that as an alternative local exchange company, Teleco Communications, Ltd., must provide the same access to 911 emergency services as provided by the local exchange company serving the same area, as described in of this Order. It is further

ORDERED that, unless a person whose substantial interests are affected by the action proposed in this Order files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, below, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 10th day of May, 1996.

s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-904-413-6770.

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 520.59 (4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 31, 1996.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
PSC RECORDS/REPORTING

IN RE: Application of Teleco)
Communications, Ltd. for certification)
as an alternative local exchange tele-)
communications company (ALEC).)
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Docket No. 95151 2-TX

PETITION FOR CERTIFICATION

Pursuant to Section 364.337(1), Florida Statutes, TELECO COMMUNICATIONS COMPANY (Teleco) hereby files its application for certification as an alternative local exchange telecommunications company (ALEC) and in support thereof states as follows:

1. This is an application for original authority.
2. Name of applicant: Teleco Communications, Ltd.
24 Harrison Avenue
Panama City, Florida 32401
(904) 785-2449
3. Name under which applicant will do business:
Teleco Communications, Ltd.
4. If applicable, please provide proof of fictitious name registration. Fictitious name registration number: _____
This section is not applicable.
5. National and Florida mailing addresses including street name, number, post office box, city, state and zip code.

Teleco Communications, Ltd.
24 Harrison Avenue
Panama City, Florida 32401

There is no national address.
6. Structure of organization:
Limited partnership organized in the State of Florida.
7. If applicant is an individual, partnership, or joint venture, please give name, title, and address of each legal entity.

General Partner: Teleco Services, Incorporated
24 Harrison Avenue
Panama City, Florida 32401

Limited Partners: Rodney Faircloth
24 Harrison Avenue
Panama City, Florida 32401

Diane Faircloth
24 Harrison Avenue
Panama City, Florida 32401

8. State whether any of the officers, directors, or any of the ten largest stockholders have previously been adjudged bankrupt, mentally incompetent or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings. If so, please explain.

No.

9. If incorporated, please provide proof from the Florida Secretary of State that the applicant has authority to operate in Florida.

Teleco's corporate charter number is: A32023. Attachment A is Teleco's certificate of authorization from the Florida Secretary of State.

10. Please provide the name, title, address, telephone number, internet address, and facsimile number for the person serving as ongoing liaison with the Commission, and if different, the liaison responsible for this application.

Suzanne Brownless, Esquire
Suzanne Brownless, P.A.
1311-B Paul Russell Road, Suite 202
Tallahassee, Florida 32301
Phone: 904-877-5200
FAX: 904-878-0090

11. Please list the other states in which the applicant is currently providing or has applied to provide local exchange or alternative local exchange service.

None

12. Has the applicant been denied certification in any other state? If so, please list the state and the reason for denial.

No.

13. Have penalties been imposed against the applicant in any other state? If so, please list the state and the reason for penalty.

No.

14. Please indicate how a customer can file a service complaint with your company.

The customer can write at the mailing address listed above or contact customer service at the phone number listed above.

15. Please complete and file a price list in accordance with Rule 25-24.825.

Teleco does not intend to offer basic local telecommunications service. Teleco will provide the switching equipment and backboard wiring on a lease-to-own basis for large developments and maintenance of the wire and equipment. Each development will have its own particular switching and wiring configuration and therefore, the contracts entered into will be project specific. Given the nature of the service to be provided, development of a price list is impractical and virtually impossible.

16. Please provide all available documentation demonstrating that the applicant has the following capabilities to provide alternative local exchange service in Florida.

A. Financial capability. See Attachment B.

B. Managerial and technical capability.

The president of the managing partner, Rodney Faircloth, has 23 years experience in the telecommunications field and holds electric contractor's licenses in Florida and Georgia. Mr. Faircloth received his initial training while employed by the Cairo Telephone Company as an electronic switchman and has augmented that training by completing coursework in related electrical engineering fields at University of Georgia and Stromberg-Carlson, Rochester, New York. For the last five years, Mr. Faircloth has supervised the installation and maintenance of backboard wiring, electronic key systems, satellite television and cable systems in several large apartment and conjugal living complexes.

17. Teleco will not be providing local intra-exchange switched telecommunications service and therefore will not be providing 911 emergency services.

WHEREFORE, TELECO COMMUNICATIONS, LTD. requests that it be certified as an alternative local exchange telecommunications company pursuant to Section 364.337(1), Florida Statutes.

Respectfully submitted this 1st day of December, 1995 by:


SUZANNE BROWNLESS

Suzanne Brownless, P.A.
1311-B Paul Russell Road
Suite 202
Tallahassee, Florida 32301
(904) 877-5200

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