IN THE SUPREME COURT OF FLORIDA

BELLSOUTH TELECOMMUNICATIONS, INC., a Georgia Corporation,	)	
Appellant,	)	CASE NO. 90,671
v.	)	
THE FLORIDA PUBLIC SERVICE COMMISSION,	)	
Appellee.	)	

AMENDED ANSWER BRIEF OF APPELLEE FLORIDA PUBLIC SERVICE COMMISSION

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SYMBOLS AND DESIGNATIONS OF THE PARTIES

Appellee Florida Public Service Commission is referred to as the Commission or FPSC. Appellant BellSouth Telecommunications, Inc. is referred to as BellSouth. Appellant Sprint-Florida, Inc. is referred to as Sprint.

The challenged Commission Order, PSC-97-0488-FOF-TL is referred to as the Order.

Citations to the record, including the oral argument presented at the March 18, 1997 Agenda Conference, are designated as R

STATEMENT OF THE CASE AND FACTS

In a marked departure from the traditional policy of providing for local exchange telecommunication service by regulated monopolies, the Legislature found, in its 1995 revision of Chapter 364, that

> the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest . . . [e.s.]

Section 364.01(3)

Accordingly, the Legislature provided for

> ... the transition from the monopoly provision of local exchange service to the competitive provision thereof...

Section 364.01(3)

A significant feature of that transition is found in Section 364.051, which affords local exchange companies (LECs) the opportunity to elect 'price regulation" as an alternative to traditional "rate of return regulation". However, those companies electing price regulation are subject to temporary rate caps for basic local service and protected non-basic services. Therefore, rates for those services are capped at Julv 1, 1995 levels until January 1, 1999 or, for a LEC with more than 3 million basic local service access lines, until January 1, 2001. Sections 364.051(2) (a) and (6) (a). Appellants BellSouth Telecommunications, Inc. (BellSouth) and Sprint-Florida, Inc. (Sprint) have both elected price regulation pursuant to Section 364.051 and are both subject to these temporary rate cap provisions. BellSouth Initial Brief, p. 3; Sprint Initial Brief, p. 4.

As the Legislature further noted,

> ...appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition... [e.s.]

is required for this transition. Section 364.01(3). In the transition to competition enacted by the Legislature, the protection of consumers by means of these temporary rate caps pending the development of competitive markets is as significant to the success of that transition as the freeing of LECs from rate of return regulation-l

This appeal arose from BellSouth's post-July 1, 1995, attempt both to elect price regulation and to apply the Commission's "regrouping" rule, Rule 25-4.056, 'to reassign or reclassify certain local exchanges into higher rate groups", as Sprint expressed it in its Initial Brief at p. 1. [e.s.] When the Commission rejected this "regrouping" attempt **as** prohibited by the rate caps imposed by 364.051(2) **(a)** and (6)(a) on LECs electing price regulation, this appeal followed.

Though the order of presentation of the issues differs in BellSouth's and Sprint's Initial Briefs, both present argument claiming that regrouping is not a rate increase (BellSouth, argument "a"; Sprint argument 3) and that eliminating regrouping will cause unlawful price discrimination (BellSouth argument "b"; Sprint argument 2). The Commission will respond to these two arguments in that sequence and, as part of its response to the

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[1] The price cap ensures that the now deregulated LECs cannot abuse their dominant market position during the transition to more effectively competitive markets.

first point, consider the additional claim raised only by Sprint (Sprint argument 1) that the Commission's Order violates its own rule.

Standard of Review

As stated by the Court in Ameristeel Corporation v. Clark, 691 So. 2d 473, 477 (Fla. 1997),

> Commission orders come to this Court "clothed with the statutory presumption that they have been made within the Commission's jurisdiction and powers, and that they are reasonable and just and such as ought to have been made". . . . Moreover, an agency's interpretation of a statute it is charged with enforcing is entitled to great deference. The party challenging an order of the Commission bears the burden of overcoming those presumptions by showing a departure from the essential requirements of law. . . . We will approve the Commission's findings and conclusions if they are based on competent substantial evidence . . . and if they are not clearly erroneous.

SUMMARYOFARGUMENT

Appellants task was to demonstrate the Commiss on's finding that regrouping constituted a rate increase to be unsupported by competent, substantial evidence. Yet, appellant BellSouth's own witness testified that, under regrouping, "the rate subscribers] are charged for local service would be increased". [e.s.] For its part, appellant Sprint relied on the description of regrouping in Commission order PSC-96-0036-FOF-TL, which states,

> As the number of access lines an end-user can call increases, the rate for flat-rate local service also increases. The increase in rates is rooted in an historic value-of-service pricing philosophy; [e.s.]

These admissions against interest amply support the Commission's finding that regrouping constitutes a rate increase.

Under the standard of review, it is support in the record for the Commission's finding that is relevant, not whether appellants' substitute views or perspectives might themselves be reasonable. Even were appellant's proffered rationales relevant to the standard of review, however, it is unreasonable to argue that the rates for renting luxury cars are not increased over the rates for renting economy cars because they are different products. Moreover, the analogy is not only contrary to common experience, but inconsistent with the admissions of record noted above.

Appellants have also not demonstrated the Commission's conclusion that the rate increases in regrouping violate the rate caps imposed by Section 364.051 to be clearly erroneous. Nothing in Section 364.051 advises the Commission to allow exceptions from

the rate caps for increases justified by a value of service rationale or to preserve rate groups by allowing rate increases for individual subscribers. The Commission's conclusion is exactly the kind of interpretation "reasonably consistent with the plain meaning of the **statute" to** which the Court must defer. Chevron USA, Inc. v. Natural Resources Defense Council, Inc. See also, Florida Interexchanse Carriers Association v. Clark; Ameristeel Corporation v. Clark.

Nor are cases in which the Agency for Health Care Administration or the Department of Health and Rehabilitative Services were reversed for failure to follow their own rules when changing established policy, practice **and procedure** applicable to the Commission's Order in this case. Here, the Legislature -- not the Commission -- reversed policy, practice and procedure that had been established for decades. Existing Commission rules cannot be applied so as to 'amend, repeal or modify" the Legislative Act embodied in recently enacted Section 364.051. Diamond Cab Owners Ass'n v. Florida Railroad and Public Utilities Commission. See also, C.F. Industries Inc. v. Nichols.

Sections 364.08, 364.09 and 364.10 do not preclude all discrimination among customers, only "undue" discrimination. The Commission gave effect to all parts of the statute in reasonably interpreting the rate caps at issue to be absolute and reasonably interpreting whatever discrimination may result from disallowing regrouping to be not 'undue". In re Bell Atl.-Pa. Inc.'s Petition and Plan for Alternative Regulation Under Chapter 30; Department of

Environmental Protection v. Millender; Forsyth v. Longboat Key Beach Erosion Control Dist.

While the Commission has a duty to regulate, Florida Cable Television Association v. Deason, that duty now includes a duty to regulate on behalf of the transition to competition. Section 364.01(3). That duty may appropriately require, as even BellSouth's own witness admitted, that if a statute and rule are in conflict, "you have to follow the statute."

That is exactly what the Commission did in the challenged Order.

ARGUMENT

I. THE COMMISSION ORDER PROHIBITING LECS ELECTING PRICE REGULATION FROM REGROUPING LOCAL EXCHANGES INTO HIGHER RATE GROUPS WAS NOT ERRONEOUS.

In the case below, the Commission was faced with the task of reconciling its long existing "regrouping" rules, Rules 25-4.053 through 25-4.056, with the temporary rate caps imposed by recently enacted Section 364.051 on LECs which have elected price regulation. The Commission found that regrouping pursuant to those rules constituted rate increases which would violate the rate caps statutorily imposed by Section 364.051 on those LECs.

Appellants have no difficulty in demonstrating that "regrouping", as such, is reasonable. Indeed, some of the arguments made by appellants would be cited by the Commission itself in support of its decision to enact regrouping rules in the context of traditional rate of return regulation. The reasonableness of regrouping in that context is not dispositive of the instant case, however, because the statutory rate caps at issue are not part of that traditional regulatory context, but are, instead, an element of the newly enacted transition from regulation to competition described previously. See, R. 180, l. 16-19; R. 195, 1. 1-16.

Moreover, under the standard of review set out by the Court in Ameristeel, it is insufficient to demonstrate that reasonable persons, whether dissenters on the Commission panel, a different state's commission, or even this Court, might disagree with the

Commission's conclusion and reconcile the regrouping rules and rate caps differently. As the Court stated in Ameristeel,

> We will approve the Commission's findings and conclusions if they axe based on competent substantial evidence, . . . and if they are not clearly erroneous. [e.s.]

691 So. 2d at 477. Thus, the standard of review appellants must meet to secure a reversal of the Commission's Order in this case, where the Order reflected a 3-2 split in the Commission panel, is just as high as it would be to reverse a unanimous decision.[2]

Indeed, appellants' task is nothing less than to prove that no competent substantial evidence supports the Commission's finding that regrouping constitutes a rate increase and that the Commission's conclusion to that effect with reference to the application of the statutory rate caps was clearly erroneous as a matter of law. Appellants have not, in the Commission's view, come even close to meeting these requirements, as either matters of fact or law.

One obvious sign of appellants' lack of success in this endeavor is that both appellants' claims are replete with admissions against interest. BellSouth's own witness Varner, for example, describes regrouping as follows in his pre-filed testimony:

> Q. Can regrouping result in a change in a subscriber's rate?
>
> A. Yes. If there is a sufficient increase in access lines in the local calling area to trigger a rate group change, subscribers in that exchange would be regrouped into the

[2] The staff recommendation in this case was also split into 'primary" and "alternative" analyses. (R. 112-125)

> next highest rate group. As a result, the rate they are charged for local service would be increased. [e.s.]

R. 133. Clearly, such an admission against interest renders BellSouth's task an impossibility.

Sprint, for its part, is content to cite Commission Order PSC-96-0036-FOF-TL as a description of regrouping. But Sprint's adoption of that description, too, is equally an admission against interest with respect to the issues on appeal:

> Rate resrouping is a rate design mechanism that has been used historically to insure that the rates for certain customer classes are equalized . . . . As the number of access lines an end-user can call increases, the rate for flat-rate local service also increases. The increase in rates is rooted in an historic value-of-service pricing philosophy; [e.s.]

Sprint, Initial Brief, p. 2.

In view of these descriptions of regrouping, appellants cannot at all demonstrate that the Commission's finding lacks any competent substantial evidence. In fact, the reverse is true; the Commission's finding is amply supported by appellants' own admissions.

The standard of review renders nugatory appellants' attempts to find a 'context" or 'perspective" within which this rate increase can be made to 'disappear". The question is not whether appellants' views when filtered through their chosen prism are supported by the record, but whether the Commission's finding is supported. As demonstrated, appellants' own admissions are sufficient to answer the latter question in the affirmative.

Even were appellants' search for such a context or perspective relevant to the appellate standard of review, appellants have not been successful in their search. The Commission believes, for example, that few ordinary consumers, let alone this Court, would "buy" BellSouth's other-worldly claim on p.13-14 of its Initial Brief that there is no **increase** in the rate for renting a luxury car as opposed to an economy car because the cars are ~~different~~ products. Indeed, if there were any validity to that claim, consumers would only rent luxury cars since BellSouth's analysis purportedly makes the increased rate charged for renting luxury cars "disappear".

However, BellSouth's claim is not only too good to be true, or to be valid economics, it is at odds with BellSouth's witness' testimony cited above. That testimony frankly acknowledges that regrouping results in rate increases, but emphasizes that such increases are justified by the increases in access lines available to the 'regrouped" subscribers.

As further stated by witness Varner,

> [t]he tariff **change** associated with the reclassification of an exchange is quickly implemented and virtually automatic. The Commission has routinely approved these tariffed changes in the **past.**

R. 133.

The virtue of regrouping is therefore not, **as** appellants **claim,** that it embodies a "group" perspective which somehow causes the rate increases at issue to "disappear", but that, in the ordinary context of resulation, regrouping is **a** more efficient,

Virtually automatic" mechanism to handle such routine changes than ordinary case-by-case ratemaking. That virtue, and the fact that such rate increases are routinely justifiable as the increase in access lines increases the value of the service provided, simply proves the reasonableness of regrouping. It does not, however, prove that no rate increase is involved in regrouping or that the Commission's finding on that point is unsupported.

Nor is the Commission's application of that finding **clearly** erroneous as a matter of law. Sections 364.051(2)(a) and (6) (a) simply cap rates for **a** specified amount of time. No directive therein advises the Commission to allow for exceptions to the cap where "justified" by "historic value-of-service pricing philosophy" or on any other basis whatsoever. Further, no directive therein advises the Commission to uncap rates for individual subscribers, if doing so will preserve the integrity and consistency of existing rate groups.

Again, the standard of review is of great significance. While BellSouth cites In re Bell Atl. - Pa. Inc.'s Petition and Plan for Alternative Regulation Under Chapter 30, 1995 WE 908609 at *7-9 (Pa. PUC January 23, 1995), **as** an example of **a** state commission reconciling **a** "rate freeze" with rate group reclassification [i.e. regrouping] to allow for regrouping as an "exclusion" from the

freeze,[3] BellSouth candidly recognized that there was a dissent.* Therein, the dissent asks,

> . . . is the [Pennsylvania] Commission's order freezing rates really a rate freeze? Or is it a rate freeze that periodically thaws out, thereby creating so many holes that the rate freeze order could eventually resemble a piece of Swiss cheese?

1995 WL 908609 at *25-26.

Under the "clearly erroneous" standard of review, the burden of appellants is to demonstrate that no commission could reasonably have arrived at the conclusion in the challenged Order, not merely that reasonable persons could disagree with that conclusion. While BellSouth has demonstrated the latter point, it has not at all demonstrated the former point, the one required by the standard of review.[5]

Sprint, for its part, cites numerous cases said to govern the extent of this Court's deference to the Commission's interpretation of Section 364.051. Sprint then summarizes its disagreement with the challenged Order as follows:

> Nowhere does this section [i.e., Section 364.0511, or any other section of Chapter 364, state that a rate regrouping constitutes "a price increase".

Sprint Initial Brief, p. 14.

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[3] Indeed, the very fact that the Pennsylvania Commission allowed for regrouping as an "exclusion" from the rate freeze supports the FPSC's reasoning in the challenged Order here. While the policy choices of the two commissions differ, both agree that a pure rate freeze or cap is inconsistent with regrouping.

[4] BellSouth Initial Brief, p. 17, n. 9.

[5] As noted previously, the point that reasonable people might disagree had already been demonstrated by the split Commission vote and, earlier still, by the split staff recommendation.

However, as the Commission pointed out previously, both the testimony of BellSouth's witness Varner describing regrouping and Commission Order PSC-96-0036-FOF-TL, adopted by Sprint to describe regrouping, plainly refer to an 'increase in rates" or 'rate that . . . would be increased". Under the cases Sprint cites, Chevron USA Inc. v. Natural Resources Defense Council, Inc., 468 U.S. 837, 842-45 (1984) and Florida Interexchanse Carriers Association v. Clark, 678 So. 2d 1267 (1976), the Commission's conclusion that the phrase "rates . , . shall be capped" in Section 364.051 forecloses any "increase in rates" as described in regrouping is exactly the kind of interpretation 'reasonably consistent with the plain meaning of the statute" to which the Court must defer. Sprint's mere disagreement with that interpretation no more meets the standard of review than BellSouth's.

Sprint, however, forwards an additional technical argument based on cases in which decisions of the Agency for Health Care Administration or its predecessor, the Department of Health and Rehabilitative Services, were reversed for failure of those agencies to follow their own rules. As summarized by the First District Court of Appeal in Cleveland Clinic Florida Hospital v. Asencv for Health Care Administration, 679 So. 2d 1237, 1241-2, those cases held the following:

> Aside from AHCA's decision to reinterpret the governing statutes, that is, to simply "change its mind", there is no good reason why the agency's abrupt change of established policy, practice and procedure should be sanctioned . . . . Without question an agency must follow its own rules . . ., but if the rule, as it plainly reads, should prove impractical in operation, the rule can be amended

> pursuant to established rulemaking procedures. However, "[a]bsent such amendment, expedience cannot be permitted to dictate its terms."

Though Sprint argues that this line of cases applies and that, in disallowing regrouping pursuant to Rules 25-4.053 through 25-4.056, the Commission failed to follow its own rules, Sprint's argument is inapposite.

Here, the Commission has not "changed its mind", the Legislature has changed its mind. Moreover, the Legislature has completely revised Chapter 364 and, in doing so, has altered decades of established policy, practice and procedure. This is, therefore, not a case in which a rule has merely proved "impractical in operation", but one in which a routinely justifiable rule-based rate increase is now subject to a statutorily-imposed rate cap.

In Diamond Cab Owners Ass'n v. Florida Railroad & Public Utilities Commission, 66 So. 2d 593, 596 (Fla. 1953), the Florida Supreme Court held that

> [t]he Commission may make rules and regulations within the yardstick prescribed by the Legislature, but it cannot amend, repeal or modify an Act of the Legislature by the adoption of such rules and regulations. [e.s.]

In its challenged Order in this case, the Commission held that regrouping by price-regulated LEC's of local exchanges into higher rate groupings violated the rate caps imposed by the Legislature on those LECs. In light of Diamond Cab, supra, Commission rules cannot operate outside "the yardstick prescribed by the Legislature". Though Section 364.051 has provided new

opportunities for LECs electing price regulation, it has also narrowed the yardstick within which Rules 25-4.053-6 may operate.[6] Because the principle of Diamond Cab is in accord with the Commission's Order, Sprint's arguments based on Cleveland Clinic and other such inapposite authority should be rejected.

II. APPELLANTS' ARGUMENTS CONCERNING PRICE DISCRIMINATION DO NOT PROVIDE ANY BASIS FOR REVERSAL OF THE COMMISSION'S ORDER.

Much of the briefing in this appeal, as well as the pre-filed testimony and oral argument below, is concerned with demonstrating that regrouping reduces discrimination between customers receiving like local service as measured by the number of access lines available. Appellants have provided numerous examples which appropriately illustrate the reasonableness of regrouping as a regulatory device to help achieve that goal. However, the implication that the presence or absence of regrouping is determinative of regulatory perfection on the one hand, or regulatory catastrophe on the other, is simply overdrawn. First, regrouping is merely a regulatory device to assist in achieving certain goals which, while desirable, are not the only concerns with which the Legislature has charged the Commission. The Legislature has also required the Commission to cap the rates of LECs electing price regulation, a command which the Commission could reasonably interpret to be inconsistent with regrouping.

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[6] See also, C.F. Industries, Inc. v. Nichols, 536 So. 2d 234 (Fla. 1988).. In response to appellants' claim that the Commission's order was contrary to Rule 25-17.0832(3)(f), appellees argued that, "assuming there is conflict with the rule, the rule must give way to state and federal law...." The Court stated, "We agree with appellees...." 536 So. 2d at 238.

Second, regrouping itself has its limits. As noted by the Director of the **Commission's Division** of **Communications at** the oral argument:

> What's interesting about all of this is that they didn't say anything about Miami, and that's top of the rate groups and it's capped. Now, Miami could triple in population, theoretically, and they couldn't increase the rates. [e.s.]

R. 181. In other words, regrouping helps to reduce certain kinds of customer discrimination, but does not eliminate it completely. Moreover, Sections 364.08, 364.09 and 364.10 only preclude undue discrimination, not all discrimination. Therefore, appellants' arguments beg the question as to whether such discrimination as may result from the Commission's refusal to allow price-regulated LECs to regroup local exchanges into higher rate groups is or is not 'undue" discrimination.

At the oral argument, staff responded to BellSouth's assertion that "...if customers are indeed similarly situated then they can't be charged different prices" as follows:

> We don't believe that it is undue discrimination when a statute changes and says rates don't go up after this point that the effect of that is that customers who were regrouped earlier than the effective date of the statute, then are being charged a higher price. We don't consider that to be undue discrimination since it is the statute and the law that created that price discrepancy.
>
> Eventually when rate regrouping goes away all together, which we think it should do now, there will be many customers who will be similarly situated who will be paying different prices.
>
> **So** we think the focus of the analysis of undue discrimination in this competitive world is different than it was for us when we were dealing with the regulatory environment, where in a

> complete monopoly situation, then customers who were in the same place had to pay the same. In this environment that's not necessarily true. And I guess the key for me is that it is not unreasonable discrimination when the statute is what has required this discrepancy. [e.s.]

R. 178-179. As seen in this light there is not, in Sections 364.08, 364.09 or 364.10, anything which the Commission's Order has failed to give effect to. The Commission understood the plain meaning of Sections 364.051(2)(a) and (6) (a) to require absolute rate caps. Because, as a policy matter, the Commission viewed regrouping as inconsistent with the competitive environment which is the goal of this transition, as reflected by such Legislative enactments as Section 364.051, the Florida Commission decided -- unlike the Pennsylvania Commission -- to enforce such absolute caps rather than to allow an "exclusion" for regrouping,

On the other hand, Sections 364.08, 364.09 and 364.10 do not prohibit by their explicit terms all discrimination. Based on the oral argument cited previously, the Commission's decision to deny regrouping therefore gives full effect to reasonable interpretations of Section 364.051, as well as Sections 364.08, 364.09 and 364.10. Section 364.051 could reasonably be interpreted to require an absolute cap and the Commission could reasonably interpret the discrimination attributable to the imposition of the rate cap by the new statute as not being "undue" discrimination. That is all such cases as Department of Environmental Protection v. Millender, 666 So. 2d 882 (Fla. 1996) and Forsyth v. Longboat Key Beach Erosion Control Dist., 604 So. 2d 452 (Fla. 1992), cited by BellSouth, require.

In Bell Atlantic, supra, the Pennsylvania Commission decided to allow regrouping as an 'exclusion" from the rate freeze imposed by the Legislature. Notwithstanding this, the Pennsylvania Commission explicitly rejected the argument based on discrimination made by appellants in this case:

> We would not consider the freeze on protected services, were it applied in an absolute fashion, to result in unreasonable rate discrimination . . . . A freeze on protected service is, inherently[, 1 discriminatory. However, the General Assembly has determined that the continued affordibility of said services is a fundamental goal of the . . . legislation.

1995 WL 908609 at *8.

Under the standard of review, it is insufficient that appellants disagree with the Commission's decision. The decision must instead be demonstrated to be clearly erroneous as a matter of law. Based on the above, the arguments of appellants do not meet that standard because the Commission's decision adequately comprehends the statute as a whole, even though in a way different from what appellants would prefer.

Moreover, the challenged Order meets the requirements of Florida Cable Television Association v. Deason, 635 So. 2d 14, 16 (Fla. 1994). The Commission does assuredly have a duty to regulate, as noted by Sprint at p. 12 of its Initial Brief. However, the Commission's responsibilities now include, though it may seem somewhat novel, a duty to regulate on behalf of the transition to competition:

> The Legislature further finds that the transition from the monopoly provision of local exchange service to the competitive provision thereof will

> require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition. . . . [e.s.]

Section 364.01(3). Sprint makes no allowance for the appropriateness of the Commission's decision to allow a degree of discrimination in 1997 which has been determined to be not undue under the facts and circumstances of this case, as opposed to the Commission's 1989 refusal to allow free long distance calls to patients of a single hospital in Order No. 22197. That order not only concerned a different kind and degree of discrimination, but pre-dated the transition to competition which provides the context for the Commission's regulatory decision in this case.

The notion expressed by Sprint that the Commission's status as regulator requires that traditional regulatory devices like regrouping must be upheld in every Commission adjudication fails to comprehend the extent of the change in the Commission's statutory authority and activities pursuant thereto. This is reflected by Sprint's reliance on citations of many older cases concerning regrouping. In fact, in appropriate circumstances, the converse is likely to be the case. It would be truly surprising if the transition to competition could be accomplished without any of the complex fabric of regulation ever being torn in the process. Indeed, BellSouth appeared to concede that at the oral argument:

> Chairman Johnson: If we were to make a determination that the law did not allow regrouping any more, the law that was passed in 1995, but we had a rule that was counter to the law, what would we do? Is the rule preempted and would we have to follow the law, or do we say, "Huh-oh, we have a rule that violates the law but we've got to apply this law anyway?"

Mr. Carver (BellSouth): I think you change your rule.

Chairman Johnson: In the interim what do we do? If there's a law out there that is in effect, and that our rule violates the law, what would we do in the interim? Do we keep applying it or do we ---

Mr. Carver: I think if at some point you determine that your rule violates the law, ~~that they are in~~ conflict, then I think you have to follow the statute. . . [e.s.]

R. 176.

The Commission did exactly that in the challenged Order.

CONCLUSION

While the Commission's decision is one with which reasonable people could disagree, Bell Atlantic, supra; Memorandum from Divisions of Communications and Legal Services to Division of Records and Reporting, filed March 11, 1997, R. 112-125; Agenda Conference Item No. 14 (March 18, 1997), R. 162C - 16211, appellants' mere disagreement with the Commission's Order is insufficient under the appellate standard of review. For the reasons stated, appellants did not demonstrate that the Commission lacked competent substantial evidence in finding regrouping to constitute a rate increase, Nor did appellants demonstrate the Commission's conclusion that regrouping conflicted with the rate cap provisions of Section 364.051 to be clearly erroneous.

Wherefore, the Florida Public Service Commission respectfully requests that the Court affirm the Commission's Order.

Respectfully submitted,

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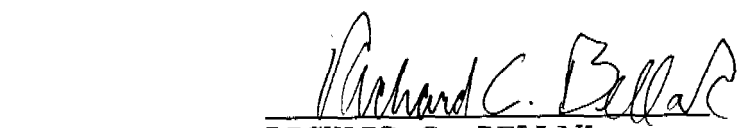

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Dated: September 19, 1997

CERTIFICATE OF SERVICE

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