IN THE SUPREME COURT OF FLORIDA

GTC, INC.,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 94,656
	)	
JOE GARCIA, ETC., ET AL.,	)	
	)	
Appellee.	)	
_____	)	

APPEAL FROM THE
FLORIDA PUBLIC SERVICE COMMISSION

ANSWER BRIEF OF APPELLEE
FLORIDA PUBLIC SERVICE COMMISSION

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SYMBOLS AND DESIGNATIONS OF THE PARTIES

Appellee, the Florida Public Service Commission, will be referred to in this brief as "the Commission." Appellant GTC, Inc. will be referred to as "GTC." Appellee, BellSouth Telecommunications, Inc., will be referred to as “BellSouth.”

References to the record on appeal are designated by volume and page (V. __ R.___). References to the appendix to this brief are designated (Appendix ___). References to the appellant’s amended initial brief are designated (I.B. ___). The Commission Order that is the subject of this appeal, Order No. PSC-98-1169-FOF-TL, will be referred to as the “Final Order.”

There are several regulatory terms which the industry commonly refers to by acronyms that are used throughout this brief:

LEC = Local Exchange Company

IXC = Interexchange Company

InterLATA = Telecommunications services that originate in one Local Access and Transport Area and terminate in another.

STATEMENT OF THE CASE AND FACTS

The Commission accepts GTC's Statement of the Case and Facts with one clarification and the addition of several relevant facts that GTC omitted. These include the facts that are the basis for the Commission's Final Order terminating the InterLATA access subsidy.

First, although the revenues for the subsidy are collected by BellSouth from IXCs and remitted to GTC, a more accurate description of the access subsidy pool was stated by the Commission in the order establishing the subsidy, that the pool is "funded by each LEC contributing a portion of the access revenue it receives for use of its local network by IXCs." In re: Intrastate access charges for toll use of local exchange services, Order No. 14452 at p. 12, June 10, 1985 (Emphasis supplied). (Exhibit 1; Appendix 2) Since BellSouth and GTC are the only LECs that remain as pool participants, the access revenue is earned by BellSouth and paid to GTC as a subsidy; it is not paid by the IXCs as a subsidy.

The Commission established the interLATA access subsidy pool in 1985, in a proceeding to implement an intrastate access charge structure that would compensate the LECs for use of their local facilities and provide incentives for competition while maintaining universal service. (Order No. 14452, Id. at 3.) To ease the

transition from a system of pooling of access revenues under monopoly regulation to "bill and keep" in a competitive long distance market, where each LEC would keep the revenue it received for use of its local facilities, a temporary subsidy was created:

> Doing away with pooling of access revenues is in the public interest in that the inequities inherent in pooling are being replaced with the more appropriate approach of each company keeping the revenue it receives for use of its local facilities. We recognize that discontinuance of the access pool is not complete because we have established a temporary subsidy pool. However, our implementation plan is an important first step in this complex process.

(Order No. 14452, Id. at p. 13) (Emphasis supplied.)

Between 1988 and 1995, the subsidies paid to the other LECs who were originally net recipients from the pool were eliminated by the Commission, leaving GTC as the only LEC receiving the subsidy, and BellSouth as the only LEC contributing in 1995. (Final Order at 3, 5; V. I, R. 78) GTC's subsidy was reduced in 1989 because of excess earnings. (V. I, R. 79) The Commission typically reduced the amount of the subsidy or terminated it when it found the LEC no longer needed it:

> Upon consideration we find it appropriate to approve the reduction to the Company's interLATA access charge subsidy. We have reduced subsidies and removed LECs from the interLATA subsidy pool when it appeared that the LEC no longer needed the subsidy; however,

> this has always been on a case by case basis. It appears that ALLTEL's subsidy can be reduced at the end of 1994 without any serious effect on the company's earnings or ALLTEL's ratepayers.

In re: Investigation into authorized return on equity and earning of ALLTEL FLORIDA, INC., 94 F.P.S.C. 3:746, 750; see also, In re: Investigation into the 1991 earnings of ALLTEL FLORIDA, INC., 92 F.P.S.C. 3:165, 167 (Access subsidy "intended to last only until we were presented with an opportunity to address each company's particular circumstances in a rate case or other proceeding"). Although excessive earnings was typically the change in circumstances that the Commission found justified removing the company from the subsidy pool, the Commission also considered the anticipated stimulation of earnings when a $.25 extended area service calling plan was implemented in In re: Modified Minimum Filing Requirements Report of Northeast Florida Telephone Company, Inc., 93 F.P.S.C. 2:419 (1993).

In 1995, the Florida Legislature substantially revised Chapter 364, Florida Statutes, (Chapter 95-403, Laws of Florida):

> The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest . . . .

§364.01(3), Fla. Stat. (1995) (Emphasis supplied.) Accordingly, the Legislature provided for:

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

Id. A significant feature of the transition is found in section 364.051, which afforded local exchange companies the opportunity to elect price regulation as an alternative to traditional rate base, rate of return regulation. As the Legislature further noted, however:

> appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition

is required for this transition. §364.01(3), Fla. Stat. (1995).

For companies that elected to be price regulated, the rates for basic local telecommunications service were capped. Prices for this service may not be raised prior to January 1, 2000, for LECs with fewer than three million access lines such as GTC, but may be adjusted to anywhere below the cap without prior Commission approval. §364.051(2)(a), Fla. Stat. (Supp. 1998). A relief provision is also included. Thus, a company that believes circumstances have changed substantially to justify an increase in basic rates can petition the Commission for a rate increase and the

Commission must act upon the petition within 120 days of its filing. §364.051(5), Fla. Stat. (1997).

Prices for non-basic services are not capped. Individual service prices may be increased in any amount as long as the aggregate price increases in a category of services do not exceed six percent per year, unless there is another provider of local service in the LEC's exchange. §364.051(6), Fla. Stat. (1997); In Re: Investigation to determine categories of non-basic services provided by local exchange telephone companies pursuant to Chapter 364.051(6), Florida Statutes, 96 F.P.S.C. 1:94 (1996). If there is another provider, then the cap on price increases is raised to 20 percent in a 12-month period. §364.051(6), Fla. Stat. (1997). Non-basic services include those such as call waiting, call forwarding, caller ID, and three-way calling. In addition, telephone directory advertising revenues are no longer regulated and GTC is free to charge whatever the market will bear and keep the profits.

On June 25, 1996, St. Joseph Telephone and Telegraph Company filed a notice electing price cap regulation. In re: Notice of election of price regulation, 96 F.P.S.C. 8:478 (1996), amended 96 F.P.S.C. 9:3 (1996). The company subsequently consolidated with two other LECs, Florala Telephone Company, Inc., and Gulf Telephone

Company, and became GTC, Inc. In re: Joint Petition for Approval of Consolidation, 97 F.P.S.C. 8:391 (1997).

BellSouth, which is also a price regulated LEC, filed its petition with the Commission to terminate the subsidy to GTC on July 1, 1997. (V. I, R. 1, 7) A hearing was held and all parties except GTC provided testimony. All parties agreed that the subsidy was not intended to be permanent, but was created in 1985 to ease the transition from monopoly regulation to a competitive environment in the long distance market. (Final Order at 5-6)

The Commission concluded that the continued subsidization of GTC's revenues was contrary to its statements in Order No. 14452 that doing away with pooling was in the public interest. (Final Order at 9) The Commission found that the subsidy pool was clearly meant to be temporary, and that its elimination does not conflict with section 364.051, Florida Statutes, providing for price regulation.

In addition, the Commission found that there was no evidence that the 1995 changes to the law impaired its authority to implement and enforce its prior orders regarding the subsidy. (Final Order at 8) The Commission also found that "GTC has demonstrated a desire to take on the opportunities of the competitive arena by electing price regulation." (Final Order at

12) It concluded that the election was a substantial change in circumstances that warranted termination of the subsidy, and that GTC could seek relief under section 364.051(5), Florida Statutes, if it believed the Commission's action justified a rate increase. (Final Order at 12-13) The Commission issued its order on August 28, 1998, terminating the subsidy effective upon BellSouth filing the appropriate tariffs. (Final Order at 18)

SUMMARY OF ARGUMENT

The Commission decided in this case that it should terminate a subsidy to GTC that was specifically established in 1985 as a temporary mechanism during the transition to competition. The Commission concluded that neither the evidence nor the statute supported GTC's position that because it elected price regulation, the subsidy could not be terminated.

GTC cites no authority in its brief to support its argument. That is because the premise for its argument is erroneous. No statute fixes or guarantees GTC the revenues it was receiving at the time it gave up rate of return regulation and elected price cap regulation. Nor do the legislative staff analyses of the 1995 law support GTC's position. Instead, the Legislature focused on promoting competition and protecting the consumer during the transition from monopoly, rate of return regulation to full competition. Moreover, it has expressly provided that regulatory oversight by the Commission will be required. §364.01(3), Fla. Stat. (1997).

The Commission's statutory duty in this regard is to provide for the development of fair and effective competition. The Commission acted in furtherance of that duty by removing a vestige of the monopoly regulatory scheme. The subsidy was not intended to

be permanent even under that monopoly regulation. Having concluded that continuation of a price support mechanism is inconsistent with the election of price regulation and a competitive environment, inconsistent with the order originally establishing the subsidy, and not in the public interest, the Commission was authorized to terminate it.

In GTC's view, it is free to retain a benefit of rate of return regulation, but is not subject to the burdens and constraints that were inherent in that form of regulation. A more reasonable construction of the statute is that the Commission has the authority to enforce an order that was entered when it had the authority to regulate GTC's earnings, and terminate the temporary subsidy when the company elects a different and inconsistent regulatory scheme, i.e., price regulation.

It was not necessary for the Commission to determine whether GTC's earnings are sufficient to absorb the termination of the subsidy. If GTC believes the change in its circumstances justifies a rate increase, it has the option to seek relief under section 364.051(5), Florida Statutes. The Legislature included this provision for just this sort of circumstance that may arise during the transition to competition. Contrary to GTC's assertion, this "hybrid method of regulation" was not created by the Commission.

It is a specific creature of statute, and that statute specifically contemplates an evidentiary hearing.

GTC cannot establish a taking or a breach of some regulatory "contract" because it has not taken advantage of the compensatory mechanism offered by section 364.051(5), Florida Statutes. Moreover, GTC cannot show that it has a reasonable, investment-backed expectation in the subsidy. An expectation is reasonable only if it is based on an explicit governmental guarantee. GTC has none. All GTC has is a unilateral expectation or an abstract need. That is not sufficient.

GTC has not met its burden to overcome the presumption of validity that attaches to Commission orders. It has not shown that the Commission's decision is clearly erroneous or that it departs from the essential requirements of law. The Court should affirm the Commission's order.

ARGUMENT

This Court has stated many times the standard on review of Commission orders:

> Commission orders come to this Court 'clothed with a presumption of validity.' Florida Interexchange Carriers Ass'n v. Clark, 678 So. 2d 1267, 1270 (Fla. 1996) (quoting City of Tallahassee v. Mann, 411 So. 2d 162, 164 (Fla. 1981)). Additionally, an agency's interpretation of a statute that it is charged with enforcing is entitled to great deference and will be approved by this Court unless it is clearly erroneous. Florida Interexchange Carriers Ass'n, 678 So. 2d at 1270; Florida Cable Television Ass'n v. Deason, 635 So. 2d 14, 15 (Fla. 1994). The burden of overcoming these presumptions is on the party challenging the Commission's order, and it must be shown that there has been a departure from the essential requirements of the law. Florida Interexchange Carriers Ass'n, 678 So. 2d at 1270; City of Tallahassee v. Mann, 411 So. 2d at 164.

BellSouth Telecommunications, Inc. v. Johnson, 708 So. 2d 594, 596-597 (Fla. 1998). This is a heavy burden, and GTC does not come close to meeting it.

I. THE COMMISSION'S DECISION TO TERMINATE A TEMPORARY SUBSIDY ESTABLISHED UNDER RATE OF RETURN REGULATION WHEN GTC ELECTED PRICE REGULATION WAS NOT CLEARLY ERRONEOUS.

In this case, the Commission decided that it should terminate a subsidy that was established in 1985 specifically as a temporary mechanism during the transition to competition in the provision of telecommunications services. The Commission concluded that neither

the evidence put forth in the hearing below nor the language of the statute supported GTC's position. The Commission rejected GTC's argument that the 1995 changes to the telecommunications law and GTC's election of price cap regulation in 1996 impaired the Commission's authority to eliminate the subsidy. (Final Order at 8) The Commission further concluded that once GTC became price regulated, it was appropriate to end the subsidy instituted when GTC was under rate of return regulation. Id.

GTC argues that under the statute, the Commission does not have the authority to discontinue the subsidy. GTC's argument is predicated on the premise that the statute fixes and guarantees it the revenues it was receiving when it elected price cap regulation. Thus, GTC asserts that it "begins the new competitive regulatory bargain with fixed rates and revenues specifically identified by the Legislature in the price cap statutes." (I.B. at 5) GTC further asserts that its shareholders have "the guarantee of statutory entitlement to the revenue the utility was receiving at the time it elected price cap regulation." (I.B. at 11)

Where the Legislature has identified such revenues or stated a guarantee in the price cap statute, or anywhere else, is a mystery. GTC cites no authority for its proposition, nor can it. There is none. Nowhere in section 364.051, Florida Statutes,

entitled “Price regulation,” or elsewhere in Chapter 364, is there any language that supports GTC’s proposition that its revenues were fixed or guaranteed. Nor is there anything suggesting that the Commission has no authority to eliminate the subsidy between potential competitors once the recipient elects price cap regulation.

Section 364.051(2)(a) imposes a cap on the rates for basic local telecommunications service running from the date GTC elected price cap regulation until January 1, 2000, for companies like GTC that have fewer than three million access lines. Of course, GTC is free to reduce its rates if it wishes in order to meet competition, but it may not increase them. The rates for nonbasic service are not capped, but price increases shall not exceed six percent within a 12-month period until there is another provider of local service in an exchange area. §364.051(6)(a), Fla. Stat.

The other statutory provision relevant here is section 364.051(1)(c). That section exempts a price regulated company from rate base, rate of return regulation and the requirements of sections 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18, Florida Statutes. These sections primarily address the setting of rates, the Commission’s authority to order improvements

to facilities, company reports to the Commission, and Commission access to company records.

Allowing the company unlimited earnings and the ability to keep all of its profits is not the only benefit provided by freeing price cap regulated companies from rate of return regulation during the transition to a competitive market. In addition, the companies are given the flexibility to respond quickly to competitive pressures and to changes in market conditions without incurring the delays inherent in seeking regulatory approval and the attendant administrative and compliance costs of regulation. J. Bonbright, A. Danielsen, & D. Kamerschen, Principles of Public Utility Rates 587-588 (2d ed. 1988). Price regulated companies also have strong incentives to reduce costs in order to increase profits, and that can lead to greater innovation and the introduction of new services. Id.

Notably absent from the statute is any provision that evidences an intent by the Legislature to guarantee the revenues of the incumbent local exchange company that elects price regulation. The Legislature's stated purpose focuses instead on promoting competition and protecting the consumer during the transition to full competition:

> The Legislature finds that the competitive provision of telecommunications services,

> including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure. 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, but nothing in this chapter shall limit the availability to any party of any remedy under state or federal antitrust laws.

§364.01(3), Fla. Stat. (1997) (Emphasis supplied).

GTC cites no law to support its view that its revenues were guaranteed at the time it elected price regulation. Nor did GTC put forth any evidence that the Legislature intended to perpetuate a price support mechanism from a potential competitor such as the subsidy to GTC from BellSouth. The legislative staff analyses of the legislation likewise say nothing about fixing or guaranteeing the level of revenues of the incumbent local exchange company. Fla. H.R. Comm. on Commerce, CS for SB 1554 (1995) Staff Analysis (final May 18, 1995)(on file at Legislative Library); Fla. S. Comm. on Commerce, CS for SB 1554 (1995) Senate Staff Analysis (April 6, 1995) (on file at Legislative Library). (Appendices 6 and 7)

Under price regulation, GTC is no longer guaranteed the opportunity to earn a fair return on its investment. Nor does the Commission concern itself with the possibility that GTC is earning in excess of a fair return. The Commission, however, has not lost all of its authority over GTC and other price cap regulated companies. It clearly has regulatory oversight authority over the transition to competition in the local exchange market. Having concluded that continuation of a price support mechanism is inconsistent with the election of price regulation, inconsistent with the order originally establishing the subsidy, and not in the public interest, the Commission had the authority to terminate it.

Despite its argument to the contrary, even GTC appears to acknowledge the Commission's authority. Thus, on page 14 of its brief, GTC asserts that "the Commission may not take a regulatory action that deprives the utility of revenues to which the utility is entitled absent some extraordinary justification." (Emphasis supplied.) GTC also does not explain what appears to be the logical consequence of its argument; that is, how the Commission would have the authority to compel BellSouth, also a price regulated LEC, to continue paying the subsidy to GTC, if it does not have the authority to terminate the subsidy. GTC cannot have it both ways.

In Teleco Communications Company v. Clark, 695 So. 2d 304 (Fla. 1997), this Court determined that the Commission had the authority to order a transfer of ownership of title of inside wire for the provision of telecommunications services from a company that was not certificated and thus was not authorized to own the wire. There, the Commission was charged with ensuring that basic telecommunications are available to all residents of the state. §364.01(3)(a), Fla. Stat. (1993). The Court read "available" to mean uninterrupted service as well. Leaving ownership of the wire with Teleco who was unauthorized to own it would leave uncertain the continuous availability of service. Thus, the Court concluded that the Commission had the implied authority under section 364.01(3)(a) to order the transfer of title.

This Court has also recognized the broad discretion of the Commission in overseeing the transition from monopoly regulation to competition. In AT&T Communications v. Marks, 515 So. 2d 741, 743-744 (Fla. 1987), the Court found that the Commission had discretion to take interim measures designed to harmonize the several goals of the new telecommunications policy wherever they were found to be temporarily inconsistent. That decision was in the context of the transition to long distance competition, where the Commission's actions were found to foster the policies of the Legislature, even

if the measures temporarily maintained some vestiges of the prior monopoly long-distance system.

In this case, the Commission was exercising its continuing regulatory oversight authority over the transition from monopoly, rate of return regulation to competition in the provision of local exchange services. It's duty in this regard is to provide for the development of fair and effective competition. The Commission has acted in furtherance of that duty by removing a vestige of the monopoly regulatory scheme that was not intended to be permanent even under that prior scheme.

Having elected to forego rate of return regulation, GTC will succeed or fail, depending on its own business acumen and ability to compete. It is not entitled to continued supplementation of its revenues through a price support mechanism that finds no basis in the statute establishing price cap regulation, and which has no place in a competitive environment. The Commission's order gives effect to its prior orders and is consistent with the law.

GTC analogizes the facts of this case to a race. It asserts that once it agreed to enter the race based on the amount of fuel in its tank, the Commission may not siphon off a portion of the tank just as the competitors are preparing to shift into high gear. (I.B. at 11-12) In actuality, GTC failed to check its fuel before

it started the race. In any event, GTC's keeping the subsidy is more akin to letting it start the race a half-mile ahead of its competitors. In addition to its market power as the incumbent LEC, GTC wants a subsidy from a potential competitor.

Under the applicable standard of review, it is insufficient for the appellant to demonstrate that another interpretation of the statute is possible, or even preferable to the Commission's. D.A.B. Constructors, Inc. v. State Dept. of Transportation, 656 So. 2d 940 (Fla. 1st DCA 1995). In order to succeed, the appellant must show that the Commission's decision is clearly erroneous. Florida Interexchange Carriers Ass'n, 678 So. 2d 1267 (Fla. 1996). GTC has failed to make this showing.

II. THE COMMISSION'S ORDER ELIMINATING THE SUBSIDY FROM BELLSOUTH TO GTC IS CONSISTENT WITH THE LEGISLATURE'S REGULATORY SCHEME AND COMPORTS WITH THE ESSENTIAL REQUIREMENTS OF LAW.

GTC asserts that under rate of return regulation, the Commission used an earnings "test" for eliminating the subsidy. Now that GTC is no longer subject to regulation of its earnings, it argues that the Commission has no basis to eliminate the subsidy. Thus, in GTC's view, it is free to retain a vestige of rate of return regulation, but is not subject to the constraints that were inherent in that form of regulation.

As an additional consequence of GTC's view, BellSouth is locked into paying a subsidy--presumably in perpetuity--to another price regulated company and potential competitor, and has no recourse. There is, however, nothing in the statute or the legislative history to support such a result. And, using the type of analysis GTC applies, it will have retained a benefit of the form of regulation it chose to abandon, but without the burden attached to it.

A more reasonable construction of the statute is that the Commission has the authority to enforce an order that was entered when it had the authority to regulate GTC's earnings, and terminate the temporary subsidy when the company elects a different and inconsistent regulatory scheme, that of price regulation. AT&T

Communications v. Marks, 515 So. 2d 741 (Fla. 1987)(Commission had authority to take interim measures in the public interest during the transition to long distance competition). See, BellSouth Telecommunications, Inc. v. Johnson, 708 So. 2d 594 (Fla. 1998)(Court affirmed Commission's rejection of a price regulated company's rate regrouping plan which was filed pursuant to a rule adopted under rate of return regulation, but which was inconsistent with price regulation statute and a competitive environment). In the order affirmed in BellSouth, the Commission concluded:

> Under a statutory scheme that deregulates local telecommunications service, however, it is not appropriate to provide regulated revenue streams for price-regulated LECs, unless the statute specifically contemplates, and provides for, such an aberration, which it does not.

In re: Notice of election of price regulation by BellSouth Telecommunications, Inc., 97 F.P.S.C. 4:618, 624 (1997).

In this case, no additional regulatory burden has been placed on GTC by the Commission. Instead, the Commission has simply terminated a singular, unique benefit of earnings regulation to which GTC is no longer entitled. GTC voluntarily gave up the regulatory status quo when it elected price cap regulation--with it went the Commission's grant of a subsidy from BellSouth.

It was not necessary for the Commission in the proceeding below to determine whether GTC's earnings are sufficient to absorb the termination of the subsidy. In fact, GTC was unwilling to show a need for the revenues represented by the subsidy or to divulge any information about its earnings, despite BellSouth's discovery requests designed to elicit that information. (V. 3, R. 454; Final Order at 17) GTC is attempting to use its election of price regulation as a shield to prevent the Commission (and BellSouth) from determining whether it needs the subsidy revenues, and to shift the burden to the Commission to show that GTC is not entitled to the subsidy.

GTC is also unwilling to use the relief provision, section 364.051(5), Florida Statutes, that the Legislature included for this sort of circumstance that may arise during the transition from rate of return regulation to competition. GTC apparently fears that it will be required to divulge its earnings. Contrary to GTC's assertion, however, this "hybrid method of regulation" was not created by the Commission. It is a specific creature of statute, and that statute specifically contemplates an evidentiary hearing.

Whatever other theory GTC may be advancing with its allusions to confiscation of revenues and a failure to observe "revenue

neutrality," GTC cannot establish an unconstitutional taking or a breach of a regulatory "contract." As an initial matter, GTC cannot demonstrate a financial burden because it has not taken advantage of the compensatory mechanism offered by section 364.051(5), Florida Statutes. Moreover, in order to establish a taking, GTC must show, among other things, that it has a reasonable, investment-backed expectation in the subsidy. An expectation is reasonable only if based on an "explicit governmental guarantee." Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1005 (1984). A unilateral expectation or an abstract need, which, at best, is all that GTC has, does not suffice. Id., citing Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 161 (1980).

Neither does GTC have some vested right to continuation of the subsidy. Not only was the subsidy clearly established in the first place as a temporary mechanism under rate of return regulation, the statute itself gives GTC no right to the revenue in any terms, much less clear and unambiguous language.

To continue a subsidy from a potential competitor is simply inconsistent with GTC's choice to give up rate of return regulation and participate in the competitive marketplace. The Commission properly exercised its regulatory oversight authority under section

364.01(3) to “provide for the development of fair and effective competition,” and to enforce its decision that the subsidy be a temporary, not permanent mechanism.

CONCLUSION

GTC has not met its burden to overcome the presumption of validity that attaches to Commission orders. It has not shown that the Commission's decision is clearly erroneous or that it departs from the essential requirements of law. The Commission's order should be affirmed.

Respectfully submitted,

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DATED: September 2, 1999

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by United States mail this 2nd day of September, 1999, to the following:

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