

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement by GTC, Inc. d/b/a GT Com regarding Section 364.051, F.S.

DOCKET NO. 990316-TL
ORDER NO. PSC-99-1194-FOF-TL
ISSUED: June 9, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER DENYING PETITION FOR DECLARATORY STATEMENT

On March 11, 1999, GTC, Inc., d/b/a GT Com (GTC), filed a Petition for Declaratory Statement regarding the application of Section 364.051(5), Florida Statutes. Notice of the petition was published in the Florida Administrative Weekly on March 26, 1999. The Office of Public Counsel (OPC) filed a Notice of Intervention and a response to the petition on behalf of the Citizens of Florida on April 2, 1999. OPC may appear in this proceeding pursuant to Section 350.0611(1), Florida Statutes.

GTC, Inc., formerly known as St. Joseph Telephone & Telegraph Company, is an incumbent local exchange company that has elected price regulation under Section 364.051, Florida Statutes. It seeks a declaration concerning Section 364.051(5), Florida Statutes, which provides, in pertinent part:

Notwithstanding the provisions of subsection (2), any local exchange telecommunications company that believes circumstances have changed substantially to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase, but the commission shall grant such petition only after

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an opportunity for a hearing and a compelling showing of changed circumstances.

GTC asserts that Order No. PSC-98-1169-FOF-TL ("Final Order") issued by the Commission on August 28, 1998, in Docket No. 970808-TL, which terminated the interLATA access subsidy to GTC, will subject it to changed circumstances.

GTC further asserts that an application for relief under Section 364.051 would be a case of first impression for the Commission, and that there are ambiguities GTC needs to have resolved before determining how to proceed. GTC seeks a declaration that:

(a) the removal of the interLATA subsidy effected by the Final Order constitutes grounds under section 364.051(5), Florida Statutes, for the Commission to grant GTC authority to raise rates for basic local service;

(b) in determining whether to grant authority to raise rates for basic local service the Commission may not inquire beyond the narrow issues of (1) the amount of subsidy eliminated and (2) the adjustments to basic local rates necessary to generate the subsidy amount; and

(c) in determining whether to grant authority to raise rates for basic local service, no party to the proceeding may seek discovery from GTC beyond (1) the amount of subsidy eliminated and (2) the adjustments to basic local rates necessary to generate the subsidy amount.

OPC asserts in its response opposing the declaratory statement that the use of the words "compelling" and "substantially" in Section 364.051(5), Florida Statutes, shows that companies such as GTC face a heavy burden before they can increase their local rates under price regulation. OPC further asserts that all of the circumstances affecting a company, including evidence that may offset the circumstances presented by the company, should be considered. OPC further asserts that any proceeding under the statute would be very fact dependent in order to determine if the

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circumstances were as compelling or as substantial as alleged by the company.

We agree that an evidentiary proceeding is required to determine whether changed circumstances justify an increase in rates for basic local telecommunications services. We do not believe that a declaratory statement proceeding is the right kind of proceeding in which to determine whether the compelling showing required by Section 365.051(5), Florida Statutes, has been made. Declaring that we may not inquire beyond the narrow issues that GTC requests would be tantamount to finding that a compelling showing has been made without the opportunity for any party to challenge whether there is a change in circumstances.

Section 364.051(5) requires the Commission to provide the opportunity for a hearing before a petition for a rate increase is granted under that statute. We believe that a Section 120.57(1) hearing is the proper proceeding in which to determine whether GTC's circumstances have changed substantially to justify a rate increase under Section 364.051(5). The scope of the issues and evidence to be considered and the scope of discovery should be determined in that proceeding, with the specific facts before us, and not by declaratory statement.

We therefore decline to issue a declaratory statement on the facts presented here. The questions posed should be answered in the proceeding initiated by filing a petition under Section 364.051(5), Florida Statutes.

It is, therefore,

ORDERED by the Florida Public Service Commission that the petition for declaratory statement pertaining to Section 364.051(5), Florida Statutes, filed by GTC, Inc. d/b/a GT Com, is denied. It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 9th
day of June, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.