

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into the) DOCKET NO. 891279-TP
regulation of public facsimile) ORDER NO. PSC-93-1120-FOF-TP
providers.) ISSUED: August 2, 1993
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER CLOSING DOCKET

BY THE COMMISSION:

This docket was initiated in 1989 to investigate the provision of public facsimile services in Florida. Public facsimile service, or public fax, can best be described as any facsimile service provided to the public at large for a fee. Examples include fax services at copy centers, hotels, airports, etc.

Two statutory definitions are pertinent to an analysis of public fax. The first is found at Section 364.02(7), Florida Statutes:

'Telecommunications company' includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision of the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term 'telecommunications company' does not include an entity which provides a telecommunications facility exclusively to a certificated telecommunications company, or a specialized mobile radio service operator, a private radio carrier, a radio common carrier, a cellular radio telecommunications carrier, or a cable television company providing cable service as defined in 47 U.S.C. 522.

The second is found at Section 364.02(8):

'Telecommunications facility' includes real estate, easements, apparatus, property, and routes used and

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operated to provide two-way telecommunications service to the public for hire within this state.

This statutory language reveals a broad legislative intent concerning services to be regulated, with a base line test of "two-way telecommunications service to the public for hire." Facsimile service providers that charge for their service clearly fall within the definition of a telecommunications company.

The result is the same whether the facsimile service is voice-capable or voiceless. Voice-capable facsimile services are able to send two-way voice communications just as any other telephone can. Voiceless facsimile services send two-way communications in the form of data streams that are interpreted at either end of the communication by the facsimile machines. Both types of communications are clearly "two-way telecommunications service to the public for hire," and each type of equipment constitutes "telecommunications facilities" within the meaning of the statute.

Once it is established that public facsimile providers are encompassed by the statutory definition of a "telecommunications company," then those providers are subject to the exclusive regulatory jurisdiction of this Commission, pursuant to Section 364.01, Florida Statutes.

However, there appears to be a conflict between the action warranted by the facts and what the statutes seem to require. We believe that competition is functioning as an effective regulator in the public fax market and that further regulation is both redundant and unnecessary. Although we originally believed that this conflict was overcome during the 1990 legislative session, further analysis shows that we were mistaken.

Prior to the 1990 revision of Chapter 364, a telecommunications company was not allowed to provide service "without first obtaining from the commission a certificate that the present or future public convenience and necessity require or will require such construction, operation, or acquisition." Section 364.33. The 1990 revision of Section 364.33 substituted "without prior approval" for this phrase. We originally believed that this change would allow us to permit a telecommunications company to operate without certification (although some form of prior approval would be required).

However, Section 364.336, Florida Statutes, requires that:

[E]ach telecommunications company licensed or operating under this chapter . . . shall pay to the commission . . . a fee that may not exceed 0.25 percent annually of its gross operating revenues. . . . Fees under this section may not be less than \$50 annually. (emphasis added)

This provision requires a minimum regulatory assessment fee of \$50 from each telecommunications company operating under Chapter 364. There are no provisions in the statute for exemption from this requirement. In order to collect this fee, each telecommunications company must first be certificated. Herein lies the conflict.

The paradox of this situation is evident when the statutory requirements for this Commission are weighed against their obvious intent. Section 364.01, Florida Statutes, establishes broad regulatory oversight guidelines in the telecommunications arena to, among other things, foster competition, insure against anticompetitive abuses, and protect consumers from discriminatory behavior. Other sections of Chapter 364 also delineate specific actions required from this Commission on a wide variety of telecommunications issues, one of which is the regulatory assessment fee requirement addressed earlier.

Generally, these two concepts work in concert to help us both regulate the companies that provide telecommunications services and protect the consumers of these services. However, these two areas diverge into a dichotomy with regard to public fax. It is evident that the Commission's role as a "surrogate for competition" outlined in Section 364.01 is not needed for the public fax market. At the same time, however, Section 364.336 requires that we certificate and extract a regulatory assessment fee from each of the hundreds or thousands of public fax providers doing business in Florida.

On balance, we believe that the most reasonable solution to this matter is to hold all action in abeyance, close this docket, and seek a statutory change in the next legislative session. Should a statutory solution fail, we will revisit this matter at that time. We believe that this approach is in the public interest and is the best way for us to utilize our limited resources. We note that we have reached this decision strictly based upon the unique facts and circumstances presented here. We further note that we have in no way relinquished our jurisdiction over this segment of the telecommunications industry.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 2nd day of August, 1993.



STEVE TRIBBLE Director
Division of Records and Reporting

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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 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 or sewer 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.