



OFFICE OF THE ATTORNEY GENERAL ORIGINAL

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH  
Attorney General  
State of Florida

May 18, 1998

VIA HAND DELIVERY

Blanca Bayo, Director  
Department of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: In re: Procedures for Data-Gathering for Legislative Reports,  
Docket Number 980647-TL

Dear Ms. Bayo:

Please find the enclosed original and fifteen copies of the **Petition of Robert A. Butterworth, Attorney General, to Intervene, and for Initiation of Formal Proceedings Pursuant to Section 120.57, Florida Statutes, to Make Findings Necessary to Assure a Rate Structure for Basic and NonBasic Telecommunications Service Which is Fair, Just and Equitable to the Consumers of this State, Consistent with the Goals of Universal Service** for filing in the above-mentioned proceedings. Thank you for your attention to this matter.

Sincerely,

Michael Gross  
Assistant Attorney General  
PL-01 The Capitol  
Tallahassee, Florida 32399-1050  
850-414-3818  
850-488-6589 (Fax)

Enclosures

cc: Charles Beck  
Martha Carter Brown  
Kimberly Caswell

RECEIVED & FILED

FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

05522 MAY 18 98

FPSC-RECORDS/REPORTING

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Procedures for Data-Gathering  
for Legislative Reports.

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Docket No. 980647-TL

**PETITION OF ROBERT A. BUTTERWORTH, ATTORNEY GENERAL,  
TO INTERVENE, AND FOR INITIATION OF FORMAL PROCEEDINGS  
PURSUANT TO SECTION 120.57, FLORIDA STATUTES, TO MAKE FINDINGS  
NECESSARY TO ASSURE A RATE STRUCTURE FOR BASIC AND  
NONBASIC TELECOMMUNICATIONS SERVICE WHICH IS FAIR, JUST AND  
EQUITABLE TO THE CONSUMERS OF THIS STATE, CONSISTENT  
WITH THE GOALS OF UNIVERSAL SERVICE**

Robert A. Butterworth, Attorney General (Attorney General), State of Florida, pursuant to Section 364.01, Florida Statutes, and Rule 25-22.036, Florida Administrative Code, petitions to intervene and for initiation of formal proceedings under Section 120.57(1), Florida Statutes, before the full Florida Public Service Commission (Commission or PSC), and states:

1. The Attorney General, pursuant to Art. IV, Section 4, Fla. Const., is the chief legal officer of the State with his principal place of business and mailing address at:

Michael A. Gross  
Fla. Bar No. 0199461  
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2. This action has been initiated to seek intervention and to request the Commission to conduct a full investigation within the context of an evidentiary proceeding under Section 120.57(1), Florida Statutes, to make appropriate findings necessary to assure a rate structure for basic and nonbasic service which is fair, just, and equitable to the consumers of this State, consistent with the goals of universal service.

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FPSC-RECORDS/REPORTING

3. The Attorney General brings this Petition, inter alia, in his *parens patriae* capacity as guardian of the health, welfare, and safety of the citizens of the State of Florida. The Attorney General seeks relief from the Commission as the state agency charged with the responsibility under Chapter 350, Florida Statutes, and Chapter 364, Florida Statutes, to protect the public health, safety, and welfare by ensuring that the rate structure for intrastate telephone service in this State is founded upon sound factual conclusions in the furtherance of the public interest.

4. The Attorney General has broad statutory authority to prosecute and appear in suits in which the State is a party or is otherwise interested. Section 16.01(4),(5), and (6), Florida Statutes. One of the matters in which the State has an interest is upholding the intent and public purpose of legislative enactments.

5. Where the public interest is involved, the Attorney General may not only initiate litigation, but also intervene in pending litigation. State ex rel. Shevin v. Yarbrough, 257 So.2d 891, 894 (Fla. 1972). The Attorney General is granted wide discretion in determining what particular matters involve the public interest. State ex rel. Shevin v. Exxon Corp., 526 F. 2d 266, 268-69 (5th Cir. 1976). Accordingly, his conclusion that a particular matter involves the public interest is presumed to be correct. State ex rel. Shevin v. Yarbrough, at 895; see also Lawyer v. Department of Justice, 65 U.S.L.W. 4629, 4632 n 4 (U.S. June 25, 1997) (No. 95-2024) (citing State ex rel. Shevin v. Yarbrough, at 894-96 and Ervin v. Collins, 85 So. 2d 852, 854 (Fla. 1956) (en banc).

6. The enforcement and implementation of the statutes and policies at issue in this proceeding clearly involve matters of public interest.

7. Legislation recently passed by the Legislature, HB 4785, contains substantial revisions

to Chapter 364, Florida Statutes, relating to telecommunications services and the rate structure for intrastate telecommunications services in this State.<sup>1</sup> The new law requires the Commission to study and report to the Legislature on a number of complex, highly disputed, fact intensive issues by February 15, 1999. The Commission is an arm of the Legislature pursuant to Section 350.001, Florida Statutes. Inevitably, the Legislature will rely on the findings of the Commission during the next legislative session in determining rates and policies for telecommunications service.

8. It is important to the citizens of our state that both legislators and regulators should be in possession of adequate facts prior to the consideration of appropriate measures needed to further the telecommunications goals of the state and the federal government. Such facts must be determined in an open and public debate, providing for cross-examination of witnesses, discovery, and presentation of opposing legal theories and factual conclusions, to assure a valid foundation for further legislative action.

9. It is clear that there are multiple factual issues which are ripe for determination by the Commission within the context of a formal evidentiary hearing to assure that the factual underpinnings of future legislation are supported by the accurate data and consistent with existing constraints of the Federal Telecommunications Act of 1996.

10. The substantial interests of the Attorney General as the guardian of the health, safety, and welfare of the citizens of the state and in upholding the intent and public purpose of legislative enactments, will or potentially will be affected by the actions of the Commission in implementing the directives of the Legislature.

11. Section 2 (b) of HB 4785, "Commission Review," expressly provides for intervenors

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<sup>1</sup> The new law has not yet been acted upon by the Governor.

in connection with the Commissions' study and report, inter alia, as to issues of fair and reasonable rates for residential basic local service, the cost of service, universal service, and the existence or nonexistence of any subsidy of local service. As stated in Commission Rule 25-22.039, Florida Administrative Code, intervenors are persons whose substantial interests are affected. Intervenors only exist in the context of a formal proceeding. See Commission Rule 25-22.036, Florida Administrative Code.

12. The complex factual and policy issues inherent in the Commission's assignment are rife with disputed issues of material fact.

13. The telecommunications industry has historically allocated to basic residential service a disproportionate share of the common cost of the facilities used in providing basic residential service. The "loop," i.e., the facilities used for the connection between the central office and the consumer's telephone for the provision of basic service is also used to carry other "vertical services," e.g., long distance, voice mail, call waiting, call forwarding and other advanced services. As a joint and common facility, the cost of the loop should be allocated so that local services using the loop will bear no more than a reasonable share of the loop costs. Industry claims that residential services are being subsidized are hinged upon the assumption that the residential basic rate should recover the entire cost of the local loop. The objective of the Federal Act regarding universal service is to ensure that basic services pay no more than their fair share of the joint and common costs in support of universal service. The Attorney General disputes the industry methodology for allocating the cost of the loop.

14. Industry claims that residential basic local customers are subsidized by revenues from long distance services are unsubstantiated. The most recent factual determination by the

Commission on this issue found that there was no cross-subsidization of basic service. In re: Investigation into NTS Cost Recovery, Docket No. 86984-TP, Order No. 18598 ( Florida Public Service Commission 12-24-87). The issues of universal service, access charges and appropriate rate structures for cost recovery were the subject of an extensive investigation conducted by the FPSC in Docket No. 860984-TP that involved significant testimony, cost analysis and economic data from all segments of the industry. The issues in this 1986-87 investigation are much the same as are currently being explored by the Legislature. The PSC dealt with access charges, universal service goals, the question of subsidy of local service by toll rates and issues of rate rebalancing in order to achieve fair and equitable rates. After extensive testimony and data gathering, the Commission determined that access charges should be decreased, that local service rates should remain unchanged and that local services were not subsidized by toll services. It is significant that, since the Commission's determination, toll charges have come down dramatically while charges for basic service have remained the same. It stands to reason that if there was no subsidy in 1987 when toll charges were higher, there certainly would be no subsidy in the context of current, much lower toll charges. Moreover, the Washington Utilities and Transportation Commission determined in 1996 that in Washington, where the statewide average rate for local service was \$10.50, substantially the same as in Florida, there was no subsidy of local service. Washington Utilities and Transportation Commission v. U.S. West Communications, Inc., Docket No. Ut-950200 (April 11, 1996 Washington Utilities and Transportation Commission) (finding: (1) there was no subsidy of local service; (2) the local loop is required for nearly every service provided and is a shared cost; and (3) that not only does residential service cover its incremental cost, but covers the incremental cost of the local loop used to provide basic and vertical services)

It is appropriate that the Florida PSC revisit these issues in the context of new state and federal legislation.

15. There is no support for the contention that existing local rates area barrier to competition. The experience of LEC's in Florida, including BellSouth, offer compelling evidence that the stalled development of competition in the local service market, if any, is attributable to reasons other than the profitability of the local exchange market. With the assistance of the Attorney General, BellSouth entered into a Stipulation with Public Counsel Jack Shreve in January 1994. The Stipulation was confirmed by the Commission by Order No. 94-0172-FOR-TL on February 11, 1994, and codified in Section 364.385 (3), Florida Statutes. Notwithstanding the restrictions imposed by the Stipulation, which required over \$300 million in benefits and refunds to customers during the 1994-97 time frame, BellSouth's earnings performance has been impressive. BellSouth's projected earnings for 1998 represent a 22% return on equity. The Company refunded \$123.5 million from 1997 earnings, while earning 15.11% under its sharing agreement that expired at the end of 1997. It is also significant that BellSouth's earnings performance has been achieved with the lowest access rates in the State, with BellSouth at 5 cents per minute, and GTE, for example, at 12 cents per minute. Clearly, profitability in the local exchange markets is not a barrier to competition. Over two-thirds of BellSouth's customers are residential customers, and the company is thriving. Sprint and GTE 1999 earnings are also projected to be well above the 20% range.

16. The Attorney General is entitled to relief under the constitutional provisions, statutes, rules, judicial precedent and factual issues cited above.

WHEREFORE, the Attorney General respectfully requests that the Commission enter an

order:

(A) granting the Attorney General leave to intervene in this docket;

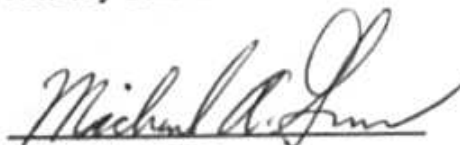
(B) initiating a formal proceeding under Section 120.57 (1), Florida Statutes, before the full Commission, to implement the study and reports as directed by the Legislature; and

(C) making appropriate findings necessary to assure a rate structure for basic and nonbasic service which is fair, just, and equitable to the consumers of this State.

DATED this 18~~th~~ day of May, 1998.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
Attorney General

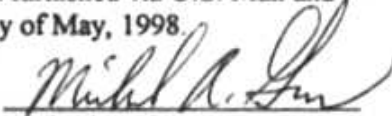


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished via U.S. Mail and Facsimile or Electronic Mail to the following parties on this 18th day of May, 1998.

  
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