

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the) DOCKET NO. 910757-TP
Regulatory Safeguards Required) ORDER NO. PSC-92-1323-PCO-TP
to Prevent Cross-Subsidization) ISSUED: 11/16/92
by Telephone Companies)
_____)

ORDER ESTABLISHING PROCEDURE

By Order No. 24910, issued August 13, 1991, this Commission determined that issues regarding cross-subsidization should be addressed in a forum separate from the development of the local exchange company cost of service methodology docket. Accordingly, this docket was opened to examine the regulatory safeguards required to prevent cross-subsidization by telephone companies. On September 20, 1991, intervening parties submitted briefs addressing the legal requirements of revised Chapter 364. Based on the reaction of the parties at the February 4, 1992, Agenda Conference, this Commission determined that any proposed agency action issued would be protested by the parties. Accordingly, by Order No. 25816, issued February 4, 1992, we set this docket for hearing.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff (staff) up to and during the prehearing conference, unless modified by the Commission. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and the rules of this Commission.

Discovery

a. When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

b. The hearing in this docket is set for March 10-12, 1993. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by March 3, 1993. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 300, and requests for production of documents, including all subparts, shall be limited to 150.

DOCUMENT NUMBER-DATE

13419 NOV 16 1992

FPSC-RECORDS/REPORTS

c. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183, Florida Statutes.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

Prefiled Testimony and Exhibits

Pursuant to Rule 25-22.048, Florida Administrative Code, each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 1/2 inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and fifteen copies of all testimony and exhibits shall be prefiled with the Director, Division of Records and Reporting by the close of business, which is 4:45 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served

by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Prehearing Statement

Pursuant to Rule 25-22.038(3), Florida Administrative Code, a prehearing statement shall be required of all parties in this docket. Staff will also file a prehearing statement. The original and fifteen copies of each prehearing statement shall be prefiled with the Director of the Division of Records and Reporting by the close of business, which is 4:45 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) the name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;

(g) a statement of issues that have been stipulated to by the parties;

(h) a statement of all pending motions or other matters the party seeks action upon; and

(i) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Prehearing Conference

A prehearing conference will be held in this docket at the Fletcher Building, 101 East Gaines Street, Tallahassee, Florida. The conditions of Rule 25-22.038(5)(b), Florida Administrative Code, shall be observed. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the

proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

To facilitate the management of documents in this docket, exhibits will be numbered at the Prehearing Conference. Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes of Use by Time of Day

Tentative Issues

Attached to this order as Appendix "A" is a tentative list of the issues which have been identified in this proceeding. Prefiled testimony and prehearing statements shall address the issues set forth in Appendix "A".

Controlling Dates

The following dates have been established to govern the key activities of this case.

- | | | |
|----|------------------------------------|-------------------|
| 1) | Direct Testimony
and exhibits | December 23, 1992 |
| 2) | Rebuttal Testimony
and exhibits | January 21, 1993 |
| 5) | Prehearing Statements | January 21, 1993 |
| 6) | Prehearing Conference | February 26, 1993 |

- 7) Hearing March 10-12, 1993
- 8) Briefs April 23, 1993
(2 weeks after transcript)

Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

Post-Hearing Procedures

Pursuant to Rule 25-22.056(3)(a), Florida Administrative Code, each party is required to file a post-hearing statement of issues and positions. Positions in the post-hearing statement shall be summarized in no more than 50 words per issue. If a party's position on an issue in the post-hearing statement differs from what appears in the Prehearing Order, the position will be marked with an asterisk; in the absence of such demarcation, the party's position on that issue will be shown in the staff recommendation as it appears in the Prehearing Order. The rule also provides that any issue or position not included in the post-hearing statement is considered waived. If a party's position has not changed since the prehearing order was issued, the post-hearing statement can simply restate the prehearing position.

All post-hearing memoranda, including findings of fact, conclusions of law, statement of issues and positions, and briefs, shall be no more than 50 pages combined, and shall be filed simultaneously. Proposed findings of fact and conclusions of law are not required. If proposed findings of fact are submitted, the proposed findings must conform with Rule 25-22.056(2)(a) and (b). In addition, each proposed finding of fact shall be separately and consecutively numbered and shall be followed by a citation to the record, identifying transcript page and line number or exhibit number and page. Proposed findings shall identify the issue to which they relate and shall be grouped by issue, following the order of issues appearing in the Prehearing Order. Any written statement which is not clearly designated as a proposed finding of fact shall be considered to be legal argument rather than a proposed finding of fact. Arguments in briefs must be identified by issue number.

Based upon the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

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By ORDER of Commissioner J. Terry Deason, as Prehearing Officer,
this 16th day of November, 1992.



J. TERRY DEASON, Commissioner
and Prehearing Officer

(S E A L)
PAK

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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

APPENDIX "A"

PROPOSED ISSUES

1. What is the appropriate definition of cross-subsidization, as contained in Section 364.3381, Florida Statutes?
2. How can the presence or absence of cross-subsidization be detected?
3. Does the detection of the presence or absence of cross-subsidization require a cost standard? If so, what is the appropriate cost standard?
4. As used in Section 364.3381, Cross-subsidization, what specific types of behavior are considered to constitute "cross-subsidization"? Specifically, should cross-subsidy be understood in a narrow sense (a function of the relationship between price and cost) or a broad sense (to include various other forms of anticompetitive behavior)?
5. Is there a distinction between the terms "effectively competitive", "subject to effective competition," and "competitive" as used in Chapter 364? (LEGAL)
6. Does the application of the provisions of 364.3381 first require a determination that a service is effectively competitive, pursuant to the provisions of 364.338? If not, what criteria should be used to identify those services subject to the provisions of 364.3381?
7. Section 364.01(3)(d), indicates that the Commission should prevent anticompetitive behavior in order to ensure that all telecommunications providers are treated fairly. Other than cross-subsidization, which is explicitly identified in the statute, are there identifiable forms of anticompetitive behavior that the Commission should prohibit? If so, what are they, what restrictions are appropriate, and how should any restrictions be implemented?

8. Once the Commission has defined cross-subsidy and the type of services that are subject to the provisions of 364.3381, what actions should the Commission take?
 - a) How often and under what circumstances should the Commission require tests of specific services to ensure that the requirements of 364.3381 have been met?
 - b) Should the Commission establish accounting requirements for those services subject to the provisions of 364.3381?
 - c) Should the Commission prohibit local exchange companies (LECs) from offering services subject to the provisions of 364.3381, without assuring that the requirements of 364.3381 have been met?
 - d) Does the language of the statute imply that cross-subsidy is appropriate or acceptable in some cases and unacceptable or inappropriate in others? If so, under what circumstances is it to be judged acceptable or not?
 - e) What other actions should be taken?

9. Should the Commission order the LECs to:
 - a) identify all services they offer which are also offered by other providers?
 - b) identify the nature of the competition for services offered by other providers?