BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF FLORIDA

ORIGINAL

MEMORANDUM

DATE: July 29, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (Bayo)

FROM: Chester Osheyack, Private Citizen

RE: DOCKET NO. 990869-TL -PETITION BY CHESTER OSHEYACK FOR AMENDMENT OF RULE 25-4.113 (1)(f), FAC, REFUSAL OR DISCONTINUANCE OF SERVICE

FILE NAME AND LOCATION: S:/PSC/APP/WP/990869.RMC

Time and circumstances did not permit me to complete my prepared remarks in support of my PETITION. Accordingly, I am submitting the entire text with the request that they be added to the record of the PSC Agenda Conference of July 27, 1999.

" I want to first address the staff analysis section of the recommendation to this Commission. The staff identified a litany of prior attacks on the Rule under discussion on a variety of substantive and procedural grounds without success. Let the record show that there was never an attack permiton grounds of FS 120.536 which was drastically amended in 1997, and further clarified and strengthened in 1999 by the legislature. Accordingly, the comment has no relevance other than historical in the current filing. As to the matter of success, I have actually had some small impact in motivating both the Executive branch of the federal government and the FCC to investigate the issue of disconnect authority. Let me quote for the record what the federal government has to say on this subject:

The FCC Chairman, Reed Hundt, appearing before a congressional sub-committee on telecommunications in May 1995, said:

....last year for the first time, the percentage of penetration of telephone service in American households dropped about ½ of 1% nationally, and that is a meaningful drop. Based on studies that we have done, the reason why people are beginning to drop off the telephone system is because we have erroneously linked long distance bills to local telephone bills, and in many places you lose your local service if you have trouble paying your long distance bill. I don't think that is logical. We should change that.

THIS IS A DIRECT QUOTE FROM THE CONGRESSIONAL RECORD

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The National Telecommunications and Information Administration, which is a policy advisory agency supporting the Executive branch in Washington, D.C., made the following report to the FCC in Docket No. 95-115 dtd March 29, 1996:

> ....The commission and the Joint Board should encourage all States to bar local exchange carriers from disconnecting local telephone service for non-payment of interstate long distance charges. The benefits of a no-disconnect policy appears to be concentrated among low-income households that would likely have the most difficulty obtaining and retaining telephone service. The results of our study strongly support the notion that a no-disconnect policy will have a significant effect on telephone subscribership.
>
> THIS IS A DIRECT QUOTE FROM THE REPORT

But the staff is correct with regard to my inability to achieve success within the state of Florida.

Further to the issue of market penetration which was the subject of the aforenoted comments of the federal agencies, there are certain statistics which your staff generated for you in 1996, as follows:

> Florida households have increased 9.3% through the 5-year period of 1990 through 1995, while penetration of telephone service to those households during the same period increased by 0.6%. It would appear then, that active subscribership has not kept pace with the growth in the State of Florida. Moreover, there are particularly weak areas of subscribership identified by low income and ethnicity which are significant and belie the averages. Statistics bear out the conclusion that people found wanting are the elderly on fixed incomes, the working poor, and in terms of ethnicity, the African-American and Hispanic-American populations. Penetration there is about 7% below the average.

A more recent study by the Federal Census Bureau reported by the St. Petersburg TIMES, and the Tampa TRIBUNE on July 9, 1999, can be summarized as follows:

> Nation wide, about 20% of Americans reported having problems paying essential bills...about 8-million of them earn in excess of $45,000 per year but still have trouble covering their basic needs...the most vulnerable group was children... African-American and Hispanic-American populations were more likely to report trouble, as were female-headed families.
>
> THESE ARE DIRECT QUOTES FROM THE REPORT AS PUBLISHED

Now, I would like to clear the air, if you will, by addressing a couple of your concerns which have in the past lent support to your current policy. First, however, we should test the need to continue ANY LONG STANDING POLICY under current circumstances. Prior to 1996, the policies of regulatory bodies were to a great extent, governed by the DOCTRINE OF SPECIAL CIRCUMSTANCES which had as its sole purpose, the PROTECTION OF MONOPOLY. After enactment into law of the Telcom Reform Acts of the State and Federal governments, the mission of regulators changed to become the ENCOURAGEMENT OF COMPETITION. State and federal legislators had little experience with the task of protecting monopolies. Such a practice is antithetical to our economic system which is based in a free market. Our laws, at least from the year 1890 on, have been directed against monopoly. So it was sound judgement, at that time, for lawmakers to provide greater latitude to the regulators to enable them to respond to circumstances for which there were no laws that fit. However, in 1996 the rules of the game were changed. Accordingly, regulation for a competitive market must now be directed at promoting a statuatory purpose, otherwise chaos will replace order in the marketplace. There must be firm standards, else there will be constant disputes. Now, this is largely a legislative problem, but it is your problem too. You have both the right and the obligation to tell the legislature where the problems are, and to make your recommendations as to possible cures. Defending the status quo is not a reasonable option in a changing marketplace.

Let's now look at a much touted concern often characterized by the slogan "PUT THE COST ON THE COST-CAUSER"...another way of stating the belief that bad debts will be translated into interstate telephone rate increases. Notwithstanding the fact that this Commission cannot affect interstate rates due to a lack of juristiction, what does the record show? Currently, here in Florida, MCI and AT&T promote offers which are 10¢ per minute for non-peak hours such as evenings and Saturdays, and 5¢ on Sundays. Sprint promotes 10¢ for calls anywhere, anytime, 5¢ at nightime, and 2½¢ on Sunday. These offers are also available to consumers in New York, Pennsylvania and Ohio, as examples of many States which have repealed disconnect authority. Accordingly, while your staff defends the disconnect authority rule with speculation, the market forces are lowering the rates without the benefit of disconnect authority in other states.

Your staff has also repeatedly stated that your policy is supported by the belief that elimination of disconnect authority would cause an increase in deposit requirements. In fact, no one talks about deposits these days because prepayment plans are available in abundance and in a variety of forms. This is also a non-starter.

There have been a few other concerns stated from time to time, and I will be happy to address them upon your request, but all that I have heard are based in speculation and have little credability in fact. I believe now that it would be useful for me to frame the issues as I see them. Let me first, stipulate, as I have before and often, that I fully agree that people who are able to pay their valid debts should pay them. However, the issue before us is not...WHO SHOULD PAY THEIR DEBTS AND WHY?...but rather, WHO IS LEGALLY EMPOWERED TO COLLECT THE DEBTS AND HOW? It is my view, that the end, no longer justifies the means... now, the means must be lawful.

In prior and currently stated positions, your staff has indicated that the Commission acquires its broad based rule-making authority from the fact that the relevant statute does not specifically preclude certain actions. In fact, the revised AP statute states rather specifically that an agency may only adopt rules that implement specific powers and duties granted by the enabling statute. Now, the word REASONABLE is an adjective, and it is non-specific at best with respect to identification of any powers and duties,

much less SPECIFIC powers and duties. Moreover, the AP statute also precludes an agency from implementing statuatory provisions setting forth general legislative intent or policy. In short, the Commission cannot substitute itself for the legislature. If there are no specific standards, you cannot fabricate them out of air. You can make your recommendations to the legislature, or you can utilize the standards that already exist. Now, I am going to surprise you by coming over to your side on this question. In my humble view, you have the authority to make APPROPRIATE REASONABLE RULES. You had it in 1996...you had it in 1997...you had it in 1998...and, you have it now in 1999. The sole difference between my position and that of your staff, is that I believe that your authority is properly limited, and that because of a badly written law which should be reviewed by the legislature, you are being ill-advised as to the interpretation of what are alleged to be BROAD POWERS. So bear with me, if you will, as I attempt to parse the language of the statute which provides the Commission with the authority to regulate by reasonable rules, the terms of telecommunications contracts between telecommunications companies and their patrons.

The word REASONABLE, can have numerous meanings, ie sensible, fair, sound, moderate, logical and others...all of which are subject to interpretation and vulnerable to bias. Further, the word itself, as a part of speech, is an adjective and cannot stand alone. It must qualify a noun. In this instance, the noun is RULE.

A RULE is a guiding principle for conduct, habit, custom or procedure. This is also a word that cannot stand alone. It is dependant upon the context in which it is used for proper definition. Here it is used in conjunction with the word REGULATE.

The word, REGULATE, is a verb which expresses an action. Its meaning is to control or to govern. Thus we have a combination of words...REGULATE BY REASONABLE RULES...which still, by themselves, mean little without a context. What provides context, is the word CONTRACT.

Now, a CONTRACT is a LEGAL transaction...and agreement between parties that is LEGALLY enforceable...and it must be LEGALLY enforceable to justify a remedy as drastic as disablement of a telephone.

Therefore, we now have a context for clearly defining what constitutes a REASONABLE RULE, and we can intelligently address the meaning of the combination of words that make up the rule-making authority granted in the Statute 364.19.

In my dictionary, Websters New World-2d College Edition, the most fitting meaning for the word REASONABLE in this context is JUST: and in the same dictionary, the word JUST means LAWFUL or LEGALLY CORRECT. Therefore, in order for RULES REGULATING a CONTRACT to be REASONABLE, they must be LAWFUL...and if they are not LAWFUL, the CONTRACTS will not be enforceable.

This hypothesis, provides a coherant legal meaning which is sufficiently definite, so as to preclude agency discretion in implementing FS 364.19...and it satisfies the mandate of FS 120.536 as amended.

With respect to your staff's comment that they find the debt collection laws not applicable to the LEC billing and collection arrangements...I find this absurd. If the arrangements are flawed, it is not the law that is out of synch, it is the contract that secures the arrangements. Is it so difficult to comprehend a world in which the LEC is defined as a DEBT COLLECTOR, instead of a CREDITOR?

Moreover, what laws would apply if the billing and collection operations were implemented by a data processing company not associated with telecommunications? One of the stated objectives of the FCC as indicated in their DETARIFFING ORDER of 1985, was that the reclassification of billing and collection would open the opportunity for data processing companies to enter into competitive bidding with the LECs for the IXC business. The functions were clearly defined in that ORDER in a manner which emphasized the fact that the functions were well within the capacities of such companies. The principle advantage that the LEC has under current policy is that the LEC can disconnect their service to collect another carrier's bill, while another data processing company could not do so. I suggest to you that this fact gives them an unfair advantage and is counter-productive to the objective of competition in a free market. I also, suggest, as did the

FCC, that there might be cost advantages available to the IXCs if they were able to put their billing and collection functions out for bid in a competitive arena, and those benefits might well accrue to the consumer. Here again, your current policy works against your mandate which is to encourage competition in the telecommunications industry. Would it not be appropriate to level the playing field?

Commissioners, there are many of us out here in the real world that need your help...the elderly, the infirm... the working poor..the single mothers with children...and as the Federal Census Bureau Report indicates, even the financially well-off report having trouble paying their bills from time to time. Experts contend that many families with healthy incomes are still living close to the financial edge...without enough saved for emergencies and particularly if they live in high cost cities or carry high mortgages or high debt loads. This makes them vulnerable to unexpected financial hits...a layoff perhaps or a large medical bill. Ever tried to get a job without a telephone? or to negotiate a medical bill with a hospital without a telephone? or adjust critical medication dosage through your doctor without a telephone?

With respect to staff suggestions regarding consolidation of this Petition with others addressing the same rule, I have a problem with that suggestion. Not because of proposed consolidation, but because there is no need for lengthy review. Your staff studied this issue for 2-years before, and returned a recommendation that this rule be eliminated. Upon receipt of their recommendation, you withdrew the Docket without comment. Unless the legal foundation is properly established, a policy review, to my mind is an exercise in futility. You taught me that.

Moreover, there are downside consequences resulting from unnecessary delay. The elderly get older; the infirm get sicker; the poor get poorer; and, the children grow up in a household without a telephone and never get the opportunity to learn how to use one properly.

The question before us today is not about my past experience...or your past judgements. It is not about changes in the markets. It is not even about what the telephone companies do or do not do. The question before us today is about the RULE OF LAW. It is about the right of the Commission to assume powers that are neither specifically granted nor specifically prohibited by interpretation or misinterpretation of the word REASONABLE. It is about the right of the Commission

to sustain a policy which disregards over 100-years of consumer protection law under a mandate which requires recognition and encouragement of competition. This is not a matter for review. It is a matter for action. Accordingly, I respectfully urge this Commission to immediately proceed to the initiation of rule-making in accordance with the revised AP statutes.

In closing, I would like to again emphasize that my Petition does not address policy...it addresses the Rule of Law. Justice and the FS 120 as amended, require that you respond accordingly. Your staff's recommendation is far from sufficient to meet the test of the law."

Respectfully submitted by:

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