

IN THE SUPREME COURT OF FLORIDA

Chester Osheyack,

APPELLANT,

vs.

Florida Public Service Commission,

APPELLEE.

CASE NO. 96,439

FILED
DEBBIE CAUSSEAU

DEC 16 1999

CLERK, SUPREME COURT
BY _____

TRANSCRIPT OF RECORD

IN THE MATTER OF:

Petition by
Chester Osheyack
for amendment of
Rule 25-4.113(1)(f), F.A.C.,
Refusal or Discontinuance of Service

DOCKET NO. 990869-TL

Chester Osheyack
10410 Zackary Circle, 28
Riverview, Florida 33569-3994

David Smith
Martha Carter Brown
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

APPELLANT

ATTORNEYS FOR APPELLEE

DOCUMENT NO. DATE

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FPSC - COMMISSION CLERK

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF FLORIDA

990869-TL

PETITION TO AMEND DISCONNECT AUTHORITY RULE

In re: FAC Rule 25-4.113 (1) (f)
Refusal or Discontinuance of Service (Wire-based telephone)
by Company

Date of filing: July 1, 1999

Subject Issue: DISCONNECT AUTHORITY, defined as the right granted by regulatory rule to local exchange telephone companies to block and/or terminate local and emergency telephone service; and access to competing long distance telephone networks, as a tactic for use in the collection of telephone debts in which they have no financial interest.

The PETITIONER, Chester Osheyack of 10410 Zackary Circle, Apt. 28, Riverview, Florida, 33569-3994, a substantially affected party in the above captioned PETITION, herewith requests that the COMMISSION **amend the above noted rule in a manner consistant with applicable State and Federal debt collection statutes.**

The Rule : FAC 25-4.113(1)(f) Refusal or Discontinuance of Service

(1) As applicable, the company may refuse or discontinue telephone service under the following conditions provided that, unless otherwise stated, the customer shall be given notice and allowed a reasonable time to comply with any rule or remedy any deficiency:

(f) For non-payment of bills for telephone service, including the telecommunications access sur-charge referred to in Rule 25-4.160 (3), provided that a suspension or termination of service shall not be made without five (5) working days' written notice to the customer, except in extreme cases. The written notice shall be separate and apart from the regular monthly bill for service. A company shall not, however, refuse or discontinue service for non-payment of a dishonored check service charge imposed by the company. No company shall discontinue service to any customer for the initial non-payment of the current bill on a day preceding a day the business office is closed.

Cause of Action: The Commission has stated that the rule under challenge implements FS Ch 364.03 and Ch 364.19. The former provides that telecommunication services be provided by companies "as demanded upon terms to be approved by the Commissions". The latter provides the Commission with authority to "regulate by reasonable rules, the terms of the telecommunications contracts between telecommunications companies and their patrons." Together,

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these statutes provide the Commission with broad discretionary powers to regulate the telecommunications industry. However, it is important to note that while these statutes do grant rule-making authority of a general nature, they do not specifically confer upon the Commission the power to disregard or override existing specific statutory provisions of state or federal law. **Accordingly, the Commission exceeds its authority by applying its discretionary power to implement rules which do not reflect the specific language of existing state and federal debt collection practices laws and statutes of limitations thereupon.**

The Standards: In our democratic republic, discretionary power is never absolute. It always has limitations...sometime in the form of guidelines... sometimes in the form of statutes. Moreover, while the agencies of government are mandated to make rules based in statutes, and they may well have a conditional power to interpret statutes for the purpose of making policy, they have neither the right nor the power to unilaterally repeal, amend, modify or ignore the clear intents, purposes or language of the laws of our state, our nation or our constitution. Policy decisions of unelected Commissioners must always be subject to challenge. The agencies of government must be held accountable for their actions. Additionally, unbridled discretion is highly vulnerable to abuse resulting from unseemly outside pressures or perhaps despotic behavior. Furthermore, there is, as perhaps never before, a great need for stability in the regulatory process in order to encourage the corporate decision-makers in the telecommunications industry to focus on **competitive marketing practices**. The only way to achieve that kind of environment is by limiting discretionary power of agencies to the specific language of laws. Our laws are the backbone and the strength of our nation. We are a nation of laws, and the law must be obeyed by Presidents and panhandlers; and, by our government agencies.

This concept was recognized and **codified** by our state Legislature when they conceived and clarified FS 120 as amended in 1997 and 1999. The following are the appropriate citations in law that apply to this PETITION:

FS 120.536 (1) "A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have the authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties ; nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory

language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute."

FS 120.536 (2)(a) ".....As of July 1, 1999, the Administrative Procedures Committee or any substantially affected person may petition an agency to repeal (modify or amend) any rule, or portion thereof, because it exceeds rulemaking authority permitted by this section.".....

FS 120.54 (7)(a) "Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to **adopt, amend, or repeal a rule,**"

- The Objections:
- (1) The amendments to FS 120 in 1997 by the legislature contained a shield against challenges to rules that were adopted prior to October 1, 1996 on grounds that it exceeds rulemaking authority permitted under FS 120.536. Such challenges were not to be permitted before July 1, 1999. **Accordingly, this rule challenge is now permissible.**
 - (2) The amendments to Rule 120 in 1997 removed the presumption of validity for proposed rules on the premise that there would be adequate time and reason to fully consider the impact of the revisions in the law. While this restriction was not extended to include existing rules, a reasonable interpretation would lead to the conclusion that all revisions in FS 120 that were made prior to July 1, 1999 must be given fair consideration in determining whether or not prior agency or court decisions may still have relevance and authority. **It is my position that, any agency or judicial order must meet current standards in order to be admissible in this proceeding.**
 - (3) A critical element in the amended Rule 120 (1999) is the tenet that when the legislature enacts a statute, it may delegate the power to adopt rules to carry out the provisions of the statute. However, if the legislature has granted rulemaking authority to an agency, that authority must have identifiable standards for implementation. Now look at FS 364.19 in that context. This statute provides the Commission with authority to "regulate by reasonable rules, the terms of the telecommunications contracts between telecommunications companies and their patrons". **There are no specific standards for implementation.** One must therefore conclude, that the standards set forth in existing

applicable law must provide the governing authority. Our nation has had more than 100-years of legislative history on the issues of fair trade and consumer protection, including but not limited to the Fair Debt Collection Practices Acts of both the federal and state governments. This rich body of legislation is designed to provide both the industry and the consumer with firm RULES OF LAW to govern the marketplace. Now, it states clearly in FS 559.552, which addresses the RELATIONSHIP OF STATE AND FEDERAL LAW, that "Nothing in this part (of the Florida Consumer Collection Practices Act) shall be construed to limit or restrict the continued applicability of the federal Fair Debt Collection Practices Act." The Act further states that "This part is in addition to the requirements and regulations of the federal Act", and, "In the event of any inconsistency..... the provision which is more protective of the debtor shall prevail." Accordingly, it is appropriate that we examine the 15 USC 1601 et seq. (the federal Consumer Protection Act) and more specifically, Title VIII, the federal Fair Debt Collection Practices Act, in the context of the relationship between the telephone service provider, its billing and collection agent, and the consumer, under the RULE OF LAW.

15 USC 1692a §803 (4) excludes from the definition of **creditor**, "any party who receives assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another". This may well be significant since under the agreements between the toll service providers and their "billing and collection" agents, the agent recourses the debt back to the service provider four weeks after the default accrues, so that it has no liability in the debt. (PSC Order 13429-1984 "true-up provision")

Under the terms of PSC Order No. 13429 (1984 Order Approving Stipulation) the billing agent was granted the right to purchase receivables "to alleviate the problem of maintaining multiple balances and pro-rating partial payments received from customers." Accordingly, we have a situation where the purchase of receivables was permitted to accommodate limitations of computer capacity in 1984 (which we have been informed by PSC staff people is no longer a real limitation with current technology), and, in the face of possible liability for the debt, it is assigned back to the service provider. Therefore, since the billing agent has no financial risk or security interest in the debt, he is excluded under 15 USC 1692 §803(4) from being a "creditor", and under the same law (6) is considered to be a "debt collector." As a debt collector, the billing agent is precluded by 15 USC 1692(f) §808(6) from "taking or threatening to take any non-judicial action to effect dispossession or disablement of property". sic disconnection of toll service provided by another party, or interference with access to the competitive interstate toll service providers, so long as the billing agent is fully paid for the service that it provides.

- (4) 15 USC 1692(h) §810 states, "If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may **not** apply such payment to any debt which is disputed by the consumer, and where applicable, shall apply such payment in accordance with the consumer's directions". PSC Order No. 13429 (1984) contravenes the law by permitting the debt collectors to prorate partial payments received from customers. Thus, the consumer has no control over where his payments are applied...and he cannot pay his local service bill.
- (5) FS 95.11 (statutes of limitations on debt collection) (3)(p) provides that "Any action not specifically provided for in these statutes" for recovery of "other than real property" shall be commenced within FOUR YEARS", with time to be tolled from the date the debt came into default.

47 USC §415 (a) limits "....actions in law by telephone carriers for recovery of their lawful charges, or any part thereof, shall be begun within two (2) years (prior to 1996 it was one-year) from the time that the cause of action accrues, and not after." PSC Rules do not address the issue of "limitations" on debt collection, however if one is to separate interstate toll charges from charges for service within the borders of the State, it would appear that interstate charge collections are limited to two-years, and intrastate and local charge collections are limited to four-years.

- (6) It is interesting to note that 47 USC §42.6 (Retention of telephone toll records) establishes limits on "....
..each carrier that offers or bills toll telephone service" to the retention of billing information about....
.."toll calls" to eighteen months...."whether it is billing its own toll service customers for toll calls, or billing customers for another carrier". Now, if the debt for "another carrier's" toll charges is recouped back to the toll carrier in four-weeks; and if the toll carrier eliminates his records after eighteen-months; and, if the statute of limitations on toll charge debts is limited to two-years; how can the disconnection of local service to collect toll charge debts carry beyond the limits of law? It is my position that the "disconnect authority rule encourages an abusive collection practice which can reasonably be characterized as a non-judicial punitive act which violates the first and fourteenth amendments to the U.S. Constitution because it is imposed without "due process". Moreover, it is prescribed under discretionary rules which disregard applicable legal standards, and therefore is an invalid exercise of delegated legislative authority under FS 120.536 (1) as amended.

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- (7) In the context of addressing the issues raised in this PETITION, it is important to examine the relationship between state and federal law as applicable. In §(3) of this brief, FS 559.552 identifies this relationship from the standpoint of the State. In the PL 95-109, §816, the federal viewpoint is stated as follows: "This title does not annul, alter or affect, or exempt any person subject to the provisions of this title with respect to **debt collection practices, except to the extent that those laws are inconsistent with any provision of this title.....**" For purposes of this section, a State law is not inconsistent with this title if **the protection such law affords any consumer is greater than the protection provided by this title**". Further, §817, which addresses Exemption for State regulation, such exemption from federal requirements is provided "if the **Commission (FTC) determines that under State law that class of debt collection practices is subject to requirements substantially similar to those imposed by this title, and there is adequate provision for enforcement.** It is my position that the right to disconnect local telephone service to collect the debt of "another carrier" does not meet this test.
- (8) If additional evidence of the supremacy of federal law is required, it is appropriate to look to the U.S. Constitution. Article VI (2) states clearly that "This Constitution.....shall be the supreme law of the land; and judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." Additionally, §IV of Article I, while giving the States the power over conduct of Federal elections, permits Congress to alter such regulations at any time. Article I, §8 (3) gives the Congress exclusive power to regulate commerce with foreign nations and among the states, which clearly takes the regulation of interstate and international telecommunications billing and collection out of state jurisdiction....and Article VII, Amendment 7 provides the right of trial by jury where there is dispute over debts. This right is preempted by the "disconnect authority" rule which imposes punishment first, and permits negotiation afterward in the cases where interstate and international toll charges are involved. It is my position that under the current "disconnect authority" rule, **due process**, which is guaranteed under the First and Fourteenth amendments, is disregarded by the action of local telephone service carriers when they terminate local telephone service to collect debts in dispute which are owed for services that they do not provide and services over which they do not have jurisdiction. The Commission has oft stated that "all

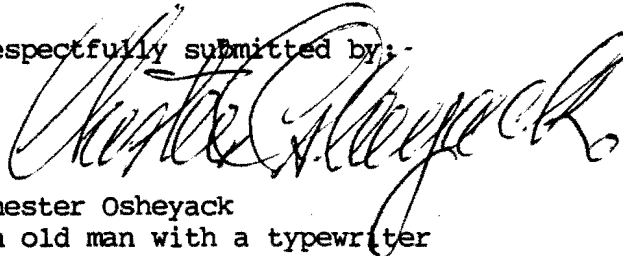
the debtor need do is pay the part of the debts that are not in dispute, and his service will be restored." It is my position that, without a court order or valid court judgement, the Commission has no right to permit the local carriers to intervene in negotiations between the debtor and the carrier when they have no jurisdiction over the sources of the debt, or alternatively, when they are aware that the debt collector has no financial interest in the debt.

- (9) The above noted Section 8 is particularly appropriate in light of the FCC REPORT AND ORDER in FCC Docket No. 85-88, which is dated as adopted January 14, 1985, and which de-tariffed billing and collection service. In this order, the FCC adopted the conclusion that **billing and collection services are not communications common carriage within Title II of the Communications Act (47 USC §201 et seq.** This had the effect of amending Part 69 (access charge rules) to cause deletion of the billing and collection element. The FCC also required local exchange carriers to file tariff revisions (with the states) removing provisions for interstate billing and collection effective January 1, 1987. The order was clear in its determination that "billing and collection is a financial and administrative service" when the functions are performed by a third party. While the FCC did defer to state regulatory authorities with respect to local cut-offs, they specifically stated that "....we do not by this action, intend to give tacit approval to this activity.....".
- (10) In connection with §9 above noted, it is important to review the Federal Telecommunications Reform Act of 1996, and specifically Title IV, §401(a) which directs the FCC to "forbear regulation when such is not in the public interest or not necessary". Now, this was easy for the FCC because they had already implemented such action in 1985. However, it must be noted that §401 (e) which deals specifically with State enforcement, states clearly that **"A State Commission may not continue to apply or enforce any provision of this Act that the FCC has determined to forbear."** Now the attorney for the PSC in prior actions in this matter presumed to pronounce that the law "speaks for itself", but the Court's have the prerogative, when they choose to exercise it, to interpret the law which may not speak loud enough to those who prefer not to hear it. Facts, however, should have the power to convince, and conversely, a lack of supportable facts should proffer a void that cries out to be filled.

- (11) Finally, FS §364.27 which addresses "Powers and duties as to interstate rates, fares, charges, classifications, or **rules of practice**", quite clearly charges the Commission to **investigate all interstate....rules of practice in relation thereto, for and in relation to** (telecommunications activities) **where** (such) **takes place within the state, and when such....rules of practice, are in the opinion of the Commission, excessive or discriminatory or are levied or laid in violation of the Act of Congress entitled "The Communications Act of 1934"** (as amended, of course, by the Telecommunications Reform Act of 1996). Thus, under Florida law, the PSC has both the right and the responsibility to gather facts where there are matters it considers to be beyond its jurisdiction, and present them to proper jurisdictions. It is my position that all of the above noted facts and laws were available to the Commission prior to 1996, and the Commission had access to all of the information as documented above. Under the provisions of FS 120.536 (2) the Commission had the obligation to provide the Administrative Procedures Committee (Joint House and Senate) with a list of each rule which exceeds rulemaking authority. The above noted "disconnect authority" rule was not included in that list. As of July 1, 1999, "any substantially affected person may petition an agency to repeal any rule or portion thereof, because it exceeds the rulemaking authority permitted in this section" sic FS 120.536 (2)(a). This petition is consistent with that statute.
- (12) In prior actions before the Division of Administrative Hearings, consideration of the above noted statute was ruled to be "premature". Moreover, the DOAH acknowledged that it had no jurisdiction over matters involving federal law.....and, under appeal before the 2d District Court of Appeals, the Court upheld the contention of the attorney for the PSC that, while the Appeals Court had proper jurisdiction, the issues relating to the Constitution and federal statutes were "not properly preserved". Accordingly, prior participation by the PETITIONER in the subject of this petition does not preclude his right to present it to the PSC at this time. Furthermore, the Commission, in its wisdom, did stipulate that the PETITIONER was in fact "a substantially affected person" prior to the presentation to the Administrative judge. These facts should be a matter of record.

This PETITION is submitted herewith, on behalf of the PETITIONER and his spouse of more than fifty (50) years; on behalf of more than 650,000 Floridians which are effectively cut-off from a part of society every year for non-payment of toll bills in dispute or default; for the working poor, the infirm, the single mothers with school age children or infants, and the elderly on fixed incomes. Moreover, this issue speaks to the concerns and circumstances of my life, a part of which was snatched from me and withheld from me for five (5) years by what I consider to be the **administration of injustice**. The purpose of this PETITION is to serve the cause of justice and humanity, and to preserve the RULE OF LAW.

Respectfully submitted by:-



Chester Osheyack
an old man with a typewriter





Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

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RECEIVED

DATE: JULY 21, 1999

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

FROM: DIVISION OF APPEALS (BROWN) *MB DS*
DIVISION OF COMMUNICATIONS (DOWDS) *Geo*

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

AGENDA: JULY 27, 1999 - REGULAR AGENDA - PETITION FOR RULEMAKING - PARTIES MAY PARTICIPATE

CRITICAL DATES: AUGUST 15, 1999 - BY STATUTE, THE COMMISSION MUST GRANT OR DENY THE PETITION BY THIS DATE

SPECIAL INSTRUCTIONS: SHOULD NOT BE DEFERRED

FILE NAME AND LOCATION: S:\PSC\APP\WP\990869.RCM

CASE BACKGROUND

On July 1, 1999, Chester Osheyack filed a Petition to Amend Disconnect Authority Rule. In the petition, Mr. Osheyack asks the Commission to amend subsection (1)(f) of Rule 25-4.113, Florida Administrative Code, which permits a local exchange company to disconnect a customer's local telephone service for non-payment of a bill for long distance telephone service.

Pursuant to section 120.536, the Commission must grant or deny Mr. Osheyack's petition within 45 days. This is staff's recommendation to deny the petition.

DOCUMENT NUMBER-DATE

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PSC-RECORDS/REPORTING

STATEMENT OF ISSUES

ISSUE 1: Should the Commission deny Mr. Osheyack's Petition to Amend Disconnect Authority Rule?

RECOMMENDATION: Yes. The Commission should deny Mr. Osheyack's petition. Rule 25-4.113(1)(f), Florida Administrative Code, satisfies the requirements of Section 120.536, Florida Statutes, because it implements the specific powers granted by Sections 364.03 and 364.19, Florida Statutes.

STAFF ANALYSIS: This petition is Mr. Osheyack's most recent attempt to convince the Commission to change its policy on discontinuance of local phone service for failure to pay long distance charges. In previous cases before the Commission, the Florida Supreme Court, the Division of Administrative Hearings, and the Second District Court of Appeals, Mr Osheyack has attacked the rule on a variety of substantive and procedural grounds. To date he has not been successful.

The rule in question, Rule 25-4.113(1)(f), Florida Administrative Code, provides, in pertinent part:

(1) As applicable, the company may refuse or discontinue telephone service under the following conditions provided that, unless otherwise stated, the customer shall be given notice and allowed a reasonable time to comply with any rule or remedy any deficiency . . .

(f) For nonpayment of bills for telephone service, including the telecommunications access system surcharge referred to in Rule 25-4.160(3), provided that suspension or termination of service shall not be made without 5 working days' written notice to the customer, except in extreme cases. The written notice shall be separate and apart from the regular monthly bill for service. A company shall not, however, refuse or discontinue service for nonpayment of a dishonored check service charge imposed by the company. No company shall discontinue service to any customer for the initial nonpayment of the current bill on a day the company's business office is closed or on a day preceding a day the business office is closed. . .

In this case, Mr. Osheyack contends that Rule 25-4.113(1)(f) does not satisfy the requirements of the Administrative Procedures Act, Section 120.536(1), Florida Statutes, which provides that an agency may only adopt rules that implement or interpret specific powers and duties granted by statute. According to Mr. Osheyack, sections 364.03 and 364.19, Florida Statutes, which the Commission cites as authority for the rule in question, provide broad discretionary powers to regulate the telecommunications industry, but they do not provide specific power to disregard or override existing state and Federal debt collection practices laws, and statutes of limitations relating to them. Thus, Mr. Osheyack contends, the Commission has exceeded its rulemaking authority, and he asks the Commission to amend the rule in question "in a manner consistent with applicable State and Federal debt collection statutes."

Section 364.19, Florida Statutes, "Telecommunications service contracts; regulation by Commission" provides that "[t]he Commission may regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons." Mr. Osheyack acknowledges this broad grant of authority, but contends the rules enacted must be "reasonable." He also contends that since there are no specific standards incorporated in Section 364.19 for discontinuance of service, the rule must incorporate debt collection standards from other existing law. Since the rule does not do that, it is not "reasonable," and since it is not reasonable, it exceeds the specific authority granted in Section 364.19, Florida Statutes.

Rule 25-4.113, Florida Administrative Code, is a rule that governs the terms of telecommunications service contracts between telecommunications companies and their patrons. It implements the specific power over contracts granted by the statute, and the particular type of contract term it addresses is termination of service. It is directly and specifically related to the authority granted by the statute. No more specificity is necessary in either the rule or the statute. Nowhere does the statute require the Commission to comply with Federal or state debt collection statutes in its regulation of telecommunications service contracts between telecommunications companies and their patrons. The Commission is not authorized to enforce or implement those statutes, and in fact, if it did, it might well exceed the authority granted it under Section 364.19. Staff has reviewed those debt collection statutes and does not believe that they would be applicable at all to local exchange company billing and collection arrangements with interexchange carriers.

Furthermore and finally, Rule 25-4.113, Florida Administrative Code, meets the standard of reasonableness found in section 364.19, Florida Statutes. It clearly is directly related to the terms of a telecommunications service contract and the Commission's long-standing policy that telecommunications consumers should not have to absorb the high costs of bad debt through their telecommunications rates. In Mr. Osheyack's 1996 rule challenge, the Administrative Law Judge specifically upheld Rule 25-4.113 on the grounds that the rule was reasonable, not arbitrary or capricious, and based on competent substantial evidence in the record. See Chester Osheyack v. Public Service Commission, Final Order issued August 11, 1997, Case No. 97-1628RX. That decision was affirmed Per Curiam by the Second District Court of Appeal.

For these reasons, staff recommends that the Commission deny Mr. Osheyack's petition. The rule meets the procedural requirements of Section 120.536, Florida Statutes. Staff notes, however, that it is presently working on two rule projects that address other aspects of Rule 25-4.113. Since the Commission has not reviewed this rule in over three years, staff could incorporate a review of this provision into its projects, if the Commission desires.

DOCKET NO. 990869-FL
DATE: JULY 21, 1999

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, this docket should be closed.

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed. The docket should remain open if the Commission grants Mr. Osheyack's petition.

MCB

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 permit- on 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 1/2 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 DOCUMENT NUMBER-DATE

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PSC-RECORDS/REPORTING

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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 aforementioned 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.

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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 statutory 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.

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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 jurisdiction, 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 nighttime, 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 pre-payment 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 credibility 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,

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much less SPECIFIC powers and duties. Moreover, the AP statute also precludes an agency from implementing statutory 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.

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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 coherent 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

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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.

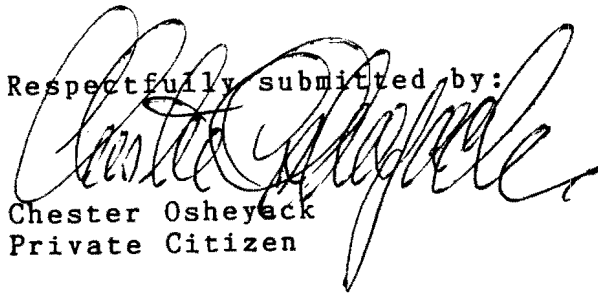
The question before us today is not about my past experience...or your past judgments. It is not about changes in the markets. It is not even about what the telephone companies do or do not do. The question before us today is about the RULE OF LAW. It is about the right of the Commission to assume powers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

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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:



Chester Osheyack
Private Citizen

10410 Zackary Circle
Apt. 28
Riverview, Florida 335693994
(813) 672-3823

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition by Chester Osheyack for Amendment) Docket No. 990869-TL
of Rule 25-4.113(1)(f), F.A.C., Refusal or)
Discontinuance of Service)
_____) Filed: August 3, 1999

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
PETITION FOR LEAVE TO INTERVENE**

BellSouth Telecommunications, Inc., ("BellSouth" or "Company"), pursuant to Rule 25-22.039, Florida Administrative Code, hereby requests leave to intervene in these proceedings, and as grounds therefor states:

1. BellSouth is a telephone company lawfully doing business in the State of Florida whose regulated operations are subject to the jurisdiction of this Commission pursuant to Chapter 364, Florida Statutes.

2. BellSouth's principal place of business in Florida is 150 W. Flagler Street, Suite 1910, Miami, Florida 33130. Pleadings and process in this matter may be served upon:

Nancy B. White
c/o Nancy H. Sims
150 So. Monroe Street, Suite 400
Tallahassee, Florida 32301

3. Any decision made by the Commission in the context of this proceeding will necessarily affect the substantial interests of BellSouth and its business operations in the State of Florida.

DOCUMENT NUMBER-DATE

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WHEREFORE, BellSouth respectfully requests that the Commission grant the Company leave to intervene for all legal purposes in this docket.

Respectfully submitted this 3rd day of August, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

NANCY B. WHITE (BW)
MICHAEL P. GOGGIN
c/o Nancy H. Sims
150 So. Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558

R. Douglas Lackey

R. DOUGLAS LACKEY (DL)
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0747

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition by Chester Osheyack for Amendment)	Docket No. 990869-TL
of Rule 25-4.113(1)(f), F.A.C., Refusal or)	
Discontinuance of Service)	
_____)	Filed: August 4, 1999

BELLSOUTH TELECOMMUNICATIONS, INC.'S NOTICE OF WITHDRAWAL OF PETITION FOR LEAVE TO INTERVENE

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files its Notice of Withdrawal of Petition for Leave to Intervene, and states the following:

1. On August 3, 1999, BellSouth filed a Petition for Leave to Intervene in this docket. BellSouth hereby withdraws the above-referenced Petition for Leave to Intervene.

Respectfully submitted this 4th day of August, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

 NANCY B. WHITE (for)
 MICHAEL P. GOGGIN
 c/o Nancy H. Sims
 150 So. Monroe Street, Suite 400
 Tallahassee, FL 32301
 (305) 347-5558

R. Douglas Lackey

 R. DOUGLAS LACKEY
 Suite 4300
 675 W. Peachtree St., NE
 Atlanta, GA 30375
 (404) 335-0747

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Chester
Osheyack for amendment of Rule
25-4.113(1)(f), F.A.C., Refusal
or Discontinuance of Service.

DOCKET NO. 990869-TL
ORDER NO. PSC-99-1591-FOF-TL
ISSUED: August 16, 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 AMENDMENT
OF RULE 25-4.113(1)(f), FLORIDA ADMINISTRATIVE CODE**

BY THE COMMISSION:

On July 1, 1999, Chester Osheyack filed a Petition to Amend Disconnect Authority Rule. Invoking the provisions of Section 120.536, Florida Statutes, Mr. Osheyack asks us to amend Rule 25-4.113 (1)(f), Florida Administrative Code, which permits a local exchange company to disconnect a customer's local telephone service for non-payment of a bill for long distance telephone service. At our July 27, 1999, Agenda Conference, we denied Mr. Osheyack's petition. We determined that Rule 25-4.113(1)(f) satisfies the requirements of Section 120.536, because it implements the specific powers granted to the Commission by Sections 364.03 and 364.19, Florida Statutes. This Order memorializes our decision, as Section 120.536(2), Florida Statutes, requires.

The rule in question, 25-4.113(1)(f), Florida Administrative Code, provides, in pertinent part:

(1) As applicable, the company may refuse or discontinue telephone service under the following conditions provided that, unless otherwise stated, the customer shall be given notice and allowed a reasonable time to comply with any rule or remedy any deficiency . . .

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(f) For nonpayment of bills for telephone service, including the telecommunications access system surcharge referred to in Rule 25-4.160(3), provided that suspension or termination of service shall not be made without 5 working days' written notice to the customer, except in extreme cases. The written notice shall be separate and apart from the regular monthly bill for service. A company shall not, however, refuse or discontinue service for nonpayment of a dishonored check service charge imposed by the company. No company shall discontinue service to any customer for the initial nonpayment of the current bill on a day the company's business office is closed or on a day preceding a day the business office is closed. . .

In previous cases before the Commission, the Florida Supreme Court, the Division of Administrative Hearings, and the Second District Court of Appeals, Mr Osheyack has attacked the rule on a variety of substantive and procedural grounds. In this case Mr. Osheyack contends that the rule does not satisfy the requirements of the Administrative Procedures Act, Section 120.536(1), Florida Statutes, which provides that an agency may only adopt rules that implement or interpret specific powers and duties granted by statute. According to Mr. Osheyack, sections 364.03 and 364.19, Florida Statutes, which the Commission cites as authority for the rule in question, provide broad discretionary powers to regulate the telecommunications industry, but they do not provide specific power to disregard or override existing state and Federal law governing debt collection practices, and statutes of limitations relating to them. Therefore, Mr. Osheyack contends, we have exceeded our rulemaking authority. He asks us to amend Rule 25-4.113(1)(f) "in a manner consistent with applicable State and Federal debt collection statutes."

Section 364.19, Florida Statutes, "Telecommunications service contracts; regulation by Commission" provides that "[t]he Commission may regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons." Mr. Osheyack acknowledges this broad grant of authority, but contends the rules enacted must be "reasonable." He argues that since there are no specific standards incorporated in Section 364.19 for discontinuance of service, the rule must incorporate debt collection standards from other existing law. Since the rule does not do that, it is not "reasonable," and

ORDER NO. PSC-99-1591-FOF-TL
DOCKET NO. 990869-TL
PAGE 3

since it is not reasonable, it exceeds the specific authority granted in Section 364.19, Florida Statutes.

Rule 25-4.113 is clearly a rule governing the terms of telecommunications service contracts between telecommunications companies and their patrons. It implements the specific power over contracts granted by the statute, and the particular type of contract term it addresses is termination of service. It is directly and specifically related to the authority granted by the statute. Nowhere does the statute require compliance with Federal or state debt collection statutes in the regulation of telecommunications service contracts between telecommunications companies and their patrons. Those statutes are not applicable to local exchange company billing and collection arrangements with interexchange carriers.

We believe that Rule 25-4.113 meets the standard of reasonableness found in Section 364.19, Florida Statutes. It is directly related to the terms of a telecommunications service contract and the Commission's long-standing policy that telecommunications consumers should not have to absorb the high costs of bad debt through their telecommunications rates. See Chester Osheyack v. Public Service Commission, Final Order issued August 11, 1997, Case No. 97-1628RX, where the Administrative Law Judge specifically upheld Rule 25-4.113 on the grounds that the rule was reasonable, not arbitrary or capricious, and based on competent substantial evidence in the record. That decision was affirmed Per Curiam by the Second District Court of Appeal. Chester Osheyack, v. State of Florida, Division of Administrative Hearings (Public Service Commission), Case No. 97-03581, issued June 19, 1998.

For these reasons, we deny Mr. Osheyack's petition. The rule meets the procedural requirements of Section 120.536, Florida Statutes. We have not, however, reviewed this rule in over three years. Considering the changes that have taken place in telecommunications in that time, we believe we should review it again, to determine whether the policies it implements are still appropriate. Our staff will include a review of Rule 25-4.113(1)(f) in its current rulemaking projects. It is therefore,

ORDERED by the Florida Public Service Commission that Chester Osheyack's Petition to Amend Disconnect Authority Rule is denied for the reasons stated above. It is further

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ORDER NO. PSC-99-1591-FOF-TL
DOCKET NO. 990869-TL
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ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 16th
day of August, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

MCB

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.

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BEFORE THE FLORIDA SUPREME COURT

IN THE FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 990869-TL
Order No. PSC-99-1591-FOF-TL
Issued August 16, 1999
Final August 30, 1999

CHESTER OSHEYACK, pro se)
Appellant)
v)
STATE OF FLORIDA (Public)
Service Commission - Joe)
Garcia, Chairman))
Appellee)
_____)

NOTICE OF APPEAL

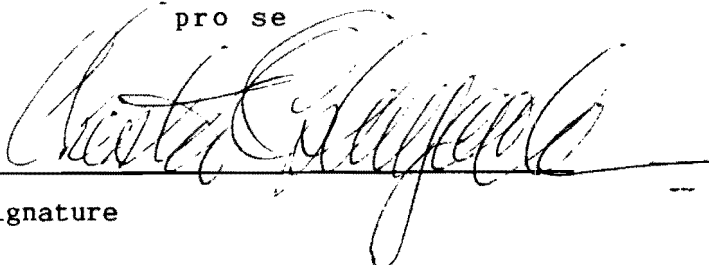
NOTICE IS GIVEN that CHESTER OSHEYACK pro se, Appellant, appeals to the Florida State Supreme Court, the ORDER of the Public Service Commission rendered and final, effective August 30, 1999 (confirmed copy attached)

The jurisdiction of this Court is hereby invoked on the following grounds:

- (1) Pursuant to FS 120.68
- (2) The basis of the dispute under appeal is interpretation of FS 120.536 as amended which was enacted during the 1999 session of the legislature. Judicial interpretation of this statute was barred prior to July 1, 1999, therefore there has been no test of the consequences of this statute.
- (3) Adjudication of this dispute requires consideration of the impact of federal and constitutional law as well as state law. Such review is beyond the jurisdiction of the administrative judicial process, but is well within the jurisdiction of this Court.

Appellant: CHESTER OSHEYACK
10410 Zackary Circle
Apt. 28
Riverview, Florida 33569-3994
(813) 672-3823
pro se

Appellee: Robert D. Vandiver, General
Counsel, Florida Public Service
Commission
2540 Shumard Oak Blvd
Tallahassee, Florida 32399-0850
Florida Bar No. 89095
(850) 413-6245


Signature

9-1-99
Date

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FLORIDA PUBLIC
SERVICE COMMISSION
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CHESTER OSHEYACK
10410 Zackary Circle, Apt. 28
Riverview, Florida 33569-3994
(813) 672-3823

October 9, 1999

Ms. Kay Flynn, Chief
Bureau of Records
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

In re: SCA 96,439
PSC Order 99-1591-FOF-TL

990869-TL

Dear Ms. Flynn:

Ms. Brown advised that I communicate with you regarding the matter of the record. As I am sure that you are aware, my experience with the process involved is quite limited, so I'll have to rely upon you for guidance where appropriate.

Enclosed is a copy of the "Table of Citations" that will be included in my Initial Brief.

Important for inclusion in the record are:

US 5th DCA Case No. 97-60421, July 30, 1999 decision. This should be no problem since FPSC was a party in this action against the FCC. and,

FS 364; FS 120; FS 95.11; FS 559.55

** PSC Orders 12765 and 13429

PSC Rules 25-4

FCC Report & Order in CC Docket No. 85-88 Jan 14, 1985

Fed Stautes: 15 USC 1601 et seq; 47 USC 201 et seq;

47 USC 42.6; 47 CFR §61.58; 5 USC 706;

15 USC 1601 et seq

APA
ADP
CAF
CMU
CTR
EAG
LEG
MAS
OPC
PAI
SEC
WAW
GTR

Brown

note: There is a Florida Order that cites Adams v Culver; Stewart v DeLand; State ex rel Loftin v McMillan; Boque & Fennelly; and Suntrust v Wood in re statuatory construction. I ave the citation but have misplaced the PSC Order, however it was in the file submitted to DOAH by Ms Helton. This should be included in the record duly noted with (**)

The US DCA Case No 97-60421 contains citations in Case law duly noted with (*)

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FPSC-RECORDS/REPORTING

page 2 (Osheyack to Flynn)

Copies of the Declaration of Independence, the Constitution of the USA and the State of Florida should be readily available in any court in the land, so I doubt that you will need those for the record, but I leave that to your expert judgement.

With respect to the US 5th DCA Case, while this Final Order was issued 3-days after the PSC Agenda Conference, and about 30-days prior to the Final Order in re my Petition, it should be emphasized that the Florida PSC was a party in that case and was well aware of the citations in the record. I did, also discuss the Case with Mr. David Smith, in the absence of Ms. Brown, and directly with Ms. Brown when she returned from her travels. I don't know what else I need to do.

Be advised that, at this writing, I have no information regarding the issuance of an Order of Indigency. I was informed on or about Sept 24th that the matter would be brought before the commission at their Agenda Conference of October 5th. I assume that it will be forthcoming.

Please call if you have any questions, or need any additional information.

I appreciate your assistance.

Sincerely,


Chester Osheyack

TABLE OF CITATIONS

- I. Documents
 - (1) Declaration of Independence
 - (2) Constitution of the U.S. of A.
 - (a) Article I, § 8 (3)(4)
 - (b) Article VII, Amendment 7
 - (c) Amendment I
 - (d) Amendment XIV

- II. Federal statutes
 - (1) 15 USC 1601 et seq
 - (2) 15 USC 1601, Title VIII, § 801 et seq
 - (3) 47 USC 201(II) et seq (1934); amended (1996)
 - (4) 5 USC § 706 (A)(B)
 - (5) 47 USC § 415 (limitations)
 - (6) 47 USC § 42.6; 401; 816;817; §151 et seq

- III. Federal Orders
 - (1) FCC 85-88 (1985)

- IV. Federal Rules
 - (1) 47 CFR §61.58 (c)(3)

- V. Florida Statutes
 - (1) 364.27
 - (2) FS 559.55 et seq
 - (3) FS 95.11
 - (4) FS 364.01 et seq
 - (5) FS 120.51 et seq

- VI. Florida Orders
 - (1) PSC 12765 (1983)
 - (2) PSC 13429 (1984)

Citations (continued)

VII. Florida Rules

- (1) 25-4.002 et seq
- (2) 25-4.113 (1-f),(4-e)

VIII. Case Law :

- * (1) Nader v Volpe, 475 F 2d 916,917, (DC Cir 1973)
- * (2) Super Tire Engrng Co. v McCorkle, 416 US 115,122 (1974)
- * (3) Maryland PSC v FCC, 909 F 2d, 1510,1515, (DC Cir 1990)
- * (4) Gulth v Kangas, 951 F 2d, 1504-1508, (9th Cir 1991)
- * (5) Harris v USA, 19 F 3d, 1090, (5th Cir 1994)
- (6) US 5th DCA, Case No. 97-60421, Consolidated challenge to the most recent attempt of the FCC to implement provisions of the landmark 1996 Telecommunications Act. DCA Order dtd July 30, 1999.

- * (7) Chevron USA, Inc., v Natural Resource Defense Council, Inc., 467 US 837 (1984).
- ** (8) Adams v Culver, 111 So 2d 665 at 667, Fla 1959 citing
** Stewart v Deland-Lake Helen, 7i So 42, Fla 1916 quoting
** State ex rel Loftin v McMilan, 45 So 882, Fla 1908.
- ** (9) Boque v Fennelly, 1997 WL 276289 Fla 4th DCA 1997
- ** (10) Suntrust Banks of Fla v Wood, 693 So 2d 99, Fla 5th DCA, 1997

IX. Reference Books

- (1) Webster's New World Dictionary, 2d College Edition
- * (2) Sutherland Statutory Construction, 5th Edition, Vol 2 (A) §46.05, 49 Fla Jur §182

note(s):(*)quotes from US 5th DCA, Case No. 97-60421, "Texas Case"

(**) quotes from FPSC orders used when appropriate to make their case

CHESTER OSHEYACK
10410 Zackary Circle, Apt. 28
Riverview, Florida 33569-3994
(813) 672-3823

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RECORDS AND
REPORTING

September 1, 1999

Mrs. Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

In re: Docket No. 990869-TL

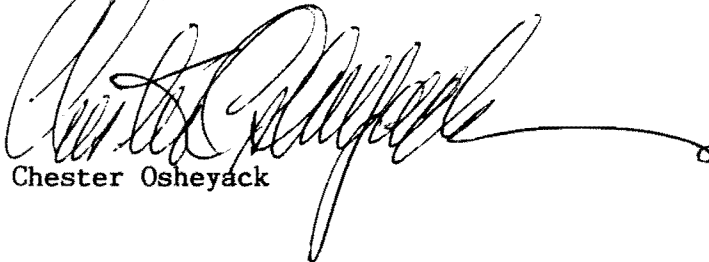
Dear Mrs. Bayo:

Pursuant to your instructions, enclosed herewith is the original of my NOTICE OF APPEAL, which I ask that you file in the above referenced matter.

A copy of this letter is enclosed so that you may mark it to indicate receipt and filing date, and return a marked copy to me for my file.

A copy has been sent to the Clerk of the Florida Supreme Court along with other appropriate documents as required. Such service is certified herein by the signature below.

Sincerely,



Chester Osheyack

Copy to: Ms. Debbie Cousseaux
Clerk of the Supreme Court
State of Florida
500 So. Duval Street
Tallahassee, Florida 32399
(850) 488-0125

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA SUPREME COURT

IN THE FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 990869-TL
Order No. PSC-99-1591-FOF-TL
Issued August 16, 1999
Final August 30, 1999

CHESTER OSHEYACK, pro se)
Appellant)
v)
STATE OF FLORIDA (Public)
Service Commission - Joe)
Garcia, Chairman))
Appellee)

NOTICE OF APPEAL

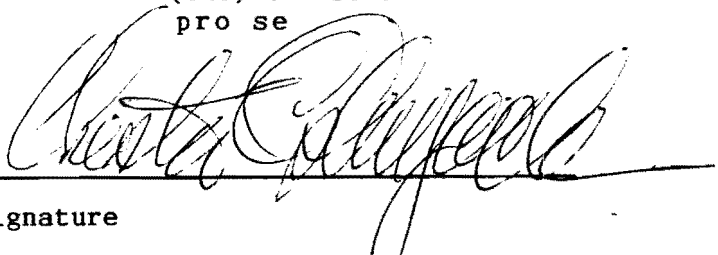
NOTICE IS GIVEN that CHESTER OSHEYACK pro se, Appellant, appeals to the Florida State Supreme Court, the ORDER of the Public Service Commission rendered and final, effective August 30, 1999 (confirmed copy attached)

The juristiction of this Court is hereby invoked on the following grounds:

- (1) Pursuant to FS 120.68
- (2) The basis of the dispute under appeal is interpretation of FS 120.536 as amended which was enacted during the 1999 session of the legislature. Judicial interpretation of this statute was barred prior to July 1, 1999, therefore there has been no test of the consequences of this statute.
- (3) Adjudication of this dispute requires consideration of the impact of federal and constitutional law as well as state law. Such review is beyond the juristiction of the administrative judicial process, but is well within the juristiction of this Court.

Appellant: CHESTER OSHEYACK
10410 Zackary Circle
Apt. 28
Riverview, Florida 33569-3994
(813) 672-3823
pro se

Appellee: Robert D. Vandiver, General
Counsel, Florida Public Service
Commission
2540 Shumard Oak Blvd
Tallahassee, Florida 32399-0850
Florida Bar No. 89095
(850) 413-6245


Signature

9-1-99
Date

DOCUMENT NUMBER-DATE

10442 SEP-18

FPSC-RECORDS/REPORTING

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Kay

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SERVICE COMMISSION

CHESTER OSHEYACK
10410 Zackary Circle, Apt. 28
Riverview, Florida 33569-3994
(813) 672-3823

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MAIL ROOM

October 20, 1999

Ms. Debbie Causseaux, Clerk
Supreme Court, State of Florida
500 South Duval Street
Tallahassee, Florida 32399-1927

990869-TL

In re SCA Case No. 96,439; in PSC Order 99-1591-FOF-TL

Dear Ms. Causseaux:

PSC consideration of my request for an Order of Indigency was apparently delayed for two-weeks and the process of "service" was delayed accordingly. There is no need to toll time since we are still well within the prescribed limits for timely service. However, while my "brief" was prepared, I was unable to consult with the counsel for the PSC in the interim, on the matter of preparation and submission of exhibits.

Accordingly, I am mailing my Initial Briefs on this date instead of on October 15, 1999 as originally planned, and will submit the exhibits as required for filing with the Initial Briefs, within two (2) weeks or ASAP after consultation with the PSC Counsel, whichever is more appropriate under the conditions imposed by the delay.

I must emphasize that this is an inconvenience, but not a problem for me, and I hope that it is not a problem for either the court or the PSC. I'm doing my best to comply with the Appellate Rules, but I do not have the capability or resources to match those of the government.

Sincerely,

Chester Osheyack
Chester Osheyack

cc: Kay Flynn for Martha Carter Brown, Esq.

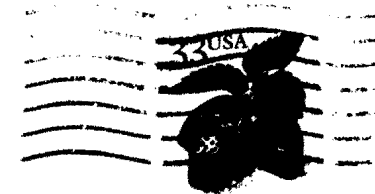
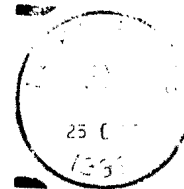
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- OTH *gkg*

DOCUMENT NUMBER-DATE

12804 OCT 20 99

FD-503 (REV. 03-07-97) REPORTING

CHESTER OSHEYACK
10410 Zackary Circle, Apt 28
Riverview, Florida 33569-3994



Ms. Kay Flynn, Chief
Bureau of Records, PSC
State of Florida
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

32399-7018 01



Key

CHESTER OSHEYACK
10410 Zackary Circle, Apt. 28
Riverview, Florida 33569-3994
(813) 672-3823

ORIGINAL

RECEIVED
FLORIDA PUBLIC
SERVICE COMMISSION
99 OCT 28 AM 8:42
MAIL ROOM

October 25, 1999

Ms. Kay Flynn, Chief
Bureau of Records
Public Service Commission
State of Florida
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

990869-

Dear Ms. Flynn:

Acknowledge receipt and thank you for your ltr of October 21, 1999 with enclosure.

I have neither questions nor objections to the "index" as you represent it.

Be advised also, to disregard my last communication in re the date of filing of my Initial Brief and the Appendix thereto.

After discussion with Ms. Brown, and as a result thereof, I will file both documents at the same time...on or before November 8, 1999. I believe that this date is well within the prescribed 70-day time requirement.

Please advise Ms. Brown of this change in plans.

Sincerely,



Chester Osheyack

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DOCUMENT NUMBER-DATE

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STATE OF FLORIDA PUBLIC SERVICE COMMISSION

I, Blanca S. Bayó, Director, Division of Records and Reporting, Florida Public Service Commission, do hereby certify that I am the duly appointed custodian of the official records of said Commission and, in that capacity, do certify that the foregoing pages, numbered 1 through 30, inclusive, contain a correct transcript of the record of the order and judgment of the Commission in the matter of the petition by Chester Osheyack for amendment of Rule 25-4.113(1)(f), F.A.C., in Docket No. 990869-TL.

In Witness Whereof I have hereunto set my hand and affixed the Seal of the Florida Public Service Commission this 13th day of December, 1999.

BLANCA S. BAYÓ, DIRECTOR
RECORDS AND REPORTING



BY: Kay Flynn

Kay Flynn, Chief
Bureau of Records

(SEAL)