

The Appellant, pursuant to Rule 9.300 (1996), respectfully moves this court to make a determination on its authority to hear this above styled case. The Appellee has challenged this court's authority in its Answer Brief on several grounds. The Appellant believes that all parties, including the court, would benefit from a resolution of this question prior to subsequent filings.

In its Answer Brief, the commission appears to have made a conscious effort to characterize the Appellant as a chronic complainer who is making frivolous presentations and should be ignored. In fact, the Appellant, is an American citizen, a very concerned American citizen, who with his family, has been irreparably harmed by an unconstitutional and unreasonable policy which is supported by the commission. My intent is to make certain that the harm that we have suffered does not happen again to me or to others among the elderly, the infirm, the working poor and single mothers with small children. I do not come before this court with guns blazing or bombs strapped to my body. I come, Honorable Justices, with words as befits a civilized democratic society, and I ask only that these words be heard by this court in accordance with "due process".

Florida Statute 364.381 accomodates the US Constitution (Articles V and XIV in re due process of law) by mandating that "the Supreme Court shall review, upon petition, any action of the commission relating to rates or service of telecommunications companies."

The commission responds on pg (12) of its brief, by asserting that "the courts have narrowly interpreted the scope of judicial review of an agency not to adopt or amend a rule without a clear constitutional question to address, or a demonstrable arbitrary and capricious agency action." **I accept this challenge!**

APPENDIX

The commission asserts on pages (11) of its brief that, "This court's long standing standard of review of commission orders establishes that they have been made within the commission's jurisdictional powers, are reasonable, just and such as ought to be made. The commission's interpretation of a statute it is charged with enforcing, is entitled to great deference and will not be overturned unless the party challenging the order can show a departure from essential requirements of law."(Gulf Coast Electric Cooperative, Inc v Johnson, 727 So 2d, 259,262 (Fla 1999) and cases cited therein.)

In rebuttal, the Appellant asks the court to recognize the following authority, (US 5th DCA Case No 97-60421 FO 1999 id Texas Util v FCC quoting Porter V Califano, 592 F 2d 770,780 5th Cir 1979) to wit "we do not give the FCC's actions the usual deference when reviewing a potential violation of constitutional right. The intent of Congress in 5 US §706 (2)(B) was that courts should make an independent assessment of a citizen's claim of constitutional right when reviewing agency decision-making." Thus the commission's invocation of "deference" is arguable if viewed in this context.

The Florida Administrative Code quoted verbatim in the briefs of both the Appellant and Appellee are again repeated below:

FAC 25-4.113 (1)(f) Refusal or discontinuance of service

- (1) As applicable, the company may refuse or discontinue telephone service under 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 system surcharge referred to in Rule 25-4.160 (3) provided that suspension or termination may not be made without five 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 a current bill on a day preceding a day the business office is closed.

There are 3 items of substance for this court to note. In the discussion of "telephone service" in the Rule, the commission neglects to differentiate among the different types of service sic local telephone service, intralata telephone service, intrastate telephone service and interstate telephone service. This planned ambiguity allows the local exchange telephone company (aka the billing agent) the opportunity to infer that it has the right to disconnect all service rendered by all carriers in all markets by terminating access even though the access surcharge may well have been paid. Thus, by this rule, the commission transfers a right of judicial punishment to clerks and computers who can summarily terminate all telephone service after a five-day wait, and the customer must assume the burden of disproving an alleged debt, which may be based in either dispute or default. Add to this the fact that, other than a requirement of a "five-day notice", there is no other concession made to debtors rights prior to punishment on the basis of the allegation presented in the form of a bill for "payment due".

Now therefore, there are three (3) constitutional issues to be addressed. First, there is the prohibition of "seizure" (sic termination of service) of a paid-for right on the basis of pure allegation (ref Article IV); second, there is a punishment inflicted without realization of fault since termination of service can occur prior to and while disputes of billing errors are being resolved. (Article(s) V and XIV); and third, the impact of a punitive act (sic termination of service) does not stop at the borders of the state, even if the access surcharge, the local, intralata and intrastate charges have been fully paid, because of the ambiguous language in the Rule. (ref Article I, Sec VIII which prohibits the states from regulating interstate commerce).

I am certain that the commission will assert that these things "can't" or "don't" happen, but I must tell the court that they "can" happen, they "do" happen, and, in fact, they happened to me. My first person account of my own experience is alluded to in an historical perspective in my Initial Brief on pages 1-8; and pages 25-27; pages which the commission in its Answer Brief, tells the court in its "Statement of the Case, page 1, "are not relevant to the issue to be decided in this case" and should not be considered. But the right of the Appellant to frame his own issues in his own case is a matter for argument in my Reply Brief if this court accepts jurisdiction in this case.

In addition to the above described constitutional questions, there are questions related to "reasonability" of the commission's interpretation of the statute that grants them regulatory power and of what can be considered "arbitrary and capricious". Florida Statute 364.19, which is the statute from which the commission receives its rule-making authority states as follows:

The Commission may regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons.

The commission has repeatedly stated that it has based its regulatory decisions on "facts and law". Accordingly, I call upon this court to recognize the following authority as a standard for review:

Harris v United States, 19 F 3d, 1090 (5th Cir, 1994); interprets 5 USC § 706 (2)(A) as requiring a focus on reasonability of an agency's decision-making processes rather than reasonability of its interpretation of facts and law to determine what is arbitrary and capricious. (ref Initial Brief Appendix, Exhib 3, Cit C, quote by US DCA 5th in Texas Utility v FCC)

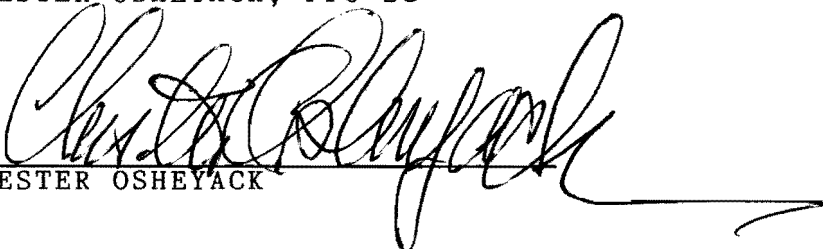
To me as an administrator, this makes eminent sense. Any good administrator knows that when decisions are made on the basis of assumptions, if the assumptions are wrong, the decisions will be wrong. If the commission has assumed projections or speculation to be factual; or if it has assumed that ambiguously written statutes or statutory silence to be subject to their interpretation in a manner which has a major negative impact on peoples lives, their decisions should be questioned.

In summary, there are three clearly established constitutional questions asserted and an authority cited which calls to question the commission's standard for establishing reasonability...none of which have ever been argued in any court by this Appellant. Constitutional issues were not subject to review by either the Commission or the DOAH....and they were not reviewed by the 2d District Court of Appeals....and, what is "arbitrary and capricious" is subject to the juristiction of this Court.

WHEREFORE, this court should find that it has proper juristiction in this case, and hear the arguments as appropriate in the search for truth and justice.

Respectfully submitted by:

CHESTER OSHEYACK, Pro se



CHESTER OSHEYACK

Dated: December 17, 1999

APPENDIX
TO
MOTION ON JURISTITION

This Exhibit is submtted in support of the contention of the Appellant that.....disconnection of all teleph-one service of all telephone carriers in all markets can occur while a dispute with one carrier is being negotiated. This letter was received shortly after a complaint was registered with the Federal Communic-ations Commission and in response to my inquiry made to the FPSC as to their juristiction. My call to the PSC was made from a wall mounted telephone at our apartment complex swimming pool. The response was by mail because the Director of Consumer Affairs (PSC) had no other way to communicate with me.

The second letter supports our contention that a com-plaint was indeed filed with the FCC and that Notice of such was sent to the PSC and all telephone carriers on August 11, 1993.

Commissioners:

J. TERRY DEASON, CHAIRMAN
SUSAN F. CLARK
LUIS J. LAUREDO
JULIA L. JOHNSON



DIVISION OF CONSUMER AFFAIRS
GEORGE HANNA
DIRECTOR
(904) 488-7238
TOLL FREE 1-800-342-3552

Public Service Commission

September 1, 1993

Mr. Chester Osheyack
17850 A Lake Carlton Drive
Lutz, Florida 33549

Dear Mr. Osheyack:

GTE records indicate that your service was interrupted for an amount of \$765 for calls made outside of the State of Florida on AT&T's lines.

The commission's jurisdiction with respect to long distance companies is limited to intrastate calls, or calls which originate and terminate within the State of Florida. The Federal Communications Commission has jurisdiction over interstate calls.

I hope this information is helpful in getting your concerns to the correct agency. If you have any questions, just let me know.

Sincerely,


George B. Hanna, Director
Division of Consumer Affairs

GBH:kt

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

OCT 21 1993

IN REPLY REFER TO:

Stop Code 1600A2
IC-94-00025
9303993

Mr. Chester Osheyack
17850-A Lake Carlton Drive
Lutz, Florida 33549

Dear Mr. Osheyack:

President Bill Clinton has asked the Commission to respond directly to you regarding the disconnection of your local exchange telephone service by GTE Florida, Inc. (GTE) for nonpayment of disputed interexchange service charges billed on behalf of AT&T Communications (AT&T). We also have received correspondence from you and correspondence from other congressional offices regarding this matter. We apologize for the delay in responding to your concerns.

After reviewing the issues raised in your correspondence, the Informal Complaints Branch (Branch) of the Common Carrier Bureau determined that an inquiry into this matter was warranted. Therefore, the Branch directed GTE and AT&T to investigate your complaint and to report the results to the Commission. Enclosed is a copy of the August 11, 1993 Notice of Informal Complaint. The Commission's rules require the carriers to provide copies of their investigation reports to you. We expect to send a final response on this matter directly to you as soon as possible after the Branch completes its review of the carriers' reports and the file on this complaint.

Thank you for your inquiry.

Sincerely,

Robert W. Spangler

Robert W. Spangler
Deputy Chief (Policy)
Enforcement Division
Common Carrier Bureau


Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the forgoing has been furnished by UNITED STATES MAIL this 17th day of December, 1999 to the following:

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

In ref: PSC Docket 990869
SCA Case No. 96,439


CHESTER OSHEYACK

CERTIFICATE OF TYPE STYLE AND SIZE

I HEREBY CERTIFY that the typewriter used to produce this document is a Brother Portable, SX-4000, and the font type used is Prestige 10 point.


CHESTER OSHEYACK