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Public Service Commission

June 13, 2001

VIA AIRBORNE EXPRESS

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
Portals II, TW-A325
445 Twelfth Street, SW
Washington, DC 20554

Re: Florida Public Service Commission Petition for Clarification, CC Dockets No.
96-98 and 99-68

Dear Ms. Salas:

Enclosed is an original and fifteen copies of the Florida Public Service Commission's Petition for Clarification in CC Docket 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and CC Docket 99-68, Intercarrier Compensation for ISP-Bound Traffic. Please date-stamp and return one copy in the enclosed, postage-paid envelope.

Sincerely,

Cynthia B. Miller, Esquire
Bureau of Intergovernmental Liaison

Harold McLean, Esquire
General Counsel

CBM:tf

Attachment

cc: Chief, Competitive Pricing Division, Common Carrier Bureau
International Transcription Services
Brad Ramsay, National Association of Regulatory Utility Commissioners

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)	CC Docket No. 96-98
)	
)	
Intercarrier Compensation for ISP-Bound Traffic)	CC Docket No. 99-68
)	

**Florida Public Service Commission
Petition for Clarification**

On April 27, 2001, the Federal Communications Commission issued an Order on remand in the above dockets. The Florida Public Service Commission (FPSC) seeks clarification on some technical concerns. They include matters related to the FCC’s sharing of jurisdiction, elimination of the word “local” throughout the FCC rules, the ambiguity of the 3:1 Ratio Cap, and definition of entry into the “new market.”

(1) FCC’s Sharing of Jurisdiction.

In Paragraphs 8 and 89, the FCC seems to acknowledge the states’ ability to act, in certain circumstances. Those paragraphs of the decision state that incumbent carriers must either exchange all Section 251(b)(5) traffic at the FCC’s capped rate, institute bill and keep for all Section 251(b)(5) traffic (in those states in which bill and keep has been ordered), including ISP-bound traffic, or must exchange ISP-bound traffic at “the state-approved or state-negotiated reciprocal compensation rates reflected in their contracts.” It is not clear, however, whether by this provision the FCC accedes to state commissions resolving issues pertaining specifically to compensation for ISP-bound traffic and, if so, to what extent state commissions are allowed to do so. Furthermore, because the FCC has once again determined that this traffic is predominately interstate in nature and within the FCC’s

authority pursuant to Section 201 of the Act, it is not clear that the FCC's sharing of jurisdiction in this area would be sufficient to authorize the FPSC to act. Therefore, further clarification of the states' jurisdiction to address compensation for this traffic would be beneficial since there is not state authority delineated in Section 201.

(2) Elimination of the Word “Local” in the FCC Rules.

We question this approach of removing the word “local” from the FCC rules since “local traffic” has been a term used consistently in the past, and this shift could inadvertently disrupt other matters. We received some comfort from the language in Paragraph 37 and Footnote 66 which maintains the pre-existing relationship. The Order specifically excludes intrastate access regulations since they are not within the FCC's jurisdiction. Yet, we question this extensive and indiscriminate striking of the word “local” throughout FCC rules. Could there be unintended consequences? We believe the FCC should explain the need to eliminate the word “local” in the rules.

(3) Ambiguity of 3:1 Ratio Cap

The Order states that the FCC has adopted a rebuttable presumption that traffic delivered to a carrier that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is subject to the compensation mechanism set forth in the Order. There seem to be two plausible interpretations regarding the 3:1 ratio cap. Specifically, the 3:1 ratio could serve as a means to segregate ISP and non-ISP traffic. An alternative interpretation would use the 3:1 ratio to determine whether the compensation rate applicable to all traffic exchanged between the carriers should be that established by the state commission or by the FCC. We seek clarification on which of these interpretations is correct.

(4) Definition of Entry into a “New Market”

The Order details that "where carriers are not exchanging traffic pursuant to interconnection

agreements prior to adoption of this Order (where, for example, a new carrier enters the market or an existing carrier expands into a market it previously had not served) . . . carriers shall exchange ISP-bound traffic on a bill-and-keep basis during this interim period." While we believe we understand the intent of the rule, we are unsure of the administration of this clause. If a LEC is certified to provide service in an area, but is not currently providing such service, would service subsequently provided in this area be considered entry into a "new market?" If voice service is being provided, would the provision of data services be considered entry into a "new market" and result in bill-and-keep regulation? What would happen if a company has a signed interconnection agreement, but they are not currently, as of the date this Order is published, exchanging traffic with another carrier? Would the subsequent exchange of traffic, under a pre-existing agreement, be considered entry into a new market? The FPSC respectfully requests that these matters be clarified.

Conclusion

In conclusion, the FPSC seeks clarification on the above points.

Respectfully submitted,

Cynthia B. Miller, Esquire
Bureau of Intergovernmental Liaison

Harold McLean, Esquire
General Counsel

DATED: June 13, 2001

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing petition of the Florida Public Service Commission will be sent this date to the parties on the attached service list.

Cynthia B. Miller, Esquire
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DATED: June 13, 2001

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