

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of)
tariff filing to reduce rate)
paid by non-LEC pay telephone)
providers to a single-line)
business service rate, required)
by Section 364.3375(2)(e), F.S.,)
by:)

FRONTIER COMMUNICATIONS, INC.) DOCKET NO. 950802-TL
(T-95-393 FILED 6/30/95))
INDIANTOWN TELEPHONE SYSTEM,) DOCKET NO. 950803-TL
INC. (T-95-381 FILED 6/26/95))
QUINCY TELEPHONE COMPANY (T-95-) DOCKET NO. 950804-TL
380 FILED 6/26/95)
NORTHEAST FLORIDA TELEPHONE) DOCKET NO. 950805-TL
COMPANY, INC. (T-95-383 FILED)
6/28/95))
UNITED TELEPHONE COMPANY OF) DOCKET NO. 950806-TL
FLORIDA (T-95-398 FILED)
6/30/95))
CENTRAL TELEPHONE COMPANY OF) DOCKET NO. 950807-TL
FLORIDA (T-95-399 FILED)
6/30/95))
BELLSOUTH TELECOMMUNICATIONS,) DOCKET NO. 950840-TL
INC. d/b/a SOUTHERN BELL)
TELEPHONE AND TELEGRAPH)
COMPANY (T-95438 FILED)
7/14/95))
GTE FLORIDA INCORPORATED (T-95-) DOCKET NO. 950841-TL
426 FILED 7/11/95))
GULF TELEPHONE COMPANY (T-95-431) DOCKET NO. 950843-TL
FILED 7/12/95))
ST. JOSEPH TELEPHONE AND) DOCKET NO. 950845-TL
TELEGRAPH COMPANY (95-424)
FILED 7/10/95))
VISTA-UNITED TELECOMMUNICATIONS) DOCKET NO. 950900-TL
(T-95-453 FILED 7/20/95))
ALLTEL FLORIDA, INC. (T-95-444) DOCKET NO. 950901-TL
FILED 7/19/95))
FLORALA TELEPHONE COMPANY, INC.) DOCKET NO. 950912-TL
(T-95-446 FILED 7/20/95))
ORDER NO. PSC-95-1237-FOF-TL
ISSUED: October 5, 1995

DOCUMENT NUMBER-DATE

09845 OCT-5 95

FPSC-RECORDS/REPORTING

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The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER SETTING PAY TELEPHONE INTERCONNECTION RATES
AND ORDER DENYING TARIFFS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed in Section IV of this Order is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Background

Chapter 364.3375, Florida Statutes, was amended to make each pay telephone station eligible to subscribe to flat-rate, single-line business local exchange services, effective July 1, 1995. Each of the local exchange companies (LECs) filed a proposed tariff to comply with the statutory change.

Non-LEC pay telephone providers (NPATS) are presently required by the NPATS interconnection tariffs to purchase access lines, at PATS access line rates, with per-minute usage charges for all local calls. PATS access line rates are typically 80% of business rates. Usage rates are typically \$.01 to \$.02 per minute. By Order No. 24101, issued February 14, 1991, we required LECs to file tariffs to provide mandatory screening, blocking, and intercept services for NPATS. Blocking and screening help prevent unauthorized calls from being placed from pay telephones. There are several screening options NPATS may choose, but they must choose at least one blocking and screening option from the LEC. With the current

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measured rate service, NPATS are charged the same rate for extended calling service (ECS) calls as they are for any other local call. By contrast, business (B-1) customers are charged as much as \$0.10 for the first minute and \$0.06 for additional minutes for ECS calls.

Section 364.3375, Florida Statutes, was amended to provide that all pay telephone stations be eligible to subscribe to "flat-rate, single-line business local exchange services." The Florida Public Telecommunications Association (FPTA), argues that the statutory change is simply intended to give rate relief for access lines to NPATS. FPTA further argues that the statute means all NPATS access lines must now be converted from their present PATS access rates to the prevailing B-1 rate. B-1 rates are typically less than PATS access rates. Each local exchange company filed a tariff to implement the new provision to Section 364.3375. However, few of the tariffs were consistent with each other, clearly illustrating the divergent interpretations of the statute by the LECs.

As explained in Section II, below, we believe NPATS customers subscribing to B-1 service should not be treated any differently than any other B-1 customer. This means a NPATS who opts for B-1 services would pay the same rates as any other B-1 customer for an access line but must also pay the same rate for blocking and screening, as well as the significantly higher usage charges B-1 customers pay for ECS calls.

For one reason or another, none of the tariffs filed by the LECs complied with the statute. Accordingly, in Section III of this Order, we deny each of the LEC tariffs and order the LECs to file new tariffs in accordance with the statutory revision.

We understand that this statute may not give any rate relief to NPATS and might actually force the LECs to offer a service that no one wants. Therefore, as set forth in Section IV, we propose to change rates for NPATS interconnection. This Order will leave NPATS with three options:

- (1) Current NPATS measured service;
- (2) B-1 service, with blocking, screening, and ECS calls charged at B-1 rates; and

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- (3) NPATS service, with access lines at B-1 rates and blocking, screening, and ECS calls at NPATS rates.

II. The Effect of the Revision of Chapter 364

The statutory amendment to Section 364.3375 affords NPATS the option of subscribing to B-1 service. Based on the plain language of the new provision, we believe the new statute allows NPATS to subscribe to B-1 service, not PATS service at B-1 rates. Moreover, we view the provision "shall be eligible for" as permissive. This language allows an NPATS provider to choose to subscribe to B-1 service in lieu of existing PATS interconnection service. The statutory change does not mandate any wholesale change to the type of service provided to NPATS.

As previously discussed, FPTA maintains that the intent of the statute was to give NPATS providers their existing service at B-1 rates, not B-1 service. Under current tariffs, the difference between getting NPATS service at B-1 rates versus getting B-1 service at B-1 rates is significant. B-1 customers may not be able to subscribe to operator blocking and screening options that we require for NPATS. Also, B-1 customers pay the significantly higher usage charges for EAS/ECS calls than NPATS providers. Business customers typically pay \$0.10 for the first minute and \$0.06 for each additional minute for ECS calls, while NPATS providers pay approximately \$0.02 for the first minute and \$0.01 for each additional minute for all local calls, including ECS. We keep NPATS' ECS rates equal to other local usage rates because we cap local pay telephone rates at \$0.25 for a 15 minute call for all local calls. At the B-1 customer's ECS rates, NPATS usage charges would exceed \$0.25 after only three or so minutes on ECS calls.

For purposes of interconnection, we find that if NPATS customers subscribe to B-1 service, they should not be treated any differently than any other B-1 customer. NPATS customers subscribing to B-1 service shall pay B-1 rates for blocking and screening and B-1 ECS rates. In addition, we find the statute offers NPATS the option of subscribing to B-1 but does not mandate that they do so.

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III. Order Denying Tariffs

After the passage of the revisions to Chapter 364, Florida Statutes, each of the LECs filed a revision to their respective tariffs to implement the new law. For the reasons outlined below, we deny each of the tariffs.

BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company's tariff is denied because it does not offer the same blocking and screening options to B-1 customers as it does to NPATS customers. Furthermore, the tariff proposes to offer only B-1 service. The statute requires the LECs to offer B-1 service but does not require changes in other services. The changes proposed by Southern Bell would eliminate certain options currently offered NPATS.

GTE Florida Incorporated's (GTEFL) tariff is denied because it does not offer the same blocking and screening options to B-1 customers as it does to NPATS customers. GTEFL also is apparently forcing its customers to change service. As discussed above in Section II, Section 364.3375 does not mandate that NPATS customers change service. It only gives the customers the option. Accordingly, GTEFL shall not change customers from one type of service to another without customer approval.

United Telephone Company of Florida's (United) tariff is denied because the company offers different blocking and screening options for B-1 customers than it does for NPATS customers who elect B-1 service. NPATS customers must have the same options as other B-1 customers. United's tariff does not address the rates NPATS customers subscribing to B-1 service must pay for ECS calls. Further, United deleted the flat-rate surrogate option from its NPATS tariff. United, like GTEFL, also is apparently forcing its customers to change service. Again, Section 364.3375 does not mandate that customers change. It only gives the customers the option. Accordingly, United shall not change customers from one type of service to another without customer approval.

Centel Telephone Company of Florida's (Centel) tariff is denied because it does not address the rates NPATS customers subscribing to B-1 service must pay for ECS calls. Further, Centel deleted the flat-rate surrogate option from its NPATS tariff. Centel is also apparently forcing its customers to change service.

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Section 364.3375 does not mandate that customers change. It only gives the customers the option. Accordingly, Centel shall not change customers from one type of service to another without customer approval.

Frontier Communications of the South, Inc.'s and Indiantown Telephone Systems, Inc.'s respective tariffs are denied because they do not offer the same blocking and screening options to B-1 customers as they do to NPATS customers. Further, the companies deleted the flat-rate surrogate option from their NPATS tariffs.

Quincy Telephone Company's and Northeast Florida Telephone Company, Inc.'s respective tariffs are denied because they do not offer the same blocking and screening options to B-1 customers as they do to NPATS customers. Further, the tariffs propose to offer only B-1 service. The statute requires the LECs to offer B-1 service but does not require changes in other services. The companies' tariffs also do not address ECS usage rates.

ALLTEL Florida, Inc.'s tariff is denied because it does not offer the same blocking and screening options to B-1 customers as it does to NPATS customers. ALLTEL's tariff does not address the rates NPATS customers subscribing to B-1 service must pay for ECS calls. ALLTEL is also limiting the area which NPATS customers can elect B-1 service to areas where full usage measurement capability is not available. The statute requires that all NPATS be eligible to subscribe to B-1 service, not just those in areas where full usage measurement is not available.

Vista-United Telecommunications' (Vista) is denied because the company offers different blocking and screening options for B-1 customers than it does for NPATS customers who elect B-1 service. NPATS customers must have the same options as other B-1 customers. Vista's tariff does not address the rates NPATS customers subscribing to B-1 service must pay for ECS calls. Further, Vista deleted the flat-rate surrogate option from its NPATS tariff. Vista is also limiting the area which NPATS customers can elect B-1 service to areas where full usage measurement capability is not available. The statute requires that all NPATS be eligible to subscribe to B-1 service, not just those in areas where full usage measurement is not available.

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The tariffs of St. Joseph Telephone and Telegraph Company, the Florida Telephone Company, Inc., and Gulf Telephone Company are denied because they do not offer the same blocking and screening options to B-1 customers as they do to NPATS customers.

As explained in Section II, we find that each tariff must allow NPATS to subscribe to the same B-1 service, at the same rates, as purchased by other B-1 customers. Each LEC shall file tariffs that allow NPATS to purchase a B-1 line to provide their service. For many companies, this will include offering blocking and screening options to B-1 customers that are currently offered only to NPATS customers. All B-1 rates for blocking and screening and ECS calls will apply to this line. These tariffs shall be filed within 15 days of the date this Order becomes final.

In addition, if any LEC encounters any technical problems with identifying NPATS providers subscribing to B-1 services for operator screening or other purposes, such LEC should file a report explaining the problem.

IV. NPATS Interconnection Rates

Access line rates for resellers of the LEC network such as NPATS, cellular, and shared tenant service providers have traditionally been made up of both a flat-rate component and a usage-based component. As previously described, NPATS providers currently pay 80% of the prevailing B-1 rate, plus usage on each local call. This policy was developed in a climate of limited or no competition, and rate-base regulation for LECs. The general rationale for usage sensitive rate designs was that resellers, because they were both making a profit on the LEC network and increasing the usage of it, should support a larger burden of revenue recovery than regular business customers. This in turn benefits the general body of ratepayers.

The regulatory climate today is far different. Competition has increased, and some companies may choose to eliminate rate base regulation next year. As LECs unbundle their networks to make local exchange service available to resellers, and other competitors also offer services, resellers should be able to subscribe to business services at rates equal to or lower than the rates for other business customers. Resale is critical to the

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development of full-fledged competition because financial constraints will limit the number of facilities-based providers.

The fundamental change in regulatory philosophy makes the FPTA's desired interconnection rate structure more reasonable notwithstanding our disagreement with FPTA's interpretation of Section 364.3375. Simply implementing the statute does not grant NPATS any real rate relief. The change, by itself, would probably result in the vast majority of NPATS providers staying with the measured-rate service they presently have. Therefore, we propose to change our policy on NPATS interconnection rates. The change will add an additional rate schedule for NPATS that will allow NPATS to pay a B-1 rate for a PATS access line and eliminate usage charges. Rates for blocking and screening and ECS calls will remain at current NPATS levels.

The current PATS rate schedule compared to our proposed additional rate schedule is as follows:

	<u>Present</u>	<u>Proposed Addition</u>
Access line:	B-1 X 80%	B-1
Local usage:	Current NPATS rates	None
ECS usage:	Current NPATS rates	Current NPATS rates
Screening:	Current NPATS rates	Current NPATS rates

Although it appears this new rate will be lower than the existing rate in nearly all profitable locations, we find it appropriate to retain the present measured rate structure while adding the new rate structure as an option. Our staff has received at least one request from an NPATS provider to keep measured rate NPATS lines.

The proposed rates appear to cover the LECs' costs for providing the service. It is widely held that the cost of a local access line is somewhere between the R-1 and B-1 rate, so the proposed B-1 rate should cover costs. Also, we determined in past pay telephone proceedings that the usage rates currently charged to NPATS providers cover the usage-sensitive LEC costs.

Since we have created a new flat-rate option for NPATS interconnection, we also find it appropriate to eliminate the existing flat-rate surrogates for NPATS lines in areas where

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measuring is not available should be deleted. Currently, such rates are \$50.00 or more per access line. Our new flat-rate option renders the flat-rate surrogate unneeded.

Our new policy will leave NPATS providers three choices for access lines: (1) their existing measured service; (2) their existing service with a B-1 access line rate; and (3) general B-1 service as described.

Our desire to change the NPATS access line policy raises questions of whether and to what extent we retain the substantive authority under the revisions to Chapter 364 to set NPATS interconnection rates. In the near term, until a LEC elects price regulation, we retain our traditional regulatory authority. However, it is anticipated that the four large LECs will elect price regulation on or around January 1, 1996. Under price caps the LECs are exempt from virtually all the substantive statutory authority upon which we traditionally relied in regulating NPATS interconnection with the LECs. See e.g. Sections 364.03 and 364.14, Florida Statutes. There is no explicit authority to set rates that are "fair, just and reasonable" for NPATS interconnection. Despite lack of explicit authority, there does appear to be implicit authority.

The principal focus of the revisions to Chapter 364 was to introduce competition where it did not previously exist and to further increase competition in those areas already subject to competition. Legislative intent clearly supports the promotion of competition. The Legislature made a finding "that the transition from the monopoly provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition." Moreover, Section 364.051(6)(b) provides, in part:

(b) The Commission shall have continuing regulatory oversight of non-basic services for purposes of ensuring resolution of service complaints, preventing cross-subsidization of non-basic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market. (emphasis added)

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Because of the lack of explicit authority, it is arguable that we may not, under price cap regulation, have the authority to effect appropriate changes in the interconnection rates for NPATS. However, such a result would, in this case, work a result that the legislature could not have intended -- that NPATS receive a net increase in interconnection rates pursuant to some of the LECs' tariffs under consideration here. Rather than disclaim the authority to achieve an appropriate result, we recognize the express legislative intent in conjunction with the provisions of Section 364.051(6)(b), Florida Statutes, and to find the implicit authority to establish NPATS interconnection rates.

Each LEC, as discussed in Section III of this Order, is required to file tariffs to comply with the statutory change. In addition, each LEC shall add an optional rate for NPATS access lines that will match the prevailing one-party, flat-rate business access line (B-1) rate, with charges for ECS and blocking remaining at present pay telephone rates. Additionally, all references to a flat-rate surrogate in areas where measuring is not available should be deleted. All local exchange companies shall file tariffs reflecting our decision in this Section within 30 days of this Order becoming final.

Nothing in this Order should be construed as eliminating the need for LECs to separately identify pay telephone access lines for reports to this Commission. Any LEC encountering technical problems with identifying NPATS providers subscribing to B-1 services for operator screening or other purposes should file a report with the Commission describing the problem and, if possible, suggesting a solution.

V. Effective Date and Service Change Fees

Both the tariffs required by Section III and the tariffs required by Section IV shall be effective July 1, 1995. There shall be no charge imposed on NPATS for changing from their current services to either of the new options.

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It is, therefore,

ORDERED by the Florida Public Service Commission that the tariffs filed by each of the local exchange companies are denied, as described in Section III of this Order. It is further

ORDERED that the local exchange companies are to file tariffs within 15 days of this Order becoming final to implement the revision to Chapter 364, Florida Statutes, as described in Section III of this Order. It is further

ORDERED that interconnection rates for non-local exchange company pay telephone providers are restructured as described in Section IV of this Order. It is further

ORDERED that the local exchange companies are to file tariffs within 30 days of this Order becoming final to implement the new interconnection rates, as described in Section IV of this Order. It is further

ORDERED that, unless a person whose substantial interests are affected by the denial of the tariffs in Section III or by the action proposed in Section IV of this Order files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, below, this Order shall become final on the following date and these dockets shall be closed. It is further

ORDERED that the new interconnection rates shall be effective July 1, 1995. It is further

ORDERED that the local exchange companies shall not impose a charge for changing to these new pay telephone tariffs. It is further

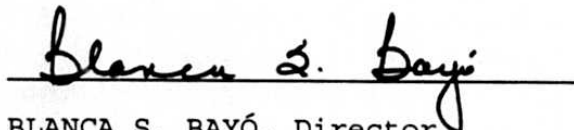
ORDERED that a protest of either the tariff action in Section III or the Proposed Agency Action in Section IV in one docket shall not prevent the action in other dockets from becoming final.

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By ORDER of the Florida Public Service Commission, this 5th
day of October, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

LMB

Commissioners Johnson and Kiesling dissent with regard to the
effective dates of the tariffs.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW
SECTION III

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The Commission's decision on these tariffs is interim in nature and will become final, unless a person whose substantial interests are affected by the action proposed files a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), Florida Administrative Code. This petition must be received by the Director, Division of Records and

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Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 26, 1995.

In the absence of such a petition, this order shall become final on the day subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this Order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this Order becomes final on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the date this Order becomes final, 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.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW
SECTION IV

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed in Section IV of this Order is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida

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Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 26, 1995.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.