

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation regarding) DOCKET NO. 920399-TP
the appropriateness of payment) ORDER NO. PSC-93-0070-FOF-TP
for Dial-Around (10XXX, 950,) ISSUED: 01/14/93
800) Compensation from inter-)
exchange telephone companies)
(IXCs) to pay telephone pro-)
viders.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

Pursuant to notice, a public hearing was held in this docket on August 28, 1992, in Tallahassee, Florida.

APPEARANCES:

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On behalf of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company.

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On behalf of The Florida Interexchange Carriers Association.

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ORDER NO. PSC-93-0070-FOF-TP
DOCKET NO. 920399-TP
PAGE 2

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On behalf of the Commission Staff.

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On behalf of the Commissioners.

FINAL ORDER

BY THE COMMISSION:

I. BACKGROUND

In Docket No. 860723-TP, Orders Nos. 24101 and 25312, this Commission ordered an investigation into the appropriateness of dial-around compensation for non-local exchange company (non-LEC) pay telephone (NPATS) providers because of concerns that interexchange carriers (IXCs) were increasingly attempting to get their customers to access the IXC of their choice through "dialing around" the presubscribed carrier at the payphone and using 800, 950, and 10XXX dialing patterns. All NPATS providers were required to provide unblocked access to all dial-around access codes. The NPATS providers were concerned that the proliferation of dial-around calls would seriously affect their ability to compete for

toll traffic, which they argued would ultimately hinder their ability to compete in the pay telephone market as a whole. This docket, Docket No. 920399-TL, was opened in response.

The Federal Communications Commission (FCC), in Docket No. 91-35, Second Report and Order, concluded that, as a matter of equity, dial-around compensation was appropriate from pay telephones. Dial-around compensation was defined by the FCC as payment to NPATS providers for calls generated over NPATS pay stations, but routed to IXCs through the use of 800, 950, or 10XXX dialing patterns. The FCC ordered that an interim flat-rate surrogate of \$6.00 per pay station per month for interstate calls be implemented until a per-call mechanism could be developed.

The FCC considered many elements in reaching its decision. The docket was opened as a result of Congress's Telephone Operator Consumer Services Improvement Act (TOCSIA). TOCSIA directed the FCC to look into the concept of dial-around compensation. The FCC received comments from many interested parties, all of whom endorsed a per-call method of compensation (if compensation were imposed). However, the parties also agreed that no one could yet implement per-call compensation. For efficiency's sake, the FCC ordered a per-phone compensation mechanism to facilitate implementation. It also directed its staff to continue the pursuit of a per-call mechanism for a future proceeding.

The FCC also wrestled with a proper amount for dial-around compensation. Many parties argued for and against rates ranging from \$0 to \$10.45 per month per NPATS line. Suggestions to waive the subscriber line charge, base the rate on opportunity costs, or base the rate on some incremental cost method were also discussed by various parties. The FCC rejected the opportunity cost and incremental cost methods as inappropriate or unfeasible.

The FCC produced at least three reasonable approaches for setting the dial-around rate. First, because dial-around calls were projected to account for half of all unblocked interstate payphone calls, the FCC believed that half of the average LEC access charges attributable to LEC payphones would be a possible solution (\$6.87/line/month). Second, some measure of the value to operator services providers (OSPs) of the call, such as the interstate LEC 0- transfer call rate, could be used (\$.22-\$0.45/call); based on an NPATS projection of 15 dial-around calls per month at \$.35, the rate would be \$5.25/line/month). Third, a rate based on AT&T's 0+ commissions was considered. Finally, as

all three methods hovered near \$6.00/line/month, the FCC decided that a flat rate of \$6.00 was the most reasonable surrogate.

The FCC ordered that compensation would be in the form of direct payments from IXCs to NPATS providers. It did not believe that LECs should be burdened with administering the compensation payments, as they neither participated in nor benefitted from dial-around calls. In an effort to minimize the burden and maximize the benefit of dial-around compensation, the FCC also limited the number of IXCs responsible for payments to IXCs with \$100 million or more in annual revenues. This limited the payments to 14 IXCs, but those carriers represent over 90% of the total interstate toll market.

II. DEFINITION

We have determined that dial-around traffic shall be limited to 10XXX, 800, 950, or other access code completed calls which are dialed by the end user from a pay telephone station to access his IXC of choice. All of the parties except the Florida Pay Telephone Association, Inc. (FPTA) agreed in principle with this definition.

FPTA's witness Kramer differed from the rest of the witnesses in two primary areas. First, Kramer testified that although 800, 950, and 10XXX are the primary dial-around access codes, no code-specific definition should be used because other codes can be used for dial-around access. He cited use of 0+700 and 0+900 access as examples. Second, Kramer testified that the definition of dial-around calls should include all calls that generate revenues for IXCs, but do not generate revenues for NPATS providers. According to Kramer, all 800 calls, whether the call is to a carrier for access or to a department store for mail-order, should provide compensation to the NPATS provider. This witness stated that the NPATS provider should be compensated for these calls for equity reasons, as well to help recover the costs of installing and maintaining the pay stations. Kramer believed that any call that generated income for another carrier and was facilitated by the NPATS' pay telephone instrument "gateway" should be compensable. His example in this case was access charges: the LECs were required to provide access to their network for IXCs, but were allowed reasonable compensation for such access.

In finding that dial-around calls shall include those calls made to get to a customer's carrier of choice, we agree with

witness Quaglia's assertion that only completed calls should be included. We also agree with witness Kramer that any other access arrangement, including (but not limited to) 700 access calls shall also be considered dial-around, if used to gain access to a customer's carrier of choice for long distance service.

We do not agree that all calls generating income for other carriers should be considered dial-around simply because the calls do not generate revenues for NPATS providers. This docket was initiated to determine the extent to which customers were utilizing dial-around mechanisms to access their carrier of choice, thus circumventing the NPATS' presubscribed carrier, and whether NPATS providers should be compensated for such calls. No other witness addressed this particular aspect, and we do not believe that adding compensation for unrelated types of calls is appropriate in this proceeding.

Regarding witness Kramer's argument that dial-around compensation is similar to LEC access charges, we simply disagree. Unlike the LECs who are obligated to place facilities and serve customers everywhere in their service area, NPATS providers have no such obligation. Comparing access charge compensation to dial-around access is not a relevant form of analysis.

Additionally, dial-around compensation in this docket is not a matter of cost-recovery, as witness Kramer has argued. It is simply a matter of fairness to the NPATS provider, by determining an appropriate compensation mechanism to recover a small amount of the revenues lost by a customer circumventing the NPATS' carrier. Dial-around compensation is a way for an NPATS provider to recover a small portion of the business it has "lost" to another carrier by providing access to that carrier. We do not mean for it to recover all of a provider's lost business. Lost revenues through competitive pressures are a fundamental part of encouraging firms to become efficient and choose carriers that their customers want. However, we do recognize that no NPATS provider can presubscribe to every carrier that a customer may choose and that the NPATS provider today receives nothing if the choice of carrier is different from the NPATS' presubscribed carrier. Access to 800 numbers that are not used to get to an IXC's network are not "lost business" to an NPATS provider. NPATS providers have never received any compensation for these calls so they cannot "lose" any business as the result of customers' use of them.

III. COMPENSATION REQUIREMENT

We find that dial-around compensation to NPATS providers is appropriate in the Florida pay telephone market for three reasons. First, it is a way to provide some recovery for revenues lost through the use of dial-around calls. We believe that some recovery of lost revenues is appropriate because an NPATS provider simply cannot satisfy the needs of all customers. Some customers will dial-around no matter which carrier the NPATS provider chooses. Yet the NPATS provider still provides access to those other carriers and today receives no revenue for it.

Witnesses Kramer and McCabe stated that the volume of dial-around traffic has increased dramatically in the past few years as customers have become more educated on how to access their carrier. We believe that this trend will continue and that dial-around traffic will continue to increase, no matter which carrier the NPATS provider chooses. We also agree in principle with witness Gillan that dial-around traffic could help keep pressure on NPATS providers to keep their rates down or choose more popular carriers. However, we believe that this idea is best served by not tying the compensation amount to the level of lost revenues, but some level significantly below it.

Second, compensation for the use of the NPATS pay telephone instrument, even if a customer elects not to use its presubscribed carrier, is consistent with this Commission's policies constructed in past pay telephone proceedings where we established what we coined as a "set use fee" (Docket No. 860723-TP, Order No. 24101). The set use fee was established to compensate NPATS providers for 0- and 0+ local, and 0- and 0+ intraLATA and interLATA toll calls. The set use fee was ordered to help compensate the NPATS provider for calls that generated little or no revenue. For example, 0+ and 0- local and intraLATA calls are routed to the LEC per this Commission's policy. The set use fee is the only revenue source available to the NPATS provider for these calls. Establishment of a dial-around compensation mechanism for the use of NPATS instruments will be consistent with our policy regarding the set use fee.

Our third consideration is the willingness of IXCs to pay high levels of commissions for identical traffic from pay stations presubscribed to that IXC. At the same time, IXCs are placing increasing emphasis on luring their customers to dial around the existing presubscribed carrier. Even though it is a reasonable

business practice to pay commissions to someone who will carry only your product, we believe that the IXCs' willingness to pay \$.50 or more per call for long distance traffic, plus their emphasis on educating customers to dial around, makes it clear that this traffic is quite valuable to them. This makes it likely, we believe, that IXCs do not pay commissions on dial-around traffic not because it is not valuable to them, but because regulations require it be sent to them free of charge. We believe IXCs would behave differently if dial-around access were a competitive venture.

We believe that witness Gillan's assertion that compensation would be passed on to end users as a rate increase is mere speculation. IXCs currently pay commissions for exactly the same traffic in other instances without such increases. We believe that the long distance market, which, in our opinion is more competitive than the pay telephone market, will be a good mechanism for curbing any rate increases to end users. We believe that IXCs will easily absorb this cost as they have other commission-related costs.

Finally, we note that there has been no demonstration by any witness that NPATS providers incur any direct costs in providing dial-around access. As a matter of fact, witness Kramer stated that the majority of NPATS providers' costs for providing service were fixed and totally unrelated to traffic of any kind. Their only relevant argument here was that all costs must be recovered in some way, and that as dial-around traffic increases, NPATS providers' revenues decrease and thus the ability to recover their overall costs diminishes. Even so, this assertion does not attribute any direct costs to dial-around access. Our requirement for dial-around compensation is based on the concept of fairness to the NPATS provider for providing access to services valuable to customers and valuable to IXCs.

Although from a fairness perspective dial-around compensation appears appropriate, we do have some reservations regarding the benefits of such compensation to end users. NPATS interconnection rates have decreased four times since NPATS were originally authorized and there is little evidence that end users have benefitted from these reductions. However, we do believe that having dial-around compensation will encourage NPATS providers to offer access to all carriers, as they have been ordered to do.

IV. COMPENSATION BASIS

The Florida Interexchange Carriers Association (FIXCA) and MCI Telecommunications Corporation (MCI) advocated collecting the charge directly from the end user if compensation were approved. GTE Florida Incorporated (GTEFL) believed that we should decide whether any additional compensation over the amount ordered by the FCC was necessary. The Office of Public Counsel (OPC) and BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell) had no position. AT&T Communications of the Southern States, Inc. (ATT-C) FPTA, and staff witness McCabe agreed that, if compensation were ordered, a per-call mechanism of some kind was ideal, but impractical at present.

We believe that a per call compensation rate is the most accurate way to compensate for dial-around traffic. A per-call arrangement would ensure that each paystation is compensated an amount equal to the dial-around traffic generated from it. Also, a per-call method would be consistent with this Commission's past decisions imposing the set use fee in a previous payphone proceeding. However, this arrangement was investigated in the FCC proceeding and found to be unfeasible at the present time, as no IXC's, LEC's, or NPATS can properly identify the traffic to segregate it for compensation purposes. Therefore, we find it appropriate to require a flat-rate surrogate until a per-call rate can be developed. We believe that any per-call mechanism developed at the federal level could easily be adapted for intrastate traffic, and that it would be most efficient if the two mechanisms were structurally the same.

In addition, we find that all NPATS pay telephones allowing access to dial-around traffic shall be compensated, regardless of location. Pay telephones that block dial-around access, such as those found in confinement facilities, shall not be compensated. Witness McCabe believed that only high-volume locations should be eligible for compensation while Quaglia added that only stations that permitted dial-around access should be eligible for compensation. FPTA agreed that only stations that allowed dial-around access should be compensated. However, FPTA differed with witnesses Quaglia and McCabe regarding the level of traffic required to make a station compensable. Witness Kramer stated that attempting to classify such stations would be highly impractical. The burden of regulating and auditing the qualifying stations would simply be too great; therefore, he believed, the proposition of

limiting compensation to only high-volume locations should be rejected.

We agree that only stations that do not block dial-around access shall be eligible for compensation. Prisons and other confinement facilities shall not be eligible for compensation. Confinement facilities block all access to 800, 950, and 10XXX calls to curb fraud. Since all calls over these phones are carried by the presubscribed carrier, equity is not an issue. All stations allowing dial-around traffic shall be included in the flat rate surrogate. This is consistent with the FCC's decision, and is the simplest method available. We agree that it would simply be too burdensome to qualify, audit, requalify, and maintain surveillance on the pay stations to make sure that proper compensation was being billed and remitted.

V. COMPENSATION AMOUNT

Only two witnesses advocated a specific rate for compensation in this proceeding. Witness Kramer advocated a surrogate of \$9.00 per phone per month, while witness McCabe thought that \$6.00 per high volume phone per month was reasonable.

Witness Kramer used an unusual formula incorporating various data in developing his \$9.00 figure. His formula took an old Southern Bell payphone investment figure from another docket, multiplied it by an interstate toll vs. intrastate toll investment ratio from GTEFL's depreciation docket, then divided the number by a percent inter/intraLATA toll traffic figure taken Southern Bell's 1991 Florida PSC annual report, and divided again by 12 to arrive at \$9.00 per phone per month. Even then, according to Kramer, the level of compensation would be too low to be compensatory.

Witness McCabe used a simpler approach. He believed that the \$6.00 surrogate adopted by the FCC would be appropriate. He believed that rate would alleviate any administrative burdens that different rates in different jurisdictions may cause.

While we agree that intrastate dial-around compensation is appropriate, we disagree with the rate levels developed by each of these witnesses. The data used by Kramer to develop his \$9.00 surrogate was sketchy and questionable. There was no evidence presented that the data used was timely, reliable, representative, or statistically valid. For example, figures were taken from

Docket No. 860723-TL (the last payphone proceeding), and the time period and relevancy to this case situation was not established. Also, ratios were taken from another docket, involving a totally different LEC, raising additional questions of relevancy and accuracy. We also disagree with witness McCabe's \$6.00 surrogate. Although we believe the FCC's approach appears to be reasonable, we do not agree that \$6.00 per compensable phone is an appropriate intrastate amount. McCabe had advocated the \$6.00 amount for high volume traffic locations. He did not testify as to an appropriate rate level for medium and low volume traffic locations or to an average amount to apply across-the-board to all compensable locations.

As a result, we are left in a somewhat difficult position. We have already determined that "zero" is not an appropriate rate level, yet the amounts advocated by both witnesses are clearly too high. Accordingly, we shall set the level of dial-around compensation at \$3.00 per month per pay station for the phones eligible for such compensation under the rationale set forth in Section IV of this Order. We recognize that this amount is somewhat imprecise. However, we believe the establishment of dial-around compensation is an important policy decision in and of itself and that the actual amount can be "fine tuned" as experience is gained in this area. We are also concerned with possible effects on end user rate levels, which gives us additional reason to proceed somewhat conservatively in setting the surrogate amount. If and when a per-call mechanism is developed, we would find this preferable to the surrogate and will look at adopting such a mechanism in a future proceeding.

VI. COMPENSATION PAYORS

FIXCA/MCI witness Gillan advocated charging end users "coin-in-the-box" fees when making a dial-around call. OPC, GTEFL, and ATT-C all believed that only IXCs that provided operator services should be included. GTEFL added that if a per-phone surrogate method was ordered, a method similar to the one the FCC imposed would facilitate consistent administration of the program. Staff witness McCabe agreed with GTEFL that the FCC's method of direct payment from IXCs to NPATS providers would be easier. FPTA's witness Kramer advocated a credit by the LECs to the NPATS providers' bills, and a charge to the IXCs' Carrier Common Line access charge element.

We disagree with witness Gillan that end users should drop coins in a paystation to complete a dial-around call. This is simply an attempt to transfer the liability for compensation from the IXCs to end users. Although he claimed that the charge would just be passed on to the customer anyway, we disagree with this assertion as explained earlier. We also believe that this is an equity issue between IXCs and NPATS providers, not end users. We also disagree with the FPTA that the LECs should get into the middle and credit the NPATS providers, then bill the IXCs for the compensation amount. We believe this is simply an effort to shift the burden of billing and collecting the compensation amounts to a third party.

We do agree with staff witness McCabe and GTEFL that a method similar to the FCC's would be both simple and consistent. We also agree with GTEFL, OPC, FPTA, and ATT-C that IXCs that provide operator services should be the parties paying the compensation.

The FCC ordered that all IXCs that had both live/automated operator services and \$100 million or more in annual revenues should pay compensation. It cited 14 companies that fit those parameters in the interstate market. Those 14 companies provide approximately 95% of all interstate toll traffic, according to the FCC's order. The FCC also directed that each IXC would be liable for a percentage of the total surrogate charge (\$6.00 interstate) that was equivalent to the percentage of revenues its operation comprised, relative to the total revenues generated by all 14 of the affected IXCs. For example, if ATT-C's revenues accounted for 50% of all the revenues of the 14 companies, it would pay \$3.00 per month per phone to NPATS providers for interstate dial-around calls.

We find that this method can be easily adapted to Florida. We believe that IXCs that provide operator services and generate \$50 million or more in gross intrastate revenues, according to the Commission's regulatory assessment fee records as of January 31st of each year, should pay compensation. Currently, four companies in Florida meet those criteria: ATT-C, MCI, Transcall America, Inc., d/b/a ATC Long Distance (ATC), and Sprint Communications Company Limited Partnership (Sprint). These four companies comprise approximately 90% of all the interLATA toll revenues in this state, according to the same regulatory assessment fee records. This method would be consistent with the FCC's method, simple to administer, and provide compensation to NPATS providers without unduly burdening small IXCs with relatively insignificant

traffic. Each IXC's compensation amount shall be based on its relative share of intrastate toll revenues among the IXCs required to pay compensation. Local exchange companies shall provide each compensating IXC with a list each quarter of all NPATS lines in the LEC's territory. It is our intention that the methodology employed in Florida be consistent with the structure adopted by the FCC in its dial-around proceeding.

VII. COMPENSATION PAYEES

There was an issue in this proceeding regarding who, if anyone, should receive dial-around compensation. There was also a related issue regarding whether any decision to compensate LEC PATS (LPATS) should be based on our decision in the concurrent LEC competitive PATS proceeding, Docket No. 920255-TL.

FIXCA/MCI maintained their position that no one should receive compensation, and thus had no real position on these issues. Witness Gillan only added that pay telephone providers should not be forced into accepting dial-around compensation; it should remain optional for them. OPC and ATT-C believed that compensation should only be paid to NPATS providers, and not to LPATS providers. Neither OPC nor ATT-C believed that this decision should be affected by the outcome of Docket No. 920255-TL. FPTA, Southern Bell, and GTEFL agreed in principle that LPATS providers should be able to receive compensation if ordered to separate their pay telephone operations.

It is our finding that only NPATS providers shall receive compensation for dial-around traffic, unless the LPATS are ordered into separate subsidiaries or ordered to remove their pay telephone investments, revenues, and expenses from their regulated operations in Docket No. 920255-TL. In that instance, LPATS should receive dial-around compensation as well. We have reached this decision because we believe that only if LPATS are required to be separated from the regulated rate base, either through accounting separations or separate subsidiaries, would the LPATS be similarly situated to the NPATS in this regard. This is because if such a separation is ordered, the compensation the LEC operation receives through access charges would no longer be counted as pay telephone revenues. We find that dial-around compensation to LPATS would only be appropriate under these circumstances. Otherwise, only NPATS providers shall receive compensation for dial-around traffic.

VIII. IMPLEMENTATION

We find that implementation of intrastate dial-around compensation shall coincide with the FCC's implementation of interstate dial-around compensation. If interstate dial-around compensation starts before the conclusion of the reconsideration period of this decision, intrastate compensation shall then begin within 90 days of the issuance of the last order closing this docket, after all reconsideration requests, if any, have been considered. In so finding, we reject FPTA's position that intrastate compensation should begin immediately. We agree instead with GTEFL and Southern Bell that our compensation mechanism should track the FCC's as closely as possible. We believe that the IXCs can simply add their percentage of the intrastate amount to the bills already generated for interstate traffic.

We also disagree with OPC's contention that a special notice should be sent to all Florida consumers. Such action is unnecessary given that the IXCs file tariffs advising consumers of their current rate levels.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that dial-around traffic shall be defined in the manner set forth in the body of this Order. It is further

ORDERED that dial-around compensation to pay telephone providers shall be required in the Florida pay telephone market as set forth herein. It is further

ORDERED that all pay telephone stations allowing dial-around traffic shall be eligible for compensation as detailed herein. It is further

ORDERED that the dial-around compensation surrogate rate shall initially be set at \$3.00 per compensable pay telephone per month in accordance with the decision set forth herein. It is further

ORDERED that currently four interexchange carriers shall be required to pay dial-around compensation pursuant to the methodology adopted herein, for the reasons and in the manner detailed in the body of this Order. It is further


ORDER NO. PSC-93-0070-FOF-TP
DOCKET NO. 920399-TP
PAGE 14

ORDERED that those pay telephone providers eligible to receive dial-around compensation are those set forth herein. It is further

ORDERED that intrastate implementation of dial-around compensation shall coincide with the FCC's implementation of interstate dial-around compensation, provided however that if interstate dial-around compensation begins before the reconsideration period for this docket ends, intrastate compensation shall then begin within 90 days of the last order closing this docket after all reconsideration requests have been disposed of. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 14th day of January, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

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ORDER NO. PSC-93-0070-FOF-TP
DOCKET NO. 920399-TP
PAGE 15

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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.

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 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 or sewer 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.