

FLORIDA PUBLIC SERVICE COMMISSION  
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M E M O R A N D U M

MAY 30, 1996

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

FROM: DIVISION OF COMMUNICATIONS (GRISWOLD, DOWDS) *GD*  
DIVISION OF LEGAL SERVICES (BARONE) *Barone*

RE: DOCKET NO. 960492-TP IMPLEMENTATION OF INTRALATA  
PRESUBSCRIPTION BY NON-LEC PAY TELEPHONES, CALL  
AGGREGATORS AND SHARED TENANT SERVICE PROVIDERS.

AGENDA: JUNE 11, 1996 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\CMU\WP\960492.PCM  
PLEASE PLACE AFTER DOCKET NO. 950561-TL AND BEFORE DOCKET  
NO. 951198-TC AND 951546-TP.

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CASE BACKGROUND

Competition continues to evolve in the intraLATA long distance (intraLATA toll) market. This has been recognized by the Commission in its ordering of 1+/0+ intraLATA presubscription (Order No. PSC-95-0203-FOF-TP). 1+/0+ intraLATA presubscription (presubscription) allows the end user to presubscribe his intraLATA long distance calls to the intraLATA carrier of his choice in the same way he presubscribes his interLATA long distance calls to the interLATA carrier of choice. Following the Commission's final decision, the four largest LECs in Florida were to begin installing switch upgrades and revising administrative procedures. The remaining small LECs were not required to implement presubscription until receipt of a bona fide request, and only then after January 1, 1997.

Although the software needed for presubscription had been developed, it was not required to be installed immediately in Florida. This was due in part to the LECs' and the Commission's desire to decrease costs by allowing installation of the presubscription software when future scheduled switch software upgrades took place.

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At the time of this writing, three categories of telecommunications providers -- non-LEC pay telephone providers (NPATs), call aggregators (CAs), and shared tenant services providers (STS) -- have the ability to use their own technology to route calls from their phones/systems to their chosen intraLATA carrier without the LECs having installed presubscription software upgrades. A NPATs provider can program his "smart" phones to forward all long distance calls, interLATA and intraLATA alike, to any designated carrier. The CAs and STS providers can do the same by programming their PBXs.

A recommendation to allow NPATs, CAs, and STS providers to route intraLATA toll calls to their designated carriers was taken to the May 7, 1996 Agenda Conference where several parties spoke on the issues. The concerns raised fell into the areas of the impact of approving the recommendation on the small local exchange companies, and the impact on the availability of extended calling service (ECS). Staff's recommendation did not address any particular category of carrier but was directed at all LECs. Also, staff's recommendation did not address the possibility of an end user being charged toll rates on routes that are designated as ECS routes. The Commission deferred the item and directed staff to examine these issues and return to the Commission with a recommendation at the June 11, 1996 Agenda Conference.

There has been some confusion regarding this item and the issue of 1+ intraLATA presubscription. (The title of this docket has not helped. In fact, the 1+ intraLATA presubscription Order No. PSC-95-0203-FOF-TP is silent on the issue of intraLATA call routing by using technology other than that used for presubscription.) Staff would stress that the subject of this recommendation is not intraLATA presubscription. Rather, the subject is call routing. These providers are able to route intraLATA calls to the carrier of their choice without the need for LEC offices being upgraded for intraLATA presubscription. The issues raised revolve around whether or not these providers should be allowed to use their routing capability today. However, intraLATA presubscription does play a role in answering these questions.

Issues 1 and 2 of this recommendation address the question of whether or not NPATs, CAs, and STS providers should be allowed to route intraLATA calls from their phones/systems to the carrier of their choice for 1+ and 0+ intraLATA toll calls (preferred call routing) at this time. Issue 3 concern closing this docket.

**DISCUSSION OF ISSUES**

**ISSUE 1:** For 1+ and 0+ intraLATA toll calls, should non-LEC pay telephone providers and call aggregators be allowed to route 1+/0+ intraLATA traffic from their phones/systems to the intraLATA carrier of their choice at this time?

**RECOMMENDATION:** Yes. For 1+ and 0+ intraLATA toll calls, non-LEC pay telephone providers and call aggregators located in the territories of BellSouth, GTE Florida, Sprint-United, and Sprint-Centel should be allowed to route 1+/0+ intraLATA toll traffic from their phones/systems to the intraLATA carrier of their choice at this time. This requires an exemption from Rules 25-24.515(7), and 25-24.620(2)(c), Florida Administrative Code. Extended calling service route calls should continue to be routed to the LEC except where the Commission has permitted IXCs to carry this traffic, in which case preferred carrier routing may be utilized. NPATs-originated ECS calls should continue to be rated at \$.25 per call, regardless of carrier. NPATs and call aggregators located in the remaining 9 small LECs' territories may begin call routing January 1, 1997 to be consistent with the Commission's decision in Docket 930330-TP (1+ intraLATA presubscription).

**STAFF ANALYSIS:** As stated in the case background, the subject of this recommendation is **not** intraLATA presubscription. Rather, the subject is call routing. NPATs and CAs are able to route intraLATA calls to the carrier of their choice without the need for LEC offices being upgraded for intraLATA presubscription. The issue is whether or not these providers should be allowed to use their routing capability today.

Staff believes there are three reasons why NPATs and CAs should be allowed to route 1+/0+ intraLATA toll traffic immediately from their phones/systems to a specific intraLATA carrier for intraLATA toll calls. First, the Commission has indicated its desire to implement intraLATA presubscription (presubscription) as the necessary technical capability is installed. Second, Chapter 364, Florida Statutes does not support the notion that, as a prerequisite for market entry, providers and their services must be ubiquitously available. Third, the Florida Legislature has conveyed to the Commission via its passage of amendments to Chapter 364, Florida Statutes, that the State is to move forward with competition.

The Commission has examined potential areas that could delay presubscription. In the presubscription docket (Docket No. 930330-TP), the IXCs argued that the Commission should order

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immediate implementation otherwise the LECs would "drag their feet" in implementing presubscription. (Order No. PSC-95-0203-FOF-TP, p. 24) Order No. PSC-95-0203-FOF-TP does allow the LECs to install presubscription capability at the same time their switch upgrades are made. The Commission was aware that the technical capability for presubscription had been developed. However, the Commission did not want the LECs to incur additional costs to provide intraLATA presubscription prior to upcoming switch upgrades that would include such capabilities anyway. Consequently, the Commission stated "sufficient time should be given to change software and make other required changes so that no precipitous costs are incurred by the LECs. We disagree with the IXCs' arguments that the LECs should be forced to accelerate the implementation of intraLATA presubscription." (Order No. PSC-95-0203-FOF-TP, p. 25) The rationale was not to delay any party unnecessarily, but to allow the LECs to make the necessary software changes efficiently, and to decrease the costs of conversion. However, there is no requirement that the LECs **must wait** to install upgrades.

In that same docket, the Commission ordered presubscription because it believed it would benefit end users by increasing competition in the intraLATA toll market. The Commission did not contemplate holding any party back in moving toward competition. Referring to Southern Bell and GTEFL not being allowed at that time to enter the interLATA market, the Commission noted "[w]hile the ability to offer volume-sensitive plans for combined interLATA and intraLATA traffic is an advantage that Southern Bell and GTEFL do not have, the IXCs argue that customers' choice of intraLATA carrier should not be delayed because certain participants may be regulated to a different degree." (Order No. PSC-95-0203-FOF-TP, p. 17) In support of this notion the Commission stated, "[r]egulatory flexibility may well be appropriate for the LECs. However, it shall not be a prerequisite for intraLATA presubscription and moving forward with the transition to competition." (Order No. PSC-95-0203-FOF-TP, p. 22, emphasis added.)

For CAs and NPATs, there is no argument that they can do something other market participants cannot or do not presently do, namely immediately implement preferred carrier routing for intraLATA calls from their phones/systems to their chosen intraLATA carriers. However, this capability does not occur because of a conscious effort on the part of any market participant(s) to deny the other groups the same ability. Rather, it occurs because of the technology they employ.

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CAs and NPATs are, in many cases, already equipped to route traffic from their systems or phones. CAs offer service through a private branch exchange (PBX). Modern payphones and PBXs are really nothing more than small switches which are computers and are programmable. Therefore, the PBX can be programmed to transfer 1+/0+ calls to whichever carrier the CA wants by translating the 1+/0+ into an access code such as 10XXX, 1-800, or 950. (Note: End users can still dial 10XXX or 1-800 to reach the interexchange carrier of their choice.)

A specific type of phone utilized by NPATs providers is referred to as a "smart" phone. It is referred to as "smart" because, like the PBX, it is programmable. The smart phone was developed due to the NPATs not being able to obtain "coin functionalities" from the LEC. Examples of such functionalities are answer supervision and coin verification. When the NPATs were allowed entry into Florida, the LECs were not required to sell them coin functionalities, which are provided out of the central office (CO) rather than the payphone. The NPATs provider connected to the CO by buying a business line from the LEC (at special rates). However, the business line does not provide the pay telephone with coin line features. Consequently, the industry developed a phone that includes many of the coin features by means of automated technology contained within the phone.

Because the LEC pay telephones had access to the coin features, there was no reason for the LECs to install smart phones. Although the technology was available, it was their choice not to use it. Smart phones were installed by the NPATs providers so they could offer service without LEC assistance. Today that same technology allows the NPATs to once again offer service without LEC assistance, and staff believes there is no reason to prevent them from doing so.

While desiring to open up the local market to competition, the Legislature realized that demanding all of the LECs' locations be capable of interconnection and resale, regardless of technological constraints, could force the LECs to convert areas that were not likely to experience significant competition, at least not initially. Consequently, Section 364.161(1), Florida Statutes, states "[u]pon request, each local exchange telecommunications company shall unbundle all of its network features, functions, and capabilities..., and offer them to any other telecommunications provider requesting such features..., to the extent technically and economically feasible." (emphasis added)

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Technological limitations have slowed the availability of other services. An example is integrated services digital network (ISDN). ISDN enables the simultaneous transmission of voice, data, and video. BellSouth, the largest LEC in Florida, does not offer ISDN everywhere in its Florida territory. This is because not all of BellSouth's offices are **technically** capable of providing ISDN. If the Commission were to require that services only be offered when they can be offered ubiquitously, services such as ISDN, developed several years ago, might still not be available anywhere today.

In a similar vein, Section 364.161(1), Florida Statutes, indicates the Legislature contemplated that competition would be evolving, in recognition of the constraints of technology. Competition in the local market will not likely occur in all territories at the same point in time, but will sprout up first in high volume areas. As a consequence, not all LEC COs will be equipped simultaneously for interconnection, but will be equipped sequentially.

Finally, Florida law requires the Commission to do what it can to bring about competition. Specifically, the law states that the Commission shall "[e]ncourage all providers of telecommunications services to introduce new or experimental telecommunications services free of unnecessary regulatory restraints." Section 364.01(4)(e), Florida Statutes. Allowing providers that are capable of routing traffic to their chosen carrier, namely the NPATs and CAs, would be a step in fulfilling the Legislation.

The subject of this recommendation is preferred call routing, not intraLATA presubscription. However, intraLATA presubscription does indirectly play a role in deciding when it is appropriate for NPATs, CAs, and STS providers to begin routing of intraLATA calls.

The issue of allowing NPATs, CAs, and STS providers to route intraLATA calls was initially brought before the Commission at its May 7, 1996 Agenda Conference. At that time, the Commissioners directed staff to examine the effect on ECS routes from allowing these providers to begin routing intraLATA toll calls prior to the LECs' installation of 1+ presubscription software. The concern was that, by using one of these providers' facilities, an end user could be charged a toll charge for a call that would otherwise be billed at the lower ECS rate.

Florida contains many LEC ECS routes. Although these routes can be as long as 140 miles, LEC-carried calls on these

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routes are often rated at less than what would be the rates if the routes were toll. For example, a residential call placed between Miami and Key West and carried by BellSouth is \$.25, regardless of duration. If a CA decided to program its system for a carrier other than the LEC for intraLATA calls, a caller making a call over an ECS route could be charged toll charges rather than the ECS rate. One way of overcoming this problem would be for the end user to be able to dial the LEC's carrier identification code (CIC). However, not all LECs have activated CICs. There is no problem with them being technically able to activate a code. The problem is that two translation tables are needed, one containing the list of interLATA carriers and one containing the list of intraLATA carriers. The translation table is what the LEC uses to determine who is to carry a toll call. Today, there is only one table, because end users can only select a carrier for interLATA calls. There has been no need for a table identifying any other carriers because only one carrier, the LEC, has carried 1+/0+ intraLATA calls. Only by having a second translation table will the LEC be able to allow intraLATA presubscription. This second table will contain the LEC's CIC.

Without having a CIC in place, BellSouth argues it would be at a competitive disadvantage because it would be excluded from the list of intraLATA carriers the NPATs and CAs could use. This is not entirely accurate since NPATs and CAs are not **required** to reprogram their phones to a carrier other than the LEC. The NPATs and CAs could continue to route all 1+/0+ intraLATA calls to the provider of local exchange telecommunications services (LEC/ALEC), in effect selecting the LEC/ALEC for this traffic. In the event that the NPATs and CAs choose to route all 1+/0+ intraLATA toll calls to a carrier other than the LEC/ALEC, an end user will not be able to dial around to the LEC/ALEC until the serving central office is cut over to intraLATA presubscription. However, it is unlikely that a majority of NPATs and CAs will immediately reprogram their equipment to provide preferred carrier routing. In the short run, the LEC/ALEC will continue to enjoy the advantage of being the default carrier for intraLATA toll traffic. This advantage helps compensate for the inability of the LEC to receive dial around traffic prior to the implementation of intraLATA presubscription.

A NPATs telephone can discern an ECS call from other calls because smart phones contain a table listing all local NXX codes. When a call is placed on an ECS route, if an ECS route NXX code is contained in that table, the call is rated at the ECS residential rate of \$.25. If the NXX code is not in the table, the call would go out as a toll call. In past orders approving ECS

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routes the following language is included, and should continue to apply:

Pay telephone providers will charge end users \$.25 per message and pay the standard measured interconnection usage charge. (See Order No. PSC-96-0557-FOF-TL, for example.)

There is no such provision for CAs. An individual placing a call on an ECS route from his hotel/motel room could be charged toll rates. However, the visitor has the option of using a phone other than the one in the room, such as a payphone in the lobby.

To summarize, the Commission has indicated its desire to move forward with intraLATA competition. Allowing the NPATs and CAs to program their phones/systems to route 1+/0+ intraLATA toll calls, a capability they currently have, would be a step in that direction. There appears to be no requirement that routing be delayed until all providers are able to implement presubscription. Recently passed state law requires the Commission to encourage the introduction of new services. Therefore, staff recommends, for 1+ and 0+ intraLATA toll calls, NPATs and CAs should be allowed to route 1+/0+ intraLATA traffic from their phones/systems to the intraLATA carrier of their choice at this time. However, all local calls and 0- calls should continue to be routed to the LECs/ALECs. Extended calling service route calls should continue to be routed to the LEC except where the Commission has permitted IXCs to carry this traffic, in which case preferred carrier routing may be utilized. Reserving local calls and 0- calls is consistent with the Commission's decision in Docket 930330-TP where it ordered "...that 0- dialed calls shall be retained by the LECs..." See Order No. PSC-95-0203-FOF-TP, p. 46. This is also consistent with Rule 25-24.620(2)(d) which requires all CAs to:

route all end-user dialed 0- calls to the local exchange operator at no charge to the end user when no additional digits are dialed after 5 seconds.

Staff does not believe that it is necessary to prohibit NPATs and CAs providers from utilizing preferred call routing for intraLATA traffic in small LECs' service territories. The statutory provisions which authorized these providers to operate in Florida never restricted or otherwise made a distinction as to where they could operate and they already operate there. The recent revisions to Chapter 364 did not change this situation. While we do not believe that an exception should be made for small



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LECs, staff would recommend a different effective date. Staff recommends that NPATs and CAs should be allowed to implement preferred call routing in small LEC territories beginning on January 1, 1997. We believe that this date, which coincides with when a small LEC can receive a bona fide request for intraLATA presubscription, is reasonable and is consistent with the spirit of Order No. PSC-95-0203-FOF-TP.

If the Commission decides that CAs and NPATs should be permitted to program their phones to route 1+/0+ intraLATA toll calls, that decision will be inconsistent with Rules 25-24.620(2)(c) and 25-24.515(7), Florida Administrative Code. Rule 25-24.620(2)(c) dictates that operator service providers impose certain requirements on call aggregators. Specifically, this section requires that in its tariffs for and contracts with Florida call aggregators, an operator service provider shall require the other party to:

route all end-user dialed 1+, 0+, and 0-  
intraLATA local and toll calls to the local  
exchange company, unless the end user dials  
the appropriate access code for their carrier  
of choice, i.e., 950,800,10XXX.

Rule 25-24.515(7), Florida Administrative Code, Pay Telephone Service, requires that all intraLATA calls, including operator service calls be routed to the local exchange company, unless the end user dials the appropriate access code for their carrier of choice, i.e., 950, 800, 10XXX.

Thus, if the Commission finds that CAs and NPATs should be allowed to route 1+/0+ intraLATA toll traffic to their carrier of choice, its action will be inconsistent with the preceding rules. Therefore, exemptions should will need to be granted pursuant to Rule 25-4.002(2), Florida Administrative Code. Staff notes there are open rulemaking dockets to amend these rules.

**ISSUE 2:** For 1+ and 0+ intraLATA toll calls, should STS providers be allowed to route 1+/0+ intraLATA traffic from their systems to the intraLATA carrier of choice at this time?

**RECOMMENDATION:** Yes. For 1+ and 0+ intraLATA toll calls, STS providers located in the territories of BellSouth, GTE Florida, Sprint-United, and Sprint-Centel should be allowed to route 1+/0+

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intraLATA traffic from their systems to the intraLATA carrier of their choice at this time. STS providers located in the remaining 9 small LECs' territories may begin call routing January 1, 1997 to be consistent with the Commission's decision in Docket 930330-TP (1+ intraLATA presubscription).

**STAFF ANALYSIS:** An STS provider is similar to a CA in that it provides service to its tenants through its own switch (such as a PBX). However, there are at least two subtle differences between the tenants of an STS provider and the tenants of a CA. First, the STS's tenants have been historically business customers, and second, these customers have tended to be longer term residents than those of the CA. In the past, the provision of STS service was restricted to business customers residing in a single location such as a large building. These subscribers were not viewed as transient, usually having signed lease agreements extending over lengthy time periods. These tenants have always been able to choose either the STS provider or the LEC for the provision of phone service.

With passage of the amendments to Section 364.339, Florida Statutes, STS providers can now provide service to residential customers as well as business customers, and to multiple buildings as well as single buildings. Staff would note that the statute is not clear whether or not the residential customer can choose between the LEC or the STS provider for service. As in the past, the commercial customer has the option of choosing the serving local exchange company or the STS provider. (Commission Rule 25-24.575 and Chapter 364.339(5), Florida Statutes) However, Chapter 364.339(5), Florida Statutes, speaks only of "commercial" customers, not mentioning residential customers. This calls into question whether or not a residential tenant is able to select the serving LEC for service or if he is restricted to the STS provider. Despite this ambiguity, staff believes that residential tenants should logically have a choice, just as commercial tenants do.

Staff has opened a rulemaking proceeding for STS service (Docket No. 951522-TS) which will address the question of allowing a choice of provider only to commercial tenants. Staff would note that even with allowing residential customers to make a choice of carrier, in the event that they chose the LEC as their local service provider, that LEC may still not have upgraded its system to allow the tenant to select a carrier other than that LEC for his intraLATA toll traffic. Regardless, as is the case with the NPATs and the CAs, staff believes if the STS provider is capable of routing traffic to its chosen intraLATA carrier, he should be allowed to do so. To the end user that selects the LEC rather than

the STS provider, there is no difference in what he receives today (before intraLATA presubscription) from what he will receive if the Commission allows the STS provider to route 1+/0+ intraLATA calls from its system. If he continues to be a LEC customer, and wants a different provider for his intraLATA traffic, he will still have to dial around the LEC. If he selects the STS service, and wants an intraLATA carrier other than the one the STS provider routes to, he will have to dial around. Most STS customers will have a selection of carriers from the LEC for their intraLATA toll traffic by February, 1997 at the latest.

ECS routes are also of concern when considering STS service. The STS provider could program his PBX to have an IXC carry calls on these routes. However, the potential customer of an STS provider also has the choice of the LEC for his local service. If he selects service from the STS provider and is subjected to excessive charges due to toll charges being assessed on ECS routes, he can change to the LEC. In addition, the STS provider is, in effect, competing with the LEC for the end user's business. Staff would argue that it makes little sense for the STS provider to eliminate potential customers by overcharging, particularly when the STS provider's competitor is probably a better recognized provider of telecommunications services. Therefore, staff recommends, for 1+ and 0+ intraLATA toll calls, STS providers should be allowed to route 1+/0+ intraLATA traffic from their systems to the intraLATA carrier of choice at this time.

Staff does not believe that it is necessary to prohibit STS providers from utilizing preferred call routing for intraLATA traffic in small LECs' service territories. The statutory provisions which authorized these providers to operate in Florida never restricted or otherwise made a distinction as to where they could operate. Other than now allowing STS providers to serve residential customers, and to serve in multiple buildings the recent revisions to Chapter 364, Florida Statutes, did not change this situation. While we do not believe that a blanket exception should be made for small LECs, staff would recommend a different effective date. Staff recommends that STS providers should be allowed to implement preferred call routing in small LEC territories beginning on January 1, 1997. We believe that this date, which coincides with when a small LEC can receive a bona fide request for intraLATA presubscription, is reasonable and is consistent with the spirit of Order No. PSC-95-0203-FOF-TP.

It should be noted that this recommendation does not address the issue of whether STS providers should themselves be required to provide presubscription to their individual tenants, nor should this recommendation be construed as an endorsement by

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the Commission that presubscription should not be required of STS to their tenants. Most of the PBXs in use do not have the technical capability to offer presubscription to individual tenants. It appears that the newest PBXs now entering the market may be technically capable of providing presubscription to individual tenants. The question of presubscription by STS providers to tenants should be left for another day.

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes, if no person whose substantial interests are affected by the Commission's proposed agency action files a protest within 21 days of the issuance date of the order, this docket should be closed.

**STAFF ANALYSIS:** If no person whose substantial interests are affected by the Commission's proposed agency action files a protest within 21 days of the issuance date of the order, this docket should be closed.