

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Recommendation to) DOCKET NO. 960910-TP
require applicable LECs to) ORDER NO. PSC-96-1265-FOF-TP
reduce their switched access) ISSUED: October 8, 1996
charges by five percent)
annually, pursuant to Section)
364.163 (6), F.S.)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER REQUIRING APPLICABLE
LOCAL EXCHANGE COMPANIES
TO REDUCE SWITCHED ACCESS CHARGES

BY THE COMMISSION:

BACKGROUND

As a result of changes to Chapter 364, Florida Statutes, during 1995, certain local exchange companies (LECs) are required to reduce their intrastate switched access rates effective October 1, 1996. Concurrent with these intrastate switched access rate reductions, telecommunications companies are to reduce their "customer long distance rates" to flow through the benefits of the access reductions.

The requirements are contained in Subsection 364.163(6), Florida Statutes, which reads as follows:

Any local exchange telecommunications company whose current intrastate switched access rates are higher than its interstate switched access rates in effect on December 31, 1994, shall reduce its intrastate switched access rates by 5 percent annually beginning October 1, 1996. Any such company shall be relieved of this requirement if it reduces such rates by a greater percentage by the relevant date or earlier, taking into account any reduction made pursuant to Florida Public Service Commission Order No. PSC-94-0172-FOF-TL. Upon reaching parity between intrastate and 1994 interstate

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switched access rates, no further reductions shall be required. Any telecommunications company whose intrastate switched access rate is reduced by this subsection shall decrease its customer long distance rates by the amount necessary to return the benefits of such reduction to its customers.

Order No. PSC-94-0172-FOF-TL resulted from our approval of the stipulation resolving BellSouth's last earnings review (Docket No. 920260-TL). Subsection 364.163(7), Florida Statutes, requires that "customer long distance rate reductions shall become effective on October 1 of each relevant year." The purpose of this order is to implement the provisions of Subsection 364.163(6), Florida Statutes, and to resolve any ambiguities over which LECs must reduce their intrastate switched access rates and which telecommunications companies must flow through these reductions to customer long distance rates.

DECISION

LEC Access Change Reductions

An important question for our consideration is whether all LECs or only price regulated LECs are subject to Subsection 364.163(6), Florida Statutes. The introductory portion of Section 364.163, Florida Statutes appears to apply only to price regulated LECs; but the requisite reductions described in Subsection 364.163(6), Florida Statutes, are applicable to "any local exchange telecommunications company." Therefore, based on a plain reading of this subsection, we believe that price regulated and rate base/rate-of-return regulated LECs are subject to the requirement to reduce intrastate switched access rates.

Another important question for our consideration concerns the determination of which LECs have current intrastate switched access rates that are higher than the interstate switched access rates in effect on December 31, 1994. Since switched access rates are composed of multiple elements, we believe that a meaningful comparison can only be made by calculating the current intrastate composite rate per minute and the December 31, 1994 interstate composite rate per minute. While comparisons could be made on an element-by-element basis, the current intrastate rates for certain elements may be lower than the December 31, 1994 interstate levels,

and the current intrastate rates for other elements may be higher than the December 31, 1994 interstate levels. Through the composite approach, intrastate rate elements that are currently priced lower than December 31, 1994 interstate levels will help offset the need to reduce intrastate rate elements that are currently priced higher than December 31, 1994 interstate levels. The composite approach gives LECs the benefit of averaging. We believe this approach is appropriate because customers (IXCs) are concerned with the bottom line per minute charge. An element-by-element approach would reduce the overall intrastate rate per minute below December 31, 1994 interstate levels.

Eight of the small LECs (all except Frontier) use National Exchange Carrier Association (NECA) rates for all or some interstate switched access elements. The eight LECs all use the NECA carrier common line (CCL) rate which is partially sustained through the Long Term Support program. The support is roughly \$.02 per minute on both the originating end and the terminating end. Stated differently, the December 31, 1994 interstate CCL rates charged by these eight LECs were below self-sustaining levels (i.e., yielded less than the revenue requirement). Similarly, the December 31, 1994 interstate CCL rates charged by the four large LECs were slightly above self-sustaining levels since these companies pay Long Term Support, which necessitates somewhat higher interstate switched access rates than would otherwise be needed. In addition, NECA rates for the traffic-sensitive elements typically generate more than the revenue requirement for most Florida LECs since switching and transport costs in this state are usually less than the national average.

These anomalies, which cause interstate rates to differ from self-sustaining levels, have generated questions in Commission discussions with the NECA-based LECs. Namely, what is the appropriate interpretation of "interstate switched access rates in effect on December 31, 1994"? Recasting the December 31, 1994 rates to reflect self-sustaining levels will produce a more realistic benchmark. Consequently, we order that the LEC's calculate the composite interstate rate per minute as of December 31, 1994, based on billed revenue plus any Long Term Support revenue.

Percentage reductions may vary by switched access element, but must yield the overall reduction required by Subsection 364.163(6), Florida Statutes. Since the switched access rate reductions are presumed valid per Subsection 364.163(7), Florida Statutes, the

seven day notice period cited in Subsection 364.163(5), Florida Statutes, is applicable to price regulated and rate base/rate-of-return regulated LECs.

IXC Rate Reduction

The last sentence of Subsection 364.163(6), Florida Statutes, states:

Any telecommunications company whose intrastate switched access rate is reduced by this subsection shall decrease its customer long distance rates by the amount necessary to return the benefits of such reduction to its customers.

This sentence clearly requires facilities-based interexchange carriers (IXCs) to reduce customer long distance rates, since these telecommunications companies pay switched access charges and will benefit from the required reductions. Resale-based IXCs may indirectly benefit from the switched access rate reductions to the extent that their underlying carriers reduce the rates for the service(s) used by the resellers. The question arises whether resellers are required to reduce their customer long distance rates. Also, the question arises whether LECs are required to reduce their own customer long distance rates, commensurate with the switched access rate reductions.

Regarding the applicability of Subsection 364.163(6), Florida Statutes, to resellers, we believe the pass-through requirement is only a one-stage process, from the LECs to the IXCs that directly pay access charges. Since resellers do not pay access charges, they cannot fall under "any telecommunications company whose intrastate switched access rate is reduced by the subsection." In addition, market forces will likely cause resellers to reduce their customer long distance rates, making regulatory intervention unnecessary. Finally, while a LEC can constitute "any telecommunications company whose intrastate switched access rate is reduced by this subsection," a LEC does not receive any benefit from this reduction, and hence, has no benefit to return. Accordingly, a LEC shall not be subject to the last sentence of Subsection 364.163(6), Florida Statutes.

The intrastate switched access rate reductions and customer long distance rate reductions are to be effective on the same day, October 1, 1996. Since a LEC has discretion as to which intrastate

switched access rate elements are reduced, the IXC will not be able to calculate ahead of time the precise dollar benefit to the IXC. We assume that an IXC's benefit will approximate the required overall percentage reduction in intrastate switched access rates for each LEC. Therefore, an IXC can calculate the estimated savings to its Florida intrastate operations, and thus the extent to which its intrastate long distance rates must be reduced effective October 1, 1996. Once the LEC tariff filings are made, an IXC can determine its realized dollar benefit and adjust its intrastate long distance rates accordingly. Any "true-up" would need to be on a going forward basis since re-rating the traffic and issuing adjustments would be onerous, and is made even more difficult by the IXCs' use of the LECs' billing services.

The specifics of a "true-up" process are complicated by the fact that an IXC could calculate its realized dollar benefit using different vintages of billing units than those used for the estimate. We are reluctant to specify the vintage of the billing units as this may unduly complicate the process for the IXCs. Consequently, we find that a 5% tolerance level should be used when determining if the realized dollar benefit is sufficiently greater than the estimate to warrant an adjustment to the IXC's customer long distance rates.

When an IXC makes the required tariff filings to reduce its intrastate long distance rates effective October 1, 1996, each company needs to include a calculation of the dollar benefit associated with the LECs' intrastate switched access rate reductions. In addition, each company will need to include a demonstration that its intrastate long distance rates have been reduced by the amount of the dollar benefit. To encourage a market driven approach, percentage reductions may vary by long distance service, but must yield the required overall reduction. Per the one day notice period allowed by Rule 25-24.485(2)(b), Florida Administrative Code, the requisite IXC tariff filings must be made not later than September 30, 1996.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each price regulated and rate base/rate-of-return regulated LEC whose current intrastate switched access rates, expressed as a composite rate per minute, are higher than its December 31, 1994 interstate switched access rates, must reduce its intrastate switched access rates per Subsection 364.163(6), Florida Statutes. It is further

ORDERED that to verify statutory compliance, each LEC must file, not later than September 24, 1996, calculations of the LEC's current intrastate switched access composite rate per minute and the LEC's December 31, 1994 interstate switched access composite rate per minute. It is further

ORDERED that if the calculations show that the LEC's intrastate switched access rates must be reduced, a tariff filing must be made not later than September 24, 1996, and should include: (1) a demonstration that the LEC's intrastate switched access rate reductions satisfy the requirement of Subsection 364.163(6), Florida Statutes, and (2) the names of all IXCs that pay intrastate switched access charges to the LEC. It is further

ORDERED that those interexchange carriers that pay intrastate switched access charges to the LECs are required to reduce customer long distance rates per Subsection 364.163(6), Florida Statutes, effective October 1, 1996. It is further

ORDERED that the required filings must be made not later than September 30, 1996 and should include (1) a calculation of the estimated dollar benefit associated with the LECs' intrastate switched access rate reductions, and (2) a demonstration that customer long distance rates have been reduced by the estimated dollar benefit. Percentage reductions may vary by long distance service, but must yield the required overall reduction. It is further

ORDERED that each IXC that is required to reduce customer long distance rates effective October 1, 1996, shall file its calculation of the realized dollar benefit associated with the LECs' intrastate switched access rate reductions by October 31, 1996. It is further

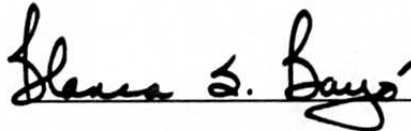
ORDERED that if an IXC's realized dollar benefit exceeds its estimated dollar benefit by more than 5%, the IXC must file revisions to its customer long distance rates by October 31, 1996 to reflect the realized dollar benefit. It is further

ORDERED that this docket should remain open to handle any protests filed in response to this order and any subsequent tariff filings necessary to ensure compliance with Subsection 364.163(6), Florida Statutes, for the year 1996. If a protest is filed within 21 days from the issuance of the order, the tariffs filed in response to Subsection 364.163(6), Florida Statutes, which are

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effective October 1, 1996, should remain in effect pending the resolution of the protest.

By ORDER of the Florida Public Service Commission, this 8th day of October, 1996.

A handwritten signature in black ink, reading "Blanca S. Bayó", is written over a horizontal line.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

NSR/MCB

Commissioner Diane K. Kiesling dissented from the Commission decision on Issue 1.

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Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 29, 1996.

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.