

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

May 14, 1997

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

FROM: DIVISION OF COMMUNICATIONS (MARSH)^{deu}
DIVISION OF LEGAL SERVICES (COX)^{AKB}

RE: DOCKET NO. 970157-TP - ESTABLISHMENT OF INTRASTATE
DISCOUNTS FOR SCHOOLS AND LIBRARIES PURSUANT TO SECTION
254(h) OF THE TELECOMMUNICATIONS ACT OF 1996

AGENDA: 05/19/97 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: DUE TO THE EXPEDITED HEARING SCHEDULE IN THIS
DOCKET, THIS ITEM MUST BE TAKEN UP AT THE MAY
19, 1997 AGENDA CONFERENCE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\970157TP.RCM

CASE BACKGROUND

On May 8, 1997, the Federal Communications Commission (FCC) issued its Report and Order, 97 157, (Order) implementing key portions of Section 254 of the Telecommunications Act of 1996 (the Act), which addresses Universal Service. The order accomplished a number of things, including identification of services to be supported by federal universal service funding and the mechanisms whereby such funding will be provided. Discounts on telecommunications services and certain non-telecommunications services for schools and libraries are among the items earmarked for federal funding.

The FCC Order provides for funding of both interstate and intrastate services for schools and libraries. Eligibility for the discounts is predicated upon adoption by the states of the federal discount levels for intrastate services. While the FCC adopted rules that will permit schools and libraries to begin using the discounted services on January 1, 1998, they may begin applying for funding July 1, 1997. This recommendation addresses the adoption of intrastate discounts for schools and libraries.

DOCUMENT NUMBER-DATE

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FPSC REC. REP. REPORTING

DOCKET NO. 970157-TP
DATE: May 14, 1997

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission adopt discounts on intrastate telecommunications services provided to schools and libraries so that Florida schools and libraries will be eligible to receive federal funding?

RECOMMENDATION: Yes. For purposes of permitting schools and libraries to receive federal funding, the discount matrix contained in FCC Order No. 97-157, CC Docket No. 96-45, should be adopted. Adoption of this matrix should not be construed as a waiver of the right of any party, including the FPSC, to file an appeal on matters contained in the Order with the appropriate court or other entity. (MARSH)

STAFF ANALYSIS: The federal Telecommunications Act of 1996 (the Act) requires that discounts be established on designated services provided to eligible schools and libraries. Specifically, the Act states:

All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the [FCC], with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities. 47 U.S.C. § 254(h)(1)(B)

While section 254(h)(1)(B) of the Act permits the states to determine the level of discount available to eligible schools and libraries with respect to intrastate services, the FCC points out in its Order, at paragraph 129, that the Act does nothing to prohibit federal funding of such intrastate discounts, nor does it prohibit conditioning that funding on state adoption of the federal discount levels. Accordingly, the FCC has decided to exercise its authority to provide federal universal service support for intrastate discounts.

DOCKET NO. 970157-TP
DATE: May 14, 1997

Florida's statute dealing with universal service, Section 364.025, Florida Statutes, specifically excludes funding for schools, and does not address libraries. No state funding for these intrastate discounts, however, is required, so long as the FCC discount levels are adopted. The participating entities will be compensated for the discounts provided to schools and libraries entirely through the federal universal fund. Therefore, there is no state conflict or inconsistency with the federal Act or with the FCC's Order regarding schools and libraries.

The discounts range from 20 percent to 90 percent for all telecommunications services, internet access, and internal connections, subject to a \$2.25 billion annual cap. The range of discounts is correlated to student's eligibility for the national school free and reduced lunch program, and urban or rural location based on metropolitan statistical areas (MSAs). The following discount matrix has been adopted by the FCC:

SCHOOLS AND LIBRARIES DISCOUNT MATRIX		DISCOUNT LEVEL	
HOW DISADVANTAGED?		urban discount (%)	rural discount (%)
% of students eligible for national school lunch program	(estimated % of US schools in category)		
<1	3	20	25
1-19	31	40	50
20-34	19	50	60
35-49	15	60	70
50-74	16	80	80
75-100	16	90	90

The discounts are to be applied to a pre-discount price. According to the FCC, that price must be no higher than the lowest price the carrier charges to similarly situated non-residential customers for similar services. The pre-discount price is significant because it is the total price that carriers would receive for the services they sell to schools and libraries. While schools and libraries would only pay the carrier a discounted rate, the carrier would receive the amount of the discount from universal service support mechanisms. Therefore, the pre-discount price is the price of most significance to providers of services to schools and libraries. The pre-discount price is also highly significant to schools and libraries because they must pay the undiscounted

DOCKET NO. 970157-TP
DATE: May 14, 1997

portion of the price. The FCC believes this will give schools and libraries a strong incentive to secure the lowest pre-discount price.

In its Order, the FCC clarified that the tariffed rate of a carrier would represent a carrier's lowest corresponding price in a geographic area in which that carrier has not negotiated rates that differ from the tariffed rate. The FCC is not requiring carriers to file new tariffs to reflect the discounts it has adopted for schools and libraries, but rather, discounts will be applied to existing tariff rates where appropriate. Staff believes this is appropriate for Florida carriers as well. Accordingly, we do not recommend that tariffs reflecting the discounts for schools and libraries be filed.

One further consideration is that the level of discounts adopted by the FPSC will have no impact on the universal service assessments paid by Florida carriers. Our carriers, and through them the ratepayers of this state, will be major contributors to the federal universal service fund. If the discounts are not adopted, Florida schools and libraries will not be able to avail themselves of this opportunity. Instead, the funding will go to those states that do adopt the discounts for intrastate services.

Staff recommends that, for purposes of permitting schools and libraries to receive federal funding, the discount matrix contained in the FCC Order and Rules should be adopted. Adoption of this matrix should not be construed as a waiver of the right of any party, including the FPSC, to file an appeal on matters contained in the Order with the appropriate court or other entity.

DOCKET NO. 970157-TP
DATE: May 14, 1997

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Any person whose interests are substantially affected by the Commission's Proposed Agency Action must file a protest of the Commission's decision between May 19, 1997 and the close of business May 21, 1997. This docket should remain open to address any protest and any other issues that may arise in the implementation of the FCC's order.

STAFF ANALYSIS: Section 120.80(13)(d), Florida Statutes, provides that in implementing the Telecommunications Act of 1996 the Commission is authorized to employ procedures consistent with that Act. In order to allow sufficient time for the schools and libraries to apply for funds for the 1997-1998 school year, an expedited hearing schedule was believed to be necessary in this proceeding. This recommendation was designed to address the relevant issues so that the June 12 hearing may be canceled if no parties protest. Any person whose interests are substantially affected by the Commission's proposed agency action must present any objections between May 19, 1997, the date of the Agenda conference at which this recommendation is to be considered, and the close of business on May 21, 1997. Because of the extremely limited time available to parties to respond to the Commission's decision, the Prehearing Officer directed staff to include a draft Proposed Agency Action order with this recommendation. See Attachment A. Parties participating in the hearing must file testimony as scheduled on May 21, 1997. If no protest is received, the hearing scheduled for June 12, 1997, should be canceled.

When the discount program for schools and libraries is implemented, however, other issues may need to be resolved. For example, if schools, libraries, or carriers believe that the lowest corresponding price, as discussed in Issue 1, is unfairly high or low, FCC rules direct that the parties should be permitted to seek recourse from the FCC regarding interstate rates, and from state commissions regarding intrastate rates. Eligible schools and libraries may request a lower rate if they believe the rate offered by the carrier is not the lowest corresponding price. Carriers may request higher rates if they believe that the lowest corresponding price is not compensatory. Therefore, this docket should remain open to address any disputes or other matters within the FPSC's jurisdiction until a procedure is developed for their disposition.

ORDER NO.
DOCKET NO. 970157-TP

DRAFT

ATTACHMENT A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Establishment of) DOCKET NO. 970157-TP
intrastate discounts for schools) ORDER NO.
and libraries pursuant to) ISSUED:
Section 254(h) of the)
Telecommunications Act of 1996.)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER ESTABLISHING INTRASTATE DISCOUNTS FOR SCHOOLS AND LIBRARIES
PURSUANT TO SECTION 254(h) OF THE TELECOMMUNICATIONS ACT OF 1996

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein 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. CASE BACKGROUND

On May 8, 1997, the Federal Communications Commission (FCC) issued its Report and Order, FCC Order No. 97-157, (Order) implementing key portions of Section 254 of the Telecommunications Act of 1996 (the Act), which addresses universal service. The order accomplished several things, including identification of services to be supported by federal universal service funding and the mechanisms whereby such funding will be provided. Discounts on telecommunications services and certain non-telecommunications

ORDER NO.
DOCKET NO. 970157-TP

DRAFT

services for schools and libraries are among the items earmarked for federal funding.

The FCC Order provides for funding of both interstate and intrastate services for schools and libraries. Eligibility for the discounts is predicated upon adoption by the states of the federal discount levels for intrastate services. While the FCC adopted rules that will permit schools and libraries to begin using the discounted services on January 1, 1998, they may begin applying for funding July 1, 1998. We will address the adoption of intrastate discounts for schools and libraries in this order.

II. DISCUSSION

The federal Telecommunications Act of 1996 (the Act) requires that states establish intrastate discounts on designated services provided to eligible schools and libraries. Specifically, the Act states:

All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the [FCC], with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities. 47 U.S.C. § 254(h)(1)(B)

While section 254(h)(1)(B) of the Act permits the states to determine the level of discount available to eligible schools and libraries with respect to intrastate services, the FCC states in paragraph 129 of its Order that the Act does nothing to prohibit federal funding of such intrastate discounts, nor does it prohibit conditioning that funding on state adoption of the federal discount levels. Accordingly, the FCC has decided to exercise its authority to provide federal universal service support for intrastate discounts.

Florida's statute dealing with universal service, section 364.025, Florida Statutes, specifically excludes funding for

schools, and does not address libraries. No state funding for these intrastate discounts, however, is required, so long as we adopt the FCC discount levels. The participating entities will be compensated for the discounts provided to schools and libraries completely through the federal universal fund. Therefore, there is no state law conflict or inconsistency with the federal Act or with the FCC's Order regarding discounts for schools and libraries.

The discounts range from 20 percent to 90 percent for all telecommunications services, internet access, and internal connections, subject to a \$2.25 billion annual cap. The range of discounts is correlated to students' eligibility for the national school free and reduced lunch program, and urban or rural location based on metropolitan statistical areas (MSAs). The following discount matrix has been adopted by the FCC:

SCHOOLS AND LIBRARIES DISCOUNT MATRIX		DISCOUNT LEVEL	
HOW DISADVANTAGED?		urban discount (%)	rural discount (%)
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The discounts are to be applied to a pre-discount price. According to the FCC, that price must be no higher than the lowest price the carrier charges to similarly situated non-residential customers for similar services. The pre-discount price is significant because it is the total price that carriers would receive for the services they sell to schools and libraries. While schools and libraries would only pay the carrier a discounted rate, the carrier would receive the amount of the discount from universal service support mechanisms. Therefore, the pre-discount price is the price of most significance to providers of services to schools and libraries. The pre-discount price is also highly significant to schools and libraries because they must pay the undiscounted portion of the price. The FCC believes that this will give schools and libraries a strong incentive to secure the lowest pre-discount price.

In its Order, the FCC clarified that the tariffed rate of a carrier would represent a carrier's lowest corresponding price in a geographic area in which that carrier has not negotiated rates that differ from the tariffed rate. The FCC is not requiring carriers to file new tariffs to reflect the discounts it has adopted for schools and libraries, but rather, discounts will be applied to existing tariff rates where appropriate. We believe that this is appropriate for Florida carriers as well. Accordingly, we will not require that tariffs reflecting the discounts for schools and libraries be filed.

One further consideration is that the level of discounts adopted by us will have no impact on the universal service assessments paid by Florida carriers. Our carriers, and through them the ratepayers of this state, will be major contributors to the federal universal service fund regardless of our action here. If we did not adopt discounts, Florida schools and libraries would not be able to avail themselves of this opportunity. Instead, the funding would go to those states that do adopt the discounts for intrastate services.

III. CONCLUSION

Upon consideration, we hereby adopt the discount matrix contained in FCC Order No. 97-157, CC Docket 96-45, and represented in this order for purposes of permitting schools and libraries to receive federal funding. By adopting this matrix, neither we nor any party waive the right to file an appeal on matters contained in the FCC Order with the appropriate court of law or other entity.

Section 120.80(13)(d), Florida Statutes, provides that in implementing the Telecommunications Act of 1996 the Commission is authorized to employ procedures consistent with that Act. In order to allow sufficient time for the schools and libraries to apply for funds for the 1997-1998 school year, an expedited hearing schedule was believed to be necessary in this proceeding. Therefore, any person whose interests are substantially affected by this proposed agency action must present any protests to this action between May 19, 1997, and the close of business on May 21, 1997.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the discount matrix in FCC Order No. 97-157, CC Docket 96-45, which is contained in the body of this order, and which will permit schools and libraries to receive federal funding, is hereby adopted. It is further

ORDER NO.
DOCKET NO. 970157-TP

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ORDERED that the provisions of this order, issued as proposed agency action, shall become final and effective unless an appropriate petition in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 21, 1997, as set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that this docket shall remain open to address any issues that may arise in the implementation of FCC Order No. 97-157, CC Docket No. 96-45.

By ORDER of the Florida Public Service Commission, this ____ day of _____, _____.

BLANCA S. BAYO, Director
Division of Records and Reporting

(S E A L)

WPC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

ORDER NO.
DOCKET NO. 970157-TP

DRAFT

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein 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 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 May 21, 1997.

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.