

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

DOCKET NO. 000075-TP
DATED: FEBRUARY 2, 2001

STAFF'S PREHEARING STATEMENT

Pursuant to Order No. PSC-00-2229-PCO-TP, as supplemented by Order No. PSC-00-2350-PCO-TP, December 7, 2000, the Staff of the Florida Public Service Commission files its Prehearing Statement.

a. All Known Witnesses

Gregory D. Fogleman addresses Issues 3, 4, 6, and 8.

b. All Known Exhibits

None.

c. Staff's Statement of Basic Position

Staff's positions are preliminary and based on materials filed by the parties, staff's witness, and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

d. Staff's Position on the Issues

ISSUE 1: (a) Does the Commission have the jurisdiction to adopt an intercarrier compensation mechanism for delivery of ISP-bound traffic?

- APP _____
- CAF _____
- CMP _____
- COM 5 _____
- CTR _____
- ECR _____
- LEG _____
- OPC _____
- PAI _____
- RGO _____
- SEC 1 _____
- SER _____
- OTH _____

Position

STAFF: Yes. Staff preliminarily takes the same position espoused by the Commission in comments to the FCC in which the Commission has supported that ISP-bound traffic is local

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traffic and has endorsed what has become more commonly known as the "two-call theory." This same rationale has been used by the Commission in its challenge of the FCC's Declaratory Ruling. Even if the Commission were to conclude in this proceeding that primary jurisdiction over this traffic lies elsewhere, staff believes that the Commission can still make decisions regarding the treatment of this traffic based upon the FCC's statement in ¶ 28 of its Declaratory Ruling that "until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic."

(b) If so, does the Commission have the jurisdiction to adopt such an intercarrier compensation mechanism through a generic proceeding?

Position

STAFF: Yes.

ISSUE 2: Is delivery of ISP-bound traffic subject to compensation under Section 251 of the Telecommunications Act of 1996?

Position

STAFF: Yes. Under the "two-call theory," when an end-user calls an ISP to connect to the Internet, there are two separate services that are being provided. The first service is an intrastate telecommunications service, provided by one or more LECs, that allows the end user to call an ISP. The second service is an information service provided by an ISP which enables customers to access Internet content and services. The intrastate telecommunications service would be subject to compensation.

ISSUE 3: What actions should the Commission take, if any, with respect to establishing an appropriate compensation mechanism for ISP-bound traffic in light of current decisions and activities of the courts and the FCC?

Position

STAFF: The Commission should move forward to develop appropriate compensation mechanisms for ISP-bound traffic.

ISSUE 4: What policy considerations should inform the Commission's decision in this docket?

Position

STAFF: The Commission should consider cost recovery and causation, longer holding times, and the imbalance of traffic.

ISSUE 5: Is the Commission required to set a cost-based mechanism for delivery of ISP-bound traffic?

Position

STAFF: Staff takes no position at this time.

ISSUE 6: What factors should the Commission consider in setting the compensation mechanisms for delivery of ISP-bound traffic?

Position

STAFF: The Commission should factor longer holding times and establish a setup and minute of use pricing structure that more accurately reflects costs.

ISSUE 7: Should intercarrier compensation for delivery of ISP-bound traffic be limited to carrier and ISP arrangements involving circuit-switched technologies?

Position

STAFF: Staff has no position at this time.

ISSUE 8: Should ISP-bound traffic be separated from non-ISP bound traffic for purposes of assessing any reciprocal compensation payments? If so, how?

Position

STAFF: The Commission should not attempt to separate ISP-bound traffic from non-ISP bound traffic.

ISSUE 9: Should the Commission establish compensation mechanisms for delivery of ISP-bound traffic to be used in the absence of the parties reaching an agreement or negotiating a compensation mechanism? If so, what should be the mechanism?

Position

STAFF: Staff has no position at this time.

e. Pending Motions

None.

f. Pending Confidentiality Claims or Requests

None.

g. Compliance with Order No. PSC-00-2229-PCO-TP and Order No. PSC-00-2350-PCO-TP

Staff has complied with all requirements of the Orders Establishing Procedure entered in this docket.

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Respectfully submitted this 2nd day of February, 2001.

Felicia Banks

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
appropriate methods to
compensate carriers for exchange
of traffic subject to Section
251 of the Telecommunications
Act of 1996.

DOCKET NO. 000075-TP
FILED: FEBRUARY 2, 2001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Staff's Prehearing Statement has been furnished by U.S. Mail this 2nd day of February, 2001, to the following:

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