State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: MAY 3, 2001

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

FROM: DIVISION OF COMPETITIVE SERVICES (BLOOM, SIMMONS)
DIVISION OF LEGAL SERVICES (KNIGHT)

RE: DOCKET NO. 010634-TL - ELIMINATION OF CERTAIN REPORTING REQUIREMENTS FOR INCUMBENT LOCAL EXCHANGE TELECOMMUNICATIONS COMPANIES.

AGENDA: 05/15/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010634.RCM

CASE BACKGROUND

Contract Service Arrangements:

On December 9, 1983, this Commission authorized incumbent local exchange companies (ILECs) to offer contractual rates or bulk discounts, instead of tariff pricing, to large users to thwart the perceived threat of uneconomic bypass. In situations where a competitor could offer service at a price less than the ILEC's tariff rate, but above the ILEC's incremental cost, there was concern that the ILEC would lose customers without economic justification. Moreover, there was concern under rate base/rate-of-return regulation that the remaining customers would have to pay higher rates to compensate for the losses. In a series of orders the Commission authorized Southern Bell (now BellSouth), United Telephone Company (now Sprint), and General Telephone Company (now Verizon) to enter into these arrangements for specific services and ordered the companies to file periodic reports listing the contracts, the relevant parties, and rate and term information.

Land-to-Mobile Activity Reports:

As a result of a generic investigation into rates for interconnection of mobile service providers with facilities of local exchange companies, this Commission ordered ILECs to file quarterly reports containing all land-to-mobile NXX activity in Order No. 951247 (Docket No. 940235-TL). The Commission determined the reports were needed to ensure accurate billing by independent pay telephone providers for calls routed to wireless NXX codes.

This Commission has jurisdiction pursuant to Sections 364.04, 364.16, and 364.19, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission eliminate the requirement for ILECs to file quarterly Contract Service Arrangement reports with the Commission?

RECOMMENDATION: Yes, the Commission should eliminate the requirement for ILECs to file quarterly Contract Service Arrangement reports. (**BLOOM, SIMMONS**)

STAFF ANALYSIS: In Order No. 12765 (Docket No. 820537-TP), issued December 9, 1983, this Commission authorized incumbent LECs to offer contractual rates or bulk discounts, rather than tariff pricing, to large users in an effort to help counter what was, at the time, perceived as the threat of bypass. In its order, the Commission noted, "much testimony, but little cost data has been presented on the potential for bypass of the local network and the resulting cost increases to the local ratepayers." Nonetheless, the Commission authorized incumbent LECs to offer special contract rates or bulk discounts on the condition it could be determined that the loss of the customer would result in greater revenue loss than providing the service below tariffed rates.

In Order No. 13603 (Docket No. 840228-TL), issued August 20, 1984, the Commission reiterated the position it established in Order No. 12765, and added, "however, we also believe that the standardization of rates is a goal which should be pursued and that the principles of fairness and nondiscriminatory treatment embodied in the tariffing process should not be wholly supplanted through

contracts negotiated to meet the exigencies of competition." The Commission acknowledged that Southern Bell needed the flexibility to enter into contract service arrangements without prior Commission approval, but expressed a need to be kept apprised of the effects of such arrangements. To meet both of these objectives, the Commission required the following information to be submitted on a monthly basis:

> A brief description of all new contract service arrangements for the month.
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> The applicable rates, charges and contract period involved (if available).
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> The comparable tariff rates and charges for each contract.
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> A cumulative total over the contract period of the revenues generated by contract service offerings, as well as the revenues under corresponding tariff rates.
>
> The justification for this offering on a case-by-case basis.

In addition, the Commission required the company to provide, on request, cost information supporting the rates and charges for specific contract service arrangements.

The order allowed Southern Bell to offer contract service arrangements for private line service and special access services, but rejected the company's request to include PBX trunks and Centrex services. A subsequent Order, No. 13781, issued November 26, 1984, gave Southern Bell authority to offer Centrex service under a contract service arrangement for a six month trial period, an interval subsequently extended by the Commission.

On August 13, 1985, United Telephone Company (now Sprint) filed a tariff requesting approval to add a provision for contract service arrangements to their General Exchange Tariff, noting it intended to comply with the reporting provisions of Order No. 13603. In a subsequent Order, No. 13830, issued November 5, 1984, the Commission granted permission to General Telephone Company (now Verizon) to offer contract service arrangements.

At the time that authorization to offer contract service arrangements was first approved, each of Florida's three largest incumbent LECs was entitled to a rate of return on its investment,

which was the obligation of the general body of ILEC ratepayers. If a sufficient number of large customers found means other than those provided by the incumbent to obtain service -- thereby "bypassing" the incumbent -- ratepayers would theoretically be responsible for making up the difference in lost revenues to the incumbent if the deficit was sufficient to erode the LEC's rate of return. While the Commission noted in its order allowing contract service arrangements that the cost-based evidence on the possibility of bypass was underwhelming, the Commission acted in an abundance of caution to protect the general body of ratepayers from incurring potentially higher telephone rates.

The protective mechanism authorized by the Commission involved allowing ILECs to offer contracts for services to large users at rates below those contained in the company's tariffs, provided the LEC reported to the Commission on a monthly (later changed to quarterly) basis the number of contract arrangements into which the LEC entered.

In recommending elimination of the reporting requirement, staff believes a number of criteria should be considered.

First, staff believes a systemic shift from a rate base, rate-of-return regulatory environment to a competitive market paradigm obviates the threat of "bypass" for rate payers. Congress and the Florida Legislature have fashioned laws to simultaneously stimulate competition, and protect ratepayers from excessive rate increases for basic services. The Legislature has also given incumbent LECs explicit authority to make competitive offerings, as evidenced in section 364.051(5)(a)(2), which reads in part:

> Nothing contained in this section shall prevent the local exchange telecommunications company from meeting offerings by any competitive provider of the same, or functionally equivalent, nonbasic services in a specific geographic market or to a specific customer by deaveraging the price of any nonbasic service, packaging nonbasic services together or with basic services, using volume discounts and term discounts and offering individual contracts.

Moreover, under price caps incumbent LECs can only increase their basic local service rates by an amount not to exceed the change in inflation less 1 percent (Section 364.051(3), Florida Statutes). Thus, it appears the Legislature addressed competitive market dynamics and protected consumers from unanticipated rate hikes, eliminating the issue of bypass as a consideration.

Second, staff finds no assigned responsibility to which the information in the report is useful. While staff engages regularly in the collection of data from incumbent LECs and competitive local exchange companies CLECs for a variety of reasons, little in the contract service arrangement reports has application to any collection efforts owing to the highly individualized nature of the contracts.

Finally, CSA reports do not have value as a reference source either for staff or the CLECs because the reports are considered proprietary business information pursuant to Section 364.183, Florida Statutes, by the parties filing the reports. While staff can access the CSA reports, reported information cannot be disseminated. This same confidentiality provision prevents access to the reports by competing carriers that may be seeking to find the best available price for a particular offering.

Conclusion

Staff cannot determine any agency function that is contingent on the continued filing of CSA reports. The Legislature has given incumbent LECs statutory authority to make competitive offerings of basic and nonbasic services, or combinations thereof. Because the Legislature has also given incumbent LECs a means by which basic local service rates can be adjusted in a competitive market environment, the concept of "bypass" is no longer a consideration. Staff recommends, therefore, that the reporting requirement created by Order No. 12765 be rescinded.

ISSUE 2: Should the Commission eliminate the requirement for the quarterly filing of Land-to-Mobile (LTM) activity reports created by Order No. 951247?

RECOMMENDATION: Yes. The Commission should eliminate the requirement for incumbent LECs to file quarterly Land-to-Mobile activity reports. (**BLOOM, SIMMONS**)

STAFF ANALYSIS: In Order No. 20475 (Docket No. 870675-TP), issued December 20, 1988, the Commission approved rates, terms and conditions for interconnection between mobile service providers (MSPs) and LECs. The order applied a formula, developed by staff, which linked mobile interconnection usage rates with access charges.

On September 15, 1993, BellSouth Telecommunications, Inc. filed a petition to disassociate usage-based mobile interconnection charges from the formula, which was considered in Docket No. 930915-TL. The Commission recognized at that time that changes in the industry and in switched access charges had the potential to impact the validity of the formula; however, it found that BellSouth had not fully supported its petition to disassociate the MSP network usage rates from access charges. Additionally, the Commission found that the formula, which was established with information from a number of parties, should not be discarded on the basis of a petition from one company.

Accordingly, the Commission denied BellSouth's petition and undertook a generic investigation (Docket No. 940235-TL) into the appropriate rates, terms and conditions for mobile interconnection, including whether the formula for mobile service provider usage charges was still appropriate. After conducting hearings, which included participation by wireline and wireless carriers, the Commission issued Order No. PSC-95-1247-FOF-TL on October 11, 1995. The salient points of the order were:

> Elimination of the formula linking mobile interconnection rates with access charges.
>
> Usage rates for mobile interconnection were frozen at existing rates, except for Type 2B interconnection.
>
> Usage rates for Type 2B interconnection were set at $0.01 per minute.

If the parties were able to negotiate appropriate elements of interconnection, including usage rates, they were not precluded from doing so.

GTE Florida, Inc. was ordered to clarify its mobile interconnection tariff to specify the facilities over which its Star Information Plus (*SIP) was provided.

Rates for NXX establishment were continued based on direct cost plus a 15 percent contribution, unless parties negotiated a different rate.

BellSouth's and GTE Florida, Inc.'s proposed tariff changes for MSP facilities charges were approved, with the exception of BellSouth's Control Access Register (CAR) charge.

Tariffs were ordered filed no later than 60 days after the effective date of the order, which was December 31, 1995.

On November 13, 1995, McCaw Communications of Florida, Inc. (McCaw), filed an appeal of the Commission's order to the Supreme Court of Florida, which was subsequently denied by the court.

Following additions and revisions to Chapter 364, Florida Statutes, which took effect July 1, 1995, the Commission issued Order No. PSC 95-0916-FOF-TL. The order required the parties in Docket No. 940235-TL to address the following issues:

1. What are the potential effects of the recently enacted Section 364.163(1), Florida Statutes, capping the rates for network access service "...at the rates in effect on July 1, 1995" effective January 1, 1996, on the resolution of the issues identified for decision in this docket?

2. What is the effect of the recently enacted Section 364.163(3), Florida Statutes, prohibiting any "...revisions in the rates, terms, and conditions for commercial mobile radio service access, which revisions are inconsistent with the requirements or methodologies of the Federal Communications Commission" on the resolution of issues identified for decision in this docket?

> 3. What, if any, are the effects of the various amendments to section 364.385, Florida Statutes (savings clauses), on the resolution of the issues identified for decision in this docket?
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> 4. Is there any other provision of the recently enacted changes to Chapter 364, Florida Statutes, which would limit, require or prohibit any action proposed by any party to resolve the issues identified for decision in this docket?

On October 11, 1995, the Commission issued Order No. PSC 95-1247-FOF-TL to address the issues raised by changes to Chapter 364, Florida Statutes. In the order, the Commission found:

> We believe the LEC who sells the NXX code to the MSP (mobile service provider) should be responsible for ensuring that the service it provides functions properly. The LEC provides the necessary translations in its end offices so that calls from all its landline customers except IPPs (independent pay telephone providers) will be correctly billed when dialing a LTM NXX code. Since IPPs are also customers of the LEC, they should be provided the information they require to provide billing in compliance with the LEC tariff.

Based on this finding, the Commission ordered LECs to provide reports containing all LTM NXX activity to the IPPs the LECs served, and to the Commission. The Commission ordered that the reports be made quarterly, effective January 1, 1996.

At the same time the Commission was formulating its order in the above referenced docket, the FCC was reconfiguring the administration of the North American Numbering Plan (NANP). In FCC Order No. 95-283 (CC Docket No. 92-237), issued July 13, 1995, the FCC considered transferring the functions associated with central office (CO) code assignments to a new NANP administrator. In its order, the FCC wrote, "so long as the LECs perform the functions of CO code administration, the suspicion of anticompetitive behavior and discriminatory treatment in CO code assignment and area code relief continues."

The FCC expressed the view that, "numbering administration should be non-discriminatory, pro-competitive and should encourage the introduction of new technologies, which often compete with the LEC for market share." To alleviate suspicion and achieve the non-discriminatory administration it sought, the FCC ordered the

administration of CO codes to be performed by a neutral party, the NANP administrator. Transfer of CO code administration functions to the NANP administrator took effect June 6, 1998.

Conclusion

Staff believes the quarterly Land-to-Mobile activity reports no longer serve a valid regulatory purpose and should be eliminated as a requirement for ILECs. Information and data related to NXX code assignments is managed by the NANP administrator, which serves as the source for this information. Staff no longer utilizes the quarterly reports, relying instead on more timely information from the NANP administrator. In addition, staff has discussed the elimination of the LTM reports with representatives of the ILECs and the pay telephone industry and none of the affected parties expressed objection to eliminating the reporting requirement.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (**KNIGHT**)

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