BEFORE THE 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 ORDER NO. PSC-05-0092-FOF-TP ISSUED: January 24, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON

ORDER ELIMINATING THE DEFAULT LOCAL CALLING AREA

BY THE COMMISSION:

I. Case Background

On January 21, 2000, this docket was established to investigate the appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the federal Telecommunications Act of 1996 (the Act). A hearing was held on July 5, 2001, covering issues associated with non-ISP reciprocal compensation matters. On December 5, 2001, we reached decisions on all but two issues, and for these, Commission staff was directed to schedule a one-day hearing to gather more evidence. This supplemental hearing was held on May 8, 2002, and we rendered decisions on the remaining two issues at the August 20, 2002 Agenda Conference. On September 10, 2002, the Final Order on Reciprocal Compensation was issued, then later amended by Order No. PSC-02-1248A-FOF-TP, issued on September 12, 2002. Several motions for reconsideration or, in the alternative, motions for stay pending appeal were filed on September 25, 2002. These motions were denied by Order No. PSC-03-0059-FOF-TP, issued January 8, 2003.

All ILECs except for BellSouth Telecommunications, Inc. filed appeals of Order No. PSC-02-1248-FOF-TP with the Supreme Court of Florida (the Court) regarding our decision establishing a default local calling area, to apply in the event parties cannot agree on this issue in negotiations for their interconnection agreement.[1] This issue was one of the two addressed at the supplemental hearing held on May 8, 2002. In addition, AT&T Communications of the Southern States, LLC and TCG South Florida filed a cross-appeal regarding our decision establishing qualifying criteria for a CLEC to be compensated at the tandem interconnection rate. On September 15, 2004, the Court affirmed our determination regarding compensation at the tandem interconnection rate, but remanded the case for further proceedings with respect to the default local calling area. The Court found that the record did not contain competent, substantial

[1] Within the local calling area used for purposes of intercarrier compensation, reciprocal compensation rates apply for termination of calls. Outside the local calling area, access charges, which are significantly more expensive than reciprocal compensation rates, apply for termination of calls.

evidence that our choice of default, the originating carrier's retail local calling area, was the most competitively neutral option.

This Order addresses our action in response to the Court's remand. We believe that we have jurisdiction to specify rates, terms, and conditions governing compensation for transport and delivery or termination of traffic pursuant to Section 251 of the Act, the FCC's rules and orders, and Sections 364.161 and 364.162, Florida Statutes, so long as not otherwise inconsistent with the FCC rules and orders and the Act. Further, we believe that Section 120.80 (13)(d), Florida Statutes, authorizes us to employ procedures necessary to implement the Act.

II. Analysis

As mentioned in the Case Background, the Supreme Court of Florida, per a decision issued September 15, 2004, remanded the case to us for further proceedings with respect to the default local calling area. In its decision, the Court affirmed that we had the jurisdiction to establish a default provision pursuant to state and federal law. However, while finding adequate support for the conclusion that the chosen default was administratively feasible, the Court found that there was not "competent, substantial evidence that it is the most competitively neutral option," and thus remanded this matter to us. (2004 Fla. Lexis 1519, p. 30)

When we considered the default local calling area issue at the August 20, 2002 Agenda Conference, our staff presented two recommendations. The primary staff recommendation was not to designate a default local calling area, while the alternative staff recommendation was to establish the originating carrier's retail local calling area as the default. In reviewing the record at that time, most of the testimony focused on the options of using the ILEC's retail local calling area or the LATA as the default. There was limited testimony on the option of using the originating carrier's retail local calling area; however, this option seemed more competitively neutral than the other two choices. Neither primary nor alternative staff supported use of the ILEC's retail local calling area or the LATA, since the record demonstrated that both of these options were not competitively neutral. However, alternative staff contended that it was important for us to establish a default local calling area for purposes of reciprocal compensation. At the time, there was concern that this issue was becoming too commonplace in arbitration cases filed with us. For the sake of administrative efficiency, alternative staff favored setting a default.

We approved the alternative staff recommendation, and this decision was memorialized in Order No. PSC-02-1248-FOF-TP, issued September 10, 2002. In that order, we stated that there was a need to establish a default definition for the sake of efficiency, and that the chosen default should be as competitively neutral as possible, thereby encouraging negotiated solutions. We selected the originating carrier's retail local calling area as the default local calling area for purposes of reciprocal compensation, on the basis that this option was more competitively neutral than the other alternatives presented. (Order No. PSC-02-1248-FOF-TP, pp. 53-55)

In view of the remand from the Court, we must now revisit the matter. The Court ultimately concluded that while there was competent, substantial evidence to support the administrative feasibility of using the originating carrier's local calling area as the default, the

Court also found that there was insufficient evidence to conclude that such a default was the most competitively neutral option.[2] Given this finding, we find it appropriate to make a new determination based upon the existing record. Because the prior proceedings were extensive and yet did not result in sufficient clarity on this issue, we believe that further proceedings to address this issue would not be fruitful. Thus, based upon the existing record, we find that there is insufficient record evidence to support any default. We note, from a practical standpoint, that there no longer appears to be a compelling need for a default. Prior concerns that the issue of the applicable local calling area would continue to arise in arbitration cases in the absence of a default have proven to be unfounded.

For all of the above reasons, we find that the default local calling area established in Order No. PSC-02-1248-FOF-TP shall be eliminated and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the default local calling area established in Order No. PSC-02-1248-FOF-TP shall be eliminated. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th day of January, 2005.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: _____
Kay Flynn, Chief
Bureau of Records

(SEAL)

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[2] The Court also found that there was competent, substantial evidence to support our finding that neither the use of the LATA-wide calling area, nor the use of the ILEC's local calling area as a default would be competitively neutral.

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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 after the issuance 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.