

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Review of Rates	) DOCKET NO.	860723-TP
and Charges by PATS Providers to LECS.	) ORDER NO.	20610
	) FILED:	1-17-89
	)	

The following Commissioners participated in the disposition of this matter:

KATIE NICHOLS, Chairman  
 THOMAS M. BEARD  
 GERALD L. GUNTER  
 JOHN T. HERNDON  
 MICHAEL MCK. WILSON

Upon proper notice, a public hearing was held in the above-noted docket on September 8, 1988, in Tallahassee, Florida.

APPEARANCES: LESLIE R. STEIN, Esquire, GTE Florida Incorporated, P.O. Box 110, MC 7, Tampa, Florida, 33601, on behalf of GTE Florida Incorporated.

J. LLOYD NAULT, Esquire, General Attorney-Florida, SIDNEY J. WHITE, JR., Esquire, c/o H. Frank Meiners, 150 South Monroe Street, Suite 400, Tallahassee, Florida, 32301 on behalf of Southern Bell Telephone & Telegraph Company.

ALAN N. BERG, Esquire, Senior Attorney, United Telephone Company of Florida, P. O. Box 5000, Altamonte Springs, Florida, 32716 on behalf of United Telephone Company of Florida.

LEE L. WILLIS, Esquire, Ausley, McMullen, McGehee, Carothers, & Proctor, Post Office Box 391, Tallahassee, Florida, 32302, on behalf of Central Telephone Company of Florida.

MICHAEL W. TYE, Esquire, Suite 505, South Calhoun Street, Tallahassee, Florida, on behalf of AT&T Communications of the Southern States, Inc.

BRUCE W. RENARD, Esquire, FLOYD R. SELF, Esquire, Messer, Vickers, Caparello, French & Madsen, Post Office Box 1876, Tallahassee, Florida, 32302 on behalf of Florida Pay Telephone Association, Inc.

DEBRA W. SCHIRO, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida, 32399-0850 on behalf of the Commission Staff.

PRENTICE P. PRUITT, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida, 32399-0850, appearing on behalf of the Commissioners.

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FINAL ORDER

I. BACKGROUND

In 1983, we issued Order No. 12792 (in Dockets Nos. 830235-TP, 830266-TP, 830250-TP, and 830372-TP) and determined that (a) Subsection 364.335(4), Florida Statutes, prohibited the Commission from granting a certificate for the provision of local exchange service over pay telephones unless a showing was made that the existing facilities of the pay telephone service required a certificate from the Commission prior to providing service; and (b) the provision of local exchange service over pay telephones did not fall within the transient exemption described in Order No. 11206, issued September 29, 1982.

After Order No. 12792 was issued, our Staff processed one of the applications for a certificate as a request for authority to provide long distance pay telephone service. The matter was set for hearing and consolidated with all other pay telephone issues in March 1984. The hearing was held in November, 1984.

On February 27, 1985, we issued Order No. 14132, dealing with the myriad of issues relating to competitive pay telephone service. In that Order we determined that:

- a. The provision of competitive pay telephone service (PATS), for both local and interexchange calls, should be allowed, as it is in the public interest.
- b. In order to allow competitive PATS for local calls, Chapter 364, Florida Statutes, would have to be amended and we stated our intention to pursue such an amendment.
- c. The Commission would begin to process certificate applications for interexchange competitive PATS.
- d. PATS providers would be required to obtain a certificate before providing service.
- e. The charges by PATS providers other than the local exchange companies (LECs) would be subject to maximum-rate regulation--no more than \$.25 per call could be charged.
- f. The charges by LECs to PATS providers would consist of a flat monthly rate (60% of the B-1) for the access line, plus a per message rate for local calls (\$.12 per local call), with a minimum bill of \$30 per month. Where message measurement is not available, the monthly rate (60% of the B-1 rate) plus a flat rate of \$108 is applied.
- g. PATS providers would be required to meet certain operating characteristics and service standards.

In Order No. 14132, we "attempted to develop charges that

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first will protect the general body of ratepayers but, at the same time, will allow the entry of competitive PATS providers into the market." We recognized "that the rates and charges may be subject to debate, due to the absence of proper evidence on the effect to the LECs of allowing competition in this area." This uncertainty led us to the requirement that LECs file quarterly reports for one year, "so that we can monitor the effect of introducing PATS competition and the appropriateness of the rates we are implementing."

The 1985 Florida Legislature, in Chapter 85-327, Laws of Florida, amended Section 364.335, Florida Statutes, specifically to allow competition in the provision of local pay telephone service under Commission regulation.

On June 2, 1986, a petition was filed seeking review of the rates and charges paid by PATS providers to the local exchange companies. The petition was filed by the Florida Privately-Owned Payphone Association (POPA). Other parties, including the LECs and several interexchange companies (IXCs), subsequently intervened.

Pursuant to the petition, hearings were scheduled and the discovery process began. POPA, however, withdrew its petition. We, nevertheless, pursued this matter since we were concerned about the rate structure and rate levels paid by PATS providers to the LECs. Several workshops were held during which issues were identified. This list of issues, however, grew far beyond the scope of the original petition which was primarily concerned with rates paid by PATS providers to the LECs. Consequently, the PATS providers expressed concerns that the review of rates be handled separately since they needed rate relief urgently.

As a result of the concerns expressed by the PATS providers, they were advised by the prehearing officer to negotiate a settlement. Workshops were scheduled for this purpose. At the final workshop, the parties agreed to a Stipulation which was approved by us pursuant to Order No. 17440 issued on April 20, 1987.

According to Order No. 17440, the stipulated rates would be in effect until permanent rates could be prescribed. It was the intent of the parties that approval of the rate restructuring meant the deferral of the remaining issues and cancellation of the hearing in Docket No. 860723-TP for a period of at least one year from the date that the Stipulation was approved.

In the past year, the case has again gone through the stages of hearing preparation. New issues were identified and discovery took place. A hearing was scheduled for September 8-9, 1988, in Tallahassee, Florida.

On August 26, 1988, the following parties entered into a Stipulation to resolve the issues: Florida Pay Telephone Association (FPTA), Southern Bell Telephone and Telegraph Company (Southern Bell), Central Telephone Company of Florida (Centel), GTE Florida Incorporated (GTEFL), United Telephone

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Company of Florida (United) and AT&T Communications of the Southern States, Inc. (ATT-C). Upon review of the Stipulation, we voted to defer our consideration of the issues addressed in the Stipulation until the September 6, 1988 Agenda Conference.

During the September 6, 1988 Agenda Conference, we voted to reject the Stipulation and continue with the hearing scheduled for September 8 and 9, 1988. However, upon further review of the Stipulation and the issues set forth in the Prehearing Order we reconsidered our decision to reject the Stipulation. Upon reconsideration we voted to adopt all portions of the Stipulation as resolution of all pending issues except as to those issues identified in paragraphs 3 and 4 of the Stipulation. Accordingly, we issued Order No. 20129 accepting certain portions of the Stipulation. The Order established that the terms of the Stipulation shall remain in effect for a period of two years from September 8, 1988 or until September 8, 1990.

As to those issues identified in paragraphs 3 and 4 of the Stipulation we received evidence and testimony upon which we have made a final determination and issue this Order.

## II. DISCUSSION

At the hearing we received testimony only on the issues of the appropriate rates nonLEC PATS providers may charge end users. Centel stated in its position that the criteria we should require pertaining to rates is that the rates should be made available to the end user so an intelligent choice on whether to use a pay telephone could be made. ATT-C, GTEFL and Southern Bell stated that they took no position as to the rates the nonLEC PATS provider should be authorized to charge an end user. However, GTEFL and United believe that whatever rates we authorize for nonLEC PATS providers should be a consideration in determining the appropriate corresponding LEC rates in order to allow the LECs to compete on equal terms. FPTA argued that the current \$1.00 cap is appropriate, although it recognized that some adjustment to the rates may be appropriate on intraLATA calls. While the evidence demonstrated that not all nonLEC pay telephone providers availed themselves of the entire \$1.00 surcharge, FPTA nevertheless argued that the \$1.00 cap is necessary to ensure the PATS industry remains viable. Based upon the evidence, we have made the following decision regarding the rates the nonLEC PATS providers may charge.

### A. RATES

The portion of the stipulation which dealt with the rates PATS providers may charge end users was found in paragraph 3 and provides the following:

NonLEC pay telephone providers shall be authorized to charge end users the following rates for interexchange calls:

- (a) For "1+" station paid calling - the applicable AT&T DDD daytime rate plus up to \$1.00;

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- (b) "0+" or "0-" IntraLATA - the applicable LEC DDD rate, plus applicable operator/calling card charges, plus \$1.00.
- (c) "0+" or "0-" InterLATA - the applicable AT&T DDD daytime rate, plus applicable operator/calling card charges, plus up to \$1.00;

The rates proposed in the Stipulation differ from the rates which are in effect. Currently, the nonLEC pay telephone providers may charge on any call not more than the ATT-C daytime direct-distance-dialed (DDD) rate, plus \$1.00, and applicable operator/calling card charges. Under the terms of the Stipulation the rate on "0+" or "0-" intraLATA calls would have been set, not at the ATT-C daytime rate, but at the applicable LEC time-of-day rate.

We believe that circumstances in the private pay telephone industry have altered to the point where it may no longer be in the public interest to require an end user to pay more for a call completed on a nonLEC pay telephone provider's phone than for the same call completed on a LEC pay telephone. Initially, we established the \$1.00 surcharge to compensate nonLEC PATS providers for their inability to collect revenues on coinless calls. This situation has been alleviated somewhat by the development of the alternative operator service (AOS) industry. AOS providers have the technical ability to bill for coinless calls (i.e. calling card, third party billed, or collect). Additionally, AOS providers offer nonLEC PATS providers another source of revenue in the form of commission payments on the revenues generated by the pay telephone providers phones.

Another significant change that took place as a result of the Stipulation is the decrease in the interconnection rates charged by the LECs to the nonLEC PATS providers. Prior to the Stipulation, nonLEC PATS providers paid interconnection rates of 80% of the B-1 rate and 6¢ for the first minute and 2¢ for each additional minute of local calling. The Stipulation reduced these charges so that the current on-peak charge is 4¢ for the first minute and 2¢ for each additional minute. For Southern Bell, off-peak rates of 2¢ for the first minute and 1¢ for each additional minute were established. For Centel, GTEFL and United off-peak rates were established at 3¢ for the first minute and 1¢ for each additional minute. This reduction in interconnection rates will undoubtedly benefit the nonLEC PATS providers.

We believe the development of the AOS industry, the reduction in interconnection rates and the continued technological advancement in the pay telephone industry may have substantially eliminated justification for allowing the nonLEC PATS provider to impose a surcharge, as well as allowing them to charge ATT-C's daytime rates at any time. However, while we are concerned about FPTA's argument that a reduction in rates will substantially impact the PATS industry, we are hesitant to accept this argument without further investigation. We believe that the information produced at the hearing is insufficient to permit us at the this time to

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continue the current rates indefinitely. We also believe that we lack the proper information to reduce the rates. Accordingly, the current rates shall remain in effect, pending the investigation discussed below.

We have determined that nonLEC PATS providers are to produce cost data relative to providing pay telephone services to substantiate their position that without favorable rate treatment they would be unable to exist in the marketplace. Additionally, we direct that the LECs which participated in this proceeding; Southern Bell, Centel, GTEFL and United, shall also submit cost data relative to the provision of pay telephone services. The above-named LECs, as well as FPTA, shall coordinate the compilation of such cost data with our Staff to ensure that the appropriate information is submitted for our review. The form and the scheduling of the compilation of the cost data shall be worked out among the interested nonLEC PATS providers and the LECs at our Staff's direction.

Upon receipt of this information and prior to the termination of the Stipulation, scheduled for September 8, 1990, a decision regarding the appropriate rate structure shall be reached.

B. RESERVATION OF 0+ AND 0- IntraLATA TRAFFIC

Paragraph 4 of the Stipulation provided:

All "0-" and "0+" IntraLATA traffic shall be routed to the LEC from non-LEC pay telephones. The LEC will bill and collect all applicable LEC charges plus \$1.00 for these calls and remit the \$1.00, less LEC tariffed billing and collection charges and less uncollectables, to the non-LEC pay telephone provider. This shall be done as soon as practical, but no later than January 1, 1990.

This portion of the Stipulation was rejected because it established that on all "0-" and "0+" intraLATA calls the LEC would remit the \$1.00 surcharge, less LEC tariffed billing and collection charges and less uncollectibles, to the nonLEC pay telephone provider. It was the reference to the \$1.00 surcharge that compelled us to deny approval of this paragraph from the Stipulation since it dealt directly with the issue of the rate cap contained in paragraph 3. We find the nonLEC PATS providers' agreement to route "0-" and "0+" intraLATA traffic to the LECs a laudable one, especially in view of our recent decision in Docket No. 871394-TP, which retained this prior policy. Additionally, we note the reservation of "0+" and "0-" traffic is under consideration in Docket No. 880812-TP, Investigation into EAEA's, TMAs, 1+ Restrictions to the LECs and Elimination of the Access Discounts.

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C. APPLICABILITY OF THE STIPULATION

As stated earlier, the following local exchange companies entered into the Stipulation and are hereby bound by its terms: GTEFL, Southern Bell, United and Centel. The smaller LECs chose not to participate in this proceeding. However, the LECs which did not participate in this proceeding, shall file revised tariffs which reflect the following rate structure and level for interconnection of nonLEC pay telephones to the local exchange telephone network:

- A. Flat rate line charge of 80% of the applicable B-1 rate,
- B. An on-peak measured rate element for local calls of 4¢ for the first minute of use and 2¢ for each additional minute of use,
- C. An off-peak measured rate element for local calls of 3¢ for the first minute of use and 1¢ for each additional minute of use.

Accordingly, ALLTEL, Florida, Inc.; Contel of the South, Inc.; Florida Telephone Company, Gulf Telephone Company; Indiantown Telephone System, Inc., Northeast Telephone Company; Quincy Telephone Company; Southland Telephone Company; St. Joseph Telephone Company; and Vista-United Telecommunications, shall file tariffs which reflect the above identified changes in the interconnection rates within thirty days of the issuance date of this Order.

D. LECS QUARTERLY PATS REPORTS

Order No. 17440 directed LECs to submit quarterly reports which monitored the rate structure paid by the nonLEC pay telephone providers to the LECs. The intent of the reports was to monitor the impact of the rates and rate structure on the nonLEC pay telephone provider. Our review of the data collected from the reports demonstrates that nonLEC pay telephone providers have not suffered as a result of the level of interconnection rates. With the stipulated reduction in those rates we find less need for the quarterly reports and hereby will no longer require that the LECs file such reports. However, this should not be interpreted as eliminating the requirement that the LECs file nonLEC PATS access line location reports.

E. REOPEN RECORD IN DOCKET NO. 860723-TP

Our limiting of the scope of the proceeding in this docket resulted in a need to reduce the extent of testimony and exhibits. Subsequent to the September 8, 1988 hearing our Staff identified the testimony and exhibits relevant to the issue of the rate cap. This list was approved by all the parties. Accordingly, the record in Docket No. 860723-TP, shall be reopened for the purpose of admitting into the record

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certain exhibits and particular portions of testimony as identified in Appendix A attached hereto.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each and all of the specific findings herein are approved in every respect. It is further

ORDERED that the current rate cap which permits nonLEC PATS pay telephone providers to charge the ATT-C DDD daytime rate, plus applicable operator/calling card charges, plus up to \$1.00 shall remain in effect pursuant to the terms set forth in the body of this Order. It is further

ORDERED that the nonLEC pay telephone providers, as well as Southern Bell Telephone and Telegraph Company, GTE Florida, Inc., United Telephone Company of Florida, and Central Telephone Company, coordinate with our Staff the scheduling and the form of the cost data we have directed be collected and submitted regarding the provision of pay telephone service as set forth more fully herein. It is further

ORDERED that those local exchange companies which did not participate in this proceeding file tariffs which reflect the interconnection rates set forth herein within thirty days of the issuance date of this Order. It is further

ORDERED that the local exchange companies will no longer be required to file quarterly PATS reports as set forth herein. It is further

ORDERED that the record in this proceeding is reopened for the sole purpose of admitting into the record certain exhibits and specified portions of testimony as identified herein. It is further

ORDERED that this docket remain open.

By ORDER of the Florida Public Service Commission,  
this 17th day of JANUARY, 1989.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

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Commissioner Herndon dissents from the Commission decision regarding the continuation of the current nonLEC PATS rate cap with the following statement:

I voted against the continuation of the AT&T-C DDD Daytime rate plus \$1.00 for another year for PATS owners because I believe that the consuming public is disadvantaged, and that any competitive benefit is fleeting at best. While the concept of competition in the telephone industry is a laudable one that the Commission should and does foster, it is not an end that justifies any means.

The authorization of an AT&T rate plus a dollar is tantamount to a guarantee of a higher rate than is otherwise charged in the marketplace. I do not believe that this Commission should be authorizing higher rates than those currently charged by some market players in the guise of fostering competition.

In fact, the privately held PATS operations are all too often skimming the cream off the LEC PATS operations to the consumers' disadvantage. This can only be construed as a very perverse form of competition, and is not worthy of our support. I believe that new players in this market should not be guaranteed an opportunity to charge higher rates than are otherwise charged. Furthermore, the continued service problems and complaints have convinced me that the consumer is not benefitting from the alleged competition.

#### NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 Records and Reporting 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 or sewer 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 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.

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## APPENDIX A

LIST OF ITEMS FOR INCLUSION IN DOCKET NO. 860723-TP

<u>Witness</u>	<u>Proffering Party</u>	<u>Exhibit Number</u>	<u>Title</u>
Moller	Staff		Direct Testimony pages 5 and 6
		10-B	Centel's Response to Staff's 2nd Set of Interrogatories Nos. 76, 77, 78, 80 and 84
Scobie	Staff		Direct Testimony pages 5 and 6
		20-B	GTEFL's Response to Staff's 2nd Set of Interrogatories Nos. 76, 77, 78, 80, 81 and 84
Fleming	Staff		Direct Testimony pages 5 and 6
		30-B	Rebuttal Testimony pages 8 and 9 SBT's Response to Staff's 2nd Set of Interrogatories Nos. 77, 78, 79, 81, 82, and 85
Poag	Staff		Direct Testimony page 6
		40-B	UTF's Response to Staff's 2nd Set of Interrogatories Nos. 76, 77, 78, 80, 81 and 84
Hanft	Staff		Direct Testimony pages 13-18
			Rebuttal Testimony pages 9-11
		50-D	Surrebuttal Testimony pages 5 and 6 FPTA's Response to Staff's 2nd Set of Interrogatories Nos. 51, 52, 53, 55, 59, 61, 62, 63, 64 and 65.