

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for waiver of) DOCKET NO. 950769-TP
required payment method of dial-) ORDER NO. PSC-97-0109-FOF-TP
around compensation to allow) ISSUED: January 28, 1997
implementation of a per-call)
based method for intrastate)
calls to non-local exchange)
company pay telephone (NPAT))
providers by Florida Public)
Telecommunications Association,)
Inc.)
_____)

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

ORDER SUSPENDING THE EFFECTIVENESS OF COMMISSION ORDERS
AND CLOSING DOCKET

BY THE COMMISSION:

By Order PSC-93-0070-FOF-TP, issued January 14, 1993, we determined that it was appropriate to require the four largest interexchange carriers (IXCs) in Florida to pay intrastate dial-around compensation to the independent payphone providers (IPPs). We set a surrogate amount of \$3.00 per pay telephone per month for all IPP phones.

On July 5, 1995, the Florida Public Telecommunications Association, Inc. (FPTA) filed a petition for waiver of the required payment method of dial-around compensation to allow implementation of a per-call-based method. Specifically FPTA petitioned for:

- 1) the IPPs to be compensated at a rate of \$.25 per call for each completed access code call, and
- 2) the initiation of a proceeding to determine whether it is appropriate to require all IXCs in Florida that receive access code calls to begin paying per-call compensation to IPPs and determine whether it is appropriate to require compensation for subscriber 800-calls.

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FPSC-RECORDS/REPORTING

ORDER NO. PSC-97-0109-FOF-TP
DOCKET NO. 950769-TP
PAGE 2

On November 3, 1995, we issued Notice of Proposed Agency Action Order No. PSC-95-1359-FOF-TP, granting in part and denying in part FPTA's petition. We ordered AT&T Communications of the Southern States, Inc. (AT&T), MCI Telecommunications Corporation (MCI), and WorldCom, Inc. d/b/a LDDS WorldCom (LDDS) to begin paying \$.25 per dial-around call made from payphones effective January 1, 1996. We also ordered that AT&T, MCI, and LDDS would no longer be required to pay the \$3.00 surrogate implemented in Order No. PSC-93-0070-FOF-TP. We have also granted a waiver of the \$3.00 surrogate to Sprint and AT&T. We required that Sprint pay \$.25 per-call compensation in Order No. PSC-95-1370-FOF-TP effective July 1, 1995. Similarly, we granted AT&T a \$.25 per-call compensation rate and waiver in Order No. PSC 96-1176-FOF-TP effective April 1, 1996. We denied FPTA's request to investigate whether all IXCs should pay dial-around compensation and whether compensation should be required for subscriber-800 calls. AT&T, MCI, and LDDS each filed timely petitions protesting the Commission's action. The matter was set for hearing July 8 through 10, 1996.

On February 8, 1996, the Telecommunications Act of 1996 (Act) became law. Specifically, 47 U.S.C. § 276 requires the Federal Communications Commission (FCC) to establish regulations that establish a per-call compensation plan to ensure that all payphone providers are fairly compensated for each and every completed intrastate and interstate call from their payphones. The regulations were to be issued November 8, 1996. Section 276(c) provides that if any state requirement is inconsistent with the federal regulations, federal regulations will preempt the state requirements.

On March 18, 1996, LDDS filed a Motion to Hold Proceeding in Abeyance Pending Conclusion of Federal Proceedings. The prehearing officer granted the motion by Order No. PSC-96-0478-PCO-TP issued April 5, 1996, and the proceedings were held in abeyance. Subsequently, on September 20, 1996 the FCC issued its First Report and Order in CC Docket No. 96-128, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996.

The FCC's Order is structured to be implemented in two phases. During phase one, which covers a one year period, each payphone service provider eligible to receive compensation shall be paid \$45.85 per payphone per month for originating access code and toll-free calls. The compensation is to be paid by IXCs that earn annual toll revenues in excess of \$100 million. Each individual IXC's compensation obligation is set in accordance with its

ORDER NO. PSC-97-0109-FOF-TP
DOCKET NO. 950769-TP
PAGE 3

relative share of toll revenues among IXCs required to pay compensation.

During the second phase, a per-call tracking mechanism is to be in place for tracking compensable calls, and the IXC to whom the calls are routed will be responsible for remitting per-call compensation to the payphone providers. For the initial one-year period during which IXCs are required to pay per-call compensation, absent an agreement with the IPP, the IXC is obligated to compensate the payphone provider at a per-call rate of \$.35 per call. After the initial one-year period of per-call compensation, in the absence of an agreement, the IXC is obligated to compensate the payphone provider at a per-call rate equal to the payphone provider's local coin rate at the corresponding payphone.

Upon consideration, we find 47 U.S.C. § 276 and the FCC's rules implementing this section conflict with and thereby preempt our dial-around compensation orders. Therefore, since the FCC has resolved the issues that were to be addressed in this proceeding, we have no further action to take on the petition, and this docket shall be closed.

We note, however, during our January 7, 1997, Agenda Conference, the FPTA requested that we not vacate our existing dial-around compensation orders. The FPTA noted that several parties have appealed the FCC's payphone order regarding dial-around compensation and the authority of the FCC to issue these rules. The FPTA requested that we suspend the effectiveness of our IPP compensation orders while the FCC order is in effect to preserve compensation for IPPs in the event the FCC's rules are overturned through the appeals process. In response, AT&T argued that we vacate our orders because the FCC order is final and in effect and has not been stayed by any court. According to the FPTA, a request for stay would be premature at this time because there is presently no harm to any affected party, as obligations for dial-around compensation under the FCC order merely accrue without monies changing hands until the second quarter of 1997. We find the FPTA's request appropriate. Accordingly, we will suspend the effectiveness of Order Nos. PSC-93-0070-FOF-TP, PSC-95-1370-FOF-TP, and PSC-96-1176-FOF-TP, while the FCC's First Report and Order in CC Docket 96-128 is in effect. IPPs shall be compensated for interLATA and intraLATA calls in accordance with the FCC's Order.

Based on the foregoing, it is, therefore,

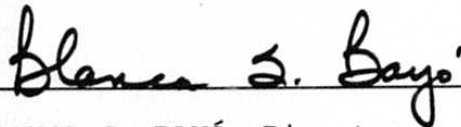
ORDER NO. PSC-97-0109-FOF-TP
DOCKET NO. 950769-TP
PAGE 4

ORDERED by the Florida Public Service Commission that the effectiveness of Order Nos. PSC-93-0070-FOF-TP, PSC-95-1370-FOF-TP, and PSC-96-1176-FOF-TP is suspended, while the Federal Communications Commission's First Report and Order in CC Docket 96-128 is in effect. It is further

ORDERED that independent payphone providers shall be compensated for interLATA and intraLATA calls in accordance with the Federal Communications Commission's First Report and Order in CC Docket 96-128. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 28th day of January, 1997.

A handwritten signature in cursive script, reading "Blanca S. Bayó", is written over a horizontal line.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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ORDER NO. PSC-97-0109-FOF-TP
DOCKET NO. 950769-TP
PAGE 5

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 Records and Reporting, 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 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.