

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of) DOCKET NO. 961450-TX
intraLATA presubscription) ORDER NO. PSC-97-0389-FOF-TX
implementation plan and for) ISSUED: April 7, 1997
suspension of implementation)
plan schedule by Metropolitan)
Fiber Systems of Florida, 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

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC.'S
INTRALATA PRESUBSCRIPTION PLAN AND
DENYING REQUEST TO SUSPEND INTRALATA PRESUBSCRIPTION PLAN

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Section 251(b)(3) of the 1996 Telecommunications Act (Act), 47 U.S.C. § 251 et. seq., states that it is the duty of all local exchange companies (LECs)

to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

Pursuant to Section 3(a)(44) of the Act, the term LEC means all providers of local exchange service.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Section 51.213 (c) of the Federal Communications Commission's (FCC) rules implementing the Act's toll dialing parity provision states:

A LEC must file its implementation plan with the state commission for each state in which the LEC provides telephone exchange service....

Pursuant to this section of the FCC rules, Metropolitan Fiber Systems of Florida, Inc. (MFS) filed a motion for approval of its intraLATA presubscription (ILP) implementation plan on December 5, 1996. In addition, pursuant to Section 251(f)(2), Suspensions and Modifications for Rural Carriers, of the 1996 Telecommunications Act, MFS filed a Petition requesting the suspension of its implementation schedule.

BellSouth Telecommunications Inc. (BellSouth or BST) filed a response to MFS's Motion and Petition on December 17, 1996, and MFS filed its reply response on January 15, 1997.

Pursuant to the FCC's Second Report and Order, FCC 96-333 issued August 8, 1996, all LECs are to implement toll dialing based on LATA boundaries no later than February 8, 1999, unless a state commission sets an accelerated schedule. Section 51.211 of the Rules adopted by the FCC in the August 8 order sets forth an implementation schedule and filing deadlines for all LECs. The applicable scheduling portions of Section 51.211 for LECs, other than a Bell Operating Company (BOC), are as follows:

(c) A LEC that is not a BOC that begins providing in-region, interLATA or in-region interstate toll services in a state before August 8, 1997, shall implement intraLATA and interLATA toll dialing parity throughout that state by August 8, 1997. If the LEC is unable to comply with the August 8, 1997 implementation deadline, the LEC must notify the Commission's Common carrier Bureau by May 8, 1997. In the notification, the LEC must state its justification for noncompliance and must set forth the date by which it proposes to implement intraLATA and interLATA toll dialing parity.

(d) A LEC that is not a BOC that begins providing in-region, interLATA or in-region, interstate toll services in a state on or

after August 8, 1997, but before February 8, 1999 shall implement intraLATA and interLATA toll dialing parity throughout that state no later than the date on which it begins providing in-region, interLATA or in-region, interstate toll services.

Since MFS currently provides interLATA and interstate toll service in Florida, it is required to implement an ILP plan by August 8, 1997. MFS submitted its ILP plan to this Commission on December 5, 1996. Consistent with our decision in Order No. PSC-95-0203-TP, Investigation into IntraLATA Presubscription, and the FCC's Order, MFS proposes to implement a full 2-PIC method for the implementation of ILP. A 2-PIC method enables customers to select an intraLATA carrier, the LEC or an IXC, that may be different from its interLATA carrier. Since no balloting is required in Florida, MFS proposes that it be the primary interexchange carrier for all of its customers. However, MFS states that it will process customer-initiated PIC selections to an alternative intraLATA carrier or it will accept a selection of No PIC as a choice. A No PIC choice would enable customers to have access code dialing capability to reach participating intraLATA carriers. In addition, MFS proposes a \$5.00 PIC change charge for each line where a PIC change is made.

Upon consideration, we believe MFS's proposed ILP implementation plan is appropriate since it is consistent with our decision in Order No. PSC-95-0203-TP, and the requirements set forth in the rules adopted by the FCC in the Second Report and Order. We also find, however, that existing customers shall be given the opportunity to designate their preferred intraLATA carrier once without incurring a PIC change charge. This one free PIC change shall be available for a period of 90 days from the date of conversion of MFS' last end-office switch to provide intraLATA equal access.

Pursuant to Section 251(f)(2) of the Act, MFS has requested that we suspend its ILP implementation plan until the later of either: 1) the date that BellSouth must implement intraLATA presubscription; or 2) four months following a bona fide request for implementation. Under Section 251(f)(2) of the Act:

A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b)

or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification--

(A) is necessary--

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

MFS asserts that it is eligible for such a suspension because it has fewer than 2% of the aggregate installed subscriber lines in the nation. MFS maintains that as of January 10, 1997, MFS and all of its affiliates served 135,724 local subscriber lines, or less than nine-hundredths of one percent (.09%) of the nationwide total. MFS believes that a suspension of the implementation schedule is necessary and in the public interest under the Act. The company contends that as a carrier with fewer than 2% of the nation's lines, it possesses substantially less market power than BellSouth.

MFS argues that BellSouth need not offer intraLATA presubscription until the time it obtains authority to provide interLATA toll service, or February 8, 1999. MFS asserts that it will suffer competitive disadvantage because BellSouth will be able to offer intraLATA toll without having to implement intraLATA presubscription. MFS contends that under Section 251(f)(2), such a requirement would pose a significant adverse economic impact on customers since new entrants' local exchange services would have to cover the costs of regulatory requirements with which BellSouth need not yet comply. Further, MFS argues that this would be unduly economically burdensome for MFS relative to BellSouth. MFS believes that in either instance, it would be inconsistent with the Act that new entrants be subjected to more regulation than the incumbent LECs.

Section 51.211 (e) of the FCC rules provides a LEC shall implement toll dialing parity under a state order:

(i) If the state issued a dialing parity order by December 19, 1995, requiring a BOC to implement toll dialing parity in advance of the dates established by these rules, the BOC must implement toll dialing parity in accordance with the implementation dates established by the state order.

As pointed out by BellSouth in its response to MFS's Petition, we issued Order No. PSC-95-0203-FOF-TP requiring the implementation of ILP by large local exchange companies by the end of 1997. Furthermore, in its Petition MFS acknowledges that the FCC's deadlines do not supersede state implementation schedules that are more accelerated.

BellSouth began ILP implementation on June 2, 1996, and contends that 98% of its access lines were converted by January 1, 1997. The remaining access lines will be converted by April 1, 1997, when two 2BESS switches are to be replaced. BellSouth argues that MFS has relied on incorrect information in seeking its suspension. We agree. Moreover, MFS has the ability to provide intraLATA toll services in BellSouth's area to customers served by offices that have already been converted to ILP. Therefore, we find that MFS's argument regarding the implementation of ILP in Florida by BellSouth is without merit.

MFS further argues that under Order PSC-95-0203-FOF-TP it must provide ILP by January 1, 1997, or presumably when it commences service; however, BellSouth is not required to offer ILP until December 31, 1997. Based on this understanding, MFS has requested in its reply response that it be granted an extension to December 31, 1997, or as discussed earlier, the Commission should allow MFS an extension of up to four months to implement ILP after a bona fide request. MFS contends that the extension of time would allow it to solicit other telecommunications carriers' participation, complete programming and testing of the presubscription method, notify customers, and effect customer selections.

Upon review, we find that MFS misunderstands our decision regarding ILP. Order No. PSC-95-0203-FOF-TP states:

...we find that the four largest LECs shall implement ILP throughout their respective service areas, by December 31, 1997. As indicated by the record, the four large LECs should complete modifications to both their operating systems and support systems, such as billing, in an orderly manner within nine to

twelve months from the date of issuance of this order. This is the target date for the initial availability of ILP. (p. 25)

Regarding small LECs:

To allow us the time to gain experience from the implementation of ILP by the large LECs, the small LECs shall not be required to entertain a bona fide request until January 1, 1997. After that time, the small LECs shall not be required to provide ILP until a bona fide request is received. At that time, they will implement ILP within a reasonable time period to be negotiated by the parties, with any disputes that arise being referred to the Commission for resolution. (p. 28)

Our Order does not require the implementation of ILP in small LECs' areas by January 1, 1997 as asserted by MFS. Furthermore, while our Order allows the large LECs until December 31, 1997, to implement ILP throughout their respective service areas, it was not our intention to allow the large LECs to delay ILP until year end 1997. We held that the four large LECs should complete modifications to both their operating and support systems within nine to twelve months from the date the order was issued, becoming the target date for the initial availability of ILP. Furthermore, we ordered the four large LECs to schedule ILP software with presently planned switch upgrade projects based on:

- 1) The software for each switch should be ordered for inclusion on the first equipment project after the software becomes available from the vendor.
- 2) Implementation should be scheduled as soon as practicable after the support systems modification is complete. (p. 25)

We also note that this is illustrated by the fact that 98% of BellSouth's access lines had been converted as of January 1, 1997, as discussed earlier.

Our Order also did not set a time period for the small LECs to implement ILP subsequent to a bona fide request. Accordingly, we do not find it either appropriate or necessary to establish a set period of time for MFS to implement ILP subsequent to a bona fide request. We believe that the details regarding the implementation

schedule should be negotiated by the parties involved in the request. We view MFS at this time as equivalent to a small LEC with respect to ILP implementation in Florida as described above. We note, however, that since MFS currently provides interLATA and interstate toll service in Florida, it is required to implement intraLATA and interLATA toll dialing parity by August 8, 1997. Therefore, according to Section 51.211 (c) of the FCC rules, MFS should notify the FCC Common Carrier Bureau by May 8, 1997, if it is unable to comply with the August 8, 1997, deadline.

While we do not dispute MFS's eligibility for a suspension of the requirements to implement ILP pursuant to Section 251(f)(2), we believe that MFS has failed to make a showing on several other criteria. MFS has premised its arguments on an incorrect understanding of this Commission's decision regarding ILP and the subsequent FCC ruling.

MFS argues that its requested suspension is necessary to avoid an adverse economic impact on users, and to avoid requirements that are unduly economically burdensome. These arguments are based on MFS's understanding that BellSouth does not have to implement ILP in Florida until year end 1997. As discussed above, this understanding is simply incorrect. MFS also argues that a suspension of its ILP schedule is necessary and in the public interest. However, MFS has not sufficiently demonstrated why it is in the public interest to suspend its intraLATA presubscription implementation plan.

Based on the foregoing, we find MFS has not made a sufficient showing to warrant its request for suspension of its ILP implementation schedule pursuant to Section 251(f)(2). Therefore, MFS's petition for suspension of its ILP implementation schedule is denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Metropolitan Fiber Systems of Florida, Inc.'s intraLATA and interLATA presubscription plan is approved as discussed in the body of this Order. It is further

ORDERED that MFS shall provide existing customers the opportunity to designate their preferred intraLATA carrier once without occurring a PIC change charge as discussed in the body of this Order. It is further

Ordered that MFS's request to suspend implementation of its intraLATA presubscription plan is denied. It is further

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 7th day of April, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

MMB

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 28, 1997.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.