

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Establishment of
intrastate implementation
requirements governing federally
mandated deregulation of local
exchange company payphones.

DOCKET NO. 970281-TL
ORDER NO. PSC-98-1088-FOF-TL
ISSUED: August 11, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING FEDERALLY MANDATED INTRASTATE TARIFFS
FOR BASIC PAYPHONE SERVICES

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.

I. BACKGROUND

To date, the Federal Communications Commission (FCC) has issued several orders in CC Docket No. 96-128, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (the Act). The Payphone Order, FCC 96-388, CC Docket Nos. 96-128 and 91-35, released September 20, 1996, and the Order on Reconsideration, FCC 96-439, CC Docket Nos. 96-128 and 91-35, released November 8, 1996, adopted new rules and policies governing the payphone industry (both orders together are

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known as the Payphone Reclassification Proceeding)¹. Two later FCC orders, DA 97-678 and DA 97-805, CC Docket No. 96-128, issued April 4, 1997, and April 15, 1997, respectively, granted incumbent local exchange companies (LECs) waivers for specific interstate and intrastate tariff filing requirements.

Paragraph 162 of the Order on Reconsideration states:

. . . as required in the Report and Order, LECs must provide tariffed, nondiscriminatory basic payphone services that enable independent providers to offer payphone services using either instrument-implemented "smart payphones" or "dumb" payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECS. LECs must file those tariffs with the state. In addition, as required by the Report and Order, any basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis.

The tariffs for a LEC's payphone service offerings must be: 1) cost-based, 2) consistent with the requirements of Section 276 of the Act, and 3) nondiscriminatory (FCC 96-439 at ¶163). In addition, states are to apply the Computer III guidelines² for tariffing such intrastate services. Where LECs have already filed intrastate tariffs for these services, states may, after considering the requirements of the Payphone Reclassification Proceedings and Section 276 of the Act, conclude: 1) that existing tariffs are consistent with the requirements noted above and 2) that in such case no further filings are required. All intrastate tariffs were to be effective no later than April 15, 1997. LECs

¹We note that Section 276(c) of the Telecommunications Act of 1996 states that "(t)o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's requirements on such matters shall preempt such State requirements."

²This requires application of the FCC's "new services test".

must comply with the above requirements, as well as others discussed in the Payphone Reclassification Proceedings, before the LECs' payphone operations are eligible to receive dial-around compensation for completed intrastate and interstate calls originated by its payphones.

In previous proceedings involving payphone services, we required the tariffing of basic phone lines ("smart" and "dumb") and various blocking and screening options (such as billed number screening and operator screening) to prevent fraud. Small LECs, however, were not required to tariff the "smart" line until they received a bona fide request from a payphone provider. It is clear, however, that the FCC's Payphone Reclassification Proceedings Orders require that the small LECs tariff the "smart" line regardless of whether a request had been made. (See FCC 96-388 at ¶144.)

Since tariffs for the various payphone services (access lines and the unbundled features) were in place, we were in agreement with the position of several of the LECs that the Computer III tariffing guidelines (also known as, "the new services test") were applicable to existing intrastate tariffs. On April 15, 1997, the FCC, however, issued Order No. DA 97-805 (Intrastate Waiver Order). This order granted LECs a limited waiver until May 19, 1997, to file or amend intrastate tariffs for payphone services to be consistent with "the new services test". This FCC order makes it clear that the new services test is applicable to all new and existing tariffed payphone services. (See DA 97-805 at ¶1.)

On April 30, 1997, our staff sent a memorandum to each incumbent LEC with a copy of the FCC's Intrastate Waiver Order attached. The memorandum asked each LEC to provide a detailed explanation and any supporting documentation if it believed its current intrastate payphone tariffs met the FCC's new services test. Furthermore, a staff workshop was held on December 9, 1997, to discuss application of the FCC's new services test. During the workshop it was suggested that the Florida Public Telecommunications Association (FPTA) and the LECs meet to determine if the various issues remaining in this docket could be resolved through stipulation of the parties. A hearing was scheduled for September 3, 1998, but has since been canceled. We allowed the parties several months to study the filings and to discuss these matters. On May 22, 1998, we received a letter from the FPTA advising that no formal settlement had been reached, although a number of operational issues had been addressed, and the

tariffs and supporting documents had been studied in detail. This Order sets forth our decision on whether current intrastate tariffs meet the FCC's new services test and related filing requirements.

II. DISCUSSION

The Computer III guidelines require the application of the FCC's "new services" test. This test was developed to prevent LECs from setting excessively high rates and to protect against unreasonably discriminatory pricing. In the Order on Reconsideration at Paragraph 163, Note 492, the FCC refers to the "new services" test required in the Report and Order as codified in Section 61.49(g)(2) of Title 47 of the Code of Federal Regulations. This section states:

Each tariff submitted by a local exchange carrier specified in §61.41(a) (2) or (3) of this part that introduces a new service or a restructured unbundled basic service element (BSE) that is or will later be included in a basket must be accompanied by cost data sufficient to establish that the new service or unbundled BSE will not recover more than a reasonable portion of the carrier's overhead costs.

In addition, Note 492 also refers to Amendments of Part 69 of the FCC's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79. It is stated in Paragraph 42 that a LEC introducing a new service will be required to submit its engineering studies, time and wage studies, or other cost accounting studies to identify the direct costs of providing the new service, absent overheads, and must also satisfy the net revenue test³. Therefore, it appears that the federal "new services" test requires that the rates for the services not recover more than a reasonable portion of the carrier's overhead cost, and the costs must be supported by a cost study.

³The net revenue test is described in FCC 90-314, CC Docket 87-313, n. 416. It requires that the proposed service increase net revenue (with the increase occurring within a certain time frame), and detailed information must be provided, including demand, cost, and revenues.

While we required cost information for wholesale payphone offerings to be filed on March 31, 1997, by Order PSC-97-0358-FOF-TP, there were only three LECs (BellSouth, GTEFL, and Sprint) that had this information available. The majority of the information was filed under confidential cover. We have reviewed the information provided and believe that when viewed in the aggregate the existing rates for payphone services are appropriate. This aggregate level assessment considers both required and typically purchased features and functions. Moreover, based on our review of these studies, we believe that these LECs' current tariffed rates for intrastate payphone services are cost-based and thus meet the "new services" test.

The small LECs did not have cost studies to submit, and we believe it would be unduly burdensome and costly to require such studies to be developed. In most cases, the small LECs have mirrored the rates of the large LECs. It should be noted that rates for the "smart" and "dumb" line and many of the unbundled features and functions (such as billed numbered screening and operator screening) are the result of one or more of our proceedings in which costs were considered.

In comparison with other states, it appears that Florida is unique in that this state's LECs have had tariffs in place for many years to provide various payphone services to independent pay telephone providers. In addition, we have held many proceedings regarding various aspects of the pay telephone market. As stated at page 30 in Order No. PSC-93-0289-FOF-TL:

No market has received as much attention, scrutiny, and evaluation, from this Commission as the pay telephone market. Since 1985, we have held three full evidentiary hearings, approved or modified two stipulations, and have addressed a myriad of other pay telephone-related issues. We have endeavored to insure that NPATS have the ability to enter and exit the market and to compete with LPATS. Since 1985, we have approved four rate reductions for interconnection . . .

III. CONCLUSION

Upon consideration, we do not believe there has been a significant change in circumstances within the pay telephone

industry regarding the wholesale services offered to payphone providers by LECs. As previously discussed, many of the rates and services have been in place in the existing tariffs for many years. The wholesale services offered in the existing LEC tariffs are not discriminatory, since all payphone providers (LEC and non-LEC) now purchase services out of the same tariff, at the same rates.

We have considered the requirements of the FCC Orders and Section 276 of the Act and find the existing tariffs for LEC payphone services are appropriate. We will require further filings, however, that are necessary to tariff coin line ("smart" line) service by Indiantown, Quincy, and Vista-United by August 18, 1998. While we are aware that these companies have not received a bona fide request for the "smart" line, we believe these tariffs must be filed to meet the FCC's guidelines and must be in place before these companies are eligible to receive per-call, dial-around compensation. A tariff whose rates and terms mirror those of a tariff previously approved by this Commission will be presumed to have satisfied the "new services test" and will be handled administratively.

We note again that in most cases the existing tariffs are the result of one or more of our payphone-related proceedings in which costs were considered. All payphone providers (LEC and non-LEC) will be purchasing the same wholesale services at the same rates from the existing tariffs; therefore, the tariffs are not discriminatory. Accordingly, we find that the existing LEC tariffs for payphone services are cost-based, consistent with Section 276 of the Act, and nondiscriminatory; therefore, no further filings are necessary to modify existing tariffs.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that existing incumbent local exchange company tariffs for smart and dumb line payphone services are cost-based, consistent with Section 276 of the Telecommunications Act of 1996, and nondiscriminatory. It is further

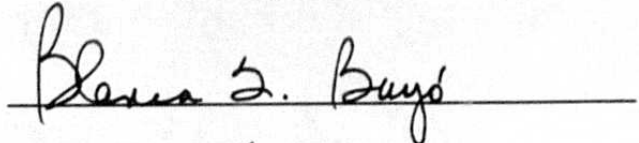
ORDERED that Indiantown Telephone Systems, Inc., Quincy Telephone Company, and Vista-United Telecommunications shall file smart line tariffs as prescribed by this Order by August 18, 1998. It is further

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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 28-106.201, 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 11th day of August, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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WPC

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. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding,

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in the form provided by Rule 28-106.201, 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 September 1, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

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.