BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Elimination of certain reporting requirements for incumbent local exchange telecommunications companies.	DOCKET NO. 010634-TL ORDER NO. PSC-01-1588-PAA-TL ISSUED: July 31, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER ELIMINATING REQUIREMENTS OF QUARTERLY FILING
OF CONTRACT SERVICE ARRANGEMENT REPORTS

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.

On December 9, 1983, this Commission authorized incumbent local exchange companies (ILECs) to offer contractual rates or bulk discounts, instead of tariff pricing, to large users to thwart the perceived threat of uneconomic bypass. In situations where a competitor could offer service at a price less than the ILEC's tariff rate, but above the ILEC's incremental cost, there was concern that the ILEC would lose customers without economic justification. Moreover, there was concern under rate base/rate-of-return regulation that the remaining customers would have to pay higher rates to compensate for the losses. In a series of orders this Commission authorized Southern Bell (now BellSouth), United Telephone Company (now Sprint), and General Telephone Company (now Verizon) to enter into these arrangements for specific services and

ordered the companies to file periodic reports listing the contracts, the relevant parties, and rate and term information.

As a result of a generic investigation into rates for interconnection of mobile service providers with facilities of local exchange companies, this Commission ordered ILECs to file quarterly reports containing all land-to-mobile NXX activity by Order No. PSC-95-1247-FOF-TL (Docket No. 940235-TL). We determined the reports were needed to ensure accurate billing by independent pay telephone providers for calls routed to wireless NXX codes.

This Commission has jurisdiction pursuant to Sections 364.04, 364.16, and 364.19, Florida Statutes.

At our May 15, 2001, agenda conference, our staff proposed elimination of the contract service arrangement (CSA) reporting requirements and the elimination of the Land-to-Mobile reports for incumbent local exchange companies. We approved our staff's recommendation to eliminate Land-to-Mobile reporting requirements, but deferred a decision regarding contract service arrangement reports. Prompted by concerns expressed by representatives of Florida's alternative local exchange company (ALEC) community about eliminating the contract service reporting requirements, we directed our staff to examine the issues raised by ALEC representatives at the agenda conference. Specifically, representatives from the Florida Cable Telecommunications Association (FCTA) and the Florida Competitive Carriers Association (FCCA) expressed the following concerns about discontinuing the reporting requirements:

1. The reports may help this Commission in policing the ILECs as to whether they are opening their markets to competition.

2. The reports could continue to serve a useful purpose by enabling staff to police potentially anti-competitive behavior on the part of the ILECs. Examples of anti-competitive behavior that could be discerned from the reports cited included below-cost contract arrangements, discriminatory contracts among similarly situated customers, and

the imposition of onerous provisions relating to length of contracts and termination liability.

3. The reporting requirement itself provides a strong motivation to the ILECs to avoid anti-competitive or discriminatory behavior.

Pursuant to our directive, our staff conducted an informal meeting May 30, 2001, with representatives from ILECs and ALECs to explore further the issues raised at the May 15, 2001 agenda conference.

By Order No. 12765, issued December 9, 1983, in Docket No. 820537-TP this Commission authorized incumbent LECs to offer contractual rates or bulk discounts, rather than tariff pricing, to large users in an effort to help counter what was, at the time, perceived as the threat of bypass. We noted that, "much testimony, but little cost data has been presented on the potential for bypass of the local network and the resulting cost increases to the local ratepayers." Nonetheless, we authorized incumbent LECs to offer special contract rates or bulk discounts on the condition it could be determined that the loss of the customer would result in greater revenue loss than providing the service below tariffed rates.

In Order No. 13603, in(Docket No. 840228-TL), issued August 20, 1984, in Docket No. 840228-TL, we reiterated the position established in Order No. 12765, and added that "we also believe that the standardization of rates is a goal which should be pursued and that the principles of fairness and nondiscriminatory treatment embodied in the tariffing process should not be wholly supplanted through contracts negotiated to meet the exigencies of competition." While acknowledging that Southern Bell needed the flexibility to enter into contract service arrangements without prior Commission approval, there was a need to be kept apprised of the effects of such arrangements. To meet both of these objectives, we required the following information to be submitted on a monthly basis:

1. A brief description of all new contract service arrangements for the month.

2. The applicable rates, charges and contract period involved (if available).

3. The comparable tariff rates and charges for each contract.

4. A cumulative total over the contract period of the revenues generated by contract service offerings, as well as the revenues under corresponding tariff rates.

5. The justification for this offering on a case-by-case basis.

In addition, we required the company to provide, on request, cost information supporting the rates and charges for specific contract service arrangements.

We allowed Southern Bell to offer contract service arrangements for private line service and special access services, but rejected the company's request to include PBX trunks and Centrex services. A subsequent Order, No. 13781, issued November 26, 1984, gave Southern Bell authority to offer Centrex service under a contract service arrangement for a six month trial period, an interval subsequently extended by the Commission.

On August 13, 1985, United Telephone Company (now Sprint) filed a tariff requesting approval to add a provision for contract service arrangements to its General Exchange Tariff, noting it intended to comply with the reporting provisions of Order No. 13603. In a subsequent Order, No. 13830, issued November 5, 1984, we granted permission to General Telephone Company (now Verizon) to offer contract service arrangements.

At the time that authorization to offer contract service arrangements was first approved, each of Florida's three largest incumbent LECs was entitled to a rate of return on its investment, which was the obligation of the general body of ILEC ratepayers. If a sufficient number of large customers found means other than those provided by the incumbent to obtain service -- thereby "bypassing" the incumbent -- ratepayers would theoretically be responsible for making up the difference in lost revenues to the

incumbent if the deficit was sufficient to erode the LEC's rate of return. While we noted in our order allowing contract service arrangements that the cost-based evidence on the possibility of bypass was underwhelming, we acted in an abundance of caution to protect the general body of ratepayers from incurring potentially higher telephone rates.

The protective mechanism we authorized involved allowing ILECs to offer contracts for services to large users at rates below those contained in the company's tariffs, provided the LEC reported to us on a monthly (later changed to quarterly) basis the number of contract arrangements into which the LEC entered.

We find that a systemic shift from a rate base, rate-of-return regulatory environment to a competitive market paradigm obviates the threat of "bypass" for rate payers. Congress and the Florida Legislature have fashioned laws to simultaneously stimulate competition, and protect ratepayers from excessive rate increases for basic services. The Legislature has also given incumbent LECs explicit authority to make competitive offerings, as evidenced in Section 364.051(5)(a)(2), which reads in part:

> Nothing contained in this section shall prevent the local exchange telecommunications company from meeting offerings by any competitive provider of the same, or functionally equivalent, nonbasic services in a specific geographic market or to a specific customer by deaveraging the price of any nonbasic service, packaging nonbasic services together or with basic services, using volume discounts and term discounts and offering individual contracts.

Moreover, under price caps, incumbent LECs can only increase their basic local service rates by an amount not to exceed the change in inflation less 1 percent in accordance with Section 364.051(3), Florida Statutes. Thus, it appears the Legislature addressed competitive market dynamics and protected consumers from unanticipated rate hikes, eliminating the issue of bypass as a consideration.

Second, we find no assigned responsibility to which the information in the report is useful. While our staff engages

regularly in the collection of data from incumbent LECs and competitive local exchange companies for a variety of reasons, little in the contract service arrangement reports has application to any collection efforts owing to the highly individualized nature of the contracts.

Third, while we understand the trepidation expressed by representatives of the Florida Cable Telecommunications Association and the Florida Competitive Carriers Association, we do not agree that the CSA reports as currently structured offer a mechanism for determining the existence of anti-competitive or discriminatory behavior in the market place.

ALEC representatives have raised three issues as to why the reports should be retained. The first reason cited is that CSA reports can be used to police ILECs as to whether they are opening their markets to competition. CSA reports were ordered by this Commission for the limited purpose of apprising us of the frequency and the extent to which ILECs were offering special contract rates or bulk rate discounts. The reporting requirements imposed for ILECs offering CSAs were developed in a non-competitive telecommunications market and predate Congressional passage of the Act by 13 years and amendments to Chapter 364, Florida Statutes, by 12 years. The contention that CSA reports that predate competition by more than a decade could be used to assess discriminatory behavior in a competitive market would appear to create a paradox of reasoning that is not overcome by the facts presented.

At the meeting on May 30, 2001, our staff provided ALEC and ILEC representatives with copies of randomly selected CSA reports from BellSouth, GTE (now Verizon) and Sprint from 1994, 1999 and 2000. Participants were to identify what aspects of the reports could be used to determine whether ILECs were opening their markets to competition. It is significant that no participant was able to offer a specific methodology through which CSA reports could be used to accomplish the surveillance function that would indicate whether ILECs are or are not opening their markets to competition.

The second issue raised by ALEC representatives is that CSA reports serve a useful purpose by enabling us to police potentially anti-competitive behavior by ILECs. Specific anti-competitive behaviors that ALEC representatives believe can be gleaned from CSA

reports include below-cost contract arrangements, discriminatory contracts among similarly situated customers, and the imposition of onerous provisions relating to length of contracts and termination liability.

For the reason's stated below, it does not appear that the CSA reports address the concerns of the ALEC representatives.

> Below-cost contract arrangements: Because a CSA report includes only information about the extent to which an individual offering differs from an ILEC's tariff, a CSA report does not provide any information about the cost of the product offered in the contract. Deviation from a tariffed rate does not equate to offering a service below cost.
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> Discriminatory contracts among similarly situated customers: CSA reports as filed do not provide the level of detail that would be needed to determine whether clients are "similarly situated," or victims of discrimination. Assuming an all-encompassing definition of "similarly situated" could be reached, an examination of whether similarly situated clients received discriminatory contracts would require staff to identify recipients of such contracts and submit a request for production of documents for the contracts in question, and a justification from the ILEC offering the contracts. Such an assessment would also require staff to determine whether discrimination occurred in the offering of contracts or whether one party was more adept than another in its negotiations with the ILEC.
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> Imposition of onerous provisions relating to length of contracts and termination liability: While CSA reports list the term of a contract offering, a determination of whether the length of a contract is "onerous" would have to be made by the entity agreeing to the contract. With regards to termination liability, we addressed this issue during the "Fresh Look" docket.

The third reason cited by ALEC representatives for retention of the CSA reporting requirement is that the act of reporting

serves as an intrinsic prohibition on anti-competitive behavior. We have no objective mechanism by which to assess the validity of this assertion. However, Section 364.3381, Florida Statutes, prohibiting local exchange telecommunications companies from offering services below cost and Section 364.10 Florida Statutes, prohibiting companies from giving undue or unreasonable preference to any individual or from subjecting any individual to unreasonable prejudice or disadvantage, provide an adequate deterrent.

We find no factual basis to support the contentions of ALEC representatives that CSA reports have validity as a barometer of anti-competitive behavior, nor can we conclude that the filing of CSA reports does or does not deter anti-competitive behavior.

In our order creating the CSA reporting requirements in 1983, this Commission expressed skepticism that the threat of uneconomic bypass was supported by cost data in the record of its proceedings. In an abundance of caution, however, we gave ILECs the authority to offer contract service arrangements and bulk discounts in the event the threat eventuated. We find that this decision was rendered moot by changes to Chapter 364, Florida Statutes, which gave ILECs specific authority to offer combinations of basic and nonbasic services to meet offerings by competitive providers.

In the current competitive environment, there is no justification for continuing the CSA reporting requirements. It does not appear the reports can be used to perform a function they were not intended to serve (i.e., identifying anti-competitive behavior), and cannot find sufficient evidence to conclude the reports continue to serve as a barometer of anti-competitive behavior.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that the requirement for Incumbent Local Exchange Companies to file quarterly Contract Service Arrangement reports with the Florida Public Service Commission is hereby eliminated. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form

provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" 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 31st day of July, 2001.

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

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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 that is available under Section 120.57, 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 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, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 21, 2001.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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.