

PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0860

M E M O R A N D U M

November 8, 1990

TO: DIRECTOR OF RECORDS AND REPORTING (TRIBBLE)

FROM: DIVISION OF APPEALS (MOORE) *CYM DES*
DIVISION OF ADMINISTRATION (SEWELL) *EMY*
DIVISION OF COMMUNICATIONS (HOLMAN) *JKM*
DIVISION OF RESEARCH (HEWITT) *OMD*

RE: DOCKET NO. 900644-TP - PROPOSED REVISION TO RULE 25-4.0161, F.A.C.,
REGARDING REGULATORY ASSESSMENT FEES FOR TELECOMMUNICATIONS COMPANIES

AGENDA: 11/20/90 - CONTROVERSIAL - PARTIES MAY NOT PARTICIPATE

PANEL: FULL COMMISSION

RULE STATUS: ADOPTION SHOULD NOT BE DEFERRED. THE GOAL IS TO AMEND THIS RULE
WITH AN EFFECTIVE DATE OF 1/1/91.

CASE BACKGROUND

At its Agenda Conference on October 2, 1990, the Commission voted to propose amendments to Rule 25-4.0161, Florida Administrative Code, relating to the regulatory assessment fees for telecommunications companies. (Attachment 1, pages 4 - 6). The proposed amendments increase the fee rate that interexchange telecommunications companies (IXCs), local exchange companies (LECs), pay telephone companies (PATs), and shared tenant service providers (STs) pay the Commission from .125 to .15 percent of their gross operating revenues derived from intrastate business. Interexchange companies and pay telephone companies are allowed to deduct the amount they pay for use of the local network from their gross operating revenues before computing the regulatory assessment fee pursuant to section 364.337(4), Florida Statutes (as amended by s. 34, Chapter 90-244, Laws of Florida.)

The proposed amendments to Rule 25-4.0161 were published in the October 12, 1990 Florida Administrative Weekly. No requests for hearing were received but ATC Long Distance ("ATC") filed comments. (Attachment 2, pages 7 - 9) Southern Bell Telephone and Telegraph Company (Southern Bell) filed a petition to intervene in the proceeding, however, it did not file any comments. (Attachment 3, pages 10 - 12)

DOCUMENT NUMBER-DATE

10052 NOV-8 1990

FPSC-RECORDS/REPORTING

ATC recommends changing proposed Rule 25-4.0161 to allow interexchange companies an additional deduction from their gross intrastate revenues before the regulatory assessment fee is applied. ATC suggests that a deduction be allowed for "resold interexchange services of another Florida certified company . . .", such as lease expenses paid for the use of other carriers' facilities.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission adopt changes to proposed amended Rule 25-4.0161, F.A.C., to incorporate ATC's suggestion that a deduction from gross intrastate revenues be allowed for expenses paid by IXCs for services that are resold before the regulatory assessment fee is applied?

RECOMMENDATION: No. Because no statute authorizes IXCs to deduct any amount from their gross intrastate revenues before the regulatory assessment fee is applied, other than amounts paid to a LEC for use of the local network, the Commission should not adopt the changes to Rule 25-4.0161 suggested by ATC.

STAFF ANALYSIS: Section 364.337(4), Florida Statutes, and the proposed rule authorize IXCs and PATs to deduct the amounts they pay to LECs for use of the local network from their gross operating revenues before calculating their regulatory assessment fee. ATC proposes that the rule be changed to allow a similar deduction for the amounts they pay to another carrier for interexchange services that they subsequently resell to end users, such as lease expenses paid to another carrier for use of its facilities. The statute, however, does not authorize such a deduction. Absent statutory authority, the Commission should not change the rule to create the deduction ATC proposes.

If ATC's proposed deduction were allowed, the burden of paying the fee on the revenues generated from resold services would simply shift from IXCs who sell at retail to the carriers' carrier, or "wholesaler" IXC. ATC has submitted a chart demonstrating the effect of their proposal and it is attached to their comments. ATC states that allowing this deduction "would prevent any double-dipping by the regulatory assessment fee and puts the fee on a value added basis."

Because the Commission has construed the statute to authorize collection of the regulatory assessment fee on the revenue generated when services are resold at retail by an IXC, and not when they are sold at wholesale, the fee is not collected twice on the same revenue. See Attachment 4, pages 13 - 15) The rationale for the Commission's practice is based in part on the difficulty wholesalers would have in determining which services that are subsequently resold by other IXCs are intrastate and which are interstate. If ATC's suggested changes to the rule were adopted, the wholesalers, or carriers' carriers, would be required to make this allocation. The IXCs who sell services at retail to end users are better able to divide the revenues associated with the

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jurisdictional intrastate services and the non-jurisdictional interstate services, and the Commission should continue to assess the fee on the IXCs' revenues from retail sales.

ATC compares the deduction from gross intrastate operating revenues that they recommend with the deduction presently allowed for local access charges. The local access charge deduction, however, is specifically authorized by statute. No statute authorizes the deduction ATC proposes; therefore, staff recommends the rule be adopted as proposed.

ISSUE 2: Should this docket be closed after the proposed rule is filed for adoption?

RECOMMENDATION: Yes.

STAFF ANALYSIS: When these rules are filed with the Secretary of State, they will be adopted and effective on January 1, 1991. The docket may then be closed.

CTM/
raf.ctm

Attachments

1 25-4.0161 Regulatory Assessment Fees; Telecommunications
2 Telephone Companies.

3 (1) As applicable and as provided in s. 350.113, F.S. s.
4 364.336, F.S., and s. 364.337(4), F.S. (1985), each company shall
5 remit a fee based upon its gross operating revenue as provided
6 below. This fee shall be referred to as a regulatory assessment
7 fee, and each company shall pay a regulatory assessment fee in
8 the amount of .15 ~~one-eighth~~ of one percent of its gross
9 operating revenues derived from intrastate business. For the
10 purpose of determining this fee, each interexchange
11 telecommunications company and each pay telephone company shall
12 deduct from gross operating revenues amounts paid for use of the
13 local network to a telecommunications company providing local
14 service. Regardless of the gross operating revenue of a company,
15 a minimum annual regulatory assessment fee of \$50 ~~\$25~~ shall be
16 imposed.

17 (2) Regulatory assessment fees and the applicable
18 regulatory assessment fee return form are due each January 30 for
19 the preceding period or any part of the period from July 1 until
20 December 31, and on July 30 for the preceding period or any part
21 of the period from January 1 until June 30. Commission Form
22 PSC/CMU 25(/), entitled "Communication Company Regulatory
23 Assessment Fee Return," applicable to local exchange
24 telecommunications companies; Form PSC/CMU 26(/), entitled "Pay
25 Telephone Service Provider Regulatory Assessment Fee Return;"

CODING: Words underlined are additions; words in
~~struck-through~~ type are deletions from existing law.

1 Form PSC/CMU 34(/), entitled "Shared Tenant Service Provider
2 Regulatory Assessment Fee Return;" and Form PSC/CMU 153(/),
3 entitled "Interexchange Company Regulatory Assessment Fee
4 Return." are incorporated into this rule by reference and may be
5 obtained from the Commission's Division of Administration. Each
6 company shall have up to and including the due date in which to
7 submit the applicable form and:

8 (a) Remit the total amount of its fee, or

9 (b) Remit an amount which the company estimates is its full
10 fee, or

11 (c) Seek and receive from the Commission a 30-day extension
12 of its due date.

13 (3) Where the company remits less than its full fee
14 pursuant to subsection (2)(b) of this rule, the remainder of the
15 full fee shall be due on or before the 30th day from the due date
16 and shall, where the amount remitted was less than 90 percent ~~¢~~
17 of the total regulatory assessment fee, include interest as
18 provided by subsection (5)(b) of this rule.

19 (4) Where a company receives a 30-day extension of its due
20 date pursuant to subsection (2)(c) of this rule, then the company
21 shall remit a charge in addition to the regulatory assessment
22 fees, as set out in s. 350.113(5), F.S. ~~(1985)~~.

23 (5) The delinquency of any amount due to the Commission
24 from the company pursuant to the provisions of s. 350.113, F.S.,
25 ~~(1985)~~ and this rule, begins with the first day after any date

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1 established as the due date either by operation of this rule or
2 by an extension pursuant to this rule.

3 (a) A penalty, as set out in s. 350.113, F.S., ~~(1985)~~ shall
4 apply to any such delinquent amounts.

5 (b) Interest at the rate of 12 percent % per annum shall
6 apply to any such delinquent amounts.

7 Specific Authority: 350.127(2), F.S.

8 Law Implemented: 350.113, 364.336, 364.337(4), F.S.

9 History: New 5/18/83, formerly 25-4.161, Amended 10/16/86, _____.

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Before the
FLORIDA PUBLIC SERVICE COMMISSION

In re: Amendment of Rule 25-4.0161)
F.A.C., Regulatory Assessment Fees)
for Telephone Companies)
_____)

DOCKET NO. 900644-TP
FILED: October -, 1990

COMMENTS OF ATC LONG DISTANCE

1 Pursuant to Order No. 23577 in Docket No. 900644-TP issued
2 on October 4, 1990, ATC Long Distance ("ATC") files the following
3 comments on the proposed Amendment of Rule 25-4.0161 F.A.C.
4

5 ATC believes that Rule 25-4.0161 F.A.C. should allow for the
6 deduction of resold interexchange services of another Florida
7 certified company, in determining the regulatory assessment fee.
8 Back in late 1986, the Commission reviewed this very issue
9 however, ATC believes it has not been brought to proper closure.
10 See attachment A for an example of what ATC is proposing (This
11 example was part of Staff's 1986 memorandum). This would prevent
12 any double-dipping by the regulatory assessment fee and puts the
13 fee on a value added basis. The proposal is similar to allowing
14 the IXCs to deduct intrastate access charges from gross
15 intrastate revenues; since the Commission already collects an
16 assessment fee on those access revenues from the local exchange
17 company.
18

ATTACHMENT 2

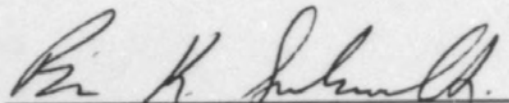
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09205 OCT 15 1990
PSC-RECORDS/REPORTING

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1 Given this new proposed amendment, ATC felt it would be an
2 excellent opportunity to re-visit the issue of what should be
3 allowed for deductions under the regulatory assessment fee
4 formula. We believe our proposal would be a fair methodology.

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Respectfully submitted by,



Brian K. Sulmonetti
Manager Regulatory Affairs
1515 South Federal Highway
Suite 400
Boca Raton, Florida 33432

REGULATORY ASSESSMENT FEECURRENT PROCEDURE

<u>CENDEL</u>		<u>LIGHTNET</u>		<u>MCI</u>	
Local Revenue	\$ 90	Lease Revenue	\$ 50	Toll Revenue	\$ 75
WATS Revenue	5	from MCI		Deduct Access Exp.	
from MCI		Deduct Sales		to Centel	5
WATS Revenue	10	for Resale	50	WATS Expense	70*
from end users			\$ 0*	to Centel	5
Access Revenue				Lease Expense	
from MCI	5			to Lightnet	50
	<u>\$110*</u>				<u>\$ 15</u>

PROPOSED PROCEDURE

<u>CENDEL</u>		<u>LIGHTNET</u>		<u>MCI</u>	
Local Revenue	\$ 90	Lease Revenue	\$ 50*	Toll Revenue	\$ 75
WATS Revenue	5	from MCI		Deduct Access	
from MCI				Expense to	
WATS Revenue	10			Centel	5
from end users				Deduct WATS	
Access Revenue				Expense to	
from MCI	5			Centel	5
	<u>\$110*</u>			Deduct Lease	
				Expense to	
				Lightnet	50
					<u>\$ 15*</u>

*Regulatory Assessment Fee Applies
0600C(10)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amendment of Rule 25-4.0161) Docket No. 900644-TP
F.A.C., Regulatory Assessment Fees)
for Telephone Companies.) Filed: October 17, 1900
_____)

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
PETITION FOR LEAVE TO INTERVENE

COMES NOW Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.03, Florida Administrative Code, hereby requests leave to intervene in these proceedings, as grounds therefore states:

1. Southern Bell is a telephone company lawfully doing business in the State of Florida whose regulated operations are subject to the jurisdiction of this Commission pursuant to Chapter 364, Laws of Florida.

2. Southern Bell's principal place of business in Florida is 150 W. Flagler Street, Suite 1910, Miami, Florida 33130. Pleadings and process in this matter may be served upon:

Harris R. Anthony
E. Barlow Keener
c/o Marshall M. Criser, III
150 So. Monroe Street, Suite 400
Tallahassee, Florida 32301

3. Any decision made by the Commission in the context of this potentially far-reaching proceeding will necessarily affect the substantial interests of Southern Bell and its business operations in the State of Florida.

WHEREFORE, Southern Bell respectfully requests that the Commission grant the Company leave to intervene for all legal purposes in this docket.

ATTACHMENT 3

DOCUMENT NUMBER-DATE
09309 OCT 17 1990
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Respectfully submitted,

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY

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CERTIFICATE OF SERVICE
Docket No. 900644-TP

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this *17th* day of *October*, 1990,
to:

Christina Moore
Division of Legal Services
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

E. Barlow Keener

M E M O R A N D U M

June 16, 1986

TO : JAMES A. WARD, DIRECTOR OF ADMINISTRATION
FROM: WILLIAM S. BILENKY, GENERAL COUNSEL *W.S.B.*
RE : LIGHTNET-REGULATORY ASSESSMENT FEES

It is my understanding from the Staff that Lightnet holds a certificate from the Commission and therefore is under the jurisdiction of the Commission. The question is whether Lightnet is exempt from the payment of any regulatory assessment fee. As we have earlier determined, the statute provides no exemption from the payment of at least a minimum fee of twenty-five dollars. Any contention to the contrary notwithstanding, Lightnet would be subject to at least the twenty-five dollar fee.

The question then is whether the company is exempt from paying anything more than twenty-five dollars. Its sole business is the provision of fiber-optic pairs through sale or lease for the purpose of resale. During the early committee meetings in 1979, in preparation for the 1980 Session, we discussed with the Legislature the problem of sales of electricity by an investor owned utility to municipal utilities or cooperatives for resale to the public. The problem was that the Commission collected the regulatory assessment fee, first from the IOU that sold the power on a wholesale basis to the Muni or Coop, and then again from the Muni or Coop when it sold it to the ultimate customer. At the committee request, we drafted

Memo to Mr. Ward
Re: Lightnet

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June 16, 1986

and the Legislature passed the language found in section 350.113(3)(c) and (3)(d), Florida Statutes, which excludes the sales for resale from the imposition of the fee. No such exclusion appears for the telephone companies. However, at the time, no such problem was occurring nor was a problem anticipated. During the discussions in committee, we were only aware of the sale for resale in the electric industry. The Legislature was interested in eliminating any possibility for the double collection of regulatory assessment fees. Had we foreseen that the problem would have been forthcoming in this industry, we would have cured it.

As for Lightnet, the statute does not clearly provide an exclusion from the payment of the fees. However, a review of the Legislative history would show that the primary concern of the bill as passed was the elimination of double collection of the fees. In order to interpret the law consistently, I believe we should construe the provision of section 350.113, Florida Statutes, as removing the possibility of double collection of regulatory assessment fees.

1. Therefore, I conclude that the statute should be corrected in the next session to clarify the intent of the Legislature;

2. Lightnet should be charged the minimum regulatory assessment fee of twenty-five dollars since all of their sales are wholesale sales. The exclusion of a fee on these sales or leases

Memo to Mr. Ward
Re: Lightnet

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June 16, 1986

are collectible when the services are resold at retail. They will be subject to the imposition of the fees at that time. Further, the ultimate user is better able to divide the revenues associated with jurisdictional intrastate service and exclude non-jurisdictional interstate sales.

I hope this answers your questions.

WSB:brs

cc: Chairman Marks
Commissioner Gunter
Commissioner Herndon
Commissioner Nichols
Commissioner Wilson
Bill Talbott
Walter D'Haeseleer
Greg Krasovsky