

AT&T

Robin D. Dunson
Attorney
Law Division

Room 4038
1200 Peachtree St., N.E.
Atlanta, GA 30309
404 810-8689
FAX: 404 810-5901

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VIA AIRBORNE EXPRESS

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Mrs. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 950737-TP

Dear Mrs. Bayo:

Enclosed for filing in the above referenced docket are an original and fifteen (15) copies of the Brief of AT&T. Also enclosed is a diskette formatted in Word for Windows 6.0.

Copies of the foregoing are being served on all parties of record in accordance with the attached Certificate of Service.

Yours truly,

Robin D. Dunson
Robin D. Dunson

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Enclosures

cc: J. P. Spooner, Jr.
Parties of Record

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CERTIFICATE OF SERVICE

DOCKET NO. 950737-TP

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail or hand-delivery to the following parties of record this 02 day of November, 1995:

Michael J. Henry, Esq.
MCI Telecommunications Corp.
Suite 700
780 Johnson Ferry Road
Atlanta, GA 30342

Richard D. Melson, Esq.
Hopping Boyd Green & Sams
P. O. Box 6526
Tallahassee, FL 32314

Tony Key
Sprint Communications Co.
3100 Cumberland Circle, N0802
Atlanta, GA 30339

Vicki Gordon Kaufman, Esq.
McWhirter, Grandoff & Reeves
117 S. Gadsden Street
Tallahassee, FL 32301

C. Everett Boyd, Jr., Esq.
Ervin, Varn, Jacobs, Odom
P. O. Drawer 1170
Tallahassee, FL 32302

Anthony Gillman, Esq.
GTE Florida Incorporated
P. O. Box 110, FLTC0007
Tampa, FL 33601-0110

Peter Dunbar, Esq.
Pennington, Haben, Culpepper
P. O. Box 10095
Tallahassee, FL 32302

Laura Wilson, Esq.
FL Cable Telecommunications
310 North Monroe Street
Tallahassee, FL 32301

Lee Willis, Esq.
Jeffry Wahlen, Esq.
Macfarlane Ausley
P. O. Box 391
Tallahassee, FL 32302

William Higgins, Esq.
Cellular One
250 S. Australian Avenue
West Palm Beach, FL 33401

Floyd R. Self, Esq.
Messer, Vickers, Caparello
P. O. Box 1876
Tallahassee, FL 32302-1876

David Erwin, Esq.
Young, van Assenderp, Varnadoe
P. O. Box 1833
Tallahassee, FL 32302-1833

Robert Beatty, Esq.
c/o Nancy Sims
Southern Bell Telephone
150 S. Monroe St., Suite 400
Tallahassee, FL 32301-1556

Douglas Metcalf
Communications Consultants
P. O. Box 1148
Winter Park, FL 32790-1148

Monica Barone, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Richard M. Rindler, Esq.
James C. Falvey, Esq.
Swidler & Berlin, Chartered
3000 K. Street, N.W., Suite 300
Washington, DC 20007

Patrick K. Wiggins, Esq.
Marsha E. Rule, Esq.
Wiggins & Villacorta, P.A.
P. O. Drawer 1657
Tallahassee, FL 32302


Angela B. Green, Esq.
FL Public Telecommunications
125 S. Gadsden St., Suite 200
Tallahassee, FL 32301

Charles J. Beck, Esq.
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison St., Room 812
Tallahassee, FL 32399-1400

Timothy Devine
MFS Communications Co., Inc.
250 Williams St., Suite 2200
Atlanta, GA 30303-1034

Jill Butler
Digital Media Partners/Time
Warner Communications
2773 Red Maple Ridge
Tallahassee, FL 32301

Sue E. Weiske, Esq.
Senior Counsel
Time Warner Communications
160 Inverness Drive West
Englewood, CO 80112


Robin D. Dunson

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into)
temporary local telephone number) DOCKET NO. 950737-TP
portability solution to)
implement competition in local) FILED: November 6, 1995
exchange telephone markets.)
_____)

BRIEF OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.

Pursuant to Rule 25-22.056, Florida Administrative Code, AT&T Communications of the Southern States, Inc. (hereinafter "AT&T") files this post-hearing brief in the above-referenced docket. AT&T respectfully requests that the Florida Public Service Commission (hereinafter the "Commission") issue an order requiring that local number portability be provided through Remote Call Forwarding at rates that are no higher than the Total Service Long Run Incremental Cost (hereinafter "TSLRIC") of providing the service.

Background

This case was initiated as a result of recent revisions to Chapter 364, Florida Statutes, which were intended to introduce more competition into the intrastate telecommunications market in Florida. Specifically, in the 1995 legislative session, the Florida Legislature enacted sweeping revisions to Chapter 364. In the course of enacting those changes, the legislature found that:

...the competitive provision of telecommunications services, including

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local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure. ...¹

In implementing this policy, the Commission was directed to:

Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of telecommunications services.²

...

Promote competition by encouraging new entrants into telecommunications markets and by allowing a transitional period in which new entrants are subject to a lesser level of regulatory oversight than local₃ exchange telecommunications companies.³

...

Encourage all providers of telecommunications services to introduce new and experimental telecommunications services free of unnecessary regulatory restraints.⁴

...

¹ Section 364.01(3), Florida Statutes (1995).

² Section 364.01(4)(b), Florida Statutes (1995).

³ Section 364.01(4)(d), Florida Statutes (1995).

⁴ Section 364.01(4)(e), Florida Statutes (1995).

Eliminate any rules and/or regulations which will delay or impair⁵ the transition to competition.

...

Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.⁶

In essence, the legislature envisioned a new telecommunications environment in Florida, with consumers enjoying the benefits of a wide array of choices with respect to telecommunications services and the attendant benefits of competition in the intrastate telecommunications markets.

Under the revised provisions of Chapter 364, the LECs were given the opportunity to elect freedom from rate of return regulation.⁷ The benefits to any LEC making that election are enormous. Essentially, a LEC electing "price regulation" under the new statute will be able to raise its rates on a wide variety of "non-basic" services by as much as 20% per year in any exchange where a competitor is providing local service. Moreover, "price regulation" permits the LEC to raise rates for "non-basic" services by as much as 6% per year in exchanges where there is no local

⁵ Section 364.01(4)(f), Florida Statutes (1995).

⁶ Section 364.01(4)(g), Florida Statutes (1995).

⁷ Section 364.051(1), Florida Statutes (1995).

competition whatsoever. And, the "price regulation" provisions of the new statute specify that such rate increases will be "presumptively valid" and may be implemented by the LECs on 15 days' notice.⁸ Given these extremely generous rate increase allowances, it is small wonder that the LECs uniformly supported the revisions to Chapter 364.

As part of opening the local exchange monopoly to competition, the legislature determined that consumers should have access to different local exchange providers without being disadvantaged, deterred, or inconvenienced by having to give up the consumer's existing local telephone number.⁹ To assure this goal, the legislature determined that:

...all providers of local exchange service must have access to local telephone numbering resources and assignments on equitable terms that include a recognition of the scarcity of such resources and are in accordance with national assignment guidelines.
10
...

Local number portability is the only way to accomplish these goals.

⁸ Section 364.051(6), Florida Statutes (1995).

⁹ Section 364.16(4), Florida Statutes (1995).

¹⁰ Id.

To meet its goals the legislature mandated the following:

1. The parties, under the direction of the Commission, were required to set up a number portability standards group for the purposes of investigating parameters, costs, and standards for number portability.

2. If the parties are unable to successfully negotiate the prices, terms and conditions of temporary number portability, the Commission is required to establish a temporary number portability solution by no later than January 1, 1996.

3. The prices and rates for number portability shall not be below cost.

4. Number portability between different certificated providers of local exchange service at the same location shall be provided temporarily no later than January 1, 1996.¹¹

Through the industry standards group mandated by the legislature, the parties were able to successfully negotiate numerous aspects of the temporary number portability question. On August 30, 1995, the parties executed a Stipulation and Agreement which addresses some, but not all, of the issues identified in this docket. That stipulation

¹¹ Id.

was approved by the Commission in Order No. PSC-95-1214-AS-TP, issued on October 3, 1995.

Pursuant to the stipulation, it has been decided that temporary number portability will be provided through Remote Call Forwarding. The only issues left to be decided relate to the advantages and disadvantages of each potential solution (Issue 3), the costs associated with each solution (Issue 4), how those costs should be recovered (Issue 5), and whether this docket should be closed (Issue 8). This brief will deal with those issues.

AT&T's Basic Position

AT&T supports the industry position as set forth in the stipulation of the parties. The only real issues left to be resolved concern the appropriate costs associated with Remote Call Forwarding and the proper method of recovering such costs. AT&T submits that the rate set for this service should be at the Total Service Long Run Incremental Cost (hereinafter "TSLRIC") of providing the service. No markup should be allowed. The LEC should be permitted to recover the costs that it incurs in providing number portability, but it should not be allowed to exact any additional premium from potential competitors simply for the right to do business in its territory.

Argument

ISSUE 3

What are the advantages and disadvantages of each solution identified in Issue 2?

*****Summary of Position:** As part of their work efforts, the industry number portability standards group developed a description of the advantages and disadvantages of the respective interim solutions. Such advantages and disadvantages are set forth in Exhibit 21. ***

Discussion: The interim number portability solution stipulated to by the parties in this docket is fraught with disadvantages. For example, customers who choose an ALEC as its local service provider will no longer be able to utilize certain features and functionalities (such as Caller ID) to which they may have become accustomed. In addition, the cost of providing service for every local service provider will increase because there will be an unnecessary increase in the switching and trunking of calls.¹² Therefore, Remote Call Forwarding as the interim number portability solution is not appropriate as a long term solution. The Commission should encourage the rapid development of a permanent solution that ensures that customers are afforded

¹² Tr. Vol. 2, Price, p. 7.

an opportunity to realize the benefits of competition without being disadvantaged, deterred or inconvenienced.

ISSUE 4

What are the costs associated with providing each solution identified in Issue 2?

*****Summary of Position:** There are both recurring and non-recurring costs associated with Remote Call Forwarding. All costs should be identified using the TSLRIC methodology.***

Discussion: The non-recurring costs associated with the provision of number portability include the labor time involved in receiving the service order, the transmission of the service order to the switching employee, and the writing of the translation. The recurring costs include the switching costs associated with the setup and maintenance of additional calls through the LEC central offices, and the transport costs associated with the facilities utilized in forwarding the call to the recipient company.¹³

¹³ Tr. Vol. 2, Guedel, p. 294.

ISSUE 5

How should the costs identified in Issue 4 be recovered?

*****Summary of Position:** The TSLRIC costs associated with Remote Call Forwarding should be recovered through an initial non-recurring charge and through recurring charges set on a per-line, per-month basis. Prices charged LEC competitors should be set at TSLRIC and no mark-up should be permitted.***

Discussion: The purpose of the interim number portability solution mandated by the legislature is to accommodate competition without inconveniencing customers who wish to change their local service to competing carriers. Indeed, the legislature has determined that consumers should not be "disadvantaged, deterred, or inconvenienced" by having to give up an existing telephone number in order to change carriers in the new competitive local exchange environment.¹⁴ This goal cannot be accomplished if prices for local number portability are set at excessive levels.

In order to meet the objectives set by the legislature, AT&T submits that prices in this docket should be set at the cost (the TSLRIC) that the LEC incurs in providing the service. No additional mark-up should be allowed. In short, the LEC should be allowed to recover the costs that it incurs in providing the service, but it should not be

¹⁴ Section 364.16(4), Florida Statutes (1995).

allowed to exact any additional premium from potential competitors simply for the right to do business in its territory.¹⁵

AT&T's position in this case recognizes several important facts. First, telephone numbers are a scarce resource which, today, are completely controlled by the incumbent LECs.¹⁶ Second, any charge imposed on the emerging ALEC competitors must ultimately be recovered from ALEC customers. Third, any charge for number portability that is excessive will inevitably deter consumers from selecting competitive alternatives to the incumbent LECs. Fourth, the provision of Remote Call Forwarding for the purposes of implementing interim local number portability will not increase the common overheads of the LECs. Fifth, long run incremental cost still contains a cost of capital which provides a return to the LEC's equity investor.¹⁷

Given the above-referenced facts, the best method of achieving the legislature's goals in this case is to set prices for interim number portability at TSLRIC with no mark-up. The LEC will be made whole for the costs it incurs, the LEC's equity investor will be compensated, and the burden on competition will be minimized.

¹⁵ Tr. Vol. 2, Guedel, pp. 295-296.

¹⁶ The legislature made specific reference to the scarcity of this resource and to the need to insure equitable assignment of the same in Section 364.16(4), Florida Statutes (1995).

¹⁷ Tr. Vol. 1, Kolb, p. 95.

Not surprisingly, the LECs are not enamored with the notion of setting number portability prices at TSLRIC. In fact, each LEC proposed setting rates at a marked-up level which would include some level of common costs. GTE proposed rates which include a "slight" margin above costs,¹⁸ while Sprint/United/Centel proposed rates that were set "sufficiently above the incremental cost to provide some contribution to joint and shared cost."¹⁹ BellSouth, on the other hand, proposed a "negotiated" rate of \$1.50 per number ported (which would include one path) or a "tariffed" rate of \$2.00 "and maybe higher."²⁰ Those rates are considerably in excess of BellSouth's purported cost of \$1.11.²¹ Furthermore, BellSouth's cost calculations contain a cost of capital of 13.2% which will provide BellSouth's shareholders a 16% return on equity.²² A 16% rate of return is significantly higher than that authorized by this Commission. The Commission should reject these proposals.

By advocating the recovery of common costs in their prices for number portability, the LECs would improperly stifle the emerging competition which the legislature found

¹⁸ Tr. Vol. 1, Menard, p. 146.

¹⁹ Tr. Vol. 1, Poag, p. 173.

²⁰ Tr. Vol. 1, Kolb, pp. 62-63.

²¹ Tr. Vol. 1, Kolb, p. 61.

²² Id. at pp. 91-92.

to be in the public interest. Indeed, the LECs ignore the facts that, today, they possess a monopoly with respect to local exchange telecommunications services, and, if ALECs are to be successful in introducing competition into the local exchange monopoly, they will have to entice existing customers away from the incumbent LECs. In many cases, a significant part of that enticement could well be the ability to assure the consumer that he or she will be able to maintain his or her existing telephone number. Given these facts, requiring customers of emerging competitors to contribute to the common overheads of the incumbent LEC as a condition of changing carriers is unjust, inappropriate, and contrary to the goals set by the legislature.

The basic problem with the LEC position in this case is that the LECs view interim number portability as a "service" and would price it accordingly. That was not the intent of the legislature. The legislature intended interim number portability to be an "arrangement" to accommodate consumer choice of carriers. It was intended to facilitate rather than to hinder competition. And, it was an "arrangement" prompted by the fact that, today, the LECs control 100% of the available local telephone numbers, which are a scarce public resource.

AT&T does not dispute the need of the LECs (or any other company) to cover their common overheads. However, the Commission should note that ALECs (when they begin to provide service) will have common overheads as well which

they must also recover.²³ An arrangement that is implemented simply for the purposes of facilitating customer choice is not an appropriate vehicle for either carrier to recover its common overheads. In short, each carrier (whether LEC or ALEC) should recover its common overheads from its own customer base - not from the customers of its competitors. The LEC proposals fail to meet this test.

To the extent that the Commission has the appropriate cost information available in this docket, it should set prices for interim number portability at rates that are no greater than the LECs' cost (the TSLRIC) of providing the service. If the LECs are allowed to price interim number portability above the LECs' cost (the TSLRIC), the LECs would have no incentive to actively pursue a long term number portability solution.²⁴ To the extent that appropriate cost information is not available, the LECs should be directed to conduct TSLRIC studies and furnish such information to the Commission. Under no circumstances should the LECs be permitted to charge rates in excess of the costs derived from the appropriate studies.

²³ Tr. Vol. 2, Price, p. 259.

²⁴ Tr. Vol. 2, Price, p. 254.

ISSUE 8

Should the docket be closed?

*****Summary of Position:** This docket should remain open to determine a permanent number portability solution.***

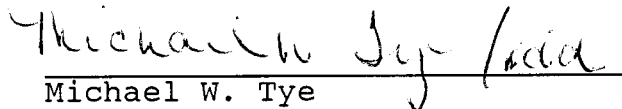
Discussion: The Commission should leave this docket open to address a permanent number portability solution. It is unanimously agreed that the use of Remote Call Forwarding to provide number portability is not an appropriate permanent solution. However, in an effort to come to an agreement on a temporary solution that would be implementable by January 1, 1996 as mandated by the statute, the parties agreed to provide interim number portability through the use of Remote Call Forwarding, notwithstanding its numerous deficiencies. This docket, therefore, should remain open to determine an appropriate permanent number portability solution.

Conclusion

The proposals submitted by the LECs in this case would result in excessive pricing of interim local number portability which would improperly stifle the local exchange competition which the legislature sought to achieve through its recent revisions to Chapter 364, Florida Statutes. The LEC proposals should be rejected. Instead, the Commission should order the LECs to perform TSLRIC studies and should set prices for local number portability at the LECs' TSLRIC

of providing the service. No additional mark-up should be permitted. Moreover, the Commission should leave this docket open to determine a permanent number portability solution.

Respectfully submitted this 6th day of November, 1995.



Michael W. Tye
106 E. College Ave.
Suite 1410
Tallahassee, FL 32301
(904) 525-6360



Robin D. Dunson
1200 Peachtree St., NE
Promenade I, Room 4038
Atlanta, GA 30309
(404) 810-8689

ATTORNEYS FOR AT&T
COMMUNICATIONS OF THE
SOUTHERN STATES, INC.