

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

April 25, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (GRISWOLD, DOWDS) *GRISWOLD*
DIVISION OF LEGAL SERVICES (BARGONE) *BARGONE*

RE: DOCKET NO. 960492-TP IMPLEMENTATION OF INTRALATA
PRESUBSCRIPTION BY NON-LEC PAY TELEPHONES, CALL
AGGREGATORS AND SHARED TENANT SERVICE PROVIDERS. *FL*

AGENDA: MAY 7, 1996 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\CMU\WP\960492.RCM
PLEASE PLACE BEFORE DOCKET NOS. 951198-TC, 951546-TP, AND
960407-TC.

CASE BACKGROUND

Competition is evolving in the local market, including the intraLATA long distance (intraLATA toll) market. This has been recognized by the Commission in its ordering of 1+/0+ intraLATA presubscription (Order No. PSC-95-0203-FOF-TP). 1+/0+ intraLATA presubscription (presubscription) allows the end user to presubscribe his intraLATA long distance calls to the intraLATA carrier of his choice in the same way he presubscribes his interLATA long distance calls to the interLATA carrier of choice. Following the Commission's final decision, the four largest LECs in Florida were to begin installing switch upgrades and revising administrative procedures. The remaining small LECs were not required to implement presubscription until receipt of a bona fide request, and only then after January 1, 1997.

Although the software needed for presubscription had been developed, it was not required to be installed immediately in Florida. This was due in part to the LECs' and the Commission's desire to decrease costs by allowing installation of the presubscription software when future scheduled switch software upgrades took place.

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At the time of this writing, three categories of telecommunications providers -- non-LEC pay telephone providers (NPATs), call aggregators (CAs), and shared tenant services providers (STS) -- have the ability to use their own technology to route calls from their phones/systems to their chosen intraLATA carrier without the LECs having installed presubscription software upgrades. A NPATs provider can program his "smart" phones to forward **all** long distance calls, interLATA and intraLATA alike, to any designated carrier. The CAs and STS providers can do the same by programming their PBXs.

Issues 1 and 2 of this recommendation address the question of whether or not NPATs, CAs, and STS providers should be allowed to route calls from their phones/systems today to the intraLATA carrier of their choice for 1+ and 0+ intraLATA toll calls. If the Commission orders that these providers should be allowed to implement preferred carrier routing now, the relevant rules will have to be addressed. This is the topic of Issues 3 and 4. Issue 5 addresses closing this docket.

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DISCUSSION OF ISSUES

ISSUE 1: For 1+ and 0+ intraLATA toll calls, should non-LEC pay telephone providers and call aggregators be allowed to route 1+/0+ intraLATA traffic from their phones/systems to the intraLATA carrier of their choice at this time?

RECOMMENDATION: Yes. For 1+ and 0+ intraLATA toll calls, non-LEC pay telephone providers and call aggregators should be allowed to route 1+/0+ intraLATA traffic from their phones/systems to the intraLATA carrier of their choice at this time.

STAFF ANALYSIS: Staff believes there are three reasons why NPATs and CAS should be allowed to route 1+/0+ intraLATA toll traffic immediately from their phones/systems to a specific intraLATA carrier for intraLATA toll calls. First, the Commission has indicated its desire to implement intraLATA presubscription (presubscription) as the necessary technical capability is installed. Second, state legislation does not support the notion that, as a prerequisite for market entry, providers and their services must be available to all on a uniform basis. Third, the Florida legislature has conveyed to the Commission via its passage of amendments to Chapter 364, Florida Statutes, that the State is to move forward with competition.

The Commission has examined potential areas that could delay presubscription. In the presubscription docket (Docket No. 930330-TP), the IXCs argued that the Commission should order immediate implementation otherwise the LECs would "drag their feet" in implementing presubscription. (Order No. PSC-95-0203-FOF-TP, p. 24) Order No. PSC-95-0203-FOF-TP does allow the LECs to install presubscription capability at the same time their switch upgrades are made. The Commission was aware that the technical capability for presubscription had been developed. However, the Commission did not want the LECs to incur additional costs to provide intraLATA presubscription prior to upcoming switch upgrades that would include such capabilities anyway. Consequently, the Commission stated "sufficient time should be given to change software and make other required changes so that no precipitous costs are incurred by the LECs. We disagree with the IXCs' arguments that the LECs should be forced to accelerate the implementation of intraLATA presubscription." (Order No. PSC-95-0203-FOF-TP, p. 25) The impetus was not to delay any party unnecessarily, but to allow the LECs to efficiently make the necessary software changes and decrease the costs of conversion. However, there is no requirement that the IXCs **must wait** to install upgrades.

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In this same docket, the Commission ordered presubscription because it believed it would benefit end users by increasing competition in the intraLATA toll market. The Commission did not contemplate holding any party back in moving toward competition. Referring to Southern Bell and GTEFL not being allowed at that time to enter the interLATA market, the Commission noted "[w]hile the ability to offer volume-sensitive plans for combined interLATA and intraLATA traffic is an advantage that Southern Bell and GTEFL do not have, the IXCs argue that customers' choice of intraLATA carrier should not be delayed because certain participants may be regulated to a different degree." (Order No. PSC-95-0203-FOF-TP, p. 17) In support of this notion the Commission stated, "[r]egulatory flexibility may well be appropriate for the LECs. However, it shall not be a prerequisite for intraLATA presubscription and moving forward with the transition to competition." (Order No. PSC-95-0203-FOF-TP, p. 22, emphasis added.)

For CAs and NPATs, there is no argument that they can do something other market participants cannot or do not presently do, namely immediately implement preferred carrier routing for intraLATA calls from their phones/systems to their chosen intraLATA carriers. However, this advantage does not occur because of a conscious effort on the part of any market participant(s) to deny the other groups the same ability. Rather, it occurs because of the technology they employ.

CAs and NPATs are, in many cases, already equipped to route traffic from their systems or phones. CAs offer service through a private branch exchange (PBX). Modern payphones and PBXs are really nothing more than small switches which are computers and are programmable. Therefore, the PBX can be programmed to transfer 1+/0+ calls to whichever carrier the CA wants by translating the 1+/0+ into an access code such as 10XXX, 1-800, or 950.

A specific type of phone utilized by NPATs providers is referred to as a "smart" phone. It is referred to as "smart" because, like the PBX, it is programmable. The smart phone was developed due to the NPATs not being able to obtain "coin functionalities" from the LEC. Examples of such functionalities are answer supervision and coin verification. When the NPATs were allowed entry into Florida, the LECs were not required to sell them coin functionalities, which are provided out of the central office (CO) rather than the payphone. The NPATs provider connected to the CO by buying a business line from the LEC (at special rates). However, the business line does not provide the pay telephone with coin line features. Consequently, the industry developed a phone

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that includes many of the coin features by means of automated technology contained within the phone.

Because the LEC pay telephones had access to the coin features, there was no reason for the LECs to install smart phones. Although the technology was available, it was their choice not to use it. Smart phones were installed by the NPATs providers so they could offer service without LEC assistance. Today that same technology allows the NPATs to once again offer service without LEC assistance, and staff believes there is no reason to prevent them from doing so.

While desiring to open up the local market to competition, the Legislature realized that demanding all of the LECs' locations be capable of interconnection and resale, regardless of technological constraints could force the LECs to convert areas that were not likely to experience significant competition, at least not initially. Consequently, Section 364.161(1), Florida Statutes, states "[u]pon request, each local exchange telecommunications company shall unbundle all of its network features, functions, and capabilities..., and offer them to any other telecommunications provider requesting such features..., **to the extent technically and economically feasible.**" (emphasis added)

Technological limitations have slowed the availability of other services. An example is integrated services digital network (ISDN). ISDN enables the simultaneous transmission of voice, data, and video. BellSouth, the largest LEC in Florida, does not offer ISDN everywhere in its Florida territory. This is because not all of BellSouth's offices are **technically** capable to provide ISDN. If the Commission were to require that services only be offered when they can be offered ubiquitously, services such as ISDN, developed several years ago, might still not be available anywhere today.

In a similar vein, 364.161(1), Florida Statutes, indicates the Legislature contemplated that competition would be evolving, in recognition of the constraints of technology. Competition in the local market will not likely occur in all territories at the same point in time, but will sprout up first in high volume areas. As a consequence, not all LEC central offices (COs) will be equipped simultaneously for interconnection, but will be equipped sequentially.

Finally, Florida law requires the Commission to do what it can to bring about competition. Specifically, the law states that the Commission shall "[e]ncourage all providers of telecommunications services to introduce new or experimental

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telecommunications services free of unnecessary regulatory restraints." Section 364.01(4)(e), Florida Statutes. Allowing providers that are capable of routing traffic to their chosen carrier, namely the NPATs and CAs, would be a step in fulfilling the Legislation.

In conclusion, the Commission has indicated its desire to move forward with presubscription. Allowing the NPATs and CAs to program their phones/systems to route 1+/0+ intraLATA toll calls, a capability they currently have, would be a step in that direction. There appears to be no Commission or legal directive requiring that routing be delayed until all providers are able to implement presubscription. Recently passed state law requires the Commission to encourage new services such as presubscription. Therefore, staff recommends, for 1+ and 0+ intraLATA toll calls, NPATs and CAs should be allowed to route 1+/0+ intraLATA traffic from their phones/systems to the intraLATA carrier of their choice at this time.

ISSUE 2: For 1+ and 0+ intraLATA toll calls, should STS providers be allowed to route 1+/0+ intraLATA traffic from their systems to the intraLATA carrier of choice at this time?

RECOMMENDATION: Yes. For 1+ and 0+ intraLATA toll calls, STS providers should be allowed to route 1+/0+ intraLATA traffic from their systems to the intraLATA carrier of choice at this time.

STAFF ANALYSIS: An STS provider is similar to a CA in that it provides service to its tenants through its own switch (such as a PBX). However, there are at least two subtle differences between the tenants of an STS provider and the tenants of a CA. First, the STS's tenants have been historically business customers, and second, these customers have tended to be longer term residents than those of the CA. In the past, the provision of STS service was restricted to business customers residing in a single location such as a large building. These subscribers were not viewed as transient, usually having signed lease agreements extending over lengthy time periods. These tenants have always been able to choose either the STS provider or the LEC for the provision of phone service.

With passage of the amendments to Section 364.339, Florida Statutes, STS providers can now provide service to

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residential customers as well as business customers, and to multiple buildings as well as single buildings. Staff would note that it is not clear whether or not the residential customer can choose between the LEC or the STS for service. As in the past, the commercial customer has the option of choosing the serving local exchange company or the STS provider. (Commission Rule 25-24.575 and Chapter 364.339(5), Florida Statutes) However, Chapter 364.339(5), Florida Statutes, speaks only of "commercial" customers, not mentioning residential customers. This calls into question whether or not a residential tenant is able to select the serving LEC for service or if he is restricted to the STS provider.

Staff has opened a rulemaking proceeding for STS service (Docket No. 951522-TS) which will address the question of allowing a choice of provider only to commercial tenants. Staff would note, that even with allowing residential customers to make a choice of carrier, in the event that they chose the LEC, that LEC may still not have upgraded its system to allow the tenant to select a carrier other than the LEC for his intraLATA toll traffic. Regardless, as is the case with the NPATs and the CAs, staff believes if the STS provider is capable of routing traffic to its chosen intraLATA carrier he should be allowed to do so. To the end user that selects the LEC rather than the STS provider, there is no difference in what he receives today (before intraLATA presubscription) from what he will receive if the Commission allows the STS provider to route 1+/0+ intraLATA calls from its system. If he continues to be a LEC customer, and wants a different provider for his intraLATA traffic, he will still have to dial around the LEC. If he selects the STS service, and wants an intraLATA carrier other than the one the STS provider routes to, he will have to dial around. He will have a selection of carriers for his intraLATA toll traffic by December 31, 1997 at the latest. Therefore, staff recommends, for 1+ and 0+ intraLATA toll calls, STS providers should be allowed to route 1+/0+ intraLATA traffic from their systems to the intraLATA carrier of choice at this time.

It should be noted that this recommendation does not address the issue of whether STS providers should themselves be required to provide presubscription to their individual tenants nor should this recommendation be construed as an endorsement by the Commission that presubscription should not be required of STS to their tenants. Most of the PBXs in use do not have the technical capability to offer presubscription to individual tenants. It appears that the newest PBXs now entering the market may be technically capable of providing presubscription to individual tenants. The question of presubscription by STS providers to tenants should be left for another day.

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ISSUE 3: Should the Commission exempt NPATs providers from portions of Commission Rule 25-24.515?

RECOMMENDATION: Yes, the Commission should exempt NPATs providers from portions of Commission Rule 25-24.515.

STAFF ANALYSIS: In Part XI of the Commission's Rules for pay telephone providers, Rule 25-24.515(7) requires that the NPATs provider hand off all intraLATA calls to the LEC. Rule 25-24.515(7) states:

All intraLATA calls, including operator service calls, shall be routed to the local exchange company, unless the end user dials the appropriate access code for their carrier of choice, i.e., 950,800,10XXX.

If the Commission agrees that the NPATs providers should be allowed to route 1+/0+ traffic to the intraLATA carrier of choice, NPATs providers should be exempt from Rule 25-24.515(7), with the exception that all local calls and 0- calls should still go to the LECs. Continuing to require that 0- calls be handled by the LEC is consistent with the Commission's decision in Docket 930330-TP where it ordered "...that 0- dialed calls shall be retained by the LECs..." (Order No. PSC-95-0203-FOF-TP, p. 46)

Pursuant to Section 364.3375, Florida Statutes, the Commission may exempt a PATS provider from any of the requirements of Chapter 364, Florida Statutes. Rule 25-24.505, Florida Administrative Code, allows the Commission to waive the requirements imposed on PATS providers by Part IX of Chapter 25-24.

ISSUE 4: Should the Commission exempt call aggregators from portions of the Commission's Rule 25-24.620(2)(c)?

RECOMMENDATION: Yes, the Commission should exempt call aggregators from portions of the Commission's Rule 25-24.620(2)(c).

STAFF ANALYSIS: Part XIII of the Commission's Rules governs operator service providers, including call aggregators. Rule 25-

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24.620(2)(c) requires that the CAs hand off all intraLATA calls to the LEC. Rule 25-24.620(2)(c) states operator service providers shall:

route all end-user dialed 1+, 0+, and 0- intraLATA local and toll calls to the local exchange company, unless the end user dials the appropriate access code for their carrier of choice, i.e., 950,800,10XXX.

If the Commission agrees that the CAs should be allowed to route 1+/0+ traffic to the intraLATA carrier of choice, CAs should be exempt from portions of Rule 25-24.620(2), with the exception that all local calls and 0- calls should still go to the LECs. Continuing to require that 0- calls be handled by the LEC is consistent with the Commission's decision in Docket 930330-TP where it ordered "...that 0- dialed calls shall be retained by the LECs..." (Order No. PSC-95-0203-FOF-TP, p. 46) This is also consistent with Rule 25-24.620(2)(d) which requires all CAs to:

route all end-user dialed 0- calls to the local exchange operator at no charge to the end user when no additional digits are dialed after 5 seconds.

Rule 25-24.600, Florida Administrative Code, allows the Commission to waive the requirements imposed on call aggregators by Part XIII of Chapter 25-24.

ISSUE 5: Should this Docket be closed?

RECOMMENDATION: Yes, this docket should be closed.

STAFF ANALYSIS: If a protest is filed within 21 days from the issuance date of the Order, this docket should remain open pending the resolution of the protest. If a timely protest is not filed, this docket should be closed.