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August 29, 1996

HAND DELIVERED

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

Re: Docket No. ~~941281~~-TL; In Re: Petition by subscribers of the Groveland exchange for extended area service (EAS) to the Orlando, Winter Garden and Windermere Exchanges.

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of The Florida Interexchange Carriers Association's Legal Brief in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

VGK/pw
 Encls.
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DOCUMENT NUMBER-DATE
09199 AUG 29 96
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by subscribers)
of the Groveland exchange for)
extended area service (EAS) to)
the Orlando, Winter Garden and)
Windermere Exchanges.)
_____)

Docket No. 941281-TL

Filed: August 29, 1996

The Florida Interexchange Carriers Association's Legal Brief

The Florida Interexchange Carriers Association (FIXCA), pursuant to Order No. PSC-96-1033-PCO-TL (Order), files its Legal Brief on the issues outlined in the Order.

Introduction

At the end of 1994, Groveland subscribers filed a petition with the Commission seeking extended area service (EAS) to Orlando. Two other exchanges (Winter Garden and Windermere) were included in the docket to prevent leapfrogging. Groveland, Winter Garden and Windermere are served by United Telephone Company (United); Orlando is served by BellSouth Telecommunications, Inc. (BellSouth).

The routes in question did not meet the requirements of the Commission's EAS rule. However, because the routes were close to meeting the requirements, the Commission held a hearing on April 18, 1996 to consider community of interest concerns.

However, during the pendency of the docket, the Congress passed the federal Telecommunications Act of 1996 (Act). As the Commission Staff recognized, the Act prohibits BellSouth from originating interLATA traffic within its region until it complies with § 271 of the Act. Further, even if BellSouth complies with § 271, it must offer interLATA service through a separate affiliate.

On July 2, 1996, Staff filed its recommendation in this docket. Staff

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recommended that the parties be required to brief the legal issues which have arisen as a result of the new federal Act. This was the first time Staff had indicated that these legal issues would be considered in this docket.

On July 9, 1996, FIXCA filed a Petition to Intervene in this docket.¹ FIXCA stated that the legal issues raised in this docket had broad ramifications, the issues had not been previously raised and requested permission to intervene in order to brief the issues for the Commission. The Commission approved Staff's recommendation at the July 16, 1996 Agenda Conference. On August 8, 1996, the Commission issued Order No. PSC-96-1033-PCO-TL, in which it set out the five legal issues the parties are to brief. These issues are discussed below.

Issue 1

Does the Act prohibit BellSouth from originating EAS or ECS traffic from the routes in question?

Yes. There is no dispute that the traffic in question in this docket is interLATA traffic. There should also be no dispute that at this point in time the Act clearly prohibits BellSouth from originating this interLATA traffic. BellSouth may not originate such traffic until numerous conditions set out in the Act are met and the FCC has granted BellSouth authority to provide interLATA service. BellSouth has not been granted authority to provide interLATA service and may not originate the traffic at issue in this docket.

This is the case regardless of how the traffic is labelled--EAS or ECS--and

¹No Order has yet been issued on FIXCA's Petition to Intervene. So as not to miss the filing deadline of Order No. PSC-96-1033-PCO-TL, FIXCA has filed its brief.

regardless of whether the request for EAS was pending at the time the Act was passed. If the traffic is interLATA traffic, BellSouth may not carry it until the requirements discussed below are met.

The General Limitation against BellSouth providing interLATA services is found in § 271(a) of the Act. That section states:

General Limitation.-Neither a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services except as provided in this section.

The General Limitation of the Act has four exceptions--two exceptions are inapplicable to this docket (out-of-region services and incidental interLATA services) and one exception (termination) will be discussed in Issue 2. Therefore, only the remaining exception for the provision of in-region services will be discussed here.

Section 271(c)(1) sets out the requirements BellSouth must meet to provide in-region interLATA services. These requirements have not been met. The Act requires BellSouth to apply to the Federal Communications Commission (FCC) for authorization to provide in-region interLATA services, § 271(d)(1), and requires the FCC to notify and consult with the Attorney General and the Florida Commission. § 271(d)(2). Clearly, this process has not occurred.

Even if BellSouth receives interLATA authority, in order to originate interLATA telecommunications services, BellSouth must provide such services through a separate affiliate. § 272(a). That affiliate must operate separately; it must have separate books and records, separate officers, directors and employees; it must conduct transactions with BellSouth at arm's length. § 271(b). This structural separation is

not in place.

None of the prerequisites which must be completed before BellSouth can carry interLATA traffic have been met. Therefore, it may not originate the traffic at issue in this docket.

Issue 2

Does the Act allow BellSouth to terminate EAS or ECS traffic from the Groveland exchange?

Yes. Section 271(b)(4) permits BellSouth to terminate a call for another carrier. That is, BellSouth can terminate a call for United if United originates the call.

However, the more fundamental issue is what BellSouth must charge United to terminate that call. It is FIXCA's position that BellSouth is not permitted to discriminate between carriers in the termination charge for the interLATA call. BellSouth must charge United (or any other LEC) the same access charge it charges an IXC to terminate the same call.

Section 251(g) of the Act contains a provision which requires that the provisions of the MFJ which are applicable to exchange access and interconnection on the day the Act was passed remain in effect until expressly superseded by FCC regulations. These provisions, which require nondiscrimination among carriers, have not been superseded and thus are still applicable today. They require that, regardless of how a call is labelled, all carriers terminating that call be treated in the same way. Therefore, in order to terminate a call for another LEC, BellSouth must charge that LEC the same thing it would charge an IXC.

Issue 3

Can BellSouth's IXC affiliate carry EAS or ECS traffic without violating Sections 364.08, 364.09, and/or 364.10, Florida Statutes, or the Telecommunications Act of 1996?

The three subsections referred to in this issue relate to nondiscrimination and were enacted to ensure that those similarly situated are treated in the same way. The only way in which BellSouth's affiliate could carry EAS or ECS traffic and comply with these Florida statutory provisions (assuming all federal prerequisites have been met) is if whatever elements which are necessary to provide the service which the affiliate purchases from BellSouth are made available to all carriers at the same price. That is, whatever price the BellSouth affiliate pays for originating and terminating access must be available to all providers on a nondiscriminatory basis. If this is not the case, the nondiscrimination provisions of the Florida statute would be violated.

Issue 4

Can the Commission require BellSouth's ALEC affiliate to carry EAS or ECS traffic?

No. Both the federal Act (and the 1995 revisions to Chapter 364, Florida Statutes) envision a fundamental shift in the telecommunications market. Rather than a market in which regulation is a surrogate for competition (which has been the case for many years), in the post-Act world market forces will bring competition to bear. In this competitive market, it is not the Commission's role, with a very limited exception, to require carriers to provide particular services. Rather, the decision as to

what services to provide is one that the carriers themselves will make based on the types of services and the packages of services which the market demands.

The limited exception to the Commission's inability to require carriers to provide particular services is found in § 364.337(2), Florida Statutes. This subsection deals with ALEC certification and requires certified ALECs to provide access to three specific services: operator services, 911 services and relay services for the hearing impaired. These express services are the only services which the Commission may require an ALEC to provide--nowhere in this short list of requirements is EAS or ECS mentioned ² Nowhere in the Act or in Chapter 364 is the Commission given the authority to require BellSouth's ALEC, or any other telecommunications carrier, to provide EAS or ECS services.

Issue 5

How can EAS or ECS be implemented without violating either the Act or Chapter 364, Florida Statutes?

As the previous issues discuss in detail, BellSouth may not provide interLATA service. Further, the Commission has no authority to require BellSouth's interLATA affiliate to implement EAS or ECS.

The intent of both acts is to move to a competitive telecommunications market for all types of calling. Any previous distinction under prior law between toll calls and local calls will become less and less important.

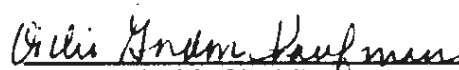
One of the most important elements in this new environment is carrier to carrier

² It should also be noted that this same section empowers the Commission to grant an ALEC a waiver as to many of the other requirements of Chapter 364.

charges. These kinds of charges, and most importantly access charges, must be cost based so that the incumbents (and their affiliates) do not have a pricing advantage and the ability to squeeze competitors out of the market.

Conclusion

The intent of the recently enacted legislation (both state and federal) is clear--its purpose is to foster a competitive market, not a market subject to regulation. Under this new framework, the Commission is no longer in the business of ordering carriers to provide certain services to certain groups of customers; rather, it is the marketplace that will dictate what types of services will be packaged and provided and such decisions will turn on the demands of the market. The Commission's role is to ensure nondiscriminatory access to the elements carriers need in order to provide the services that the market wants so that no carrier has an undue advantage.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Florida Interexchange Carriers Association's Legal Brief has been furnished by hand delivery (*) or U.S. Mail to each of following parties, this 29th day of August 1996:

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