

LAW OFFICES  
MESSER, CAPARELLO, METZ, MAIDA & SELF  
A PROFESSIONAL ASSOCIATION

215 SOUTH MONROE STREET, SUITE 701  
POST OFFICE BOX 1876  
TALLAHASSEE, FLORIDA 32302-1876  
TELEPHONE: (904) 222-0720  
TELECOPIERS: (904) 224-4359; (904) 425-1942

January 6, 1997

Ms. Blanca Bayo, Director  
Division of Records and Reporting  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

**BY HAND DELIVERY**

Re: Docket No. 950737

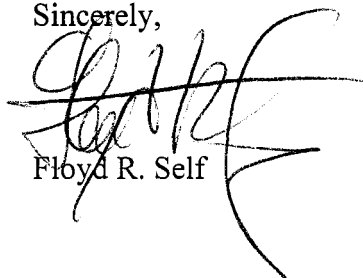
Dear Ms. Bayo:

Enclosed are an original and fifteen copies of Posthearing the Brief of AT&T Wireless Services of Florida, Inc. in the above-referenced docket. The brief is provided in WordPerfect 6.0/6.1 format on the 3-1/2 inch diskette which is also enclosed.

Please indicate receipt of this document by stamping the enclosed extra copy of this letter.

Thank you for your assistance in this matter.

Sincerely,



Floyd R. Self

- CK  \_\_\_\_\_
- FA \_\_\_\_\_
- PP \_\_\_\_\_
- AF \_\_\_\_\_
- MU  \_\_\_\_\_
- TR \_\_\_\_\_
- AG \_\_\_\_\_
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- SEC  \_\_\_\_\_
- VAS \_\_\_\_\_
- JTH \_\_\_\_\_

FRS:gje

Enclosures

cc: Parties of Record

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

00087 JAN-65

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

07/15/97  
FILE 95-116

In re: Investigation into )  
temporary local telephone number )  
portability solution to )  
implement competition in local )  
exchange markets. )  
\_\_\_\_\_ )

Docket No.: 950737-TP  
Issued: January 6, 1997

**POSTHEARING BRIEF OF AT&T WIRELESS  
SERVICES OF FLORIDA, INC.**

AT&T Wireless Services of Florida Inc., f/k/a McCaw Communications of Florida Inc., for itself and its Florida regional affiliates ("AWS"), pursuant to Rule 25-22.056, Florida Administrative Code, respectfully submits the following Posthearing Brief to the Florida Public Service Commission ("Commission") in the above captioned docket.

**I. BASIC POSITION**

The Commission should approve a mechanism which requires each participating carrier to pay for its own costs of providing interim local number portability. However, in approving any interim number portability cost recovery mechanism the Commission should not include wireless carriers that are not porting numbers.

**II. ISSUES AND POSITIONS**

**ISSUE 1: Is Order No. PSC-95-1604-FOF-TP inconsistent with the Federal Communications Commission's First Report and Order and Further Notice of Proposed Rulemaking in the Matter of Telephone Number Portability in CC Docket No. 95-116?**

SUMMARY OF POSITION: \*Order No. PSC-95-1604-FOF-TP is inconsistent with the FCC's First Report and Order and Further Notice of Proposed Rulemaking in the Matter of Telephone Number Portability in CC Docket No. 95-116.\*

DOCUMENT NUMBER-DATE  
00087 JAN-65  
FPSC RECORDS/REPORTING

**ANALYSIS AND ARGUMENT:** In Order No. PSC-95-1604-FOF-TP, (the “INP Order”) the Florida Public Service Commission established a method of cost recovery entitling the incumbent Local Exchange Companies (“ILECs”) to charge new entrants a rate equal to or greater than the incumbents’ incremental cost of providing the portability service. In other words, the INP Order imposes the entire cost of interim number portability on the entering ALEC. However, the FCC’s First Report and Order and Further Notice of Proposed Rulemaking released July 2, 1996 in CC Docket No. 95-116 (“FCC Order”) at paragraph 138 provides in pertinent part:

requiring the new entrants to bear all of the costs, measured on the basis of incremental costs of currently available number portability methods, would not comply with the statutory requirements of section 251 (e) (2). Imposing the full incremental cost of number portability solely on new entrants would contravene the statutory mandate that all carriers share the cost of number portability.

Therefore, the FPSC’s Order is in direct conflict with the FCC Order with respect to cost recovery.

All but two of the parties are in agreement that the Florida INP Order is inconsistent with the FCC Order thus requiring further action by this Commission. Hearing Tr. 106 (Varner), 190 (Kistner), 307 (Poag), 29 (Guedel), 21 (Giannella), 353 (McDaniel), 383 (Cresse), 259 (Devine). GTEFL and BellSouth, on the other hand, argue that no further action is necessary. This position is entirely inconsistent with the FCC Order.

GTEFL maintains that the INP Order is consistent with the FCC Order. GTEFL concedes that the FCC set forth explicit guidelines for competitively neutral cost recovery, but contends that the existing tariffs in Florida are in compliance with those guidelines in that each carrier is permitted to recover its own costs. Hearing Tr. 157. However, the FCC determined that the approach in the existing Florida tariffs violates the competitively neutral cost recovery criteria. FCC Order at paragraphs 133 and 138. Thus, GTEFL’s proposal to maintain the status quo is not an acceptable

alternative.

Taking a different approach, BellSouth acknowledges that the pricing structure of the INP Order appears to be inconsistent with the FCC's guidelines. However, BellSouth believes the FCC's order does not address interim number portability, and therefore proposes that this Commission do nothing to resolve the inconsistency. Hearing Tr. 106. Absent a stay of the order by the FCC or other appropriate judicial forum, the guidelines adopted by the FCC for interim number portability cost recovery cannot be ignored simply because BellSouth disagrees with them. Thus, this position is also not sustainable in the face of the FCC Order.

Based upon this record, the competent, substantial evidence supports a finding that the existing Florida cost recovery mechanism for temporary number portability is inconsistent with the FCC Order. Accordingly, the Commission should approve the primary recommendation as discussed more fully below.

**ISSUE 2: What is the appropriate cost recovery mechanism for temporary number portability?**

SUMMARY OF POSITION: \*Each carrier should absorb its own costs. However, regardless of the cost recovery methodology approved, wireless carriers that do not use interim number portability should not participate in any interim cost recovery mechanism.\*

**A.) Primary Recommendations**

**ANALYSIS AND ARGUMENT:** The best approach for interim number portability cost recovery supported by the competent, substantial evidence of record would be for each local carrier to absorb its own costs. This "bill and keep" approach fully satisfies the competitively neutral policy objective set forth by the FCC in its First Report and Order and Further Notice of Proposed

Rulemaking in CC Docket No. 95-116 at paragraph 126 (“FCC Order”), while minimizing the additional effort and administrative expenses associated with all of the other allocation-based cost recovery schemes. Hearing Tr. 196 (Kirstner), 33 (Geudel), 22 (Giannella), 358 (McDaniel), 384-385 (Cresse). Thus, the Commission should adopt the “bill and keep” mechanism.

The FCC established two criteria for determining competitive neutrality:

First, a “competitively neutral” cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber. In other words, the recovery mechanism should not have a disparate effect on the incremental costs of competing carriers seeking to serve the same customer. . . . We thus interpret our first criterion as meaning that the incremental payment made by a new entrant at an appreciable cost disadvantage relative to any other carrier that could serve that customer.

FCC Order at ¶ 132. At paragraph 135 of the FCC Order, the FCC provides:

The second criterion for a “competitively neutral” cost recovery mechanism is that it should not have a disparate effect on the ability of competing service providers to earn normal returns on their investment.

These criteria are not only an essential part of the FCC Order in effect today, but are consistent with Florida’s objectives of implementing and expanding competition into all phases of the telecommunications industry.

In evaluating the available alternatives, the Commission should keep in mind the short amount of time interim number portability will be required before being replaced by a permanent system, the small amount of revenue that would be exchanged during this short duration, and the existing capability of most ILEC and ALEC switches to provide interim number portability without new investments. A cost recovery system that is expensive and complicated would only further burden and delay the start of true local competition. In the final analysis, each carrier paying its own costs is the simplest, least expensive mechanism available consistent with competitive neutrality.

Hearing Tr. 46.

As Ms. Kistner testified, competitive neutrality requires that the costs be incurred by competing carriers on an equal per customer basis. Hearing Tr. 213. Where the costs of interim local number portability are not incurred on an equal basis per customer, then one carrier will have a cost advantage over its competition with regard to number portability, a result the Telecommunications Act of 1996 intended to prohibit. The cost recovery mechanism in which competing local carriers pay their own costs for interim portability measures is competitively neutral because it recognizes that both incumbent LECs and ALECs will incur costs to forward calls to another carrier's network via interim number portability methods. Hearing Tr. 194. As Ms. Kistner testified, the true costs of porting numbers include both the costs of providing interim portability measures to other carriers and the cost of receiving customers with ported numbers. Hearing Tr. 215. While the ILEC may incur more of the total network costs in porting from its network to an ALEC's network, ALECs will incur similar costs as customers ask to be ported to other carriers, in addition to the costs ALECs incur to accommodate ported customers in their networks. Hearing Tr. 215. Indeed, the ALEC will spend significantly more time and expense in the customer acquisition process and in developing billing and customer service systems to track two numbers for each ported customer than the ILEC. Hearing Tr. 216.

Additionally, where ILECs and the ALECs absorb their own costs when porting a number to another carrier, each company is operating on an equivalent basis and sharing costs by each covering its own costs for routing calls through the network. Hearing Tr. 360. Although initially the ILEC will be porting more numbers than the ALEC, the proportionate cost to the ILEC and the ALEC will not be noticeably different. Hearing Tr. 360. Rather, the interim number portability

costs the ILEC will incur on a per customer basis compared with the costs the ALEC will incur on a per customer basis are relatively equal. Hearing Tr. 219. Therefore, requiring each carrier to absorb its own costs for number portability is competitively neutral and consistent with the spirit of the Telecommunications Act of 1996 in that the ILEC will not have a cost advantage over the competing ALEC.

Furthermore, the “bill and keep” mechanism is the most straightforward, least complex mechanism proposed which will preserve industry and state commission resources in its implementation. It does not require special reporting between carriers of revenues, minutes of use, or number of customer telephone numbers. Hearing Tr. 195. Moreover, it does not require carriers to produce, or the Florida PSC to review, cost studies to determine the appropriate incremental costs for recovery because each carrier recovers its own costs. Id. Development and auditing of the accounting and reporting systems necessary to provide such information would be extremely inefficient given the short time frame it will be in place.

The only other primary plan advanced was Sprint’s proposal for a per ported number charge based on a rate which is approximately 50% of the cost. This results in an approximately equal sharing of the cost of interim number portability by the ILEC and the ALEC. Hearing Tr. 311. Although Sprint’s proposal correctly allocates the cost of interim number portability on only those carriers porting numbers, it may not meet the FCC’s guidelines for competitively neutral cost recovery in that it does not allocate costs on a proportionate basis. Hearing Tr. 76 (Guedel), 212 (Kistner). Moreover, implementing Sprint’s proposal would be more complex than a recovery mechanism requiring each carrier to absorb its own costs of porting numbers. Hearing Tr. 69. However, if the Commission rejects “bill and keep” the Sprint proposal is the second, though much

less appropriate approach for interim number portability cost recovery because wireless and other carriers that do not port numbers would not participate.

Finally, as for the cost-recovery mechanism proposed by BellSouth and GTEFL, maintaining the status quo simply is not an appropriate course. For the reasons discussed at Issue I, BellSouth's and GTEFL's proposals fail to recognize and resolve the inconsistency between the FCC and Florida Orders and should therefore be rejected.

### **B.) Alternative Recommendations**

If the Commission rejects the primary recommendation, the Commission should adopt a method of cost recovery that allocates the cost of interim number portability based on the number of active access lines or telephone numbers of the participating carriers. This approach meets the competitively neutral criteria and would exclude wireless and other carriers not porting numbers from any interim cost recovery. Hearing Tr. 240. Under this scenario, it is essential that only the incremental costs that are incurred due to the provision of interim portability be recovered. Hearing Tr. 197 (Kistner), 358, 362 (McDaniel), 389 (Cresse). To ensure that only the incremental costs are recovered by the LEC, the ILEC would need to submit cost studies that include only those cost components that are directly related to providing RCF as a temporary number portability solution. Hearing Tr. 202 (Kistner), 384 (Cresse). Moreover, those cost studies must be scrutinized to determine that costs are not artificially inflated above absolute incremental costs. Hearing Tr. 197.

This cost-recovery mechanism is more involved than simply requiring each carrier to absorb its own costs in that it requires cost studies and tracking of telephone access lines. However, it is less intricate than the alternatives suggested by GTEFL and MFS and does not impose the cost of porting numbers on non-participating carriers like wireless carriers.



GTEFL contends that the Commission should adopt a pooling and surcharge cost-recovery mechanism if it determines the Florida INP Order and the FCC Order are inconsistent. However, given the limited costs and duration associated with interim number portability, GTEFL's proposal is cumbersome and inefficient. As a matter of fact, GTEFL's proposal includes eight time consuming and costly components.

First, under GTEFL's pooling and surcharge mechanism, all carriers would be required to submit cost studies for direct inward dialing and remote call forwarding to determine the appropriate incremental cost. Hearing Tr. 166. As testified to by Ms. Kistner, ALECs historically have not prepared cost studies of their own costs and generally do not have the personnel and methodologies to do so. Hearing Tr. 277. Thus, the value of requiring an ALEC to prepare such a cost study for such a short duration is uncertain. Moreover, the time to conduct such a study would have to be expedited in that the permanent number portability system is scheduled to become effective in October of 1997. Hearing Tr. 395

The next component of GTEFL's alternative recommendation is to review IXC, ILEC, ALEC, and CMRS traffic information, estimate the total number of local service and interexchange calls, and update data on a periodic basis. Third, an estimated annual cost of interim local number portability would need to be determined and then computed on a per-call basis. Hearing Tr. 166. The fourth component requires managing the allocation of costs to the IXCs, ILECs, ALECs and CMRS providers and collecting the funds from those carriers. The next component includes requiring and reviewing ILEC and ALEC cost reports on a regular basis to determine the amount of remote call forwarding and direct inward dialing usage for reimbursement. The sixth step requires management of periodic distribution of funds to ILECs and ALECs, including dispute resolution. The seventh

step would be to have the Commission determine an end user surcharge and oversee customer notification and reaction. The eighth and final step is to have the Commission determine and manage shortfalls or excesses in the fund and reapportion as needed. Hearing Tr. 167

This cumbersome mechanism is replete with the potential for errors, inconsistencies, and disputes. Additionally, such a pooling mechanism reduces the incentive for carriers to incur costs in the most economically efficient manner while encouraging carriers to exaggerate costs, thereby impeding the principles set forth in the FCC Order. Hearing Tr. 209. In its Order the FCC states that the principles adopted should mitigate any anti-competitive effects that may arise if a carrier falsely inflates the cost of currently available number portability. FCC Order at paragraph 125.

In short, the costs and time associated in establishing and managing all of the necessary reporting, tracking, end user billing, and auditing processes make GTEFL's alternative proposal too administratively burdensome and complex. Under GTEFL's alternative, carrier and Commission resources will be unnecessarily diverted from the more productive efforts of furthering the introduction of competition to Florida local exchange customers. Thus, GTEFL's pooling and surcharge mechanism should be rejected.

Likewise, MFS' alternative proposal is equally inappropriate and should be rejected. The MFS alternative would have the interim portability costs recovered from all telecommunication carriers in Florida, in direct proportion to each company's total revenues from intrastate telecommunications operations, with an offset for payments made to other carriers for intermediate telecommunications services that are used in the delivery of revenue-generating retail services. Hearing Tr. 270. Although MFS' alternative proposal complies with the FCC Order as a competitively neutral cost-recovery mechanism, it requires auditing and billing procedures that can

become administratively burdensome. Furthermore, it unnecessarily includes non-participating carriers in the cost recovery for interim number portability. Hearing Ex. 12 at pg 17. Consequently, this cost recovery mechanism dictates the creation of the same kind of bureaucracy as would be required by the GTEFL alternative. The MFS alternative is likely to be more costly to each carrier than the costs that will be recovered, and thus should be rejected.

### **C.) Conclusion**

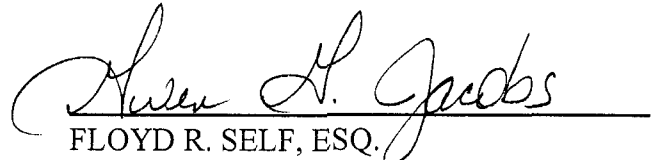
Within a year the permanent number portability cost-recovery mechanism begins to go into effect, which leaves little time for the cost determinations and other logistical burdens associated with all of the options except for the “bill and keep” approach. Moreover, there is no data or other evidence in the record as to what the various allocation systems would cost, how they would be administered and by whom. Therefore, the Commission should approve a cost-recovery mechanism in which carriers absorb their own costs of porting numbers as it is the most efficient and simple method proposed that meets the competitively neutral criteria.

**ISSUE 3:      Should there be any retroactive application of the Commission’s decision in this proceeding, if so what should be the effective date?**

SUMMARY OF POSITION:            No. Given the very few numbers being ported, the administrative expense of retroactively applying a new system, and the doctrine of retroactive rate making, retroactive application is improper.

Respectfully submitted, this 6th day of January, 1997.

MESSER, CAPARELLO, METZ,  
MAIDA & SELF, P.A.  
Post Office Box 1876  
Tallahassee, FL 32302-1876  
(904) 222-0720

A handwritten signature in cursive script, appearing to read "Gwen G. Jacobs", is written over a horizontal line.

FLOYD R. SELF, ESQ.

GWEN G. JACOBS, ESQ.

Attorneys for AT&T Wireless Services of Florida, Inc.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Posthearing Brief of AT&T Wireless Services of Florida, Inc. in Docket No. 950737-TP has been sent by Hand Delivery (\*) and/or U.S. Mail on this 6th day of January, 1997 to the following parties of record:

Jack Shreve, Public Counsel  
Office of the Public Counsel  
111 W. Madison St., Room 812  
Tallahassee, FL 32399-1400

Monica Barone, Esq.\*  
Division of Legal Services, Room 370  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Phillip Carver, Esq.  
BellSouth Telecommunications  
Suite 1910  
150 West Flagler Street  
Miami, FL 33130

Laura L. Wilson, Esq.  
Charles F. Dudley, Esq.  
Florida Cable Television Assoc.  
310 N. Monroe St.  
Tallahassee, FL 32301

Peter M. Dunbar, Esq.  
Robert S. Cohen, Esq.  
Pennington, Culpepper, Moore,  
Wilkinson, Dunbar and Dunlap, P.A.  
P.O. Box 10095  
Tallahassee, FL 32302

Ms. Jill Butler  
Florida Regulatory Director  
Digital Media Partners  
2773 Red Maple Ridge  
Tallahassee, FL 32301

Ms. Jill Butler  
Time Warner Communications  
Florida Regulatory Director  
2773 Red Maple Ridge  
Tallahassee, FL 32301

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

Robert G. Beatty  
BellSouth Telecommunications  
c/o Nancy H. Sims  
150 S. Monroe Street, Suite 400  
Tallahassee, FL 32301

Lee Willis, Esq.  
Ausley & McMullen  
P.O. Box 391  
Tallahassee, FL 32302

F. Ben Poag  
Sprint  
MC 2565  
1313 Blairstone Road  
Tallahassee, FL 32301

Timonty Devine  
MFS Communications Co., Inc.  
Six Concourse Parkway, Suite 2100  
Atlanta, GA 30328

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

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

Tony H. Key, Director  
State Regulatory - South  
Sprint  
3100 Cumberland Circle  
Atlanta, GA 30339

Michael W. Tye, Esq.  
AT&T  
101 N. Monroe St., Ste. 700  
Tallahassee, FL 32301

Robin D. Dunson, Esq.  
1200 Peachtree St., NE  
Promenade I, Room 4038  
Atlanta, GA 30309

Martha McMillin  
MCI Telecommunications Corp.  
780 Johnson Ferry Road, Suite 700  
Atlanta, GA 30346

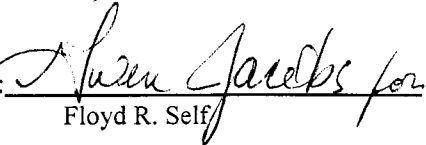
Richard D. Melson  
Hopping Boyd Gree & Sams  
P.O. Box 6526  
Tallahassee, FL 32314

Angela B. Green  
Florida Public Telecommuications  
Association, Inc.  
125 S. Gadsden St., Suite 200  
Tallahassee, FL 32301

Patrick K. Wiggins  
Wiggins & Villacorta, P.A.  
P.O. Drawer 1657  
Tallahassee, FL 32303

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

Mark Logan, Esq.  
Bryant, Miller and Olive, P.A.  
201 S. Monroe Street, Suite 500  
Tallahassee, FL 32301

By:   
Floyd R. Self