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LAW OFFICES
BRYANT, MILLER AND OLIVE, P.A.

201 South Monroe Street
Suite 500
Tallahassee, Florida 32301
(904) 222-8611

FAX: (904) 224-1544
(904) 224-0044

Barnett Plaza, Suite 1265
101 East Kennedy Boulevard
Tampa, Florida 33602
(813) 273-6677

FAX: (813) 223-2705

E-mail address
bmo@polaris.net

430 Margate
Atlanta, Georgia 30328
(770) 399-7700

FAX: (770) 399-6462

January 6, 1997

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

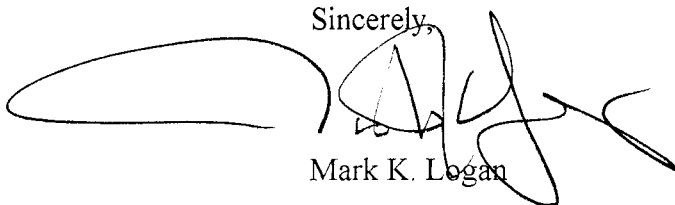
Re: Docket No. 950737-TP

Dear Mrs. Bayo:

Enclosed for filing in the above referenced docket are an original and fifteen (15) copies, of AT&T's Post-Hearing Brief. Also enclosed is a diskette of same in WordPerfect 6.1 format.

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

Sincerely,



Mark K. Logan

- ACK _____
- AFA _____
- APP _____
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- WAS _____
- OTH _____

MKL/thb

enclosures

cc: All parties of record

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BEFORE THE PUBLIC SERVICE COMMISSION

IN RE: Investigation into)	
temporary local telephone number)	DOCKET NO. 950737-TP
portability solution to)	
implement competition in local)	
exchange markets.)	
_____)	

POST-HEARING BRIEF

INTRODUCTION

The principal focus of this docket is to establish an appropriate cost recovery mechanism, on an interim basis, for the provision of telephone number portability. In 1995, as part of an earlier proceeding in this docket, the Commission established Remote Call Forwarding ("RCF") as the temporary number portability mechanism in Florida. Commission Order No. PSC-95-1604-FOF-TP (December 28, 1995). The Commission's Order allowed incumbent local exchange companies ("ILECs") to charge new entrants a rate equal to or greater than the incumbent's incremental cost of providing the portability service. As this Commission is well aware, since the issuance of that Order in December of 1995, there has been fundamental change in the regulation of the telecommunications industry in the United States. The passage of the Telecommunication Act of 1996 ("Act") by Congress ushered in a new era of complete and thorough competition for each and every aspect of the provision of telecommunications services.

Subsequent to the enactment of the Act the Federal Communications Commission ("FCC") began its Congressionally-mandated implementation of the Act. On July 2, 1996, the FCC issued its First Report and Order and Further Notice of Proposed Rulemaking in the Matter of Telephone Number Portability. FCC Docket No. 95-116 ("Order"). Echoing the competitive

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neutrality concept which is the hallmark of the Act, the FCC's Order requires the states to adopt interim number portability cost recovery mechanisms that do not give one service provider an appreciable incremental cost advantage over another service provider and do not have a disparate effect on the ability of competing service providers to earn normal returns on their investment. FCC Order at paragraphs 132, 135. Thus, the Commission's order implementing RCF as a temporary number portability mechanism is inconsistent with the FCC Order. Therefore, the Commission should adopt a new, consistent mechanism that promotes competitive neutrality consistent with the Act.

AT&T proposes, consistent with the Act and the FCC Order, that the Commission adopt an interim number portability mechanism that requires each local carrier to pay for its own costs of providing local number portability. As each carrier will pay for its own costs, there would be no cost charged to either the incumbent or new entrant within any Florida market. AT&T's proposal is consistent with the FCC Order and is the simplest, least onerous solution for the provision of temporary local number portability. This is especially important given the limited 12-18 month time frame within which the interim mechanism adopted by the Commission will actually be used. Thus, the Commission should not burden the parties or itself with a complex recovery mechanism when there is such a simple solution that is consistent with the Act. AT&T's proposal is that solution.

Alternatively, should the Commission eschew A&T's primary proposal in favor of requiring actual dollar payments, AT&T proposes a mechanism identical to that approved in the New York metropolitan area by the New York Department of Public Service as part of a NYNEX tariff. That mechanism establishes a charge per "ported" line equal to the total number

of minutes ported by the incumbent LEC multiplied by the switching and transport costs incurred per ported minute, divided by the total number of telephone numbers (active or ported) provided by the incumbent ILEC. The rate developed through this formula is then chargeable by either the ILEC or ALEC for porting telephone numbers. AT&T's alternative proposal is also consistent with the FCC order in that it is competitively neutral in that it does not give one service provider a cost advantage and it does not have a disparate effect on the ability of competing providers to earn normal returns on their investments.

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?

AT&T: *Yes. The FCC concluded that an appropriate charge should be "competitively neutral."*

There is little dispute over the conclusion that the FCC Order issued on July 2, 1996 is in fact inconsistent with the Commission's Order of December 28, 1995 in this same docket. The Commission's RCF cost recovery mechanism allows ILECs to charge new entrants a rate equal to or greater than the ILEC's incremental cost of providing portability service. (Guedel, T 30). Such a rate is not competitively neutral, therefore it is inconsistent with the FCC's Order. The Order specifically noted that: "...requiring the new entrant 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)." FCC Order at paragraph 138. The FCC further stated that 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.” Id. Thus there is little doubt that the Commission’s order and the FCC Order are inconsistent.

All but one of the ten parties participating in this docket have taken the position that the Commission’s order is inconsistent with the FCC Order and have offered testimony to support that position. The lone party arguing that the orders are consistent is GTEFL. GTEFL’s position is based upon language in the FCC’s Order which allows states to require the filing of tariffs for currently available number portability measures. (Menard, T 157) However GTEFL’s reliance on that language totally ignores the other operative paragraphs of the Order which specifically require that any such filing be consistent with the statutory mandate of the Act. FCC Order at paragraph 127. (Guedel, T 40). Ms. Menard additionally admitted during cross examination that the current tariffed cost recovery mechanism approved by the Commission in 1995 is inconsistent with paragraphs 133 and 134 of the FCC Order. (Menard, T 172-3). Therefore GTEFL’s position with respect to the consistency of the Commission and FCC Orders should be rejected and the Commission should issue a new order consistent with the FCC’s competition fostering Order issued last July.

While BellSouth does not challenge the inconsistency of the two orders, it asserts that the FCC Order violates Chapter 364, Florida Statutes (1995) and the Act itself. (Varner, T 104,124). BellSouth has filed a Petition for Reconsideration with the FCC containing those allegation. However, BellSouth admitted during the hearing in this docket that there is no stay of the FCC’s Order and that it is currently in effect. (Varner, T 137). Accordingly there is no basis for any finding that this Commission should not move forward to adopt a new interim number portability mechanism that is consistent with the FCC Order. As discussed below, AT&T’s proposal,

similarly advocated by other parties participating in this docket is the most appropriate solution to establishing an efficient, fair competitively neutral cost recovery mechanism for the provision of portability services.

ISSUE 2:

What is the appropriate cost recovery mechanism for temporary number portability?

AT&T:

*** The Commission should adopt a mechanism which requires each carrier to pay for its own costs of providing interim local number portability. In other words, the service should be provided as requested (of either the incumbent or the new entrant) at no charge.***

Given that the Commission's December 28, 1995 order is inconsistent with the FCC Order issued in July of last year, it is necessary for the Commission to adopt a new interim portability cost recovery mechanism. The life span of this new mechanism will clearly be short. Mr. Guedel testified that the whatever arrangement the Commission adopts will become obsolete within the next 12 to 18 months. (Guedel, T 34). Furthermore, the mechanism is not likely to result in a great deal of revenue changing hands. There have been virtually no customers ported to date under the existing mechanism and demand is likely to be sluggish at best given the struggle of new entrants to actually enter established ILEC markets. Id. Thus the Commission should endeavor to adopt a mechanism that is not only consistent with the FCC Order (e.g., competitively neutral) but is simple and efficient to administer.

AT&T's proposal meets those criteria. With respect to consistency, AT&T's proposal is one of the suggested mechanisms the FCC expressly found consistent with the Act. Paragraph

135 of the Order lists three such mechanisms: 1) a distribution of costs based upon total working telephone numbers in an area; 2) a distribution of costs based upon total revenues minus carrier to carrier revenues; and 3) a mechanism that requires each carrier to pay its own costs of currently available number portability measures. FCC Order at paragraph 135.

The AT&T proposal is essentially the third FCC suggestion and of the three it is the simplest, least intrusive measure for the implementation of an interim cost recovery mechanism. The mechanism requires no dollars to change hands, therefore there is no major administrative or billing burden for either the party requesting porting services from a switch or the party receiving those services.

Most importantly AT&T's proposal is competitively neutral. As Mr. Guedel testified the FCC interprets competitive neutrality as consisting of two components. (Guedel, T 45). First, the mechanism must not give one provider an appreciable incremental cost advantage over another service provider and, second, that the mechanism must not have a desperate effect on the ability of competing service providers to earn normal returns on their investment. The AT&T proposed mechanism meets both these criteria as each competing company pays for its own cost of providing currently available number portability. *Id.* On a customer-specific basis the costs of incurring such an interim solution will be about the same between an ALEC and an ILEC. (Guedel, T 48). Thus, AT&T's proposal should be adopted by the Commission as an FCC-consistent, competitively neutral mechanism that is simple and efficient to administer over the next 12 to 18 months.

BellSouth and GTEFL both propose keeping the Commission's current cost recovery mechanism in place. As the record in this docket clearly indicates that mechanism is inconsistent

with the FCC's Order those proposals should be rejected outright. BellSouth, alternatively proposes that each carrier track and record their costs of providing interim number portability until a mechanism for long-term number portability becomes effective. This approach should be rejected as overly burdensome given the anticipated minuscule demand for the provision of number portability on an interim basis. GTEFL proposes an alternative "pooling" mechanism to recover interim portability costs. Such a mechanism is overly complex for the solution needed. (Menard, T 166-168). Accordingly, it should also be rejected.

While AT&T advocates its primary proposal as the most efficient solution to providing competitively neutral interim number portability, should the Commission decide to require a mechanism that actually necessitates the exchange of dollars, then the Commission should adopt AT&T's alternate proposal. That proposal bases compensation for the provision of interim number portability on the total number of minutes times the per minute switching and transport costs, divided by the total working telephone numbers provided by the incumbent carrier serving the area. (Guedel, T 35). This alternative proposal is essentially an application of one of the mechanisms suggested by the FCC discussed in paragraph 135 of the Order. The compensation rate developed through this formula would then be applied identically to both ILEC or ALEC ported lines.

Sprint/United offers a proposal that is uses a per ported number charge based upon a rate which is approximately 50% of the cost of providing that service. (Poag, T 310). While Sprint/United's plan is not unduly complex to administer, it fails to meet the competitive neutrality requirement recommended by the FCC and should therefore be rejected. (Guedel, T 69).

ISSUE 3:

Should there be any retroactive application of the Commission's decision in this proceeding, if so what should be the effective date?

AT&T:

No

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark K. Logan', is written over a horizontal line. The signature is stylized and somewhat cursive.

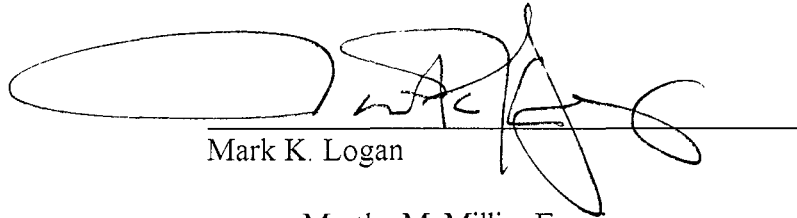
MARK K. LOGAN
Florida Bar No. 0494208
Bryant, Miller and Olive, P.A.
201 South Monroe, Suite 500
Tallahassee, FL 32301
(904) 222-8611

and

ROBIN D. DUNSON
1200 Peachtree Street, NE
Promenade I, Room 4038
Atlanta, GA 30309
(404) 810-8689

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Post-hearing Brief has been furnished by U.S. Mail to the parties listed below on this 6th day of January, 1997.


Mark K. Logan

Norman H. Horton, Esquire
Floyd Self, Esquire
Messer, Caparello, Madsen,
Goldman & Metz, P.A.
215 South Monroe Street
Tallahassee, Florida 32302

Patrick K. Wiggins, Esquire
Wiggins & Villacorta, P.A.
P.O. Box 1657
Tallahassee, Florida 32302

Nancy B. White, Esquire
Thomas B. Alexander, Esquire
675 West Peachtree Street, Suite 4300
Atlanta, Georgia 30375

Laura L. Wilson, Esquire
310 North Monroe Street
Tallahassee, Florida 32301

Kimberly Caswell, Esquire
One Tampa City Center
P.O. Box 110
FLTC007
Tampa, Florida 33601

Martha McMillin, Esquire
780 Johnson Ferry Road, Suite 700
Atlanta, Georgia 30342

Richard D. Melson, Esquire
Hopping, Green, Sams & Smith
123 South Calhoun Street
Tallahassee, Florida 32314

Pamela S. Arluk, Esquire
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Sue Weiske, Esquire
160 Inverness Drive West
Englewood, CO 80112

J. Jeffrey Wahlen, Esquire
John P. Fons
Ausley & McMullen
227 South Calhoun Street
Tallahassee, FL 32302

Monica M. Barone, Esquire
William Cox, Esquire
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850