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Public Service Commission

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DATE: JULY 9, 1998

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

FROM: DIVISION OF COMMUNICATIONS (KING, SHELFER, AUDU)
DIVISION OF LEGAL SERVICES (COX)

RE: DOCKET NO. 970281-TL - ESTABLISHMENT OF INTRASTATE IMPLEMENTATION REQUIREMENTS GOVERNING FEDERALLY MANDATED DEREGULATION OF LOCAL EXCHANGE COMPANY PAYPHONES.

AGENDA: 07/21/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\970281.RCM

CASE BACKGROUND

To date the FCC has issued several orders in CC Docket No. 96-128, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996. The Payphone Order (FCC 96-388) released September 20, 1996, and the Order on Reconsideration (FCC 96-439) released November 8, 1996, each adopted new rules and policies governing the payphone industry (both orders together are known as the Payphone Reclassification Proceeding)[1]. Two later orders, DA 97-678 and DA 97-805, issued April 4, 1997, and April 15, 1997, respectively, granted incumbent local exchange companies (LECs) waivers for specific interstate and intrastate tariff filing requirements.

[1] Staff would note that Section 276(c) of the Telecommunications Act of 1996 states that "(t)o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's requirements on such matters shall preempt such State requirements."

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FPSC-RECORDS/REPORTING

Paragraph 162 of the Order on Reconsideration states:

> ". . . as required in the Report and Order, LECs must provide tariffed, nondiscriminatory basic payphone services that enable independent providers to offer payphone services using either instrument-implemented "smart payphones" or "dumb" payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECS. LECs must file those tariffs with the state. In addition, as required by the Report and Order, any basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis."

The tariffs for a LEC's payphone service offerings must be 1) cost-based, 2) consistent with the requirements of §276 of the Act, and 3) nondiscriminatory (¶163, FCC 96-439). In addition, states are to apply the Computer III guidelines[2] for tariffing such intrastate services. Where LECs have already filed intrastate tariffs for these services, states may, after considering the requirements of the Payphone Reclassification Proceedings and §276, conclude: 1) that existing tariffs are consistent with the requirements noted above and 2) that in such case no further filings are required. All intrastate tariffs were to be effective no later than April 15, 1997. LECs must comply with the above requirements, as well as others discussed in the Payphone Reclassification Proceedings, before the LECs' payphone operations are eligible to receive compensation for completed intrastate and interstate calls originated by its payphones.

In previous proceedings, the Florida Public Service Commission (FPSC) required the tariffing of basic phone lines ("smart" and "dumb") and various blocking and screening options (such as billed number screening and operator screening) to prevent fraud. However, small LECs were not required to tariff the "smart" line until they received a bona fide request from a payphone provider. Once the FCC's Orders were issued, it was clear that the small LECs were required to tariff the "smart" line regardless of whether a request had been made.

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[2] This requires application of the FCC's "new services test"; the test is described on pages 4-5 of this recommendation.

Since tariffs for the various payphone services (access lines and the unbundled features) were in place, staff and several LECs did not believe the Computer III tariffing guidelines (i.e., the "new services" test) were applicable to existing intrastate tariffs. However, on April 15, 1997, the FCC issued Order No. DA 97-805 (Intrastate Waiver Order). This order granted LECs a limited waiver until May 19, 1997, to file or amend intrastate tariffs for payphone services to be consistent with the "new services" test. This order makes it clear that the new services test is applicable to all new and existing tariffed payphone services.

On April 30, 1997, staff sent a memorandum to each incumbent LEC with a copy of the Intrastate Waiver Order attached. The memorandum asked each LEC to provide a detailed explanation and any supporting documentation if it believed its current intrastate payphone tariffs met the FCC's new services test. Furthermore, a staff workshop was held on December 9, 1997, to discuss application of the FCC's new services test. During the workshop it was suggested that the Florida Public Telecommunications Association (FPTA) and the LECs meet to determine if the various issues remaining in this docket could be resolved through stipulation of the parties (a hearing was scheduled for September 3, 1998, and has since been canceled). Staff allowed the parties several months to study the filings and to discuss these matters. On May 22, 1998, staff received a letter from the FPTA advising that no formal settlement has been reached, although a number of operational issues have been addressed and the tariffs and supporting documents have been studied in detail.

Issue 1 will address whether the LECs' current tariffs for the basic payphone services and any basic network services and unbundled features satisfy the FCC's requirements and whether further filings are required. All intrastate tariffs were to be effective no later than April 15, 1997.

DISCUSSION OF ISSUES

ISSUE 1: Are the existing LEC intrastate tariffs for payphone services 1) cost-based, 2) consistent with the requirements of Section 276 of the Telecommunications Act of 1996, and 3) nondiscriminatory?

RECOMMENDATION: Yes, the **existing** LEC tariffs for payphone services are cost-based, consistent with Section 276 and nondiscriminatory; therefore, no further filings are necessary to modify **existing** tariffs. However, Indiantown Telephone Systems Inc., TDS/Quincy Telephone Company, and Vista-United Telecommunications currently do not have "smart" line service tariffed as required by the FCC's Orders. Therefore, Indiantown, TDS/Quincy, and Vista-United should be required to file a tariff for this service no later than August 18, 1998. A tariff whose rates and terms mirror those of a tariff previously approved by this Commission will be presumed to have satisfied the "new services test" and will be handled administratively. (King, Shelfer)

STAFF ANALYSIS: The FCC concluded in its Payphone Reclassification Proceedings that LECs are required to file intrastate tariffs for basic payphone lines ("smart" and "dumb") and any basic network services or unbundled features used by the LEC's payphone operations. The tariffs for LEC payphone services must be 1) cost-based, 2) consistent with the requirements of §276, 3) nondiscriminatory, and consistent with the Computer III guidelines for tariffing such intrastate services.

The Computer III guidelines require the application of the FCC's "new services" test. This test was developed to prevent LECs from setting excessively high rates and to protect against unreasonably discriminatory pricing. In the Order on Reconsideration at paragraph 163, note 492, the FCC refers to the "new services" test required in the Report and Order as described at Section 61.49(g)(2) of Title 47 of the Code of Federal Regulations. This section states:

> Each tariff submitted by a local exchange carrier specified in §61.41(a) (2) or (3) of this part that introduces a new service or a restructured unbundled basic service element (BSE) that is or will later be included in a basket must be accompanied by cost data sufficient to establish that the new service or unbundled BSE will not recover more than a reasonable portion of the carrier's overhead costs.

In addition, note 492 also refers to Amendments of Part 69 of the FCC's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79. It is stated in paragraph 42 that a LEC introducing a new service will be required to submit its engineering studies, time and wage studies, or other cost accounting studies to identify the direct costs of providing the new service, absent overheads, and must also satisfy the net revenue test[3]. Therefore, it appears that the federal "new services" test basically requires that the rates for the services not recover more than a reasonable portion of the carrier's overhead cost, and the costs must be supported by some type of cost study.

While the FPSC required cost information for wholesale payphone offerings to be filed on March 31, 1997, by Order PSC-97-0358-FOF-TP, there were only three LECs (BellSouth, GTEFL, and Sprint) that had this information available. The majority of the information was filed under confidential cover. Staff reviewed the information provided and believes that when viewed in the aggregate the existing rates for payphone services are appropriate. This aggregate level assessment considers both required and typically purchased features and functions. Moreover, based on our review of these studies, we believe that these LECs' current tariffed rates for intrastate payphone services are cost-based and thus meet the "new services" test.

The small LECs did not have cost studies to submit, and staff believes it would be unduly burdensome and costly to require such studies to be developed. In most cases, the small LECs have mirrored the rates of the large LECs. It should be noted that rates for the "smart" and "dumb" line and many of the unbundled features and functions (such as billed numbered screening and operator screening) came about as the result of one or more FPSC proceedings in which costs were considered.

In speaking with other state commissions, it appears that Florida is unique in that Florida's LECs have had tariffs in place for many years to provide various payphone services to independent pay telephone providers. In addition, Florida has held many proceedings regarding various aspects of the pay telephone market. As stated in Order No. PSC-93-0289-FOF-TL:

> No market has received as much attention, scrutiny, and evaluation, from this Commission as the pay telephone market. Since 1985, we have held three full evidentiary

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[3] The net revenue test is described in FCC 90-314, Docket 87-313, n. 416. It requires that the proposed service increase net revenue (with the increase occurring within a certain time frame), and detailed information must be provided on demand, cost, revenues, etc.

> hearings, approved or modified two stipulations, and have addressed a myriad of other pay telephone-related issues. We have endeavored to insure that NPATS have the ability to enter and exit the market and to compete with LPATS. Since 1985, we have approved four rate reductions for interconnection . . . (page 30)

Staff does not believe there has been a significant change in circumstances within the pay telephone industry regarding the wholesale services offered to payphone providers by LECs. As previously discussed, many of the rates and services have been in place in the existing tariffs for many years. The wholesale services offered in the existing LEC tariffs are not discriminatory, since all payphone providers (LEC and nonLEC) now purchase services out of the same tariff, at the same rates.

Staff has considered the requirements of the FCC Orders and Section 276 of the Act and believes the existing tariffs for LEC payphone services are appropriate. However, further filings are necessary to tariff coin line (smart line)service by Indiantown, Quincy, and Vista-United. While staff is aware that these companies have not received a bona fide request for the "smart" line, staff believes these tariffs must be filed to meet the FCC's guidelines and must be in place before these companies are eligible for per-call compensation. A tariff whose rates and terms mirror those of a tariff previously approved by this Commission will be presumed to have satisfied the "new services test" and will be handled administratively.

Staff would note again that in most cases the existing tariffs came about as the result of one or more payphone-related proceedings in which costs were considered. All payphone providers (LEC and nonLEC) will be purchasing the same wholesale services at the same rates from the existing tariffs, therefore, they are not discriminatory. Accordingly, staff believes the **existing** LEC tariffs for payphone services are cost-based, consistent with Section 276 and nondiscriminatory; therefore, no further filings are necessary to modify **existing** tariffs. However, Indiantown Telephone Systems Inc., TDS/Quincy Telephone Company, and Vista-United Telecommunications do not currently have "smart" line service tariffed as required by the FCC's Orders. Therefore, Indiantown, TDS/Quincy, and Vista-United should be required to file a tariff for this service no later than August 18, 1998. A "smart" line tariff whose rates and terms mirror those of a "smart" line tariff previously approved by this Commission will be presumed to have satisfied the "new services test" and will be handled administratively.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action. (Cox)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, this docket should be closed.