

STATE OF FLORIDA OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature 111 West Madison St. Room 812 Tallahassee, Florida 32399-1400 850-488-9330

February 16, 2001

Cheryl Bulecza-Banks
Division of Competitive Services
Florida Public Service Commission
2540 Shumard Oaks Boulevard
Tallahassee, FL 32399-0850

Re: Docket 001503

Dear Ms. Bulecza-Banks:

At the workshop held on December 12, 2000, you invited participants to provide you written comments about cost recovery and allocation issues for number pooling trials in Florida. I am providing these written comments to explain why price cap regulation in Florida already provides cost recovery for the local exchange companies. There is no need for a local rate surcharge, as the local exchange industry argues, nor is such a surcharge on local rates authorized by the Florida Statutes.

Prior to 1996, carriers recovered their costs through rate of return regulation. Under that paradigm, carriers recovered a reasonable rate of return on their investments, plus all prudently incurred expenses, through rates set by the Florida Public Service Commission. That changed on January 1, 1996, when the legislature granted significant regulatory freedom and flexibility to the local exchange companies in return for certainty surrounding the companies' local rates. Section 364.051, Florida Statutes, sets forth the very limited circumstances under which carriers subject to price cap regulation may increase their local rates.

There is evidence that the companies have thrived under price cap regulation. BellSouth Telecommunications, for example, refunded in excess of \$195 million plus interest to customers during 1997, yet still earned a return on equity of 15.11% in Florida. 1997 was the last year during which BellSouth was

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required to make any refunds, so since that time it seems likely that the company's earnings have improved significantly. BellSouth has had "cost recovery" of all of its costs since that time.

There is nothing extraordinary or unique about number pooling costs. Efficient use of these resources is part of the overall cost of providing telecommunications services. Companies incur a wide variety of costs to provide telephone service, and the nature of these costs continually changes as the industry itself evolves. The companies can not pass through each of their costs as special surcharges to local rates, and the costs of conducting number pooling trials should be no exception.

Nothing in the FCC's orders requires anything more than the cost recovery mechanism afforded by Florida's price cap statute. While it is true that the costs incurred by carriers to implement state-mandated thousands-block number pooling are intrastate costs¹, the FCC's interpretation of section 251(e)(2) of the Telecommunications Act does not guarantee any particular return or require the Commission to guarantee that carriers recover all their thousands-block number pooling costs². Moreover, the Florida Public Service Commission is bound by chapter 364, Florida Statutes. The FCC does not have the power to require the Florida Commission to take an action that is not authorized by Florida Statutes, such as raising local rates through a surcharge, when the price cap statute does not allow such an increase.³

Although price cap regulation places strict limits on the companies' ability to raise local rates, the statute also provides a mechanism if the companies should encounter a substantial hardship. Under section 364.051(4), Florida Statutes, any local exchange company that believes circumstances have changed substantially to justify any increase in local rates may petition the Commission for a rate increase, but the Commission may grant such a petition only after an opportunity for a hearing and a compelling showing of changed

¹ Numbering Resource Optimization, First Report and Order, FCC 00-104 released March 31, 2000, para. 197.

² *Id.*, para. 200.

³ Also note that so far the FCC has not authorized a federal charge on end users for federal thousands-block number pooling costs. *Numbering Resource Optimization, Second Report and Order*, FCC 00-429 released December 29, 2000, para. 180-181.

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circumstances. This mechanism is always available to the companies if they believe they are not recovering their cost of providing telephone service.

Sincerely,

Deputy Public Counsel

Division of Records and Recording CC:

All parties of record