

State of Florida



# Public Service Commission

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RECORDS AND REPORTING

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**DATE:** MAY 17, 2001

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF COMPETITIVE SERVICES (AUDU) *A*  
DIVISION OF LEGAL SERVICES (BANKS) *PPB BK*

**RE:** DOCKET NO. 990546-TL - APPROVAL OF INTRALATA TOLL DIALING PARITY PLANS.

**AGENDA:** 05/29/2001 - REGULAR AGENDA - ISSUE 1 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE - ISSUE 2 - PROCEDURAL

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\990546C.RCM

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### CASE BACKGROUND

In Order No. PSC-95-0203-FOF-TP, Docket No. 930330-TL, issued on February 13, 1995, this Commission found that intraLATA presubscription (ILP) was in the public interest, and directed the large local exchange companies (LECs), BellSouth Telecommunications, Inc., Verizon Florida (formerly known as GTE Florida) (Verizon), and Sprint Florida, Incorporated (Sprint), to implement ILP in Florida by year-end 1997. The small LECs were required to implement ILP only upon receipt of a bona fide request (BFR).<sup>1</sup>

Section 251(b)(3) of the Telecommunications Act of 1996 (the Act) directs each local service provider to provide dialing parity to competing providers of telephone exchange and telephone toll

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<sup>1</sup>Small LECs were not required to entertain a BFR until January 1, 1997.

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service. On August 8, 1996, the Federal Communications Commission (FCC) issued Order FCC 96-333 in CC Docket No. 96-98; this order required that each local service provider implement toll dialing parity no later than February 8, 1999.

On August 22, 1997, the United States Court of Appeals for the Eighth Circuit (Court) concluded that the FCC had exceeded its jurisdiction in promulgating its dialing parity rules. In Docket No. 96-3519, the Court vacated the FCC's dialing parity rules, 47 C.F.R. 51.205-51.515, as they apply to intraLATA telecommunications.

On January 25, 1999, the United States Supreme Court, in *AT&T v. Iowa Utilities Board* reversed in part the rulings of the Eighth Circuit Court that had vacated the dialing parity rules. The Supreme Court held, inter alia, that the FCC has general jurisdiction to implement the 1996 Act's local competition provisions, and reinstated the dialing parity rules.<sup>2</sup>

On March 23, 1999, the FCC issued Order 99-54 in CC Docket No. 96-98. In that order, pursuant to Section 1.3 of the FCC's rules, the FCC extended its deadline for local service providers to file intraLATA toll dialing parity plans to April 22, 1999, and the deadline for state commissions to approve not later than June 22, 1999. (FCC 99-54, ¶7)

In the weeks leading up to this deadline, staff received and reviewed numerous toll dialing parity plans, and prepared a recommendation for the June 1, 1999, Commission Agenda Conference. The Commission's decisions in this proceeding are memorialized in Order No. PSC-99-1255-PAA-TP, issued on June 25, 1999. Staff brought another recommendation before the Commission on June 29, 1999; the Commission's decision is memorialized in Order No. PSC-99-1373-PAA-TP. Since the last Commission decision in this docket, there has been little activity in this docket. On January 9, 2001, Urban Media of Florida, Inc. filed a dialing parity plan. This dialing parity plan is partly the subject of this recommendation.

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<sup>2</sup> *AT&T v. Iowa Utilities Board*, 119 S.Ct. at 730.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the intraLATA toll dialing parity plan submitted by Urban Media of Florida, Inc.?

RECOMMENDATION: Yes. The Commission should approve the intraLATA toll dialing parity plan submitted by Urban Media of Florida, Inc. (AUDU)

STAFF ANALYSIS:

In its Public Notice DA 99-1554 in CC Docket No. 96-98, released on August 5, 1999, the FCC ruled on all outstanding dialing parity plans that had been filed with the Common Carrier Bureau, and stated:

[F]uture filings of dialing parity plans by LECs should be done with the state public utility commission in which the LEC provides exchange service and in the manner required by that state Commission. (Public Notice, page 2)

In the FCC's Orders addressing dialing parity, there are no specific guidelines as to what the state commissions should use as a basis for approval of the local service providers' dialing parity plans. In Order No. PSC-96-1569-FOF-TP, this Commission outlined the basic provisions of a toll dialing parity plan, as had been specified in the intraLATA presubscription proceeding, Docket No. 930330-TP. In reviewing the earlier toll dialing parity plans, staff relied on this Commission's prior decisions on intraLATA presubscription for guidance, in conjunction with the dialing parity rules promulgated in the FCC's Second Report and Order in CC Docket No. 96-98 (FCC 96-333). With the earlier plans, staff analyzed each implementation plan to ensure it met the requirements of the FCC's rules, as well as those requirements in the FPSC's Orders that comport with these FCC rules.

In its orders, the FCC provides that a local service provider's dialing parity plan should include a 2- Presubscribed Interexchange Carrier (PIC) option and the availability of No-PIC status with the capability to dial-around using an access code. (FCC 96-333, ¶¶48, 78) These same provisions were determined by this Commission to be necessary provisions of an ILEC's intraLATA presubscription plan in Order No. PSC-96-1569-FOF-TP. In ¶77 of FCC 96-333, the FCC also requires all LECs to provide consumer notification and carrier selection procedures in their dialing

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parity plans. Similar requirements were imposed on the ILECs by this Commission, using the customer contact protocols<sup>3</sup> outlined in Order No. PSC-96-1569-FOF-TP. The customer contact protocols required LECs to inform their customers of the availability of intraLATA toll services in a competitively neutral manner.

Staff has reviewed Urban Media's filing to ensure it satisfies all previous FPSC intraLATA dialing parity requirements including a 2-PIC option, No-PIC status with dial-around capability, and consumer notification and carrier selection procedures. Urban Media's implementation plan has met all of these requirements.

Based on staff's review of the plan submitted by Urban Media of Florida, Inc., the plan comports with the applicable rules and orders. Thus, staff recommends that this plan be approved.

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<sup>3</sup> All ILECs have been relieved of all restrictions on contact protocols except those pertaining to new customers.

**ISSUE 2:** Should the Commission direct staff to administratively approve intraLATA toll dialing parity plans that are consistent with the provisions of Order No. PSC-99-1255-PAA-TP?

**RECOMMENDATION:** Yes. The Commission should direct staff to administratively approve all future intraLATA toll dialing parity plans filed with the Commission that are consistent with the Commission's decision in Order No. PSC-99-1255-PAA-TP and approve the amendment to the Administrative Procedures Manual shown on Attachment 2. (AUDU, BANKS)

**STAFF ANALYSIS:** Since April 22, 1999, this is the third recommendation that staff has brought before the Commission on the subject of intraLATA toll dialing parity.

In Order No. PSC-99-1255-PAA-TP, this Commission determined that all implementation plans that provided for the 2-PIC option, the No-PIC status with dial-around capability, and consumer notification and carrier selection procedures comported with FCC Orders and prior Commission decisions. Based upon these findings, the Commission approved those dialing parity plans.

Staff is unsure how many more dialing parity plans may be filed in the future; however, as alternative local exchange carriers (ALECs) decide to provide local service and intraLATA toll service, they will need to implement a dialing parity plan. Thus, there will always be some activity in this regard. As a result, staff believes that it would be most efficient to administratively approve future toll dialing parity plans consistent with prior Commission's decisions. Specifically, staff believes that all future toll dialing parity plans that provide for the 2-PIC option, the No-PIC status with dial-around capability, and consumer notification and carrier selection procedures, consistent with FCC Orders and prior Commission decisions, should be administratively approved by staff.

Although it is not common practice that Commission staff request administrative approval at an agenda conference, staff believes that it is appropriate for consideration in this recommendation. In the past, this Commission has granted staff authority to administratively dispose of cases which are typically non-controversial and routine in nature under the provisions of Section 2.07, Administrative Procedures Manual. (See Attachment 1) Staff believes that the process of approving intraLATA toll dialing parity plans is typically non-controversial and routine. Further, staff believes that granting administrative authority to process

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all future toll dialing parity plans will streamline the process for local service providers and allow staff to process these filings within shorter timeframes.

Thus, staff recommends that the Commission direct it to administratively approve all future intraLATA toll dialing parity plans filed with the Commission that are consistent with the Commission's decision in Order No. PSC-99-1255-PAA-TP.

Staff also proposes that the Commission approve the amendment to the Administrative Procedures Manual shown in Attachment 2 to this recommendation to implement the procedure.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. This docket may be closed upon issuance of a Consummating Order if no person whose substantial interests are affected files a protest to Issue 1 within 21 days of the issuance date of the PAA Order. If a timely protest is filed, the docket should remain open pending the outcome of further proceedings.  
(BANKS)

STAFF ANALYSIS: In Order No. PSC-99-1255-PAA-TP, this Commission ruled that this docket should remain open to address subsequent filings of intraLATA toll dialing parity plans. Since the issuance of Order No. PSC-99-1373-PAA-TP, which dealt with the additional toll dialing parity plans that were not addressed in Order No. PSC-99-1255-PAA-TP, there has been virtually no activity in this docket.

This docket may be closed upon issuance of a Consummating Order if no person whose substantial interests are affected files a protest to Issue 1 within 21 days of the issuance date of the PAA Order. If a timely protest is filed, the docket should remain open pending the outcome of further proceedings.

ATTACHMENT 1

2.07 ADMINISTRATIVE DISPOSITION OF CERTAIN MATTERS (OPR: RAR)

a. PURPOSE

To list those matters which the Commission has authorized to be disposed of administratively by the staff.

b. POLICIES

i. Except as otherwise stated, the director of the division which is designated Office of Primary Responsibility (OPR) is responsible for processing and disposing of the matters listed below. Such actions by the OPR are to be taken in coordination with the Offices of Collateral Responsibility (OCRs) and, in particular, with the Director of the Division of Legal Services or his/her designee. The Director of the Division of Legal Services, where responsible for actions hereunder, is to coordinate them with the appropriate other divisions.

ii. Any party to matters processed under this section may, upon written request, have the matter considered by the Commission.

c. MATTERS FOR ADMINISTRATIVE DISPOSITION

Legal Matters

i. The Director of the Division of Legal Services may grant motions or Petitions for Intervention. Recommendations to deny motions or Petitions for Intervention are to be forwarded by the Director of the Division of Legal Services to the Commissioner assigned to rule on motions and procedural matters for the case.

Administrative Matters

ii. Changes of names and corporate reorganizations of regulated utilities, where no change of ownership or control or transfer of assets is involved, may be approved by the Director of the Division of Records and Reporting in coordination with the



appropriate industry division and the Division of Legal Services. Cases involving changes in ownership or control, or asset transfer, or other reason to withhold acknowledgment, are to be referred to the Commission.

- iii. The Director of the Division of Records and Reporting, with concurrence of the OPR and the attorney assigned, may grant written requests for withdrawal of pay telephone certificate applications filed by a utility or company.
- iv. The Director of the Division of Records and Reporting may close a staff-assisted rate case docket thirty days after the utility is notified of the denial by the Chairman unless a written protest is filed.
- v. The Division of Records and Reporting may administratively close dockets as described below upon the joint recommendation of the OPR division and the Division of Legal Services or Appeals. By the fifteenth of the following month, the Division of Records and Reporting will submit a monthly report of such actions to the Chairman, with copies to the Executive Director and General Counsel.
  - (1) Dockets which were erroneously opened.
  - (2) Dockets which were opened to resolve objections relating to notices or applications for certificates, amendments, or transfers in which the objection was subsequently withdrawn.
  - (3) Dockets opened to address requests for confidential classification when the subject request is withdrawn prior to a ruling on the confidentiality of the information or when staff determines that it does not need the information and directs that it be returned to its source prior to a ruling on confidentiality.
  - (4) Other dockets initiated by the filing of a petition, application, notice, complaint or other request in which the applicant,

petitioner or complainant seeks to withdraw its initial pleading and staff has determined that there are no pending issues that need to be addressed by the Commission regarding the filing, no request for refund of filing fee has been made, and no agency action has been taken.

- vi. The Director of the Division of Water and Wastewater may grant written requests for withdrawal of pass-through or price index rate adjustment applications.
- vii. Requests may be granted for increases in bonds, letters of credit and corporate underwritings, which are submitted due to an order by the Commission or pursuant to appropriate statutes, when the originals are deemed inadequate to fulfill the purpose for which they were filed.

#### Accounting Records

- viii. The Division of Auditing and Financial Analysis and the relevant industry division with the concurrence of the Executive Director or designee may provide comments to federal agencies concerning audit reports or findings proposed by the staff of federal agencies. The Division of Appeals shall be copied with the draft comments prior to their transmittal to the federal agencies.

#### Jurisdictional Water and Wastewater Systems

- ix. Requests may be granted for the keeping of records and record books outside of the office or place of business of companies within this state (private homes, independent accounting offices or other record keeping offices) if the Commission will have free access to such records and books of record.
- x. Requests may be granted for the keeping of records and record books outside of the state if the company agrees to reimburse the Commission for the reasonable travel expenses of the Commission's representative during any out-of-state audits or investigations.

- xi. Applications for the sale or transfer of water and wastewater utilities from private to governmental agencies, and for amendments to or cancellation of water and wastewater certificates, may be granted when they are filed and processed in accordance with Chapter 367, and no protests have been filed.
- xii. The Divisions of Legal Services, Economic Regulation, and Regulatory Oversight are directed not to initiate a show cause proceeding when staff first discovers that a water and/or wastewater utility's books and records are not maintained in accordance with the NARUC USoA, in apparent violation of Rule 25-30.115, Florida Administrative Code. Staff is also directed to require the utility to bring its accounts and records into conformance with the NARUC USoA in accordance with Rule 25-30.115, Florida Administrative Code, and to require the utility to submit a statement from its accountant with its next annual report indicating that it has done so. If a utility remains out of compliance, staff should then bring a show cause issue to the Commission for disposition.

Refunds

- xiii. Requests by water and wastewater utilities to refund excess service availability charges (CIAC) collected pursuant to Order No. 16971 issued in Docket No. 860184-PU, may be granted and an administrative order issued. Any unusual request will be placed before the Commission.

Miscellaneous

- xiv. Requests for reimbursement of defaulted energy conservation loans from utility companies participating in the Commission's Energy Loan Guarantee Program (Public Service Commission Rules, Chapter 25-17.11) may be approved when filed and processed in accordance with Section 9.13, APM.
- xv. Investor-owned utility tariff filings, when they propose to do the following things, may be approved administratively. Proposals to obsolete or

eliminate non-obsolete tariff offerings shall be presented to the Commission. In addition, any proposal falling in the following categories shall be brought to the Commission for consideration if it appears to the staff to be controversial or unique in nature.

- (1) To approve tariffs filed in response to a Commission rule, order or vote unless the Commission has requested to see the tariffs filed before approval. These tariffs may go into effect upon staff approval.
- (2) To correct typographical errors.
- (3) To clarify text or to reorganize or modify the tariff as long as such changes simplify or clarify use of the tariff and do not alter the application of charges or services offered or the original Commission intent or understanding.
- (4) To remove obsolete tariff offerings once all customers have discontinued service.
- (5) To offer new services or equipment which are not presently available to existing customers as long as that proposal does not contain new pricing concepts and does not limit service or affect rates to existing customers.
- (6) To approve tariffs modifying telephone exchange, zone or base rate area boundaries as long as no customers' charges are increased nor service reduced.
- (7) To make any change in the existing tariffs of telephone companies which solely provide resold interexchange services (i.e. not local exchange companies).
- (8) Local exchange tariff filings which change rates for new directories may be administratively approved by staff.
- (9) Interexchange company tariff filings not in compliance with tariff minimum filing

requirements may be administratively returned to the petitioner together with a statement advising of the deficiency. The time period will not begin until such time as the filing is resubmitted and meets the tariff filing requirements.

- (10) To change municipally owned electric and rural electric cooperative rates and charges as long as (1) there is no change in the rate structure previously approved for that utility, (2) the change results in the rate relationships moving closer to those approved for the investor-owned electric utilities or, (3) the proposal does not contain new pricing concepts.
- (11) To approve miscellaneous service charges (including initial connection, normal and violation reconnection and premises visit charges) for a water and/or wastewater utility as long as the amounts and conditions are the same as recent Commission decisions.
- (12) Pass-through rate adjustments for water and wastewater utilities may be allowed to go into effect forty-five days after filing, except that a pass-through application from any utility which reports unaccounted-for water exceeding ten percent is to be placed before the Commission.
- (13) Price index rate adjustments for water and wastewater utilities may be allowed to go into effect sixty days after filing except that, when material staff adjustments are made and/or possible overearnings are evident, these two exceptions are to be placed before the Commission.
- (14) Requests by rate base/rate-of-return regulated telephone companies to waive recurring and nonrecurring charges associated with special promotions may be granted when the Commission has previously approved requests of the same type and for the same service for any rate base/rate-of-return regulated telephone

company. Such staff approval is granted fifteen days after filing or at a later date requested by the company.

(15) Tariff filings made by a local exchange telecommunications company which has elected to be price-regulated pursuant to 364.051, F.S., may be administratively processed<sup>4</sup> as follows:

(a) Basic Service filings which are in compliance with 364.051(2) and 364.051(4), F.S., may go into effect after thirty days' notice.

(b) Non-Basic Service filings which are in compliance with 364.051(6), F.S., may go into effect after fifteen days' notice.

(c) Network Access Service filings which are in compliance with 364.163(4), F.S., and reduce rates shall go into effect after seven days' notice, except that the annual intrastate switched access and customer long distance rate reductions required by 364.163(6) shall go into effect on October 1 of each relevant year.

(d) Network Access Service filings which are in compliance with 364.163(5), F.S., and increased rates may go into effect after thirty days' notice.

(e) Network Access Service filings which are in compliance with 364.163(5), F.S., and change terms and conditions shall go into effect after fifteen days' notice.

(16) Price list filings made by an alternative local exchange telecommunications company may

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<sup>4</sup>In the event that staff's review of the tariff filing uncovers a potential substantive conflict with Florida Statutes, Commission rules or orders, staff will process the tariff administratively and concurrently open an investigation docket.

be administratively processed and may go into effect after one day's notice.

xvi. The Division of Competitive Services and the Division of Legal Services may administratively dispose of a request by a telecommunications carrier to adopt of an Interconnection Agreement between carriers that was previously approved by the Commission or allowed to go into effect by operation of law. The docket shall be closed upon filing of an acknowledgment memorandum to the docket file.

xvii. The Divisions of Competitive Services and Legal Services may dispose of a request for voluntary cancellation of a pay telephone certificate initiated by the pay telephone company. The docket shall be closed upon issuance of the administrative order.

xviii. The Division of Competitive Services and the Division of Legal Services may administratively dispose of a request for approval of a negotiated Interconnection Agreement, subject to the following conditions, by allowing an agreement to go into effect by operation of law;

- (1) The party entering into the agreement with the incumbent local exchange telecommunications company is registered with the Secretary of State's Office to conduct business in Florida, and if certificated as an alternative local exchange telecommunications company, the certificated name of the party is used in the agreement.
- (2) The agreement contains a provision for 911 access, which meets the requirements of Rule 25-24.840, Florida Administrative Code.
- (3) There is no basis for rejection under Section 252(e)(2) of the Telecommunications Act of 1996.
- (4) The agreement appears to comply with state law, to the extent provided for in Section

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252(e)(3) of the Telecommunications Act of 1996.

The docket shall be closed upon filing an acknowledgment memorandum to the docket file.

[History: Revised IA 11/15/82; IA 3/16/83; IA 3/29/83; IA 8/1/83; IA 8/30/83; IA 4/17/84; IA 4/1/85; IA 4/30/85; IA 10/15/85; IA 10/6/86; IA 9/29/87; IA 11/22/88; 2/7/89; Agenda 4/4/89; IA 8/1/89; ED 4/13/90; Agenda 2/91; IA 4/30/91; ED 5/3/91; 2/11/92; APM Reformatted and Reissued 7/1/94; IA 2/6/96; ED 2/22/96; ED 2/27/96 (originally approved at IA 12/4/95); ED 2/97; IA 6/1/99; IA 5/16/2000; ED 6/15/2000; IA 2/6/01; IA 5/14/01]



ATTACHMENT 2

The proposed change to the Administrative Procedures Manual is as follows:

2.07C.19 The Divisions of Competitive Services and Legal Services may approve intraLATA toll dialing parity plans that are consistent with the provisions of Order No. PSC-99-1255-PAA-TP. The intraLATA toll dialing parity plans must include the following:

- a) the 2-PIC option,
- b) the No-PIC status with dial-around capability, and
- c) consumer notification and carrier selection procedures.

The Docket shall be closed upon issuance of the administrative order.