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June 21, 2001

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 000075-TP

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket are the following documents:

1. Original and fifteen copies of the Joint Supplemental Posthearing Brief on behalf of A&T Communications of the Southern States, Inc., TCG South Florida, Global NAPS, MediaOne Florida Telecommunications, Inc., Time Warner Telecom of Florida, LP, Florida Cable Telecommunications Association, Inc., the Florida Competitive Carriers Association, Allegiance Telecom of Florida, Inc., e.spire Communications, Inc., WorldCom, Inc. and US LEC of Florida, Inc.;

2. Original and fifteen copies of a Notice of Substitution of Witness and Adoption of Testimony on behalf of A&T Communications of the Southern States, Inc., TCG South Florida and Teleport Communications Group, and MediaOne Florida Telecommunications, Inc.; and

3. A disk in Word Perfect 6.0 containing a copy of the Joint Supplemental Posthearing Brief.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Handy

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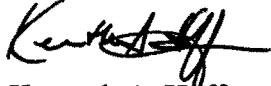
Joint Brief
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RUTLEDGE, ECENIA, PURNELL & HOFFMAN

Page 2
June 21, 2001

Thank you for your assistance with this filing.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth A. Hoffman". The signature is written in a cursive style with a large initial "K" and a long horizontal stroke extending to the right.

Kenneth A. Hoffman

KAH/rl
Enclosures
cc: All Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into appropriate)
methods to compensate carriers for)
exchange of traffic subject to Section 251)
of the Telecommunications Act of 1996.)
_____)

Docket No. 000075-TP

Filed: June 21, 2001

**JOINT SUPPLEMENTAL POSTHEARING BRIEF OF
AT&T COMMUNICATIONS OF THE
SOUTHERN STATES, INC., TCG OF SOUTH FLORIDA,
MEDIAONE FLORIDA TELECOMMUNICATIONS, INC.,
GLOBAL NAPS, INC., TIME WARNER TELECOM OF FLORIDA, LP,
FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC.,
THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION
ALLEGIANCE TELECOM OF FLORIDA, INC.,
E.SPIRE COMMUNICATIONS, INC., WORLDCOM, INC.
AND US LEC OF FLORIDA, INC.**

AT&T Communications of the Southern States, Inc., TCG of South Florida, MediaOne Florida Telecommunications, Inc., Global NAPS, Inc., Time Warner Telecom of Florida, LP, Florida Cable Telecommunications Association, Inc., the Florida Competitive Carriers Association, Allegiance Telecom of Florida, Inc., e.spire Communications, Inc., WorldCom, Inc. and US LEC of Florida, Inc., hereinafter referred to collectively as the "Joint ALECs," by and through their undersigned counsel and pursuant to Order Nos. PSC-01-1036-PCO-TP issued April 27, 2001 and PSC-01-1094-PCO-TP issued May 8, 2001, hereby file their Joint Supplemental Posthearing Brief.

Introduction

Phase I of this docket focuses on issues concerning the establishment of a prospective intercarrier compensation mechanism for the delivery of ISP-bound traffic. Following the evidentiary hearing and the submission of posthearing briefs in the Phase I part of this proceeding, the Federal Communications Commission ("FCC") issued its April 27, 2001 Order on Remand from the D.C. Circuit Court's decision in Bell Atlantic Telephone Companies v. FCC, 206 F.3d 1 (D.C.

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Cir. 2000) (“ISP Remand Order”).¹ With the release of the FCC’s ISP Remand Order, the Prehearing Officer issued an Order requesting the parties to file supplemental briefs addressing the impact of the ISP Remand Order on the Phase I issues in this docket.²

The ISP Remand Order

The FCC’s ISP Remand Order was issued in response to the March 24, 2000 decision of the United States Court of Appeals for the District of Columbia in Bell Atlantic, which had validated and remanded the FCC’s previous Declaratory Order, which had held that traffic delivered to Internet Service Providers (“ISPs”) was predominantly *interstate* in nature and not local traffic subject to the reciprocal compensation requirements of Section 251(b)(5). *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket 99-98 and Notice of Proposed Rulemaking in CC Docket 99-68, 14 F.C.C.R. 3689 (1999).

The FCC’s ISP Remand Order concludes that traffic delivered to an ISP is “information access” subject to §251(g) of the Communications Act of 1934 (“Act”), 47 U.S.C. 251(g), and therefore not subject to the reciprocal compensation obligations of §251(b)(5) of the Act. Given this, the FCC ISP Remand Order concludes that jurisdiction to establish inter-carrier compensation for this traffic falls under Section 201 of the Act. As a result, the FCC, not state commissions, has

¹In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001).

²See Order No. PSC-01-1036-PCO-TP.

jurisdiction to establish the cost recovery mechanism for the exchange of ISP-bound traffic. The FCC Order establishes an interim inter-carrier compensation mechanism for ISP-bound traffic, consisting of specific maximum per-minute-of-use rates, to be effective beginning with the effective date of the ISP Remand Order and for the ensuing 36 months (or until further FCC action, whichever is later). See ISP Remand Order, par. 78-81.

In announcing this completely new and prospective federal rule for addressing how local carriers are to be compensated when they exchange ISP-bound traffic, the FCC emphasized that its new rule does not alter existing obligations under interconnection agreements or past state commission decisions that ISP-bound traffic is local for purposes of reciprocal compensation. In fact, the FCC ISP Remand Order expressly acknowledges that, under current law, most states require reciprocal compensation for the exchange of calls to ISPs. Id. ¶ 68, 82.

The FCC did, however, clearly indicate that state commissions will no longer have jurisdiction over the prospective compensation mechanism for ISP-bound traffic:

The interim compensation regime we establish here applies as carriers renegotiate expired or expiring agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change of law provisions. This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here. Because we now exercise our authority under Section 201 to determine the appropriate inter-carrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue.

Id. ¶ 82.

The FCC's interim, inter-carrier compensation scheme begins on the effective date of the ISP Remand Order (June 14, 2001) and applies to ISP-bound traffic. ISP-bound traffic is presumed to be any traffic over an inbound to outbound ratio of 3:1. In order to take advantage of the declining

rate caps under the FCC's interim inter-carrier compensation mechanism, an ILEC must offer to exchange all traffic subject to Section 251(b)(5) at the same rates established by the FCC for ISP-bound traffic. If an ILEC chooses not to offer to exchange all Section 251(b)(5) traffic at these same rates, it must exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in its contracts.

Numerous parties have filed a notice of appeal of the FCC's ISP Remand Order with the U.S. District Court for the District of Columbia. In fact, this Commission has joined in questioning the lawfulness of the ISP Remand Order. At the June 11, 2001 Internal Affairs Meeting, the Commission considered a Staff Memorandum outlining the flawed "jurisdictional analysis" of the ISP Remand Order and approved the filing of a Petition for Clarification with the FCC and intervention in the pending appeals.

Argument

Issue 1(a): Does the Commission have jurisdiction to adopt an intercarrier compensation mechanism for delivery of ISP-bound traffic?

Issue 1(b): If so, does the Commission have the jurisdiction to adopt such an intercarrier compensation mechanism through a generic proceeding?

ALECs' Position: *Yes. The Telecommunications Act of 1996, the FCC and federal court rulings interpreting the Act, and Florida law clearly authorize the Commission to adopt an intercarrier compensation mechanism for delivery of ISP-bound traffic in a generic proceeding.*

ALECs' Supplemental Position: No. As of June 14, 2001, the effective date of the FCC's ISP Remand Order, the Commission no longer has jurisdiction to establish an inter-carrier compensation mechanism for ISP-bound traffic, which the FCC has declared to be interstate "information access" traffic under Section 251(g) of the Act. The Commission retains the jurisdiction

to establish reciprocal compensation rates for the exchange of 251(b)(5) local traffic, which would apply to all local and non-ISP-bound traffic. These reciprocal compensation rates would also apply to ISP-bound traffic in the event an ILEC does not “offer” to exchange all 251(b)(5) traffic (including wireless terminations) at the rate caps set forth the ISP Remand Order.

Issue 2: Is delivery of ISP-bound traffic subject to compensation under Section 251 of the Telecommunications Act of 1996?

ALECs’ Position: *Yes. ISP-bound traffic is local under FCC regulations. The ISPs may originate additional Internet communications, but that does not mean that ISP-bound calls do not terminate at the ISP. Also, this traffic must be deemed local to be consistent with FCC precedent.*

ALECs’ Supplemental Position: As a result of the FCC’s prospective declaration that ISP-bound traffic is interstate “information access” under Section 251(g) of the Act, the compensation for ISP-bound traffic is now to be established by the FCC under Section 201 of the Act, rather than by state commissions under Section 252(d) of the Act for Section 251(b)(5) “local” traffic.

Issue 3: What action should the Commission take, if any, with respect to establishing an appropriate compensation mechanism for ISP-bound traffic in light of the current decisions and activities of the courts and the FCC?

ALECs’ Position: *The Commission should rule that ISP-bound traffic is local traffic and require the originating carrier to pay the same per-minute rate for such traffic as applies to any other local traffic. Future court or FCC action can be accommodated when and if it occurs.*

ALECs’ Supplemental Position: The Commission should take no further action in this Docket to establish a prospective compensation mechanism for ISP bound traffic, in light of the FCC’s ISP Remand Order. However, the Commission should confirm, consistent with its previous decisions and the FCC’s ISP Remand Order: (1) that ISP-bound traffic was local traffic and subject to reciprocal compensation under the interconnection agreements that have been approved by the Commission and (2) unless and until the interconnection agreements are amended to reflect an agreement between the

parties to exchange ISP-bound traffic under the FCC's interim compensation scheme, the contractual obligations of the parties are not changed.

Issue 4: What policy considerations should inform the Commission's decision in this docket?

ALECs' Position: *To achieve equity, prohibit discrimination, and promote competition and innovation, the Commission should prescribe for ISP-bound traffic an explicit, volume-based compensation mechanism having a rate derived from the ILEC's TELRIC cost.*

ALECs' Supplemental Position: As previously discussed, the Commission should take no further action in this Docket to establish a prospective inter-carrier compensation mechanism for ISP-bound traffic.

Issue 5: Is the Commission required to set a cost-based mechanism for delivery of ISP-bound traffic?

ALECs' Position: *Yes, as required by Section 252(d)(2) of the Act. The appropriate intercarrier compensation for the termination and transport of ISP-bound local calls, as well as other forms of local traffic, is a symmetric rate based upon the ILEC's prevailing TELRIC cost level.*

ALECs' Supplemental Position: No. The Commission is not required to set a cost-based mechanism for the delivery of ISP-bound traffic. However, as previously discussed, the Commission does retain the jurisdiction to establish reciprocal compensation rates for the exchange of 251(b)(5) local traffic, which would apply to all local and non-ISP-bound traffic. These reciprocal compensation rates would also apply to ISP-bound traffic in the event an ILEC does not "offer" to exchange all 251(b)(5) traffic (including wireless terminations) at the rate caps set forth the ISP Remand Order.

Issue 6: What factors should the Commission consider in setting the compensation mechanisms for delivery of ISP-bound traffic?

ALECs' Position: *The Commission should consider that a "sent-paid" arrangement has been traditionally applied to local traffic, there is no technical difference or practical means of

differentiating between ordinary local and ISP-bound calls, and differences between ALEC and ILEC networks lead some ALECs to seek economies of specialization in order to compete.*

ALECs' Supplemental Position: As previously discussed, the Commission should take no further action in this Docket to establish a prospective inter-carrier compensation mechanism for the delivery of ISP-bound traffic.

Issue 7: Should intercarrier compensation for delivery of ISP-bound traffic be limited to carrier and ISP arrangements involving circuit-switched technologies?

ALECs' Position: *No. There is no reason or basis for limiting intercarrier compensation for delivery of ISP bound traffic to only circuit switched technology. To deny compensation for this traffic penalizes competitive carriers for providing innovative services and using current technology.*

ALECs' Supplemental Position: The ALECs adopt their original position and argument. In addition, the ALECs would note that the FCC's ISP Remand Order at paragraphs 90 through 93 supports this position.

Issue 8: Should ISP-bound traffic be separated from non-ISP bound traffic for purposes of assessing any reciprocal compensation payments? If so, how?

ALECs' Position: *No. There is no need to separate ISP from non-ISP bound traffic. The routing of a call to an ISP is technically the same as routing a call to any number and the cost characteristics are the same. Furthermore, there is no current method to reliably and accurately separate the traffic.*

ALECs' Supplemental Position: As previously stated, under the FCC's ISP Remand Order, ISP-bound traffic is declared prospectively to be interstate "information access" traffic and is no longer subject to reciprocal compensation. Thus, there is no need for the Commission to engage in this exercise. Notwithstanding this, the ALECs' original position that there is no current method to reliably and accurately separate ISP-bound traffic from non-ISP-bound traffic was confirmed by the

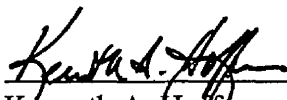
FCC's ISP Remand Order. Recognizing that there existed no method to separate this traffic, the FCC simply declared that traffic exchanged between an ALEC and an ILEC of greater than a 3:1 inbound to outbound traffic ratio was presumed to be ISP-bound traffic.³

Issue 9: Should the Commission establish reciprocal compensation mechanisms for delivery of ISP-bound traffic to be used in the absence of the parties reaching an agreement or negotiating a compensation mechanism? If so, what should be the mechanism?

ALECs' Position: *In the absence of agreement by two interconnecting carriers, the Commission should require ISP-bound traffic to be compensated on the same basis as all other local traffic, at a rate based on the ILEC's forward-looking cost of transporting and terminating local traffic.*

ALECs' Supplemental Position: No. As previously stated, under the FCC's ISP Remand Order, ISP-bound traffic is declared prospectively to be interstate "information access" traffic and is no longer subject to reciprocal compensation and there is no need for the Commission to engage in this exercise.

Respectfully submitted,



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³However, if an ALEC believes that it does have voice traffic above the 3:1 ratio, it would have to file the necessary documentation with the Commission to demonstrate that traffic above the ratio should be compensated at the local traffic rate.

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I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 21st day of June, 2001:

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