



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: APRIL 11, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (BANKS, B. KEATING) &
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BLOOM)

RE: DOCKET NO. 000075-TP (PHASE I) - INVESTIGATION INTO
APPROPRIATE METHODS TO COMPENSATE CARRIERS FOR EXCHANGE OF
TRAFFIC SUBJECT TO SECTION 251 OF THE TELECOMMUNICATIONS
ACT OF 1996.

AGENDA: 04/23/02 - REGULAR AGENDA - POST HEARING DECISION -
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\000075.RCM

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CASE BACKGROUND

On January 21, 2000, this docket was established to investigate the appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996 (the Act). An administrative hearing regarding issues delineated for Phase I of this docket was conducted on March 7 - 8, 2001. In accordance with Order No. PSC-00-2229-PCO-TP, issued November 22, 2000, as modified by Order No. PSC-01-0863-PCO-TP, issued April 5, 2001, post-hearing briefs were filed on April 18, 2001. Thereafter, on April 19, 2001, the Federal Communications Commission (FCC) released its decision in FCC Dockets Nos. 96-98 and 99-68 on matters regarding intercarrier compensation for telecommunications traffic to Internet Service Providers that had been remanded to the FCC for further determination by the Court of Appeals for the District of Columbia Circuit. On April 27, 2001, Order No. PSC-01-1036-PCO-TP was

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issued requiring all parties in this proceeding to file supplemental posthearing briefs addressing the decision of the FCC in Dockets Nos. 96-98 and 99-68 (FCC Order) within 10 days of the issuance of the FCC's Order memorializing the April 19, 2001, decision. On that same day, the FCC Order was memorialized in Docket Nos. 96-98 and 99-68.

On May 2, 2001, AT&T Communications of the Southern States, Inc., TCG of South Florida, Global NAPS, Inc., MediaOne Florida Telecommunications, Inc., Time Warner Telecom of Florida, LP, Florida Cable Telecommunications Association, Inc., Allegiance Telecom of Florida, Inc. and the Florida Competitive Carriers Association (collectively "Joint Movants") filed a Joint Motion for Extension of Time to File Supplemental Posthearing Brief. Order No. PSC-01-1094-PCO-TP, issued May 8, 2001, was issued granting the Joint Movants' Motion for Extension of Time.

On March 27, 2002, the parties filed a Joint Stipulation, to defer Commission action of the issues raised in Phase I of this docket. Staff notes that all of the parties have signed the stipulation.

The Commission is vested with jurisdiction over this matter pursuant to Section 252(d)(2) of the Telecommunications Act of 1996 and Sections 364.16 and 364.162, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the Joint Stipulation filed by parties on March 27, 2002?

RECOMMENDATION: Yes. Staff recommends that the Commission approve the Joint Stipulation filed by the parties on March 27, 2002.
(BANKS, B. KEATING)

STAFF ANALYSIS: On March 27, 2002, parties filed a Joint Stipulation, which is attached as Attachment A and incorporated by reference. In the Joint Stipulation, the parties agree that the Commission should defer ruling on the issues raised in Phase I of this docket.

In their stipulation, the parties state that on April 27, 2001, the FCC issued its ruling in the case of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Order on Remand and Report Order (ISP Remand Order), FCC 01-131. The parties assert that the *ISP Remand Order* establishes certain nationally applicable rules regarding intercarrier compensation for ISP-bound traffic. Therein, the parties contend that the FCC has asserted jurisdiction over ISP-bound traffic and hence, the Commission should decline to issue a ruling on the issues in Phase I, which addresses reciprocal compensation for ISP-bound traffic. The parties assert that although the *ISP Remand Order* is under court review, it has not been stayed and is, therefore, binding.

Given the fact that the *ISP Remand Order* is binding and currently on appeal, the parties contend that the Commission should decline to issue a ruling on the issues in Phase I, but that the record from Phase I should be preserved. If, however, the FCC or the courts subsequently rule that ISP-bound traffic is not entirely within the jurisdiction and control of the FCC, the parties agree that further proceedings before the Commission addressing Phase I issues should be reinitiated either at the request of any party to the proceeding or on the Commission's own initiative in the manner prescribed in the stipulation.

Staff agrees with the parties and believes that the *ISP Remand Order* does classify ISP-bound traffic as interstate and, therefore, under the jurisdiction of the FCC. In its opinion, the FCC stated

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that "traffic delivered to an ISP is predominantly interstate access traffic subject to section 201 of the Act...". (*ISP Remand Order*, at ¶1) Although the FCC stated the *ISP Remand Order* "does not preempt any state commission decision regarding a compensation mechanism for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here," it did, however, state that "[b]ecause we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue." (*ISP Remand Order*, at ¶82). Staff believes that the FCC's intent to preempt a state commission's authority to address reciprocal compensation for ISP-bound traffic is clear. In view of the fact that Phase I of this docket focused on issues concerning the establishment of an intercarrier compensation mechanism for the delivery of ISP-bound traffic, staff agrees that the Commission should defer its ruling on the issues delineated in Phase I. Staff also agrees that the proposal in the Stipulation provides a reasonable means to reinitiate Commission consideration of these issues should the FCC's decision be modified or overturned. Based on the foregoing, staff recommends that the Commission approve the Joint Stipulation listed herein as Attachment A, filed by parties on March 27, 2002.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending the outcome of Phase II in this docket. (**BANKS, B. KEATING**)

STAFF ANALYSIS: This docket should remain open pending the outcome of Phase II in this docket.

ATTACHMENT A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:

Investigation into appropriate methods to compensate carriers for Docket No. 000075-TP exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

Docket No. 000075-TP

STIPULATION

The undersigned parties to the above-captioned proceeding, and the Staff of the Florida Public Service Commission ("FPSC") hereby stipulate as follows:

1. On April 27, 2001, the FCC issued its ruling in the case of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, *Order on Remand and Report and Order*, FCC No. 01-131 (rel. Apr. 27, 2001) ("*ISP Remand Order*"). The *ISP Remand Order* establishes certain nationally applicable rules regarding intercarrier compensation for ISP-bound traffic. The *ISP Remand Order* is under court review, but it has not been stayed and is therefore legally effective. As a result, the *ISP Remand Order* has established a nationwide resolution of the issues presented in Phase I of this proceeding.

2. In light of the *ISP Remand Order*, the Florida Public Service Commission ("FPSC") should decline to rule on the issues presented in Docket No. 000075-TP, Phase I, at this time, and should suspend any further activity in this Docket pertaining to the Phase I issues.

3. Because the *ISP Remand Order* is currently subject to court review, however, the record from the Phase I hearing conducted on March 7-9, 2001, should be preserved, as described below.

4. The *ISP Remand Order* may be modified as a result of court review or further FCC action. If the FCC and/or the courts subsequently rule that ISP-bound traffic is not entirely within the jurisdiction and control of the FCC, or that state regulatory bodies have jurisdiction with respect to intercarrier compensation arrangements for such traffic notwithstanding its interstate character, further proceedings before the FPSC addressing the Phase I issues may be reinitiated either at the request of any party to this proceeding or on the FPSC's own initiative. The FPSC should, at the time of any request to reinitiate consideration of the Phase I issues, address and resolve any questions that may exist at that time with regard to its jurisdiction to proceed.

5. The undersigned parties stipulate that if such further proceedings are initiated, the record from the Phase I hearing should be deemed applicable as preserved, and should be incorporated into the record of the reinitiated proceedings in full.¹ The undersigned parties hereby waive any objection that they might otherwise have to the inclusion of the record from the Phase I hearing into the record of such further proceedings, subject only to objections as to the admissibility of particular evidence which were actually made on the record during the Phase I hearing. Any such objections actually made during the Phase I hearings shall be deemed preserved.

¹ References in this stipulation to "the undersigned parties" are intended to include the Commission staff as well.

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6. Because the record from Phase I shall be incorporated into the record of any future proceeding on the Phase I issues, the undersigned parties hereby stipulate that they will not seek to introduce additional testimony on the issues addressed in the Phase I hearing, and stipulate that they will limit their presentation in such future proceedings to supplemental briefs, addressing legal and regulatory decisions and developments occurring between the time of the Phase I hearing and the time of such future proceedings, provided, however, that the undersigned parties reserve their right to request the FPSC to permit the submission of supplemental testimony in order to address significant changes in factual circumstances occurring between the time of the Phase I hearing and the time of such future proceedings. Changes in regulatory or policy considerations shall be addressed in briefs, not in testimony.

7. If, upon the conclusion of Phase II of this proceeding, the state of the law regarding the jurisdiction over ISP-bound traffic remains as set forth in the *ISP Remand Order*, the undersigned parties stipulate that Docket No. 000075-TP may be closed, subject to the terms of this stipulation regarding reinitiating proceedings to address the Phase I issues.

8. Even if Docket No. 000075-TP is closed in accordance with Point 7 of this stipulation, if the state of the law regarding the Phase I issues changes as a result of further judicial or FCC proceedings, then Points 3 - 6 of this stipulation should be deemed applicable to any new Docket opened to address the same issues identified in Phase I of Docket No. 000075-TP.

9. This stipulation may be executed in multiple counterparts.

10. This stipulation may not be considered binding in any way upon the parties or the FPSC with regard to complaints arising under agreements prior to FCC Order 01-131.

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Respectfully submitted this 25th day of March, 2002.

INSERT OUR SIGNATURE PAGE AND THEN ATTACH ALL
OTHERS AFTER

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DATE: APRIL 11, 2002

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Respectfully submitted,

STAFF OF THE FLORIDA PUBLIC
SERVICE COMMISSION

SPRINT COMMUNICATIONS COMPANY
LIMITED PARTNERSHIP and SPRINT-
FLORIDA, INCORPORATED

Felicia Banks
Staff Counsel
Its Attorney

Susan S. Masterson
Their Attorney

AT&T COMMUNICATIONS OF THE
SOUTHERN STATES; TCG OF SOUTH FLO-
RIDA; MEDIAONE FLORIDA COMMUNI-
CATIONS, INC.; ALLEGIANCE TELECOM
OF FLORIDA, INC; LEVEL 3 COMMU-
NICATIONS, LLC; and US LEC OF
FLORIDA, INC.

FLORIDA CABLE TELECOMMUNICA-
TIONS ASSOCIATION

Michael A. Gross
Vice President — Regulatory Affairs &
Regulatory Counsel
Its Attorney

Kenneth A Hoffman
Martin P. McDonnell
Their Attorneys

TIME WARNER TELECOM OF FLORIDA,
L.P.

Morton J. Posner
Additional Counsel for Allegiance Telecom of
Florida, Inc.

Peter M. Dunbar, Esq.
Karen M. Camechis, Esq.
Their Attorneys

GLOBAL NAPS, INC.

BELLSOUTH TELECOMMUNICATIONS,
INC.

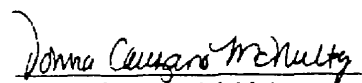
Christopher W. Savage
Jon C. Moyle
Its Attorneys

James Meza III
James Meza
Kip Edenfield
Its Attorneys

(2A)

DOCKET NO. 000075-TP (Phase I)
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MCI METRO ACCESS TRANSMISSION SERVICES, LLC;
MCI WORLD COM COMMUNICATIONS, INC; AND
INTERMEDIA COMMUNICATIONS INC.



Donna Canzano McNulty
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325 John Knox Road
The Atrium Bldg., Ste. 105
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(850) 422-1254
Their attorney.

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Respectfully submitted,

STAFF OF THE FLORIDA PUBLIC
SERVICE COMMISSION

SPRINT COMMUNICATIONS COMPANY
LIMITED PARTNERSHIP and SPRINT-
FLORIDA, INCORPORATED

Felicia Banks
Staff Counsel
Its Attorney

Susan S. Masterson
Their Attorney

AT&T COMMUNICATIONS OF THE
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TIME WARNER TELECOM OF FLORIDA,
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Morton J. Posner for

Morton J. Posner
Additional Counsel for Allegiance Telecom of
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Peter M. Dunbar, Esq.
Karen M. Camechis, Esq.
Their Attorneys

GLOBAL NAPS, INC.

BELLSOUTH TELECOMMUNICATIONS,
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Jon C. Moyle
Its Attorneys

James Meza
Kip Edenfield
Its Attorneys

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Respectfully submitted,

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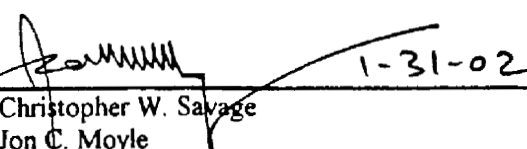
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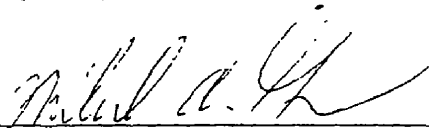

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Its Attorneys

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The **FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION** hereby agrees to the Stipulation submitted in Phase I of Florida Public Service Commission Docket. 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.

Respectfully submitted,



Michael A. Gross
Vice President, Regulatory Affairs
& Regulatory Counsel
Florida Cable Telecommunications Association
246 E. Park Avenue
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850/681-9676 (fax)
mgross@fcta.com

Dated this 25th day of January, 2002.

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Respectfully submitted,

STAFF OF THE FLORIDA PUBLIC
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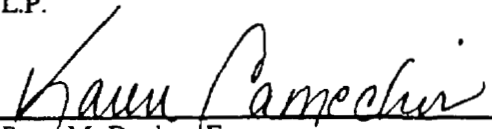
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GLOBAL NAPS, INC.

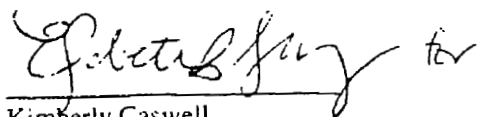
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Kip Edenfield
Its Attorneys

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VERIZON FLORIDA INC.


A handwritten signature in cursive script, appearing to read "Kimberly Caswell", followed by the word "for" in a smaller, less legible script.

Kimberly Caswell
Its Attorney

DOCKET NO. 000075-TP (Phase I)
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Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY
LIMITED PARTNERSHIP and SPRINT-
FLORIDA, INCORPORATED



Susan S. Masterton
Susan S. Masterton
1313 Blairstone Road
P.O. Box 2214
Tallahassee, FL 32316-2214
Phone: (850) 599-1560

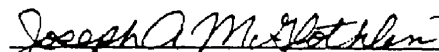
Their Attorney

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Respectfully submitted,

FLORIDA COMPETITIVE
CARRIERS ASSOCIATION



Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.

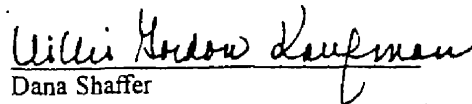
Its Attorneys

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Respectfully submitted,

XO FLORIDA, INC.



Dana Shaffer
Vice President, Regional Regulatory Counsel

Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, PA

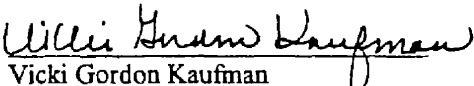
Its Attorneys

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Respectfully submitted,

KMC TELECOM, INC.,
KMC TELECOM II, INC.
and KMC TELECOM, III, INC.


Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, PA

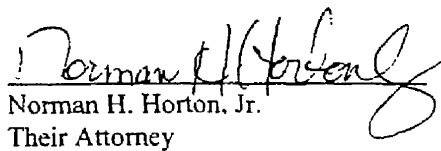
Its Attorneys

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Respectfully submitted,

e.spire COMMUNICATIONS, INC.


Norman H. Horton, Jr.
Their Attorney