

State of Florida



ORIGINAL

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: June 27, 2007

TO: Ann Cole, Commission Clerk - PSC, Office of Commission Clerk

FROM: David L. Dowds, Public Utilities Supervisor, Division of Competitive Markets & Enforcement SD

RE: Response to Staff's May 11, 2007 Data Request to be filed in Docket No. 060476-TL

The attached response to staff's May 11, 2007 data request from DeltaCom/BTI was received this past Friday, June 22, 2007; it was sent directly to staff and not filed in the docket file. Accordingly, I am providing you with a copy and ask that it be filed in Docket No. 060476-TL.

RECEIVED-FPSC

07 JUN 27 PM 3:36

COMMISSION
CLERK

DOCUMENT NUMBER-DATE

05140 JUN 27 5

FPSC-COMMISSION CLERK

**DeltaCom, Inc. and Business Telecom Inc. (collectively the "Companies")
Responses to Data Request Dated June 4, 2007 in Docket No. 060476-TL**

- 1) Do you believe that the Florida Public Service Commission (FPSC) can eliminate the rate caps set forth in Rules 25-24.630(1) and 25-24.516(1), Florida Administrative Code, taking into consideration Chapter 364.3376(3), Florida Statutes? Please explain your response.

The Companies believe that the FPSC can effectively eliminate the rate caps set forth in Rules 25-24.630(1) and 25-24.516(1), Florida Administrative Code. Section 364.3376(3) requires the Commission to "establish maximum rates and charges for all providers" of operator services in Florida. The statute does not, however, prescribe any particular methodology for setting operator service rates. The Companies understand that the current maximum rate was set in the context of a rulemaking proceeding rather than a ratemaking proceeding, and was considered a reasonable rate at that time. Prior to that rulemaking proceeding, however, the Commission implemented Section 364.3376(3) by setting the maximum rate at the tariffed rate charged by AT&T, the then-dominant operator services provider. The rate was permitted to float as AT&T changed its tariffed rates. This rule was in effect for quite some time, and the Commission found the rule to be compliant with its statutory obligations. Accordingly, as it has done in the past, one way that the Commission could effectively eliminate the rate cap while still remaining compliant with its statutory obligations is to remove specific reference to the dollar amount of the rate cap for operator service providers that operate under tariffs and simply peg the maximum charge to the operator service provider's lawful interstate charges.

- 2) If you believe that the FPSC can eliminate the rate caps, should they be eliminated in total, or should they remain in place with respect to inmate payphone services? Please explain your response.

To the extent the Commission determines that it has authority to remove the rate caps, the Companies support the removal of these caps in their entirety, allowing market forces to determine the prevailing rates. Unless there is a demonstrated breakdown in the market's ability to regulate such prices, the Commission should not set retail pricing, particularly for competitive providers.

- 3) If the rate caps were eliminated, what rates would you charge for operator services?

If the rate caps were eliminated, the Companies currently have no plans to change their rates but would monitor changes in the marketplace and react accordingly.

- 4) Do you believe the rate caps set forth in Rules 25-24.630(1) and 25-24.516(1), Florida Administrative Code, should be increased?
 - a. Is so, please explain why.
 - b. What rates would you recommend?
 - c. What is the basis for your recommended rates?

**DeltaCom, Inc. and Business Telecom Inc.
Responses to Data Request in Docket No. 060476-TL**

See response to question 2, which is incorporated by reference.

- 5) If the FLPSC believes the rate caps should be increased, how should these rates be developed?

See response to question 2, which is incorporated by reference.

- 6) Do you believe the FPSC can set these rates based on the costs to provide operator services? If so, should the rates be cost-based? Please explain your response.

See response to question 2, which is incorporated by reference.

- 7) If the FPSC requires cost data be submitted in order to determine the appropriate rates, should all parties be required to prepare/present cost data? If so, should the FPSC require that data be presented/prepared the same way for each company?

See response to question 2, which is incorporated by reference.

- 8) If the costs to provide any operator services are determined to be less than the current rate caps, should those rates be reduced?

Assuming that the current cap is determined to be above cost for the purposes of this question – the Companies' believe it should not be reduced. The cap, which has been in place for a number of years, would still serve as a ceiling and enables companies to compete on the basis of price and service.

- 9) Without disclosing your revenues, please identify what percentage of your total revenues come from operator service calls.

This question calls for confidential and proprietary information and will be provided under separate cover pursuant to a request for confidential treatment.

- 10) Please provide any additional comments you believe would assist the FPSC in determining if the rate caps set forth in Rules 25-24.630(1) and 25-24.516(1), Florida Administrative Code, should be changed or eliminated.

The Companies believe that unless there is a demonstrated breakdown in market forces (e.g., exertion by an entity of market power), caps are generally inefficient and interfere with competition.