



Greg Follensbee  
Executive Director  
Regulatory Relations

AT&T Florida  
150 South Monroe Street  
Suite 400  
Tallahassee, FL 32301 1561

T: 850.577.5555  
F: 850.222.8640  
www.att.com

July 9, 2008

Mrs. Ann Cole  
Director, Division of the Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

*080000*

RECEIVED-FPSC  
08 JUL -9 PM 4: 24  
COMMISSION  
CLERK

RE: CLEC Intrastate Access Charges Workshop

Dear Mrs. Cole:

Attached please find the comments and responses for AT&T Florida, AT&T Communications of the Southern States, Inc, TCG of South Florida and AT&T Long Distance to the questions posed by the Commission for the CLEC Intrastate Access Charge workshop to be held on July 16. AT&T Florida and its affiliates do not intend to make a formal presentation but do plan to attend and participate at the scheduled workshop.

If you have any further questions please do not hesitate to call.

Sincerely,

*Greg Follensbee*

Greg Follensbee

Attachment

- 05922
- 05923
- 05924
- 05925
- 05926
- 05927
- 05928
- 05929
- 05930
- 05931
- 05932
- 05933
- 05934
- 05935
- 05936
- 05937
- 05938
- 05939
- 05940
- 05941
- 05942
- 05943
- 05944
- 05945
- 05946
- 05947
- 05948
- 05949
- 05950
- 05951
- 05952
- 05953
- 05954
- 05955
- 05956
- 05957
- 05958
- 05959
- 05960
- 05961
- 05962
- 05963
- 05964
- 05965
- 05966
- 05967
- 05968
- 05969
- 05970
- 05971
- 05972
- 05973
- 05974
- 05975
- 05976
- 05977
- 05978
- 05979
- 05980
- 05981
- 05982
- 05983
- 05984
- 05985
- 05986
- 05987
- 05988
- 05989
- 05990
- 05991
- 05992
- 05993
- 05994
- 05995
- 05996
- 05997
- 05998
- 05999

DOCUMENT NUMBER-DATE

05922 JUL -9 g

FPSC-COMMISSION CLERK

## CLEC INTRASTATE ACCESS CHARGES

**1. What are the key factors that CLECs consider when determining how to set their access charge rates?**

Several factors are considered when setting access charge rates including, but not limited to the following:

- prevailing ILEC rates
- access rates of other CLECs who are operating in the territory

**2. Are the access rates being charged by Florida's CLECs cost-based?**

No.

**3. Should Florida's CLECs be allowed to set their intrastate access charge rates at any level they choose? Should their cost to provide access service be considered?**

No. AT&T suggests that the Commission adopt mechanisms for pricing CLEC switched access services, similar to the FCC's CLEC Access Reform Order, by selecting a benchmark that limits CLEC access rates. Rather than relying on a cost approach to pricing individual CLEC service which would require a review of costs of all the CLECs operating in the market, the Commission should adopt as benchmark for each CLEC the rate charged by the competing ILEC operating in the CLEC service area.<sup>1</sup> The rationale for this position is that in a market where competitive market forces function effectively, the CLECs could not be expected to sustain access rates higher than those charged by the ILECs in the same service area. When more than one ILEC exists within a CLEC's service area, the CLEC may choose a single, blended access rate as the benchmark, provided that the total revenues generated from the blended rate do not exceed the total revenues that would have been generated if the CLEC had a separate benchmark rate for each ILEC with which it competes.<sup>2</sup> This would not prevent a CLEC from negotiating a different set of rates with an individual IXC that would not need to be tariffed.

**4. Are Florida consumers harmed by CLECs charging access rates that are in excess of those charged by the ILEC in the area in which they compete? Are there other adverse effects?**

Yes. The current CLEC access pricing system enables CLECs to tariff rates that are many times their ILEC rival's rate. This is obviously an irrational outcome in a competitive market, and it continues to put IXCs and other LECs that are forced to pay these unreasonable rates at a competitive disadvantage because CLECs have bottleneck control over access to each of their end users, such that an IXC has no alternative path

<sup>1</sup> See *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) (*CLEC Access Reform Order*).

<sup>2</sup> See *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd at 9108, 9126, ¶48 (2004) (*CLEC Access Reconsideration Order*).

DOCUMENT NUMBER-DATE

05922 JUL -9 8

## CLEC INTRASTATE ACCESS CHARGES

over which to terminate traffic to a certain end user other than the CLEC that end user has selected for its local exchange service.

IXCs must recover these excessive access charges from their own end users. Accordingly, excessive access charges would allow one carrier to overcharge (to the extent the access charges are in excess of the ILEC's access rates) its competitors. When one LEC has high access rates it encourages others to do the same. Those that do not are paying the inflated access prices of, and thus subsidizing, their competitors.

### **5. Is the market for the access service structured in a way that allows competitive pressures to effectively constrain access prices? Why or why not?**

No. In a competitive market where market forces are functioning effectively, customers are able to reject any price perceived to be unreasonably high. The fact that under the current access structure IXCs cannot decline high rates tariffed by the CLECs is evidence of some market failures that would not allow competitive pressures to constrain CLEC access rates. First, under the "filed rate doctrine," once a tariff is filed IXCs are generally required to pay the published rate for the CLEC access services, absent an agreement to the contrary or a finding by the Commission that the rate is unreasonable.<sup>3</sup> Second, section 254(g) of the Act requires IXCs to geographically average their interstate toll rates and thereby spread high-cost access charges across all of their end users.<sup>4</sup> As a practical matter, IXCs often do the same with intrastate toll rates to enable uniformity in billing. As a result, IXCs are unable to pass directly the intrastate access cost to an end user that selects a CLEC with high access rates. Accordingly, this pricing regime would not allow IXCs to send the correct price signals that could encourage the end user to select a lower price LEC. Third, CLECs have bottleneck control over access to each of their end users such that an IXC has no alternative path over which to terminate traffic to a certain end user other than the CLEC that end user has selected for its local exchange service. Fourth, FCC decisions require IXCs to interconnect (directly or indirectly) with CLECs and prohibit the blocking of traffic.<sup>5</sup> The lack of alternative call paths and the inability to refuse or reject calls from high-priced access CLECs make the IXCs unwilling consumers of the CLECs' access services.

### **6. Do market forces applicable to originating switched access differ from the market forces for terminating switched access? If so, how?**

No. The market forces do not differ. IXCs are required by federal law to geographically average interstate rates and for all practical purposes often do the same with intrastate

---

<sup>3</sup> See *Hyperion Order*, 12 FCC Rcd 8596, 8608-8611, ¶¶ 23-29 (1997). Cf. *Advantel*, 118 F. Supp. 2d at 687 (concluding that parties are precluded from negotiating separate agreements that affect the rate for services once a tariff has been filed with the Commission).

<sup>4</sup> See 47 U.S.C. § 254(g).

<sup>5</sup> Specifically, the FCC states that "... no carriers, including interexchange carriers, may block, choke, reduce, or restrict traffic in any way .... These decisions evidence the Commission's general prohibition on call blocking. See *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers and Call Blocking by Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, ¶6 (June 28, 2007) (DA 07-2863).

## CLEC INTRASTATE ACCESS CHARGES

rates. Because of 254(g) obligations, an IXC is unable to pass any unreasonably high switched access rates back to the calling party. Hence, the institutional structure of regulating IXC's retail toll rates blocks the natural response that could mitigate the imposition of unreasonably high originating and terminating access rates by CLECs. In this case, the IXCs become captive participants to the CLECs in this rate averaging design/structure.

**7. Under what conditions, if any, can a carrier decline to terminate its traffic to another carrier?**

The FCC has addressed this question and it appears clear that carriers may not block or refuse to terminate calls to other carriers.<sup>6</sup>

**8. On what basis can it be determined if CLEC access rates are just and reasonable?**

Consistent with the discussion in Nos. 1 and 3 above, any CLEC tariffed access rate lower than, or equal to, the rates charged by the ILEC(s) in the same service area should be deemed just and reasonable.

**9. If it is determined that CLEC access charges are not just and reasonable, does the Commission have authority to act to remedy this situation?**

The Commission has broad statutory authority to prevent CLEC activities that are unfair and harmful to competition pursuant to Section 364.01(4). To the extent that the Commission determines the excessive levels of CLEC access charges to be unfair and harmful to competition, it appears that the Commission may assert some authority over CLEC switched access charges.

**10. Should the Commission establish caps on the intrastate access rates that CLECs can charge? If so, how should caps be determined?**

Yes. The Commission should adopt a benchmark system capping the CLEC tariffed intrastate access rates at the rate level charged by the ILEC operating in the same service areas. This approach would act as surrogate for efficient market and produce competitive rates... The FCC implemented a similar approach in the Seventh Report and Order, where it capped CLEC interstate rates at the level of the ILEC's interstate switched access charge. The FCC's mechanism aimed to mimic the operation of the marketplace and to generally prevent CLECs from operating in the interstate access market with tariff rates above ILEC's rate with which the CLEC competes.<sup>7</sup>

---

<sup>6</sup> See *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers and Call Blocking by Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, ¶6 (June 28, 2007) (DA 07-2863).

<sup>7</sup> See *CLEC Access Reform Order*, ¶¶ 3-4.

## CLEC INTRASTATE ACCESS CHARGES

**11. What would be the impact on Florida CLECs if this Commission were to cap CLEC access rates at the rates of the incumbent LEC in the area in which they serve?**

If the benchmark system is adopted for the FL CLECs, it would have minimum impact on them as long as they are not precluded from recovering their costs across the spectrum of services they offer to their customers... The benchmark should only ensure that the CLECs do not over-recover their combined costs from the long distance market.<sup>8</sup> The FCC considered and resolved this policy concern by allowing a CLEC to recover its interstate access service costs and local exchange service costs on a collective basis. Under the FCC benchmark, a CLEC will recover its costs from the combination of access charges (set at or below the benchmark) and its charges for local exchange and toll services, as well as for unregulated services that the CLEC offers over the access line.<sup>9</sup> Also, adopting the benchmark capping system will eliminate for the CLECs, and Commission, the need for the resource and time intensive process of conducting cost analysis on a carrier by carrier basis.

**12. If the Commission opts to constrain allowable CLEC access rates through some means other than rate caps, what options are available?**

In AT&T's opinion, at this time, there are no other viable options other than rate caps that could be used to constrain tariffed CLEC access rates.

---

<sup>8</sup> Since the CLECs offer two types of services with substantial common costs, the benchmark system ensures that the bulk of the CLECs' costs are not shifted to the IXC customers who face inelastic demand, and are not likely to readily react to high CLEC access rates. The CLECs' other customer group (i.e. end users) are not likely affected by this problem because they have more elastic demand and can shift to alternative local service provider. However, regulators must ensure the end users' ability to receive adequate and timely information is not constrained by requiring notice before any price change can take effect. The duration of the notice should be long enough to enable end users to search for and choose an alternative provide.

<sup>9</sup> *CLEC Access Reform Order*, ¶39.