

State of Florida



Public Service Commission

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

DATE: January 16, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Lee, King)
Office of the General Counsel (McKay, Teitzman)

RE: Docket No. 070646-TL – Petition for approval to revise customer contact protocol by BellSouth Telecommunications, Inc. d/b/a AT&T Florida.

AGENDA: 01/29/08 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\070646.RCM.DOC

Case Background

On October 11, 2007, BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T Florida) filed a petition to revise its customer contact protocol for intraLATA¹ long distance services. Specifically, AT&T Florida would like to eliminate the scripting requirements for intraLATA long distance services to achieve consistency in its intraLATA and interLATA customer contact procedures across the AT&T footprint.

¹ LATA stands for local access and transport area, also called by some telephone companies as service areas. A LATA is a contiguous geographic area within which an incumbent local exchange company (LEC) may offer telecommunications services – local or long distance.

In Docket No. 930330-TP, Order No. PSC-95-0203-FOF-TP, issued February 13, 1995, the Florida Public Service Commission (FPSC) found that intraLATA presubscription was in the public interest and was an important step toward full competition in the long distance market. Presubscription is the ability of a telephone customer to preselect a telecommunications company to carry that customer's toll calls by dialing the digit "1", the area code, and the called number. This dialing pattern is referred to as "1+" dialing. The FPSC also concluded that dialing parity with interLATA² calls would give carriers an incentive to provide new and innovative services.

In Docket No. 960658-TP, Order No. PSC-96-1569-FOF-TP, issued December 23, 1996, the FPSC ordered BellSouth (now known as AT&T Florida) to adopt a carrier-neutral business practice for communicating information to new customers regarding choices of available intraLATA carriers. The company was ordered to (1) advise new customers that they now had an option of selecting a long distance carrier for their local toll calls, (2) offer to read the list of available carriers, (3) read the list if requested, and (4) if the customer did not pick a carrier, repeat the process and inform the customer that dialing an access code would be required on all intraLATA calls until a presubscribed carrier was chosen. BellSouth was prohibited from marketing its own intraLATA service unless the customer introduced the subject. In addition to requiring these customer contact protocols, BellSouth was prohibited from initiating marketing efforts designed to retain customers who decided to switch their intraLATA toll service from BellSouth to another carrier for a period of 18 months.

In Docket No. 971399-TP, Order No. PSC-98-1469-FOF-TP, issued October 28, 1998, the FPSC found that because of interexchange company (IXC) marketing efforts, customers had become sufficiently informed to make educated choices despite any inherent advantage BellSouth had due to its gatekeeper status, being the first entity most consumers approach for phone service by virtue of it being a LEC. The FPSC granted BellSouth limited relief from the customer contact protocols by revising the first step in the protocol. BellSouth was now allowed to advise customers that due to the newly competitive environment, customers had the option of selecting a carrier for their local toll calls "in addition to us." (Emphasis supplied)

In Docket No. 031038-TL, Order No. PSC-04-0115-PAA-TL, issued January 30, 2004, the FPSC again allowed BellSouth to modify its customer contact protocols. BellSouth was now permitted to recommend its own intraLATA toll service on new customer contacts after it informs customers that they have a choice of local toll providers, and offers to read a list of all available intraLATA toll providers. In that order the FPSC noted, among other things, that the FCC has allowed a LEC to recommend its own long distance affiliate, as long as it contemporaneously states that other carriers also provide long distance service and offers to read a list of all available interexchange carriers in random order. The FPSC also noted that the objectives underlying the customer contact restrictions, assuring customer awareness of their intraLATA choices and allowing the IXCs to establish themselves in the intraLATA market, have been met.

² Presubscription for interLATA toll calls was implemented beginning in 1984 in conjunction with the divestiture of the Bell Operating Companies from AT&T and the advent of competition in the toll market. While 1+ was available early on for interLATA toll traffic, all 1+ intraLATA toll traffic had to date been reserved to the serving LEC.

In its recent filing AT&T Florida is asking the FPSC to eliminate the scripting requirement for intraLATA services to achieve consistency in its intraLATA and interLATA customer contact procedures across the AT&T footprint as a result of a recent Federal Communications Commission (FCC) decision concluding that scripting requirements for interLATA long distance service are no longer necessary in today's competitive environment.³ Staff's recommendation addresses whether the Commission should relieve AT&T Florida from the intraLATA scripting requirements.

The Commission has jurisdiction in this matter pursuant to Section 364.01, Florida Statutes.

³ FCC 07-179, Memorandum Opinion and Order, In the Matters of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket No. 06-120, released August 31, 2007. (Long Distance Order)

Discussion of Issues

Issue 1: Should AT&T Florida's petition to revise its customer contact protocol be approved?

Recommendation: Yes. AT&T Florida should be permitted to revise its customer contact protocol by eliminating the scripting requirement for intraLATA long distance service. (Lee)

Staff Analysis: AT&T Florida seeks relief from the FPSC's intraLATA toll customer contact protocols. Specifically, AT&T Florida is requesting that the FPSC eliminate the scripting requirement⁴ for intraLATA long distance services. AT&T Florida asserts that this action would be consistent with recent action taken by the FCC in its Long Distance Order where the FCC held that the scripting requirements for interLATA long distance services are no longer justified in today's competitive environment, and granted AT&T Florida and the other Bell Operating Companies (BOCs) forbearance from their continued application.⁵ AT&T Florida asserts that the public interest served by elimination of these requirements applies equally at the federal and state levels. (Petition at 1)

In its Long Distance Order, the FCC found:

- The scripting requirement was designed to foster fair competition in the provision of stand-alone long distance service at a time when there was very little competition in the provision of stand-alone long distance services. Market conditions have since changed, greatly reducing the benefits of the requirement.
- The stand-alone long distance competition that the scripting requirement was designed to protect has given way to competition between service bundles that include both local exchange and long distance service or "any distance" minutes that can be used for both local exchange and long distance calling.
- Consumers that still take stand-alone long distance services now have additional options available for making long distance calls, such as subscribing to wireless services or using prepaid calling cards.
- The current scripting requirement focuses solely on one type of competitive alternative (wireline long distance provider) rather than increasing consumer awareness of all available alternatives. This narrow focus may lead to customer confusion and cause customers to inadvertently not investigate other alternative means of making long distance calls, such as with cable operators, interconnected VoIP providers, and prepaid long distance providers.
- Even without the scripting requirement, the BOC's local customers retain the right to obtain long distance service from a long distance carrier other than the BOC.

⁴ LECs are required to inform customers calling to obtain new local exchange service that they may obtain stand-alone long distance service from the LEC or other wireline carriers, and to read the customers a list of carriers offering long distance service in their area upon request.

⁵ Verizon Florida has also filed a petition similar to the instant AT&T Florida petition in Docket No. 070671-TL.

In support of its petition, AT&T Florida relies heavily on the analysis and reasoning in the FCC's Long Distance Order. AT&T Florida asserts that because the scripting requirement has been eliminated for interLATA long distance, there is no logical basis for continuing the requirement for intraLATA long distance service. AT&T Florida asserts:

- The scripting requirement for intraLATA long distance service, like the requirement for interLATA long distance service, focuses only on one set of competitive alternatives, discounting other less traditional options.
- The intent behind intraLATA scripting requirements, to protect intraLATA stand-alone long distance competition, is no longer served by their continued application. Consumers are well aware of their choices for communications service and are selecting carriers and plans that best meet their needs.
- The majority of customers subscribe to bundled local and long distance services, not stand-alone long distance service.⁶ Service bundles are increasingly available from cable operators and interconnected VoIP providers; wireless providers provide "any distance" minutes that can be used for local or long distance calling.
- Those customers that take stand-alone long distance service have additional options available for making long distance calls, including wireless services and prepaid calling cards.
- Continued application of the requirement for intraLATA long distance service, while it has been eliminated for interLATA service, "will greatly confuse and frustrate customers, who for the most part no longer focus on stand-alone long distance services apart from local service, much less on out-moded distinctions between inter- and intrastate long distance service." (Petition at 12)

AT&T Florida concludes by stating that continued enforcement of the scripting requirement for intraLATA long distance service will "thwart the public interest" intended to be served by the FCC's removal of such requirements for interLATA long distance service. AT&T Florida asserts that it will gain nothing from the FCC's decision if it continues to be required to include such scripting for intraLATA long distance service. Continued application for intraLATA long distance service will therefore disserve the public. (Petition at 13)

Analysis:

By Order No. PSC-96-1569-TP in Docket No. 960658-TP, issued December 23, 1996, the FPSC ordered neutral customer contact protocols out of a concern that LECs would use their status as "gatekeeper" of local phone service (i.e., the first company most new phone customers have contact with) to unduly influence new customers into selecting their own intraLATA toll service. The neutral customer contact protocols required LECs to: 1) inform each customer they now had a choice of intraLATA toll carriers; 2) offer to read the customer a list of available carriers; and 3) if the customer did not choose a prescribed carrier, offer to read the list again and

⁶ AT&T Florida defines stand-alone long distance service as long distance service not purchased from an AT&T entity.

if the customer remained noncommittal, explain that a carrier access code would have to be used for intraLATA toll calls absent selecting a long distance carrier. The FPSC found that the objectives underlying the customer contact restrictions were to assure customer awareness of their intraLATA choices and to allow IXCs to establish themselves in the intraLATA toll market.

In Docket No. 031038-TL, Order No. PSC-04-0115-PAA-TL issued January 30, 2004, the FPSC found that the objectives underlying the scripting requirement, assuring customer awareness of their intraLATA choices and allowing the IXCs to establish themselves in the intraLATA market, had been met. However, concerned that customer awareness remained high, the FPSC ordered safeguards to remain in place. These safeguards required BellSouth (now known as AT&T Florida) to continue informing customers they have a choice of intraLATA toll carriers and to offer to read a list of available intraLATA toll carriers to the customers before recommending its own intraLATA toll service.

The data shows that the majority of AT&T local customers opt for bundled packages of local and long distance, rather than stand-alone long distance.⁷ IntraLATA stand-alone long distance represents less than 10 percent of AT&T Florida's new local service orders. Customers are educated about intraLATA long distance competition, and competitive alternatives are prevalent. Those consumers taking stand-alone long distance services have additional options available for making long distance calls, such as using wireless services or prepaid calling cards. As noted by the FCC, the scripting requirement narrowly focuses on only alternative wireline long distance providers, leaving out other viable alternatives.

AT&T Florida states that its procedures and practices, for the foreseeable future, will be to initially assume that if a customer is calling AT&T Florida to establish new service or to transfer existing service, the customer wants AT&T products and services and wants the same carrier for intraLATA and interLATA long distance services. Rather than informing the customer at the outset that he or she has a choice of service providers and volunteer to read the random list, it will be up to the customer to specifically request this information. AT&T Florida requires that the service representative confer with the customer and recap all orders at the time of sale, thereby giving the customer another opportunity to chose an alternative long distance carrier if desired. Staff notes that the recap discloses both the product and service ordered as well as the applicable rates. In this manner, customers are not assigned to AT&T Florida by default. AT&T Florida states that it will continue to assess the situation, and will alter, change, or modify its procedures as necessary in order to meet the future needs of the business.

Staff believes that eliminating the intraLATA scripting requirement should not adversely affect the market because the market data shows few customers opt for stand-alone long distance service. Further, AT&T Florida states that safeguards will remain in place to ensure consumer awareness of intraLATA toll competitors remains high. Customers will continue to retain the

⁷ AT&T Florida was asked to provide market data that supports the elimination of the scripting requirements for intraLATA long distance services. While the specific response to this request is proprietary, it shows that more than 50 percent of the customers ordering new local phone service from AT&T Florida for the period January through September 2007 selected a local and long distance bundle. The data also shows that more than 90 percent of the customers either chose an AT&T entity as their intraLATA long distance provider or chose no provider; less than 10 percent chose a non-AT&T provider (stand-alone service).

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right to obtain long distance service from a carrier other than AT&T Florida. AT&T Florida remains obligated to read the list of alternative long distance carriers, if requested, not assign customers to itself by default, and comply with the nondiscrimination obligations of § 251(g) of the Act.

With the above safeguards in place, staff recommends that AT&T Florida should be permitted to revise its customer contact protocol by eliminating the scripting requirement for intraLATA long distance service.

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Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (McKay, Teitzman)

Staff Analysis: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.