FPSC-FCC COMMENTS
Addressing Competition and Deregulation of the Telecommunications Industry

CC Docket No. 96-98
FCC 96-182

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

RE: Notice of Proposed Rulemaking

May 15, 1996

In response to the FCC's April 19, 1996 NPRM, the Florida Public Service Commission filed the following comments. These comments primarily deal with Interconnection, which is addressed in more detail in the "Telecommunications Trilogy".

The FPSC urged the FCC to allow states to choose one of two approaches to implementing the Act. The first approach would allow a state two with partnership with the FCC under a national framework. Under the second approach, the FCC would develop a detailed national model which either a state could choose to adopt and implement or the FCC could use if the state does not act. Florida favored the national framework in the first approach. The FPSC pointed out that Florida passed a procompetitive law one year prior to the implementation of the Telecommunications Act of 1996.

The Commission also stated that the FCC should only implement "essential" rules in the short statutory time frame and avoid explicit rules unless absolutely necessary.

The FPSC agreed with the statement in the NPRM that the roles of the state and FCC should be parallel. Also, the Commission disagreed with the FCC's tentative conclusion that Congress intended for Section 251 to take precedence over any contrary implications in Section 2(b) of the 1934 Act. That section provides that nothing in the Act should be construed to give the FCC jurisdiction in connection with intrastate communication service by wire or radio. The Commission also stated that an overly preemptive FCC approach would be at odds with the intent of Congress.

The FPSC stated its belief that intrastate rates are explicitly under the jurisdiction of the states unless a state relinquishes it to the FCC by failing to act.

RE: Second Further Notice of Proposed Rulemaking

May 25, 1999

On April 16, 1999, the FCC issued a Second Further Notice of Proposed Rulemaking (Second FNPRM) to obtain input from interested parties on how the FCC should interpret the standards set forth in section 252(d)(2), and which specific network elements the ILECs should be required to unbundle under section 251(c)(3). The FPSC provides the following four comments:

(1) The FCC Lacks Appellate Authority Over State Decisions
The FPSC believes that the FCC lacks authority to review state commission decisions except where the ACT clearly provides that authority. The provision for judicial review of state commission decisions is found at 47 USC 252(e)(6).

The Court decisions construing the Act have been consistent in giving effect to the plain statutory language. In Michigan Bell Tel.Co. v. MFS Intelenet of Mich., the court stated that "Congress has created a unique framework which, while inviting state commissions to arbitrate and approve interconnection agreements, retains exclusive jurisdiction within the federal courts to ensure federal requirements." Other cases cited by the FPSC included U.S. West Telecommunications v. Hix, U.S. West Communications v. TCG Seattle, MCI Telecommunications Corp. v. Illinois Commerce Commission, Illinois Bell Telephone Co. v. WorldCom Technologies, Inc., and Iowa Utilities Bd. v. FCC.

The FPSC states that the plain statutory language, coupled with clear precedent cited above, totally precludes the FCC from bootstrapping its rulemaking authority into an appellate mechanism for state decisions.

(2) Nationwide Standards Minimum Set of UNEs and Geographic Variation of UNEs Outside the Incumbent's Network

The FPSC believes that serious consideration of which UNEs are available from non-ILEC providers will bear out that

establishing a single, national set of UNEs would be ill advised.

The FCC also asks for comment on whether the "existence of geographic variations in the availability of elements outside the ILEC's network is relevant to a decision to impose minimum national unbundling requirements" The FPSC believes that the availability of UNEs from non-ILEC providers is likely to vary considerably both within a state and among states.

To comply with the Supreme Court's directive, an important analysis must take into consideration whether viable facilities-based providers of network functionalities and components, other than the ILECs, exist in a specific geographic locale. Of necessity such determinations are highly fact-intensive and thus are more suitable for a state commission to conduct. As a way out of the apparent contradiction between alternative providers' UNEs and consideration of local alternative providers' UNE offerings, the FPSC proposes that the FCC consider that each of the network elements set forth in the competitive checklist of section 271(c)(2)(B) must be provided by ILECs, but treat each of these requirements as a rebuttable presumption.

The FCC asks whether there should be a "sunset" provision. The FPSC believes that using section 271(c)(2)(B)'s competitive checklist as the basis for a national UNE list provides sufficient flexibility such that a sunset provision is unnecessary. However, if the FCC orders a national list of mandatory UNEs, the FPSC recommends that the FCC include a sunset provision for two years from the date of the order.

The FCC also seeks comment on whether it should require subloop unbundling at the remote terminal or at other points within an ILEC's network and whether dark fiber is an unbundled network element. The FPSC believes that whether subloop unbundling should be should be determined on a case by case basis, with an analysis of any alternative means for a CLEC to provide service. With regard to dark fiber, the FPSC does not think that it is necessary for the FCC to deem dark fiber a UNE. Dark fiber is a physical item, not a functionality, in contrast to the items in 271 (c)(2)(B)'s competitive checklist.

(3) Differences in Cost between an ILEC's UNEs and an Alternative Provider's UNEs

The FCC asks whether, and to what extent, differences in cost

between obtaining a UNE from an ILEC and an alternative source should be considered. The FPSC believes that an overly prescriptive approach can create more problems than it solves. Prescriptive rules will not permit the flexibility that is essential in any analysis or study of cost differentials; therefore, we suggest that the FCC provide guidelines for the analysis of cost differentials.

(4) Impairment - Lack of Collocation Space

The FCC seeks comment on whether a CLEC might be "impaired" in a particular area if the ILEC's serving central office has no additional collocation space available. Because any analysis of potential impairment is likely to be heavily fact-intensive, with many variables, the FPSC suggests that the FCC consider providing guidelines rather than a "standard." Guidelines will provide the state commissions with flexibility rather than new regulatory burdens.