BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into EAEAs, TMAs, 1+ Restriction to the LECs and elimination of the access discount	DOCKET NO. 880812-TP ORDER NO. 24610 ISSUED: 6/3/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
GERALD L. GUNTER
MICHAEL McK. WILSON

ORDER DISPOSING OF MOTIONS FOR RECONSIDERATION OF ORDER NO. 23540

BY THE COMMISSION:

I. BACKGROUND

On May 26, 1988, the Florida Interexchange Carriers Association (FIXCA) sent a letter to this Commission urging it to undertake a fundamental reexamination of our policies dealing with 1+ and 0+ Dialing, Equal Access Exchange Areas (EAEAs), and Toll Transmission Monopoly Areas. This Docket was initiated by the Commission in June, 1988, to consider FIXCA's request. The issues raised by the parties to this proceeding were presented at hearings held during November of 1989. Our decisions are reflected in Order No. 23540. By Order No. 23540 (the Order), we determined to retain the toll transmission monopoly areas until December 31, 1991; to allow the resale of switched access; to continue IXC payment of compensation to the LECs for completion of intraEAEA traffic; to retain the bypass restriction; to retain the reservation of 1+ and 0+ intraLATA dialing to the LECs for an unspecified time; and to modify the application of several switched access rate elements.

II. INTRODUCTION

The Florida Interexchange Carriers Association (FIXCA), MCI Telecommunications, Inc. (MCI), Advanced Telecommunication Corporation (ATC, formerly Telus), and US Sprint Communications Company (Sprint) have each filed either a Motion for Reconsideration or for Clarification or both, of Order No. 23540. Southern Bell and GTE Florida filed responses to those motions.

To satisfy the standard for reconsideration, a motion must concisely state the grounds supporting the relief requested. See Rule 25-22.060(2), Florida Administrative Code. The allegations

must bring to the Commission's attention some matter of law or fact which it failed to consider or overlooked in its prior decision. The motion may not be used as an opportunity to re-argue matters previously considered by the Commission. See Diamond Cab Co. of Miami v. King, 146 So. 2d. 889 (Fla. 1962), Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981).

As discussed in detail below, we have denied the requests to reconsider the elimination of TMAs and the intraEAEA compensation requirements. We have clarified that all intraEAEA compensation shall end when TMAs expire and that special access compensation shall be addressed at a later date in a separate Docket. We have also denied requests for reconsideration of our decision to retain the bypass restriction and to retain the reservation of intraLATA 1+ and 0+ traffic to the LECs. In addition, we have clarified our decisions regarding the test floor for the pricing of toll services.

III. RETENTION OF TMAs

MCI seeks reconsideration of our decision to postpone elimination of the toll transmission monopoly areas (TMAs) until December 31, 1991. In support of its motion, MCI argues that two of our "concerns" noted in our retention of TMAs private line restructuring and LEC revenue losses, do not support retention.

With respect to private line restructuring, MCI contends that we overlooked or failed to consider that the then pending LEC proposals in the private line docket would increase private line and special access rates, making those services less competitive rather than more so. MCI argues that the order does not provide a reasoned basis for continued protection of the LECs from competition while their services are repriced so as to make them less competitive, and furthermore, that no such explanation is possible. Therefore, according to MCI, the Commission should reject the proposition that TMAs should be retained until private line and special access restructuring is substantially complete, and advance the elimination date to December 31, 1990.

With respect to LEC projected revenue losses, MCI argues that certain facts have been discovered since the hearing that justify a rehearing. In this proceeding, Southern Bell testified that it expected to lose $44.9 million in annual contribution if TMAs are eliminated. In Southern Bell's Rate Stabilization proceeding in

Docket No. 880069-TL, however, a Southern Bell witness testified that the Company had budgeted an $11 million reduction in 1992 earnings as a result of the TMA order. On that basis, MCI contends that the Commission should conduct a limited rehearing to examine this new evidence, and that it should find that a primary basis for postponing the elimination of TMAs, lost LEC revenues, no longer exists.

Our decision was based on our examination of a number of factors. Those factors included the restructure of LEC private line and special access and our desire to further deload NTS costs from access charges before full competition is allowed. MCI fails to grasp that our goal is not to make the LECs super competitive in every service or solely to protect the LECs' revenues from competition. Our goal has been to fix perceived structural problems in the LECs' toll services prior to subjecting them to full competition. One of those problems is the historic imbalance between switched access service rates and the private line and special access services rates. MCI focuses on the restructure of private line while omitting the other structural problem of switched access charge rates. We fully considered the issue of the restructuring of private line service. As we stated in the Order, the restructure of private line and special access is an important piece of the overall goal of readying the LECs for a competitive future. However, it is only a piece of a larger, more complex whole. We find MCI's narrow focus inappropriate and contrary to a well ordered transition of the LECs to full competition.

With respect to MCI's arguments that new revelations regarding LECs' revenue losses suggest that a "primary basis" for delaying elimination of TMAs no longer exist, we are unpersuaded. We did not rely on LEC revenue losses as a principal basis for retaining TMAs until December 31, 1991. As we noted in the order, the estimated revenue losses appeared overstated. Confirmation of this for one LEC does not cast doubt on the basic decision.

Upon consideration, we find that no party has raised any matter that we failed to consider or overlooked in our decision to eliminate TMAs on December 31, 1991. The arguments of the parties presented here are repetitions of those presented previously and addressed at length in Order No. 23540.

Based on our discussion above, MCI's request for reconsideration of our decision to delay elimination of TMAs until

December 31, 1991, is denied. MCI's request for an additional hearing to consider new information on LEC revenue losses from the elimination of TMAs is also denied.

IV. INTRAEAEA COMPENSATION

By Order No. 23540, we retained the intraEAEA traffic compensation requirements as established in Orders Nos. 20484 and 22122. FIXCA and MCI seek reconsideration of this decision. FIXCA takes issue with our statement that the resale of access is not consistent with the goal of protecting LEC revenues, noting that LECs receive revenues from the resale of access through the collection of prescribed access charges. FIXCA argues that our decision "overlooks" the fact that the resale of access is not within the TMA monopoly, that LEC revenues did not suffer before the imposition of compensation, that the potential for LEC harm is inconsequential, and that a "penalty" on "authorized" traffic is an obstacle to establishment of a healthy competitive environment.

MCI argues that Order No. 23540 is internally inconsistent because it authorizes the resale of access, yet requires compensation to be paid on that traffic. MCI requests that the Commission reconsider and "rule that no compensation above access charges is payable with respect to resale of access from the date of the vote on reconsideration until the date the TMAs are eliminated."

Southern Bell and GTEFL responded to MCI's and FIXCA's motions. Southern Bell argue that the Commission recognized that eliminating compensation on resale of access would be equivalent to eliminating the TMAs. Southern Bell also argues that the Commission did not authorize the resale of access prior to Order No. 23540, that the order reaffirms the prohibition against intraEAEA traffic carried over IXC facilities by treating resold access as unblocked intraEAEA traffic. GTEFL argues that both MCI and FIXCA simply reargue their positions from prior proceedings which have already been unsuccessful.

With respect to MCI's argument, the "inconsistency" is created because we never intended the resale of access to be a loophole for IXC completion of intraEAEA traffic. However, as we stated in the Order, we authorized such activity only because of the short time remaining for TMAs. Southern Bell correctly points out that elimination of intraEAEA compensation is tantamount to elimination

of TMAs. The compensation is the disincentive to the IXCs to carry intraEAEA traffic where such traffic is not blocked. To eliminate the disincentive before the elimination of TMAs would be the true inconsistency. In addition, allowing the resale of access avoids requiring the IXCs to incur the expense to modify their switches to block all intraEAEA, FGA, FGB and 10XXX traffic between now and December 31, 1991.

With respect to FIXCA's arguments, they are a repetition of its previous arguments that were considered and disposed of in Order No. 23540.

Based on the foregoing, MCI's and FIXCA's requests for reconsideration of the retention of compensation requirements on intraEAEA resold access traffic are denied.

MCI and Sprint also requested, in the event that we do not modify our decision to continue compensation requirements, that we clarify the Order to state specifically that all compensation will end no later than the date that the TMAs will be eliminated, which is December 31, 1991. To the extent there is any question regarding the termination of intraEAEA compensation requirements, these compensation requirements shall end coincident with the end of TMAs as per Order No. 23540.

V. SPECIAL ACCESS COMPENSATION

Our current intraEAEA compensation mechanism is based on the amount of intraEAEA traffic carried by an IXC over switched access. In the Order we noted that, having retained intraEAEA compensation requirements, we intended to address the appropriate requirements for intraEAEA special access compensation.

FIXCA and MCI seek clarification that the Order does not prejudice the issue of special access compensation nor require further Commission action until Southern Bell submits a surrogate plan. FIXCA and MCI argue that our decision to address special access compensation is inconsistent with our prior decisions in Orders Nos. 20484 and 22122 and that the Order does not accurately reflect our decision on special access compensation. They further argue that the Commission has never concluded that inadequate compensation occurs under the present system.

GTE and Southern Bell responded, arguing that the Commission should not clarify the Order. GTE states that the IXCs simply seek reconsideration of prior Commission orders which establish the basic policy. Southern Bell argues that the Commission's intent is accurately reflected in the order. According to Southern Bell, the Commission's intent was to definitely apply special access compensation, and that only the level and to what it applies remains to be determined. Southern Bell stated that "it is evident from the Commission's order that it thoroughly considered the evidence and arguments regarding the development of special access compensation requirements."

Our decision regarding special access compensation was simply to address the issue in the future. Nothing has been prejudged. The issues of the application and levels of any special access surrogate will be addressed in a separate docket.

VI. RETENTION OF BYPASS PRODUCTION

FIXCA contends that the bypass restriction, as it applies to the ongoing restructure of private line/special access services, is currently thwarting competition and harming ratepayers. According to FIXCA, this is because LEC-provided private line services are generally regarded as below cost items at present, so prohibiting competition with the bypass prohibition only exacerbates the problem. FIXCA further requests the Commission to establish a time certain for the restriction's demise, as the Commission did with TMAs.

FIXCA simply reargues its case on this issue. Therefore, its request for reconsideration on the bypass issue is denied. We note that the bypass prohibition's future is currently an issue in the Alternative Access Vendor (AAV) proceeding in Docket No. 890183-TL; retention or extermination of the bypass prohibition will be decided in that docket.

VII. RESERVATION OF INTRALATA 1+ AND 0+ TRAFFIC TO LECs

FIXCA does not request reconsideration of our basic decision on reserving all 1+ and 0+ intraLATA traffic. However, FIXCA asks that we now detail the information needed to make changes to the policy; establish a deadline for receipt of the information and schedule a workshop to address the information.

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Southern Bell and GTEFL opposed setting the kind of schedule proposed by FIXCA. They argued that setting a schedule under the guise of clarification was inappropriate.

We agree that there is work to be done. However, we do not believe that work should be started until more reliable data can be gathered and the software for intraLATA presubscription is available. As we noted in the Order, the impact data presented is subject to serious question. We also agree with Southern Bell and GTEFL that initiation of a new proceeding such as FIXCA requests is inappropriate in the form of clarification of the Order. Our Staff will monitor the impacts of toll competition on the LECs and the feasibility of intraLATA presubscription. However, at this point, initiating such a proceeding would be premature. Accordingly, FIXCA's request for clarification is denied.

VIII. AGGREGATE ACCESS CHARGE TEST FOR TOLL PRICING

Advanced Telecommunications Corporation (ATC) asks for clarification or reconsideration of our decisions regarding the aggregate access charge test that requires LECs to set toll rates such that total toll revenues exceed total access charge expenses. ATC argues that this test does not indicate whether it will be sufficient for LECs to cover access on a service-by-service basis or whether they need only cover access for the whole of their toll offerings. While it has been the Commission's practice before and after this decision to require IXCs and LECs to cover their access charges in the aggregate for each toll service, the Order does not explicitly state this. Therefore, Order No. 23540 is clarified to reflect our policy that each toll service should meet the relevant access charge test.

ATC also seeks reconsideration of our decision to allow the LECs to reduce toll rates in the first two mileage bands as long as the aggregate access charge test is met. ATC argues that these two bands are already priced below access charge levels and that to permit further reductions could seriously and adversely impact the ability of many IXCs to remain competitive.

This issue was clearly addressed in the proceeding and in the order. The LECs may reduce the first two mileage bands as long as they are able to cover access charges in the aggregate. ATC has presented nothing we failed to consider or overlooked; it simply

reargues its case. ATC's request for clarification or reconsideration of this decision is denied.

IX. FURTHER DEVELOPMENT OF ACCESS CHARGE TEST FOR LEC TOLL PRICES

FIXCA asks that we clarify the Order to state we intend to further develop the access charge tests for LEC toll service pricing in Docket No. 900708-TL. FIXCA states "The mechanics and requirements of an "aggregate test" standard for local exchange carriers have never been fully explored, leading the Commission to initiate a separate proceeding (Docket No. 900708-TL) having the express purpose of developing a methodology applicable to local exchange carriers. Order No. 23540, however, is silent in this regard."

Docket No. 900708-TL was opened in August 1990, after we made our decisions in this docket. Order No. 23540 could not have reflected an action that took place after the hearing and our decision in this case. Therefore, FIXCA's request for such clarification of Order No. 23540 cannot be approved. We note that the issues FIXCA raises will be addressed in Docket No. 900708-TL.

X. ATC'S REQUEST FOR STAY OF ORDER NO. 23540

At the time Order No. 23540 was issued in this proceeding, ATC had a pending complaint against GTEFL's Suncoast Preferred experimental discount toll service. ATC sought a stay of the Order pending resolution of the issues raised in its complaint. On November 9, 1990, ATC filed a Voluntary Motion to Dismiss its objections and complaints in Dockets Nos. 880643-TL and 880812-TL relating to GTEFL's Suncoast Preferred experimental tariff filing. By Order No. 23908, GTEFL's Suncoast Preferred service had its experimental status eliminated and was made a permanent offering. In view of ATC's withdrawal of it complaint, ATC's request for a stay is moot.

Therefore, based on the foregoing it is

ORDERED by the Florida Public Service Commission that MCI Telecommunications Corporation's request for reconsideration of that portion of Order No. 23540 eliminating Toll Transmission Monopoly Areas effective December 31, 1991, is denied as set forth in the body of this Order. It is further

ORDERED that the Florida Interexchange Carriers Association's and MCI's requests for reconsideration of that portion of Order No. 23540 retaining intraEAEA compensation requirements is denied as set forth in the body of this Order. It is further

ORDERED that U.S. Sprint Communications's Company Limited Partnership's and MCI's request for clarification that intraEAEA compensation requirements will end coincident with the elimination of TMAs is granted as set forth in the body of this Order. It is further

ORDERED that FIXCA's and MCI's requests for clarification that the issue of intraEAEA special access compensation will be addressed in a separate proceeding is granted as set forth in the body of this Order. It is further

ORDERED that FIXCA's request for reconsideration of that portion of Order No. 23540 retaining the bypass restriction and FIXCA's request to set a time certain for elimination of the bypass restriction is denied as set forth in the body of this Order. It is further

ORDERED that FIXCA's request that the Commission establish the necessary information requirements and a schedule for the elimination of the reservation of intraLATA 1+ and 0+ traffic to the Local Exchange Companies is denied as set forth in the body of this Order. It is further

ORDERED that Advanced Telecommunications Corporation's request for clarification regarding the application of the aggregate access charge test is granted as set forth in the body of this Order. It is further

ORDERED that FIXCA's request for clarification regarding development of the aggregate access charge test is denied as set forth in the body of this Order. It is further

ORDERED that ATC's request for a stay of Order No. 23540 is moot for the reasons set forth in the body of this Order. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this 3rd day of JUNE, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

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Commissioner Wilson concurs in the Commission's decision to retain intraEAEA compensation requirements but registers a strong concern that the "compensation" has evolved into little more than a revenue protection measure and may provide an incorrect economic signal to interexchange carriers.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme

Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.