

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into which) DOCKET NO. 930046-TP
local exchange company) ORDER NO. PSC-93-1768-FOF-TP
(LEC) services are effectively) ISSUED: December 9, 1993
competitive in 1993.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER REGARDING THE COMPETITIVE STATUS OF CERTAIN SERVICES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

Chapter 364, Florida Statutes, was substantially revised during 1990, resulting in an increased statutory emphasis on allowing competitive forces to guide markets where possible. This philosophy is espoused both in Sections 364.01, and 364.338, Florida Statutes. As discussed in greater detail below we have examined a number of local exchange company provided services and have determined that certain services are not effectively competitive at this time and that certain other services must be examined more closely to determine their competitive status.

Pursuant to 364.338(2), a determination of whether a LEC service is subject to effective competition may be made "on motion by the commission or on petition of the telecommunications company or any interested party."

DOCUMENT IDENTIFICATION

13134 DEC-93

FPCO-REGISTRATION

In making a determination of whether or not a LEC service is subject to effective competition, Section 364.338(2) requires the Commission to consider all of the following:

- (a) The effect, if any, on the maintenance of basic local exchange telecommunications service.
- (b) The ability of consumers to obtain functionally equivalent services at comparable rates, terms, and conditions.
- (c) The ability of competitive providers in the relevant geographic or service market to make functionally equivalent or substitute services available at competitive rates, terms, and conditions.
- (d) The overall impact of the proposed regulatory change on the continued availability of existing services.
- (e) Whether the consumers of such service would receive an identifiable benefit from the provision of the service on a competitive basis.
- (f) The degree of regulation necessary to prevent abuses or discrimination in the provision of such service.
- (g) Such other relevant factors as are in the public interest.

Parts (b) and (c) can be classified as economic criteria, while the other parts constitute more of a public interest test.

The economist's concept of effective competition centers around the terms market share, market dominance, and market power. Market share is usually expressed in percent of sales or units sold and reflects a given firm's portion of the total market. When a firm's size is such that it has a majority or controlling share of the market, the firm is said to have market dominance. A dominant firm may or may not possess market power which is the ability to set prices at levels higher than would be found in a competitive environment. An intuitive way of looking at these terms is that market share is a measure of market dominance, which can indicate the potential for exercising market power. Notwithstanding the intuitive appeal of the economic notion of effective competition, the question remains whether the concept can be applied in practice

to the telecommunications industry. With the vast number of providers and services, the quantification of market share and market dominance, plus detection of market power, can be problematic.

In order to determine the nature and extent of competition in various services, we have sought information regarding identification of competitive alternatives, barriers to entry or expansion, monopoly service elements used in the provision of competitive services, extent of competition, level of advertising expenditures, consumer knowledge of alternatives, market leadership, and other relevant considerations. This information was sought from a wide spectrum of entities including local exchange companies, interexchange carriers, and alternate access vendors.

We also solicited information from telecommunications equipment vendors operating in Florida. The information request was in the form of a vendor survey. Vendors were selected on the basis of the size of their LEC yellow page advertisements, the rationale being that those vendors who purchase the largest advertisements are potentially the most significant competitors in their respective markets. This survey sought to identify as many competitors as possible for 21 LEC products, and to obtain the vendors' perceptions of their abilities to compete effectively. The 21 LEC services were those thought to have a customer premises equipment (CPE) alternative.

The survey consisted of four sections:

- I. Cities served by the vendor
- II. LEC products subject to competition from the vendor
- III. Incidence of perceived problems which impede effective competition
- IV. Comments

Due to the structured nature of the survey, some concessions were made in terms of the depth of information collected. Through the survey, it was determined whether a vendor was providing an alternative to a LEC product. However, it could not often be determined whether the alternative was a ubiquitous substitute for all customer types, nor determine the closeness of the substitute.

II. Analytical Methodology

Due to the volume of services (approaching a thousand) offered by the local exchange companies, the number of services analyzed was limited. The determination of which services should be evaluated for potential classification as effectively competitive services was based on those services identified by one or more respondents as effectively competitive or possibly effectively competitive. All services listed in Attachment A were evaluated. LEC pay telephone service was excluded from consideration since the Commission earlier determined that LEC pay telephone service is not effectively competitive for end users. See Order No. PSC-93-0289-FOF-TL.

The bulk of the information received from the respondents concentrated on the economic aspects of the statutory requirements for effective competition. While the information requests had to be tailored to some extent to fit each class of respondent, the same types of information were solicited from each. The information can be largely categorized into the following areas:

- 1) Types of competitors (IXC/AOS, AAV, and CPE vendors) and customer markets (residence, small/medium business, and large business)
- 2) Number and location of competitors providing alternatives to LEC products
- 3) Extent of competitive barriers
 - a. Lack of customer knowledge about alternatives
 - b. Customer loyalty to LEC
 - c. Financial
 - d. Regulatory
 - e. Difficulty in obtaining service from the LEC
- 4) Other

The product evaluation was conducted using the same basic categories as shown above, except for the addition of a section on public interest considerations. The public interest considerations consist of the following three elements: effect on maintenance of basic service, effect on availability of existing services, and degree of regulation necessary. Each product was graded based on

the information received as well as information already available. A determination was made that a product was a candidate for effective competition if all of the following five conditions were satisfied:

- 1) Competitive providers target the same customer types as the LEC.
- 2) 2 or more non-LEC competitors operate in each of the LEC's key cities, and there are no competitive barriers, or
3 or more non-LEC competitors operate in each of the LEC's key cities, and competitive barriers are at most "occasionally a problem," or
5 or more non-LEC competitors operate in each of the LEC's key cities, and competitive barriers are at most "often a problem," or
10 or more non-LEC competitors operate in each of the LEC's key cities.
- 3) A determination that this product is "effectively competitive" will have at most a "small" effect on the maintenance of basic service and the availability of existing services.
- 4) A determination that this product is "effectively competitive" will necessitate at most a "small" degree of regulation.
- 5) No other factors were identified which call into question the viability of effective competition as addressed by F.S. 364.336(2).

This approach and analysis generated two lists of services: those which do not appear to be effectively competitive, and those which require further investigation before a final determination can be made. See Attachment A.

III. Services Not Effectively Competitive

The review of LEC services using the analytical methodology described above indicates that certain services are not yet effectively competitive. The services failing the competitive test did so for a variety of reasons. Many failed because of pricing barriers, or lack of customer knowledge about alternatives. Some failed because of regulatory barriers, for example, Operator Assistance failed because of the Commission's 0+ and 0- intraLATA traffic restrictions. Also, loyalty to LEC-provided services or financial barriers were also other reasons. Attachment B to this Order shows each service and the primary reason that we find it not to be effectively competitive at this time.

One service on this list worth particular mention is intraLATA Message Toll Service (MTS). MTS did not make the "effectively competitive" list mainly because of the reasons advanced by the IXCs: the Commission's current 1+/0+ intraLATA restrictions and high intrastate access charges. IXCs maintained that the 1+/0+ restriction keeps them out of the market altogether, and even if it was lifted, high intrastate access charges would hurt IXCs' chances of effectively competing with LECs for intraLATA MTS service. This Commission requires LECs to impute access charges when pricing their toll services. While this policy means that the LECs' MTS prices must be sufficient to cover access charges, the IXCs maintained that they would still be disadvantaged. They believed that access charges have a high margin, and this would be a distinct advantage to the LEC. The IXCs' position was that although LEC and IXC prices for MTS might be comparable, the LEC's actual costs may be significantly below the IXC's, giving the LEC a greater profit margin.

Although many of the IXCs' claimed barriers may be noneconomic ones and be controlled to a large degree by this Commission, we do not believe that intraLATA MTS should be investigated further in this docket. There is currently a proceeding investigating the Commission's 1+/0+ intraLATA policies, and intraLATA MTS competition will largely depend on the outcome of that proceeding.

Upon consideration, we find, that the services set forth on Attachment B to this Order are not effectively competitive at this time under the criteria set forth in Section 364.338, Florida Statutes.

IV. Services To Be Investigated Further

The preliminary analysis of LEC services showed that several services could possibly be effectively competitive, at least in certain markets or circumstances.

Most of the services identified by the LECs appear to warrant further investigation as to whether they are effectively competitive. LECs and private vendors alike indicated for most of these services that many vendors compete with the LEC in the major markets for the service, the substitutes were functionally equivalent, and that no significant financial or regulatory barriers prohibited them from competing. The list of these services is shown on Attachment A to this Order. While these services reflect several competitive characteristics, a definitive conclusion that these services are "effectively competitive" would be premature.

We prefer to approach this determination with some caution. Services which had been previously thought to be effectively competitive, such as operator services and pay telephone service, have either failed to perform in a manner commensurate with a competitive marketplace or not passed the statutory test of being effectively competitive for end-users. Also, it appears increasingly less likely that LEC inside wire maintenance, which is currently deregulated, is truly competitive. This matter is being investigated in a separate rule proceeding in Docket No. 930485-TL.

One service which is worth particular mention is Centrex or ESSX service. Although the general consensus of the vendors was that it was not effectively competitive, there are several issues worth pursuing. Many of the vendors' responses indicated that some of the reasons it was not effectively competitive may be regulatory in nature, such as financial barriers to competition.

Upon consideration we find that the services listed in Attachment C be investigated further to determine whether they are effectively competitive. In order to facilitate the final determination we must have additional information regarding market share, market dominance and market power, analysis of the actual ability of competitive offerings to be functional equivalents of LEC-provided services, and an analysis of whether the substitutes are ubiquitous, or only for certain customers or customer groups.

Each of these factors must be evaluated in the context of the criteria in Section 364.338 to reach a final determination on the level of competition for these services.

In order to conduct our investigation in an orderly manner we find it appropriate to limit the number of services to be examined in the first phase of this proceeding. This narrowed scope is necessary due to the total number of services at issue as well as the complexity and difficulty inherent in reaching a determination for any one service. The services to be examined in the first phase are:

- Call Forwarding/Call Waiting
- Private Line service
- Foreign Exchange service
- ESSX/Centrex
- Custom Calling Services - Business

These services were selected based on approximate revenues generated by each service for Southern Bell. This prioritization is premised on two factors. First, since Southern Bell is the largest LEC in the state, its revenues will provide a reasonable estimate of relative importance. Second, in view of Southern Bell's pending rate case, its revenue calculations are the most current available. Further prioritization on the basis of revenues will allow us to investigate those services with the largest potential impact first. After a determination on the first group of services is concluded, we will continue with the next group until all the services on the list have been completed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the list of services set forth in Attachment B to this Order are determined to be not effectively competitive at this time, pursuant to Section 364.338, Florida Statutes, for the reasons set forth in the body of this Order. It is further

ORDERED that if any person files a protest to the Commission's determination as to the competitive status of any of the services listed in Attachment B, such protest shall be specific to each service for which that person seeks a hearing. A protest of any specific service shall not prevent the Commission's determination regarding any other service from becoming final. It is further

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ORDERED that the services set forth in Attachment C to this Order shall be investigated further to determine which of these services if any are effectively competitive. It is further

ORDERED that the investigation of the services in Attachment C shall be prioritized as set forth in the body of this Order. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 9th day of December, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

TWH

by: Kay Flynn
Chief, Bureau of Records

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose

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substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 30, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.

NOT EFFECTIVELY COMPETITIVE*

Customer Network Management
FlexServ
Message Toll Service
Valu-Pak Service
Saver Service
Directory Assistance Service
Operator Assistance
Directory Assistance Access Service
Distinctive Ring
Machine Tape
E911 Equipment
TicketTaker Service
Special Construction
Add. Engin., Labor, and Misc. Charges
Charges for Unusual Installations
Trouble Location Charge
Coin Booths
Network Interface Equipment
Custom Local Area Signaling Services
Billing Analysis Service
Billing Information Service

EFFECTIVELY COMPETITIVE
CANDIDATES*

ESSX
Personal Signaling Service
Data Transport Access Channel
Service
Derived Data Channel Service
PulseLink
AccuPulse
Multi-Location Business Service
Data Link Consoles
WATS
800 Service
Three Way Conferencing
Custom Calling Services - Business
Speed Calling - Residence
Hot Line/Warm Line Service
Call Forwarding/Call Waiting
Recording Service
Bill Processing Service
Private Line Billing Service
Selective Class of Call Screening
Customized Code Restrictions (CCR)
976 Service
Watch Alert Service
UniServ
Apartment Door Answering Service
Simplified Message Desk Interface
Message Waiting Indication
Multiline Hunt Queuing
Night, Sunday and Holiday Service
High Voltage Protection Equipment
Foreign Exchange
Auxiliary Equipment
Message Register Service
Equipment for Disabled Customers
Private Line
MegaLink Service
MegaLink Channel Service
SynchroNet Service
LightGate Service
Special Access Services
Area Communication Services

* Names of services are Southern Bell-specific; other LECs provide many of the services under different names

Evaluation of Services Failing Effective Competitive Test

Service	Reasons For Failure
Customer Network Mgt.	Technical Barrier: The information that this service provides to a customer can only be provided by a LEC.
FlexServ	Regulatory Barrier: This service gives LEC customers access to the LEC's central office and the ability to reconfigure and monitor services provided by the LEC
MTS	Regulatory Barrier: IXCs are prohibited from presubscribing customers for intraLATA calls. IntraLATA 1+ and 0+ calls are reserved to the LECs
Valu-Pak	Marketing and Regulatory Barriers: This is an intraLATA toll discount package that targets LEC dormitory and residential subscribers. The prohibition against 1+ and 0+ intraLATA presubscription for IXCs results in their inability to offer a similar intraLATA service.
Saver Service	Marketing and Regulatory Barriers: This is an intraLATA optional calling plan. The prohibition against 1+ and 0+ intraLATA presubscription for IXCs results in their inability to offer a similar intraLATA service.
Directory Assistance Service	Marketing Barrier: DA provides information on LEC subscribers, both residential and business. While alternatives may exist, the LEC is the primary source of subscriber information.
Operator Assistance	Marketing and Regulatory Barrier: IntraLATA 0+ and 1+ traffic are reserved for the LEC.
Directory Assistance Access Service	Marketing Barrier: This service provides transport to a LEC directory assistance location from an IXC's point of presence as well as the use of the LEC's DA operators.
Distinctive Ringing	Financial Barrier: A significant number of CPE vendors are unable to price their alternatives in such a way as to remain competitive.
Machine Tape	Regulatory Barrier: This service provides LEC subscribers with call detail information. Only the LEC can provide this information.
E911 Equipment	Marketing and Regulatory Barriers: A significant number of CPE vendors find customer loyalty to the LEC and inability to price on a competitive basis as a hinderance to competition.

Evaluation of Services Failing Effective Competitive Test (con't)

Service	Reasons For Failure
Ticket Taker Service	Marketing Barrier: TicketTaker allows cable TV companies to provide cable customers the ability to order pay-per-view services over the phone. In most cities there is only one provider other than the LEC that provides this service.
Special Construction Charges	Not Applicable: Special construction charges are applied to unusual customer specific requests for facilities that will carry services currently offered in a service tariff. A construction charge is not a service. Theoretically it represents the intersection of supply and demand for a product and acts as a rationing mechanism for goods and services. It is a direct function of the demand for a service.
Unusual Installation Charges	Not Applicable: These charges are applied to work requested by the customer due to unique and expensive requirements. A charge is not a service. It represents the intersection of supply and demand for a product and acts as a rationing mechanism for goods and services. It is a direct function of the demand for a service.
Trouble Location Charge	Not Applicable: This charge is assessed for each visit by the LEC to a customer premises in order to determine service difficulty. A charge is not a service. It represents the intersection of supply and demand for a product and acts as a rationing mechanism for goods and services. It is a direct function of the demand for a service.
Coin Booths	Marketing and Financial Barriers: A significant number of CPE vendors indicate that consumers' lack of knowledge concerning alternatives and the inability to price competitively are a problem. The Commission has found that overall, pay telephone service is not effectively competitive.
Custom Local Area Signalling	Marketing and Financial Barriers: Customer loyalty to LEC product cited by CPE vendors as a barrier to provision of this service. CPE vendors unable to price competitively.
Billing Analysis Service	Technical and Regulatory Barriers: The information provided by this service can only be obtained from the LEC.
Billing Information Service	Technical and Regulatory Barriers: The information provided by this service can only be obtained from the LEC.
Network Interface Equipment	Financial Barriers: A significant number of CPE vendors are unable to compete due to inability to price competitively.

Key Information Needs

Service	Type of Analysis
ESSX/Centranet	Economic Analysis: to determine if barriers are economic or artificial
Personal Signaling Service	Marketing Analysis: to determine if the market for LEC providers and alternate providers are comparable
Data Transport Services	Marketing Analysis: to determine if AAVs and LECs are the only competitors for this service and determine if the markets for LEC providers and competitors are comparable
Multi-Location Business Services (includes Area Communications and Extended Communications Services)	Economic and Marketing Analysis: to identify functionally equivalent alternatives to this service
Data Link Consoles	Economic Analysis: to determine if all alternatives are functionally equivalent
WATS/800 Services	Marketing Analysis: to make a determination as to the level of market share and market power
Three Way Conferencing	Economic and Marketing Analysis: to identify functionally equivalent services and the market position of LECs and alternative providers
Custom Calling Services (includes Call Forwarding, Call Waiting, Speed Dial, Selective Class of Call Screening)	Economic and Marketing Analysis: to evaluate closeness of substitutes by relevant markets and determine LEC penetration rates
Recording Service	Economic Analysis: to identify functionally equivalent services
Bill Processing Service	Economic Analysis: to identify whether alternative services are functionally and economically comparable to LEC offering
Hot Line/Warm Line Service	Economic Analysis: to determine if functionally equivalent services exist
Customized Code Restriction	Marketing Analysis: to identify alternative providers of this service
976 Service	Economic Analysis: to identify functionally equivalent services
UniServ	Economic Analysis: to identify functionally equivalent services

Key Information Needs (cont.)

Service	Type of Analysis
Apartment Door Answering Service	Marketing and Economic Analysis: to evaluate closeness of substitutes by relevant markets
Simplified Message Desk Interface	Economic and Marketing Analysis: to evaluate closeness of substitutes by relevant markets
Message Waiting Indication	Economic and Marketing Analysis: to evaluate closeness of substitutes by relevant markets
MultiLine Hunt Queuing	Marketing Analysis: to determine whether or not this service is limited only to ESSX/Centrex services
Night, Sunday, and Holiday Service	Service Function Analysis: to determine how functionally equivalent service can be provided without use of a switch
High Voltage Protection Equipment	Marketing Analysis: to determine the extent to which this service is generic
Foreign Exchange	Economic Analysis: to determine if alternatives are functionally equivalent
Auxiliary Equipment	Market Analysis: to determine market penetration
Message Register Service	Marketing Analysis: to identify the relevant markets
Equipment for Disabled Customers	Marketing Analysis: to determine market penetration for this service and functionally equivalent alternatives
Private Line/Special Access Services (includes MegaLink, SynchroNet, LightGate)	Economic Analysis: to determine the regulatory barriers for functionally equivalent alternatives to this service