

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

March 6, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (SIMMONS, KING) ^{SAS} ^{2/11 RTT} ^{10/18/97}
DIVISION OF AUDITING & FINANCIAL ANALYSIS (WRIGHT, BOYER)
DIVISION OF LEGAL SERVICES (BROWN, COX) ^{NCB} ^{1/27/97}

RE: DOCKET NO. ~~970172~~ TP - PETITION BY MCI TELECOMMUNICATIONS CORPORATION FOR AN ORDER REQUIRING BELLSOUTH TELECOMMUNICATIONS, INC. TO REMOVE ITS DEREGULATED PAYPHONE INVESTMENT AND ASSOCIATED EXPENSES FROM ITS INTRASTATE OPERATIONS AND REDUCE THE CARRIER COMMON LINE RATE ELEMENT OF ITS INTRASTATE SWITCHED ACCESS CHARGES BY APPROXIMATELY \$36.5 MILLION AS REQUIRED BY THE FEDERAL TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. 970173-TP - PETITION BY MCI TELECOMMUNICATIONS CORPORATION FOR AN ORDER REQUIRING GTE FLORIDA INCORPORATED TO REMOVE ITS DEREGULATED PAYPHONE INVESTMENT AND ASSOCIATED EXPENSES FROM ITS INTRASTATE OPERATIONS AND REDUCE THE CARRIER COMMON LINE RATE ELEMENT OF ITS INTRASTATE SWITCHED ACCESS CHARGES BY APPROXIMATELY \$9.6 MILLION AS REQUIRED BY THE FEDERAL TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. 970281-TL - ESTABLISHMENT OF INTRASTATE IMPLEMENTATION REQUIREMENTS GOVERNING FEDERALLY MANDATED DEREGULATION OF LOCAL EXCHANGE COMPANY PAYPHONES

AGENDA: 03/18/97 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: IMPLEMENTATION REQUIREMENTS OF FCC ORDERS 96-388 and 96-439 NECESSITATE COMMISSION DECISION AT MARCH 18, 1997 AGENDA CONFERENCE.

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\970281TL.RCM

DOCUMENT NUMBER-DATE

02464 MAR-6 97

FPSC-RECORDS/REPORTING

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CASE BACKGROUND

This recommendation concerns the deregulation of LEC payphones pursuant to the FCC's Report and Order (96-388) and the FCC's Order on Reconsideration (96-439). The FCC orders require:

pursuant to the mandate of Section 276(b)(1)(B) [Telecommunications Act of 1996], incumbent LECs to remove from their intrastate rates any charges that recover the costs of payphones. **Revised intrastate rates must be effective no later than April 15, 1997.** ...States must determine the intrastate elements that must be removed to eliminate any intrastate subsidies within this timeframe. (emphasis added)

FCC Order 96-388, ¶ 186, September 20, 1996.

Staff would note that Section 276(c) of the Telecommunications Act of 1996 states "(t)o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's requirements on such matters shall preempt such State requirements." A LEC has the option to deregulate using structural (separate subsidiary) or non-structural safeguards (accounting separations). All LECs are subject to the deregulation requirement.

On February 7, 1997, MCI Telecommunications Corporation (MCI) filed a petition requesting that this Commission order BellSouth Telecommunications Inc. (BellSouth) to remove its deregulated payphone investment and associated expenses from its intrastate operations and reduce its intrastate Carrier Common Line (CCL) charge by approximately \$36.5 million (Docket No. 970172-TP). MCI filed a similar petition for GTE Florida Incorporated (GTEFL) to reduce its intrastate CCL charge by \$9.6 million (Docket No. 970173-TP). Staff would note that at the interstate level, LECs must "reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges." FCC Order 96-388, ¶ 181

On February 27, 1997, GTEFL filed a motion to dismiss MCI's petition (Docket No. 970173-TP) on the grounds that the petition is deficient, invalid, and incomplete. In addition, GTEFL states that if payphone revenues are included in its subsidy calculation, this demonstrates that no subsidy exists for GTEFL. Staff would note that the actions taken in Issue 1 could render GTEFL's motion to dismiss moot. While MCI has the opportunity to respond to GTEFL's

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motion to dismiss within 12 days (no later than March 11, 1997), as of the date this recommendation was filed, MCI had not filed its response. However, since the Order from this recommendation will be a Proposed Agency Action, MCI will not be denied its opportunity to respond or protest the actions taken in these dockets. Lastly, BellSouth filed an answer to MCI's petition (Docket No. 970172-TP) on February 27, 1997, in which BellSouth denied the vast majority of MCI's allegations and denied that MCI is entitled to the requested relief.

As of March 3, 1997, three LECs have filed to remove their retail payphone offerings from their General Subscriber Services Tariffs. GTEFL and Alltel filed on January 1, 1997, for an April 15, 1997 effective date. BellSouth filed on February 26, 1997, for an April 1, 1997 effective date. In addition, BellSouth calculated the intrastate subsidy to its payphone operation to be \$6.5 million. Finally, BellSouth proposed to eliminate the intrastate subsidy by reducing its rates for Business Rotary Service.

This Commission need not order all LECs to remove their retail payphone offerings from their General Subscriber Services Tariffs since FCC Order 96-388 already imposes this requirement. However, this Commission must determine what actions are necessary to eliminate any intrastate subsidies associated with the LECs' payphone operations. Further, any intrastate subsidies associated with the LECs' payphone operations must be eliminated by April 15, 1997, per FCC Order 96-388, ¶ 186. This recommendation addresses MCI's petitions and, more generally, the matter of how this Commission should eliminate any intrastate subsidies.

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ISSUE 1: Should the Commission grant MCI's petitions to reduce intrastate Carrier Common Line rates to remove payphone investment from the rates of BellSouth and GTEFL?

RECOMMENDATION: No, the Commission should not grant MCI's petitions to reduce intrastate Carrier Common Line rates to remove payphone investment from the rates of BellSouth and GTEFL. This action will render GTEFL's motion to dismiss moot.

STAFF ANALYSIS: In its petitions, MCI requests that this Commission take the following actions:

- (1) Direct BellSouth and GTEFL, respectively, to file with the Commission an intrastate switched access tariff to remove the deregulated payphone investment and associated expenses and to reduce their intrastate CCL charges to reflect the removal of the payphone investment and associated expenses in their intrastate Florida operations.
- (2) Establish an expedited discovery and procedural schedule that will permit MCI to conduct discovery on BellSouth's and GTEFL's filings and result in a hearing and decision on the removal of the payphone subsidy from BellSouth's and GTEFL's intrastate carrier access operations by April 15, 1997, as required by the FCC.

Staff believes it is clear from FCC Orders 96-388 and 96-439 that all LEC payphones must be deregulated and that any intrastate subsidies associated with the LECs' payphone operations must be eliminated by April 15. The size of any LEC intrastate payphone subsidy and the appropriate method for disposition of any subsidy are not explicitly addressed by the FCC orders. Consequently, there are different interpretations of how these two aspects should be handled.

In its petitions, MCI relies heavily on the FCC's decision concerning the appropriate compensation to payphone providers when a customer of MCI or another IXC places a call from a payphone. As noted in ¶ 18 of both petitions, MCI states "the FCC established a compensation amount of \$45.85 per payphone per month to be paid by MCI and other IXCs whose customers use payphones." MCI further states in the same paragraph that this compensation amount "represents a significant cost increase from the present level of \$6.00 per payphone per month established previously by the FCC and the \$3.00 per payphone per month established by this Commission." Staff would note that the \$45.85 is an interim amount, of which

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MCI's share is 19.25%. As of October 1997, compensation will be \$.35 per call.

MCI goes on to state that "(i)n addition to the significant increase in the monthly cost per payphone, the number of payphones eligible for this compensation from MCI and other IXCs will increase dramatically." (Petitions, ¶ 19) MCI argues that "the present payphone subsidies will, in effect, be replaced by compensation from the IXC industry." On this basis, MCI believes "it is only appropriate and imperative that the intrastate subsidy be eliminated by reducing ... intrastate switched access charges which are also paid by the IXCs." (Petitions, ¶ 20)

Staff believes that MCI's argument misses the mark. The objective is to eliminate any LEC payphone subsidy, not offset the IXCs' higher costs for dial-around compensation. At the intrastate level, staff fails to see how there is a direct link between dial-around compensation and switched access charges. Staff would also note that new dial-around compensation will be deregulated LEC revenue, while switched access charges will remain regulated LEC revenue.

Unlike the interstate case where a portion of payphone investment and expense is specifically recovered through the CCL, any intrastate payphone subsidy could be recovered anywhere. Since intrastate rates are not set based on allocated costs, there is no way of determining which intrastate rate elements are contributing to any payphone subsidy. Therefore, there is no direct link between dial-around compensation and switched access charges at the intrastate level.

If there is an intrastate payphone subsidy, staff believes it is logical to attribute the subsidy to one or more of the various network revenue streams which can flow from a payphone. These network revenue streams include toll, operator surcharges, and switched access. Staff believes it would be reasonable to reduce the rates for one or more of these services. Consequently, staff recommends in Issue 2 that any intrastate payphone subsidy be eliminated by reducing rates for toll, operator surcharges, or switched access. While MCI's request to reduce the intrastate CCL charge would fall within the range of permissible actions, staff's recommendation is premised on the network revenue streams which can flow from a payphone, not on the premise of offsetting the IXCs' higher costs for dial-around compensation.

MCI's request to reduce BellSouth's and GTEFL's CCL rates is also inflated in that MCI's calculation of the intrastate payphone subsidy ignores the fact that BellSouth and GTEFL have payphone

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revenue which will move to the deregulated operation. GTEFL raises this point in its motion to dismiss, and BellSouth makes this same point in its answer to MCI's petition. The revenue which will move to the deregulated operation is from the \$.25 local coin rate and the set use fee which applies to intraLATA toll calls, and optionally to interLATA toll calls.

The second aspect of MCI's petitions concerns establishing an expedited discovery and procedural schedule that will result in a hearing and Commission decision by April 15, 1997. Staff believes it is not practical, nor necessary, to have a hearing between now and April 15. The Commission can issue a PAA order (see Issue 2) and, if there is a protest, tariff filings made in accordance with the PAA order can go into effect on an interim basis. In Issue 2, staff proposes ground rules for the LECs to follow in making their tariff filings.

In conclusion, staff recommends that MCI's petitions be denied on the basis that the requested actions are inappropriate and unnecessary. This action will render GTEFL's motion to dismiss moot.

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ISSUE 2: What actions should this Commission take to bring Florida LECs into compliance with the provisions of § 276 of the Telecommunications Act of 1996 (TA96) and FCC Orders 96-388 and 96-439?

RECOMMENDATION: In order to comply with the provisions of § 276 of TA96 and FCC Orders 96-388 and 96-439, all LECs should file the following information no later than March 31, 1997:

- As of December 31, 1995, the amount of payphone investment and any other assets used in the provision of payphone service along with the accumulated depreciation and deferred income tax liabilities.
- 1995 payphone services revenues by account or source, with supporting documentation.
- 1995 payphone services expenses by account or source, with supporting documentation.
- Amount of any subsidy of payphone services.
- A copy of the CCL rate revision filings and accompanying subsidy calculation data submitted to the FCC in docket number 96-128.

Staff recommends that a LEC may make rate reductions in intrastate toll, operator surcharges, or switched access to the extent necessary to eliminate any intrastate payphone subsidy. Subject to this constraint, the LEC should have discretion regarding which tariff elements are reduced and need only demonstrate via a price-out that the revenue reduction eliminates the subsidy. For purposes of the price-out, the LEC should not include any stimulation associated with the reduction in rates. The price-out should be included with any LEC tariff filing that purports to eliminate a LEC payphone subsidy. For rate-of-return regulated LECs, staff recommends that the Commission order these LECs to file tariffs reflecting the Commission's decision no later than March 31, 1997, for an April 15, 1997 effective date.

STAFF ANALYSIS:

Based on the FCC's orders (96-388 and 96-439), all LECs must eliminate retail payphone offerings from their General Subscriber Services Tariffs by April 15, 1997. In addition, these orders require that any intrastate subsidies associated with the LECs' payphone operations be eliminated by the same date. Given the 15 day filing period for non-basic service tariff changes (per Section

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364.051(6), Florida Statutes), price regulated LECs must file no later than March 31, 1997. Staff would note there is a slight timing problem with rate-of-return regulated LECs since these companies would normally need to file by March 14, 1997, due to the 30 day filing period per Rule 25-4.214, F.A.C. For rate-of-return regulated LECs, staff recommends that the Commission order these LECs to file tariffs reflecting the Commission's decision no later than March 31, 1997, for an April 15, 1997 effective date. Nonetheless, staff wants to be clear that the FCC's orders already dictate that these filings be made. Staff is merely trying to clarify filing dates.

The Commission does need certain information in order to determine the extent of any intrastate subsidies associated with the LECs' payphone operations. In addition, the Commission should specify how intrastate rates for regulated services should be reduced to eliminate any intrastate subsidies flowing to the LECs' payphone operations. These actions should help ensure consistent application across LECs and minimize the chance of disparities that may require subsequent Commission action.

Along with the revised tariff filings, LECs should provide information regarding their 1995 payphone operations such as "the payphone investment and any other assets used in the provision of payphone service along with the accumulated depreciation and deferred income tax liabilities." FCC Order 96-388, ¶ 184. In addition, the LECs should identify the amount of payphone operations subsidy, if any, provided by basic exchange and exchange access revenues, through identification of all 1995 revenues and expenses associated with payphone operations. In their filings to the FCC, incumbent LECs were required to "identify and report accounts that contain costs attributable to their payphone operations. Incumbent LECs must identify specific cost pools and allocators that are required to capture the nonregulated investment and expenses associated with their payphone operations." FCC Order 96-388, ¶ 186. On an intrastate basis, we should require the same information be provided to the Commission for our analysis of the LEC's filings. Finally, in their filings, each LEC should also include a copy of the CCL rate revision filings and accompanying subsidy calculation data submitted to the FCC in docket number 96-128.

If the above information reveals that a particular LEC's payphone operation is being subsidized, staff recommends that the LEC may make rate reductions in intrastate toll, operator surcharges, or switched access to the extent necessary to eliminate the subsidy, as discussed in Issue 1. Subject to this constraint, the LEC should have discretion regarding which tariff elements are

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reduced and need only demonstrate via a price-out that the revenue reduction eliminates the subsidy. For purposes of the price-out, the LEC should not include any stimulation associated with the reduction in rates. Since the subsidy calculation is historical in nature, staff believes it would be inappropriate to consider the effect of stimulation in the price-out. The price-out should be included with any LEC tariff filing that purports to eliminate a LEC payphone subsidy.

In summary, in order to comply with the provisions of § 276 of TA96 and FCC Orders 96-388 and 96-439, all LECs should file the following information no later than March 31, 1997:

- As of December 31, 1995, the amount of payphone investment and any other assets used in the provision of payphone service along with the accumulated depreciation and deferred income tax liabilities.
- 1995 payphone services revenues by account or source, with supporting documentation.
- 1995 payphone services expenses by account or source, with supporting documentation.
- Amount of any subsidy of payphone services.
- A copy of the CCL rate revision filings and accompanying subsidy calculation data submitted to the FCC in docket number 96-128.

Staff recommends that a LEC may make rate reductions in intrastate toll, operator surcharges, or switched access to the extent necessary to eliminate any intrastate payphone subsidy. Subject to this constraint, the LEC should have discretion regarding which tariff elements are reduced and need only demonstrate via a price-out that the revenue reduction eliminates the subsidy. For purposes of the price-out, the LEC should not include any stimulation associated with the reduction in rates. The price-out should be included with any LEC tariff filing that purports to eliminate a LEC payphone subsidy. For rate-of-return regulated LECs, staff recommends that the Commission order these LECs to file tariffs reflecting the Commission's decision no later than March 31, 1997, for an April 15, 1997 effective date.

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ISSUE 3: Should the Commission require BellSouth to withdraw its tariff filing of February 26, 1997 (T-97-156)?

RECOMMENDATION: Yes, the Commission should require BellSouth to withdraw its tariff filing of February 26, 1997 (T-97-156).

STAFF ANALYSIS:

In BellSouth's filing of February 26, 1997 (T-97-156), the company calculated the intrastate subsidy to its payphone operation to be \$6.5 million and proposed to eliminate this subsidy by reducing its rates for Business Rotary Service, effective April 1, 1997. This filing is not consistent with staff's recommendation that any intrastate LEC payphone subsidies should be eliminated by reducing rates for toll, operator surcharges, or switched access. Consequently, the Commission should require BellSouth to withdraw its tariff filing of February 26, 1997 (T-97-156).

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ISSUE 4: Should these dockets be closed?

RECOMMENDATION: If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, Docket No.s 970172-TP and 970173-TP should be closed. A protest in one docket should not prevent action in a separate docket from becoming final. In any event Docket No. 970281-TL should remain open to handle implementation matters. If a timely protest is received, tariffs filed in accordance with the Order should remain in effect with revenues held subject to refund.

STAFF ANALYSIS: Staff's recommendations in Issues 1, 2, and 3 will result in a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, Docket No.s 970172-TP and 970173-TP should be closed. Any protest to the proposed agency action order should be docket specific; consequently, a protest in one docket should not prevent action in a separate docket from becoming final. In any event Docket No. 970281-TL should remain open to handle implementation matters. If a timely protest is received, tariffs filed in accordance with the Order should remain in effect with revenues held subject to refund.