State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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DATE: MAY 20, 1999

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

FROM: DIVISION OF COMMUNICATIONS (AUDU, KING)
DIVISION OF LEGAL SERVICES (COX) CB for WC

RE: DOCKET NO. 990546-TP - APPROVAL OF INTRALATA TOLL DIALING PARITY PLANS

AGENDA: 06/01/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: June 22, 1999 - FCC ORDER 99-54 REQUIRES THAT THE STATE COMMISSION MUST APPROVE OR DENY PLANS BY JUNE 22, 1999.

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\990546.RCM

CASE BACKGROUND

For purposes of this recommendation, except as otherwise noted, "LEC" refers to the ten incumbent local exchange companies, "ALEC" refers to all other local service providers other than the LECs, and "local service providers" refers to both LECs and ALECs.

On February 13, 1995, the Florida Public Service Commission (FPSC) issued Order No. PSC-95-0203-FOF-TP. In this order the FPSC concluded that intraLATA presubscription (ILP) was in the public interest. The large local exchange companies (LECs), BellSouth, GTEFL, Centel and United, were directed to implement ILP in Florida by year-end 1997. With regard to the small LECs, the FPSC concluded that they be allowed to delay implementation of ILP until receipt of a bona fide request (BFR).[1] Once a BFR is

[1]Small LECs were not required to entertain a BFR until January 1, 1997.

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received the small LECs must implement ILP within a reasonable time period to be negotiated by the parties, with any disputes that arise being referred to the FPSC for resolution.

ILP implementation was completed by the large LECs in April 1997. Currently, the only small companies that have implemented ILP are ALLTEL and Quincy.

In February 1996, Congress passed and the President signed into law the Telecommunications Act of 1996 (the Act). Section 251 (b)(3) of the Act directs each local service provider to provide dialing parity to competing providers of telephone exchange and telephone toll service. On August 8, 1996, the FCC released Order FCC 96-333 in CC Docket No. 96-98; this order required that each local service provider implement toll dialing parity no later than February 8, 1999.

On August 22, 1997, the United States Court of Appeals for the Eighth Circuit Court (Court) concluded that the FCC had exceeded its jurisdiction in promulgating its dialing parity rules. In Docket No. 96-3519, the Court vacated the FCC's dialing parity rules, 47 C.F.R. 51.205-51.515, as they apply to intraLATA telecommunications.

On January 25, 1999, the United States Supreme Court, in *AT&T v. Iowa Utilities Board*, reversed in part the rulings of the Eighth Circuit Court that had vacated the dialing parity rules. The Supreme Court held, inter alia, that the FCC has general jurisdiction to implement the 1996 Act's local competition provisions.[2]

On March 23, 1999, the FCC issued Order 99-54 in CC Docket No. 96-98. In that order, pursuant to section 1.3 of its rules, the FCC extended its deadline for full implementation of intraLATA toll dialing parity. The FCC order requires, among other things, that:

> No later than April 22, 1999, all LECs[3] must file intraLATA toll dialing parity plans with the state regulatory commission for each state in which the LEC[3] provides telephone exchange service if the plan has not yet been filed with such state commissions. Once a state commission has approved a plan, the LEC[3] must implement its plan no later then 30 days after the date on which

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[2] *AT&T v. Iowa Utilities Board*, 119 S.Ct. at 730.

[3] In this order and the FCC dialing parity rules, the term "LEC" refers to both LECs and ALECs; this term describes any provider of telephone exchange service or exchange access. (Part 51, Subpart A,¶51.5)

> the plan is approved. Any plan that provides for the implementation of intraLATA dialing parity by a date subsequent to 30 days after approval by the state commission will be deemed in violation of Commission rules.

In addition, on June 22, 1999, if a state commission has not yet acted on a local service provider's intraLATA toll dialing parity plan, the local service provider must file that plan with the FCC's Common Carrier Bureau.

The FPSC has received several ILP implementation plans. Issue 1 of this recommendation will address whether or not those plans should be approved. In addition, the FPSC has also received five petitions requesting suspension of the FCC implementation date. Section 251(f)(2) of the Act allows rural carriers[4] to petition a State commission for a suspension or modification of the application of the dialing parity requirements. Issue 2 addresses the suspension petitions.

[4] A rural carrier is a local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide.

DISCUSSION OF ISSUES

ISSUE 1: Should the FPSC approve the intraLATA toll dialing parity plans submitted by the local service providers listed in Table I?

RECOMMENDATION: Yes. The FPSC should approve the dialing parity plans submitted by the local service providers listed in Table I in the body of this recommendation. (AUDU)

STAFF ANALYSIS:

The FCC's dialing parity order indicates that:

> No later than April 22, 1999, all LECs[3] must file intraLATA toll dialing parity plans with the state regulatory commission for each state in which the LEC[3] provides telephone exchange service if a plan has not yet been filed with such state commissions. Once a state commission has approved a plan, the LEC[3] must implement its plan no later than 30 days after the date on which the plan is approved. (FCC 99-54, ¶7)

In all its deliberations on the subject of dialing parity, the passage quoted above is one of the few where the FCC talks of the state commissions approving the local service providers' dialing parity plans. Unfortunately, nowhere in its deliberations has the FCC specifically outlined this approval process.

While Order No. PSC-95-0203-FOF-TP specified the conditions for implementing intraLATA presubscription for all Florida LECs, this Order allowed Florida's small LECs to implement intraLATA presubscription (ILP) only after the receipt of a bona fide request (BFR). However, in FCC 99-54, the FCC requires all local service providers to file plans for intraLATA dialing parity with the state commissions by April 22, 1999. To evaluate the plans, staff reviewed the FPSC's prior decisions on intraLATA presubscription, in conjunction with the dialing parity rules promulgated in the FCC's Second Report and Order in CC Docket No. 96-98 (FCC 96-333). Specifically, staff analyzed each implementation plan to ensure it met the requirements of the FCC's rules, as well as those requirements in the FPSC's Orders that comport with the FCC rules. Combining these two sets of conditions to evaluate the local service providers' dialing parity filings provides a consistent methodology for analyzing the plans.

In its orders, the FCC has outlined the elements that the local service providers' dialing parity plans should include, e.g., 2-PIC option and No-PIC status. (FCC 96-333, ¶48, 78) Similarly, the FPSC has determined in prior decisions that some basic tariff provisions and customer contact protocols were necessary. These provisions included that a No-PIC status with the capability to dial-around be provided, and that a no-charge presubscription window be provided for existing intraLATA customers.

Paragraph 77 of FCC 96-333, requires all LECs[3] to provide consumer notifications and carrier selection procedures in their dialing parity plans. The FPSC satisfied this requirement using the customer contact protocols outlined in Order No. PSC-96-1569-FOF-TP, which requires LECs to inform their customers of the availability of intraLATA toll services in a competitively neutral manner. The LECs have since been relieved of all restrictions on contact protocols except those affecting new customers.

Based on staff's review of the plans submitted by the local service providers shown in Table I, all the plans comport with the applicable rules and orders. However, Frontier, GTC, ITS, Northeast and Vista-United are unable to implement their plans within 30 days of the FPSC's approval of the plans as required by FCC 99-54, ¶7. As addressed in Issue 2, each of these five LECs is seeking a temporary suspension of this implementation timetable as allowed by Section 251(f)(2) of the 1996 Telecommunications Act. Notwithstanding these suspension requests, staff recommends that these plans be approved.

TABLE I

AT&T
e.spire Communications
Florida Digital Network
Focal Telecommunications
Frontier Communications of the South
GT Com
Hyperion Communications
Intermedia Communications
ITC^DeltaCom
ITS Communications
Northeast Florida Telephone Company
MediaOne Florida Telecommunications
NetworkPlus
Onepoint Communications
Teligent
US LEC of Florida
Vista-United Telecommunications
WinStar Wireless

ISSUE 2: Should the FPSC grant the Petitions for Suspension of the FCC's toll dialing parity requirements, pursuant to Section 251(f)(2), for those LECs identified in Table II?

RECOMMENDATION: Yes, the FPSC should grant the Petitions for Suspension of the FCC's toll dialing parity requirements for those LECs identified in Table II. Each LEC whose petition is granted will implement ILP no later than the date specified in Table II. In addition, each LEC will provide documentation to certify when ILP implementation has been completed. (KING)

TABLE II

LEC	IMPLEMENTATION DATE
Frontier Communications of the South, Inc. (Frontier)	July 20, 1999
GTC, Inc. (GTC)	March 31, 2000
ITS Telecommunications Systems, Inc. (ITS)	September 30, 1999
Northeast Florida Telephone Company, Inc. (Northeast)	September 30, 1999
Vista-United Telecommunications (Vista)	September 30, 1999

STAFF ANALYSIS:

FCC Order 99-54, released March 23, 1999, states that "[O]nce a state Commission has approved a plan, the LEC[3] must implement its plan no later than 30 days after the date on which the plan is approved." While not all of the LECs listed in Table II have technically filed a plan with the FPSC, the FPSC adopted an overall plan which is applicable to all Florida local exchange companies, in Order PSC-95-0203-FOF-TP. In FCC Order 99-54 the FCC acknowledged that Florida has implemented a plan. However, the FPSC's ILP implementation plan for the small LECs is contingent upon receipt of a bona fide request (BFR), which appears to be contrary to paragraph 58 of FCC Order 96-333. In paragraph 58 of FCC Order 96-333, the FCC considered the arguments of LECs[3] that sought to make their toll dialing parity obligation contingent upon receipt of a BFR, but concluded that special implementation schedules for smaller LECs[3] are not necessary because these LECs[3] may petition their state commissions, pursuant to Section 251(f)(2), for suspension of the application of the dialing parity requirements. Section 251(f)(2) states:

> A local exchange carrier with fewer than 2 percent of the Nation's subscribers lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification-
>
> (A) is necessary-
> (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
> (ii) to avoid imposing a requirement that is unduly economically burdensome; or
> (iii) to avoid imposing a requirement that is technically infeasible; and
>
> (B) is consistent with the public interest, convenience and necessity.
>
> The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

As of May 17, 1999, Frontier, GTC, ITS, Northeast, and Vista have filed petitions for suspension by the FPSC of the requirements of Section 251(b)(3) of the Act. Section 251(b)(3) is one of the provisions of the Act that can be suspended by a State commission.

According to its petition, Frontier seeks the FPSC to suspend and modify the FCC's implementation schedule for it to implement toll dialing parity effective July 20, 1999. Frontier serves several exchanges in Florida and Alabama, with all of the exchanges being served out of its central office (CO) in Atmore, Alabama.

Frontier's toll dialing parity plan in Alabama is scheduled to go into effect July 20, 1999. Accordingly, Frontier believes that from a customer standpoint, there is a need to implement toll dialing parity in both states at the same time. Frontier asserts, that to do otherwise would be confusing and expensive.

GTC seeks suspension and modification of the FCC's implementation schedule to implement toll dialing parity on March 31, 2000. Except for the old Gulf Telephone territory (Taylor County), GTC is not technically capable of implementing ILP. GTC is in the process of replacing numerous CO switches, and until these switches have been replaced, GTC cannot provide toll dialing parity throughout its service territory. While GTC could provide toll dialing parity in the old Gulf Telephone territory, it believes to do so in only one portion of its company's territory would be confusing to customers and expensive to the company.

Unlike GTC, ITS currently has the appropriate switch in place. However, ITS needs to have its switch manufacturer's personnel install and activate switch functionalities to permit toll dialing parity, and due to the sudden need for the switch manufacturer personnel service throughout the country, ITS is not certain when personnel will be available to attend to the ITS switch. Therefore, ITS is seeking a decision by the FPSC to suspend and modify the FCC's toll dialing parity implementation schedule to permit ITS to implement toll dialing parity on or before September 30, 1999.

According to their petitions, Northeast and Vista have been preparing to provide toll dialing parity as part of their normal switch upgrades. Both companies have identified a list of tasks that must be accomplished before ILP can be implemented. However, the tasks cannot be completed until after the FCC's implementation deadline; therefore, each company filed a petition requesting suspension of the FCC's ILP implementation schedule. Some of the tasks identified include providing notification to IXCs and subscribers, updating business office practices and customer service protocols, and modifying billing systems. Because some of the tasks identified require a certain number of days notice to customers and carriers, and because neither company has sufficient personnel to handle all of the tasks simultaneously, both Northeast and Vista believe that it would be technically infeasible and unduly economically burdensome to accomplish all the tasks before September 30, 1999.

After reviewing the petitions filed by Frontier, GTC, ITS, Northeast, and Vista, and considering the criteria outlined in section 251 (f)(2) of the Act, staff believes it is appropriate to grant the petitions for suspension or modification of the FCC ILP implementation schedule. Each company has provided information that demonstrates that imposition of the current FCC's implementation schedule could impose a requirement that is unduly economically burdensome or technically infeasible at this time. Staff therefore recommends that the petitions for suspension of the FCC's toll dialing parity requirements be granted for those LECs identified in Table II pursuant to Section 251(f)(2). Each LEC shall provide documentation certifying when it has completed implementation of toll dialing parity.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. (Cox)

STAFF ANALYSIS: This docket should remain open to monitor ILP implementation for those LECs whose petition for suspension of the FCC's toll dialing parity requirements were granted, and such other related matters that may arise.