

State of Florida

# Public Service Commission

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RECORDS AND REPORTING

**DATE:** JUNE 17, 1999

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

**FROM:** DIVISION OF COMMUNICATIONS (AUDU, KING) *AK*  
DIVISION OF LEGAL SERVICES (COX) *WPC CB by road*

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

**AGENDA:** 06/29/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

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

In Order No. PSC-95-0203-FOF-TP, issued on February 13, 1995, the Florida Public Service Commission (FPSC) concluded that intraLATA presubscription (ILP) was in the public interest. The FPSC directed the large local exchange companies (LECs), BellSouth, GTEFL, Centel and United, to implement ILP in Florida by year-end 1997. The FPSC concluded that the small LECs should be allowed to delay implementation of ILP until receipt of a bona fide request (BFR).<sup>1</sup> Once a BFR is received the small LECs must implement ILP

<sup>1</sup>Small LECs were not required to entertain a BFR until January 1, 1997.

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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, the Telecommunications Act of 1996 (the Act) was signed into law. 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.<sup>2</sup>

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<sup>3</sup> must file intraLATA toll dialing parity plans with the state regulatory commission for each state in which the LEC<sup>3</sup> provides telephone exchange service if the plan has not yet been filed with such state commissions. Once a state

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<sup>2</sup> *AT&T v. Iowa Utilities Board*, 119 S.Ct. at 730.

<sup>3</sup> 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)

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commission has approved a plan, the LEC<sup>3</sup> must implement its plan no later than 30 days after the date on which 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, FCC 99-54 provides that:

On June 22, 1999, if a state commission has not yet acted on a LEC's intraLATA toll dialing parity implementation plan, the LEC must file that plan with the Common Carrier Bureau (Bureau). By June 23, 1999, the Bureau will release a public notice initiating a comment cycle for the Bureau's consideration of any LEC plan filed with the Bureau. A state commission may continue to act on a plan until the Bureau has acted upon that plan. (emphasis added) (¶7)

Since the filing of staff's last recommendation, staff has received two late-filed ILP implementation plans. While FCC 99-54 requires that local service providers file their intraLATA toll dialing parity plans by April 22, 1999, the FCC order provides that state commissions may continue to act on dialing parity plans that are received thereafter. FCC 99-54 states that if a state commission has not ruled on a local service provider's dialing parity plan by June 22, 1999, the local service provider must file its intraLATA toll dialing plan with the FCC. Staff believes that any local service provider that has not filed an intraLATA toll dialing parity plan with this Commission or whose intraLATA toll dialing parity plan is addressed in this recommendation should file its intraLATA toll dialing parity plan with the FCC's Common Carrier Bureau, since the Commission will not rule on these plans until June 29, 1999. Knology of Florida filed its plan on May 17, 1999, and Time Warner AxS of Florida, L.P., filed its plan on May 27, 1999. These late filings are the subject of this staff recommendation. Issue 1 of this recommendation will address whether these plans should be approved.

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**ISSUE 1:** Should the FPSC approve the late-filed intraLATA toll dialing parity plans submitted by Knology of Florida and Time Warner AxS of Florida, L.P.?

**RECOMMENDATION:** Yes. The FPSC should approve the late-filed intraLATA toll dialing parity plans submitted by Knology of Florida and Time Warner AxS of Florida, L.P. Also, staff recommends that any local service provider that has not filed an intraLATA toll dialing parity plan with this Commission or whose intraLATA toll dialing parity plan is addressed in this recommendation should file its intraLATA toll dialing parity plan with the FCC's Common Carrier Bureau. (AUDU)

**STAFF ANALYSIS:**

The FCC's dialing parity order indicates that:

No later than April 22, 1999, all LECs<sup>3</sup> must file intraLATA toll dialing parity plans with the state regulatory commission for each state in which the LEC<sup>3</sup> 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<sup>3</sup> must implement its plan no later than 30 days after the date on which the plan is approved.... On June 22, 1999, if a state commission has not yet acted on a LEC's intraLATA toll dialing parity implementation plan, the LEC must file that plan with the Common Carrier Bureau (Bureau). By June 23, 1999, the Bureau will release a public notice initiating a comment cycle for the Bureau's consideration of any LEC plan filed with the Bureau. A state commission may continue to act on a plan until the Bureau has acted upon that plan. (emphasis added) (FCC 99-54, ¶7)

In the FCC's Orders that address dialing parity, the passage quoted above is one of the few instances where the FCC discusses the state commissions' approval of local service providers' dialing parity plans. Unfortunately, the FCC has not specifically outlined this approval process.

In Order No. PSC-95-0203-FOF-TP, this Commission specified the fundamental conditions for implementing intraLATA presubscription for all Florida LECs, although this Order allowed Florida's small LECs to implement intraLATA presubscription (ILP) only after the receipt of a bona fide request (BFR). To evaluate the plans, staff reviewed the FPSC's prior decisions on intraLATA presubscription, in conjunction with the dialing parity rules promulgated in the

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FCC's Second Report and Order in CC Docket No. 96-98 (FCC 96-333). Staff has analyzed each implementation plan to ensure it meets the requirements of the FCC's rules, as well as those requirements in the FPSC's Orders that comport with the FCC rules, consistent with the Commission's decision in this same docket at the Commission's last Agenda Conference.

In its orders, the FCC has outlined the elements that the local service providers' dialing parity plans should include, e.g., a 2-PIC option and the availability of 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<sup>3</sup> to provide consumer notification 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 incumbent 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 Knology of Florida and Time Warner AxS of Florida, L.P., both plans comport with the applicable rules and orders. Thus, staff recommends that these plans be approved.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open. If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final upon the issuance of a Consummating Order. (Cox)

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be 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, this Order will become final upon the issuance of a Consummating Order. This docket should remain open to monitor ILP implementation for those LECs whose petitions for suspension of the FCC's toll dialing parity requirements were granted, and such other related matters that may arise.