

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by MCI) DOCKET NO. 970172-TP
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.)

In Re: Petition by MCI) DOCKET NO. 970173-TP
Telecommunications Corporation)
for an order requiring GTE)
Florida Incorporated to remove)
its deregulated payphone)
investment and associated)
expenses from its intrastate)
operations and reduce 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.)

In Re: Establishment of) DOCKET NO. 970281-TL
intrastate implementation) ORDER NO. PSC-97-0358-FOF-TP
requirement governing federally) ISSUED: March 31, 1997
mandated deregulation of local)
exchange company payphones.)

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

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FPSC-RECORDS/REPORTING

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING PETITIONS AND
ESTABLISHING INTRASTATE IMPLEMENTATION REQUIREMENTS
GOVERNING FEDERALLY MANDATED DEREGULATION
OF LOCAL EXCHANGE COMPANY PAYPHONES

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

The Telecommunications Act of 1996 and the FCC Order

This Order concerns the deregulation of LEC payphones pursuant to the FCC's Report and Order 96-388, issued September 20, 1996, and the FCC's Order on Reconsideration 96-439, issued November 8, 1996. The FCC orders state:

We require pursuant to the mandate of Section 276(b)(1)(B) [Telecommunications Act of 1996 (Act)], 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.

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. 47 U.S.C. §276(b)(1)(C); FCC Order 96-388, ¶ 144.

MCI's Petitions

On February 7, 1997, MCI Telecommunications Corporation (MCI) filed a petition requesting that we 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). We 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

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, 1997. 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 Paragraph 18 of both MCI 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 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."¹

MCI also states in Paragraph 19 of its petitions 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." MCI argues that "the present payphone subsidies will, in effect, be replaced by compensation from the IXC industry." On this basis, MCI states in Paragraph 20 of its petitions that "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."

¹ We note that the \$45.85 is an interim amount, of which MCI's share is 19.25%. As of October 1997, compensation will be \$.35 per call.

Company Responses to MCI's Petitions

On February 27, 1997, GTEFL filed a motion to dismiss MCI's petition 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. MCI filed its response to GTEFL's petition on March 11, 1997. We note that MCI's response indicates no objection to the process we have adopted in this Order.

On February 27, 1997, BellSouth filed an answer to MCI's petition (Docket No. 970172-TP). In its response, BellSouth denies the vast majority of MCI's allegations and denies that MCI is entitled to the requested relief.

Current Status of LEC Tariffs

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. BellSouth calculated the intrastate subsidy to its payphone operation to be \$6.5 million. BellSouth proposed to eliminate the intrastate subsidy by reducing its rates for Business Rotary Service.

By the terms of the Act and FCC Order 96-388, all LECs must remove their retail payphone offerings from their General Subscriber Services Tariffs. It is our responsibility to determine what actions are necessary to eliminate any intrastate subsidies associated with the LECs' payphone operations. Any intrastate subsidies associated with the LECs' payphone operations must be eliminated by April 15, 1997, per FCC Order 96-388, Paragraph 186. In the discussion below we will address MCI's petitions and, more generally, the matter of what requirements we should impose to eliminate any intrastate subsidies by LECs of their payphone operations.

II. DENIAL OF MCI'S PETITIONS

Switched Access or CCL Charges

In its petitions, MCI requests that we take several actions. First, MCI asks that we direct BellSouth and GTEFL to file an intrastate switched access tariff to remove deregulated payphone investment and associated expenses. MCI further requests that we

reduce BellSouth and GTEFL's intrastate CCL charges to reflect the removal of the payphone investment and associated expenses in their intrastate Florida operations.

We find MCI's argument unpersuasive. The objective is to eliminate any LEC payphone subsidy, not offset the IXCs' higher costs for dial-around compensation. At the intrastate level, there is not a direct link between dial-around compensation and switched access charges. Also, 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.

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 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 that 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.

Expedited Discovery

Second, MCI asks us to 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.

It is not practical, nor necessary, to have a hearing between now and April 15. Affected parties may protest this Proposed Agency Action, while tariff filings made in accordance with this Order shall go into effect on an interim basis. LECs shall follow the requirements contained in this Order in making their tariff filings.

Upon consideration, we deny MCI's petitions in Docket Nos. 970172-TP and 970173-TP on the basis that the requested actions are inappropriate and unnecessary. This action hereby renders GTEFL's motion to dismiss moot.

III. INTRASTATE IMPLEMENTATION REQUIREMENTS

We need certain information in order to determine the extent of any intrastate subsidies associated with the LECs' payphone operations. In order to comply with the provisions of Section 276 of the Act and FCC Orders 96-388 and 96-439, we require all LECs to file the following six items of information with the Commission no later than March 31, 1997:

1. 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.
2. 1995 payphone services revenues by account or source, with supporting documentation.
3. 1995 payphone services expenses by account or source, with supporting documentation.
4. Amount of any subsidy of payphone services.
5. A copy of the CCL rate revision filings and accompanying subsidy calculation data submitted to the FCC in docket number 96-128.
6. Cost support for each of the services that LECs provide to payphone providers.

Upon consideration, we find that a LEC must make rate reductions to the extent necessary to eliminate any intrastate payphone subsidy. We will not specify particular services or elements where LECs may make rate reductions. 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.

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Further, given the 15-day filing period for non-basic service tariff changes per Section 364.051(6), Florida Statutes, price regulated LECs must file no later than March 31, 1997. There is a timing problem with regard to 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, Florida Administrative Code. Accordingly, we order rate-of-return regulated LECs to file tariffs reflecting the requirements of this Order no later than March 31, 1997, for an April 15, 1997, effective date.

If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, Docket Nos. 970172-TP and 970173-TP shall be closed. A protest in one docket shall not prevent action in a separate docket from becoming final. Docket No. 970281-TL shall 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that all local exchange carriers shall file the information requested within the body of this Order by March 31, 1997. It is further

ORDERED that all local exchange carriers shall file tariffs reflecting the requirements of this Order no later than March 31, 1997, for an April 15, 1997, effective date. It is further

ORDERED that the provisions of this Order, issued as a proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that if no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, Docket Nos. 970172-TP and 970173-TP shall be closed. It is further

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ORDERED that a protest in one docket shall not prevent action in a separate docket from becoming final. It is further

ORDERED that Docket No. 970281-TL shall remain open to handle implementation matters. It is further

ORDERED that if a timely protest is received, tariffs filed in accordance with the Order shall remain in effect with revenues held subject to refund.

By ORDER of the Florida Public Service Commission, this 31st day of March, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

WPC

Chairman Julia L. Johnson dissented with regard to the intrastate implementation requirements and the Commission's decision not to require specific rate reductions in the removal of the subsidy from the local exchange carriers' payphone operations.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 21, 1997.

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 substantially 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.