BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Florida Inter-exchange Carriers Association (FIXCA) for rejection of tariff revision of Southern Bell Telephone and Telegraph Company and tariff revision of United Telephone Company of Florida	) DOCKET NO. 890307-TL) ORDER NO. 22122) ISSUED: 11-1-89	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

ORDER MODIFYING INTRAEAEA IXC TRAFFIC COMPENSATION MECHANISM AND REQUIRING THE FILING OF INTRAEAEA COMPENSATION TARIFFS

BY THE COMMISSION:

I. BACKGROUND

By Order No. 13750 this Commission established Equal Access Exchange Areas (EAEAs) within which the local exchange companies (LECs) would be the sole suppliers of toll transmission facilities. The Commission stated that resellers and IXCs could provide toll service within the monopoly areas only over resold LEC provided WATS and MTS. An exception was granted for those IXCs who did not have the capability to screen and block unauthorized calls. In that case, the IXCs may carry the traffic over their own facilities; however, they must compensate the LECs at the existing MTS rates. See Order No. 13750. These restrictions were codified in Rule 25-24.480 (3), Florida Administrative Code.

In August 1987, Southern Bell petitioned this Commission to Compel IXCs to comply with Rule 25-24.480(3). By Order No. 19014, we initially addressed Southern Bell's petition, changing the intraEAEA traffic reporting requirement from monthly to quarterly. We also directed Southern Bell to develop alternative reporting procedures in conjunction with the IXCs.

By Order No. 20484, issued December 20, 1988, we established procedures for IXCs to provide intraEAEA traffic compensation to LECs.

II. COMPENSATION TARIFFS

On January 9, 1989, Southern Bell filed revisions to its access tariff incorporating the compensation rates and procedures set forth in Order No. 20484. The tariff revisions became effective on January 25, 1989. On January 27, United Telephone filed a similar revision to its access tariff. On February 10, Southern Bell filed a revision to its newly effective tariff to reflect a change in GTE Florida's compensation rate.

On February 16, FIXCA informally objected by letter to the incorporation of intraEAEA compensation into the access tariffs on principle, as well as to the specific tariffs filed by Southern Bell and United. On February 24, 1989, FIXCA filed a formal petition to reject both the Southern Bell and United filings, primarily on the basis that it was inappropriate to incorporate the compensation program set forth in Order No. 20484 within the Access Tariffs.

By Order No. 21128, we suspended both the pending United and Southern Bell tariffs. However, we also noted that suspension of the tariffs did not preclude the LECs from billing and collecting compensation amounts due in accordance with Order No. 20484. During the course of our deliberations leading to Order No. 21128, FIXCA stated that it desired to reach an agreement with the LECs which would resolve its concerns. On March 21, 1989, Southern Bell filed a Motion to Dismiss FIXCA's petition, arguing that inclusion of the compensation requirement in the access tariffs is appropriate. FIXCA responded to Southern Bell's Motion to Dismiss on April 3, 1989, restating its previous arguments and repeating its desire to reach a reasonable resolution of its concerns with the compensation tariffs.

As a result of the negotiations, the interested parties have agreed that the intraEAEA compensation rates and procedures should appear in the access tariffs. They also agreed to the following specific modifications to Southern Bell's and United's respective access tariffs:

1. Southern Bell and United's access tariffs shall include specific language stating that all reporting and all billing is to be done quarterly;

2. Southern Bell's access tariff shall cross reference only Section E2.4.1 concerning bill payment procedures.

The language in the access tariff's should be specific, clear and unambiguous. Of the two tariffs before us United's language is clearer and more specific than Southern Bell's. Accordingly, Southern Bell shall conform the language in its tariff to match United's.

III. MODIFICATIONS TO COMPENSATION MECHANISM

In the course of the discussions between the parties three additional issues arose: whether IXCs should report and pay compensation on intraEAEA traffic originated or terminated over special access, whether the LECs should be able to backbill for intraEAEA compensation and whether the surrogate developed in response to Order No. 20484 be IXC specific or statewide.

A. IntraEAEA Special Access Compensation

In Docket No. 870894, Southern Bell was instructed to develop and propose alternative reporting procedures. Southern Bell, in the course of meetings which followed, proposed to receive compensation for feature groups A, B, D and 800 Service intraEAEA minutes hauled by IXCs, resellers, and AOS providers. If IXCs could not report actual minutes, Southern Bell proposed the use of a surrogate to be based on a ratio of intraEAEA Feature Group D minutes to total company intrastate Feature Group D minutes. At no time during the activities in Docket No. 870894 did Southern Bell offer any proposal as to how special access minutes would be captured and reported. Further, it was not raised or addressed by us in Order No. 20848. Given the length of these proceedings and the discussion concerning the impracticality of capturing actual minutes that led to the development of a surrogate, we are surprised that Southern Bell was still requiring the IXCs to report actual special access minutes and moreover, to file monthly reports. No other LEC has done this.

The IXCs have repeatedly stated that their systems cannot capture minutes of use on an intraEAEA basis. Telus, for example, described the procedures, labor and expenses necessary to report special access, concluding that it would cost more to hire the staff than the annual compensation amounts would be. MCI echoed Telus' claims and further stated that if Southern Bell wanted the reporting of intraEAEA special access minutes it should have proposed such reporting so that the industry group would not have been working under a false pretense during the workshops.

In light of the uncertain status of reporting and compensation on intraEAEA special access minutes, we find it appropriate to suspend current reporting and compensation requirements on intraEAEA special access minutes. The suspension will be lifted only after Southern Bell has developed a proposal for a special access surrogate and it has been approved, as was originally required in Order No. 20484. In addition, this issue as well as the definition of "LEC facilities" for compensation purposes shall also be taken up in Docket No. 880812, the Commission's investigation into Toll Monopoly Areas, in order to examine the appropriateness and feasibility of compensation on intraEAEA special access.

B. Backbilling for IntraEAEA Compensation

In our initial considerations of the compensation requirement we did not address the issue of backbilling for unpaid compensation amounts. During our deliberations leading to Order No. 20484, Southern Bell attempted to raise this issue but we declined to address it due to the lack of information available at the time.

It has become evident that the parties to these proceedings have varying interpretations as a result of our deliberations. Southern Bell apparently believed that it could proceed to backbill for twelve months which is the maximum length of time allowed by the Commission's rules on backbilling. The IXCs, on the other hand, argue that the Commission rejected Southern Bell's attempt to receive authorization to backbill.

No one disputes that certain intraEAEA IXC traffic is subject to compensation pursuant to Orders Nos. 13750 and 13912. However, it has not been entirely clear what traffic

IXCs are to compensate or how it should be done. In addition, some IXCs have been reporting or attempting to report intraEAEA minutes and pay compensation, while others have not. We note that it has been difficult and time consuming to implement workable procedures on a prospective basis. We are concerned that it will be even more difficult to try to go back and determine compensation amounts for previous periods. Further, the total amount due the LECs is apparently small from the LECs' point of view.

Upon consideration, we find that the LECs may backbill back to October 1, 1988 forward. If an IXC can produce actual data for intraEAEA Feature Groups A, B, D and 800/900 Service traffic for that period of time, it should report the actual traffic and pay compensation on it. If actual intraEAEA data is unavailable, the IXC should so notify the LECs. In this instance, a LEC may backbill using a surrogate of intraEAEA minutes of use for Feature Groups A, B, D and 800/900 Service traffic if the LEC can provide sufficient documentation to support its calculations. The procedures for doing this were set forth in Order No. 20484, and should be followed with the clarification that the LECs must provide sufficient documentation to support its calculations with any and all back billings.

C. Statewide Surrogate

The final issue that has arisen subsequent to our decision in Order No. 20484 is whether a statewide surrogate or an IXC-specific surrogate factor should be used. A statewide surrogate factor would be composed of the sum of all intraEAEA Feature Group D minutes divided by the sum of all intrastate Feature Group D minutes. This factor would then be applied uniformly to all IXCs. An IXC-specific surrogate, on the other hand, would require the development of a factor for each IXC based on that IXC's number of intraEAEA Feature Group D minutes and its total Feature Group D minutes in each LEC's territory.

Order No. 20484 is, unfortunately, not completely clear as to whether a statewide or IXC specific surrogate was to be used. The LECs believed they were required to use a statewide surrogate. They informed the IXCs that a factor of 3.7 percent would be used to develop a surrogate number of intraEAEA minutes for compensation purposes. IXCs who believed that their intraEAEA minutes were less than 3.7 percent of total

Feature Group D minutes were understandably concerned since most had interpreted the order to require IXC specific factors. Since some IXCs carry more intraEAEA traffic than others, an IXC specific factor would require those IXCs who carry more to pay more. A statewide surrogate on the other hand would average the traffic and hence the compensation, over all IXCs.

Since Order 20484 was issued, the parties have explored the effects of a statewide surrogate, and several advantages appear to exist. First, some LECs do not provide Feature Group D. Without Feature Group D, those LECs cannot calculate IXC specific surrogates. Second, surrogate factors should be contained in the access tariffs as part of the compensation procedures. IXC-specific factors utilize sensitive data which would preclude publication in the access tariffs. A statewide factor avoids this problem. Finally, it is easier to administer. It appears that all parties, including those who initially opposed the LECs' use of a statewide factor, have now agreed that the efficiencies may outweigh the inequities.

Upon consideration, we find that a statewide surrogate factor should be utilized in the intraEAEA compensation mechanism. We also find that the 3.7 percent surrogate developed by Southern Bell is the appropriate factor to be used. We note, however, that the 3.7 percent factor, which was to be used by all LECs statewide, was actually composed of the data of only two LECs, Southern Bell and GTE Florida. We are informed that neither Centel nor United have the necessary data to contribute to the development of a true statewide factor. Based on that information, it appears that a more accurate statewide surrogate factor cannot be developed. We recognize that while the surrogate is not as accuratre as we would like it is the best available. The 3.7 percent factor shall be clearly specified in the access tariffs of United and Southern Bell.

Upon further consideration, we approve United's tariff filing as filed as it conforms to our decisions herein. We direct Southern Bell to file revisions to its access tariffs to reflect our decisions set forth herein. The tariff revisions should be filed within 15 days of the issuance of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the methodology for compensating Local Exchange Companies for intraEAEA traffic carried by Interexchange Carriers shall be included in the access tariffs of Southern Bell Telephone and Telegraph and United Telephone Company of Florida as set forth in the body of this Order. It is further

ORDERED that intraEAEA compensation for intraEAEA traffic originated or terminated over special access is hereby suspended as set forth in the body of this Order. It is further

ORDERED that the issue of compensation for intraEAEA traffic originated or terminated over special access shall be addressed in the proceedings in Docket No. 880812-TP as set forth in the body of this Order. It is further

ORDERED that the Local Exchange Companies shall be allowed to backbill for intraEAEA compensation as set forth in the body of this Order. It is further

ORDERED that the intraEAEA compensation mechanism shall utilize a statewide surrogate factor as set forth in the body of this Order. It is further

ORDERED that United Telephone Company of Florida's tariff is approved as set forth in the body of this Order. It is further

ORDERED that Southern Bell Telephone and Telegraph shall file revisions to its access tariff to reflect our decisions as set forth in the body of this Order. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this 1st day of NOVEMBER, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer 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 after the issuance 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.