

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Elimination by Florida) DOCKET NO. 940754-TP
Public Service Commission of) ORDER NO. PSC-94-1545-POF-TP
prohibitions regarding resale of) ISSUED: December 13, 1994
foreign exchange, private line,)
and special access services of)
local exchange companies.)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER AUTHORIZING THE RESALE OF
SPECIAL ACCESS SERVICES AND PRIVATE LINE SERVICES
PROVIDED BY LOCAL EXCHANGE COMPANIES

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. BACKGROUND

Since the advent of competition in the telecommunications market, the Commission has maintained a prohibition of the resale of Special Access Services, Private Line Services and Foreign Exchange Services.

A private line service is a dedicated service which provides a direct path for communications between customer locations and is not directly connected to the public switched network with one

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possible exception, which is foreign exchange service (FX). A private line service is typically made up of two local channels and an interoffice channel, if applicable.

The initial resale restriction for private line service was established by Order No. 11206, issued September 29, 1982, which was a result of the Commission's proceeding on Resale of Wide Area Telephone Service and Message Toll Service, Docket No. 810239-TP. Resale of private line was prohibited because the rates for private line service were thought to be below cost.

The prohibition on resale of special access service was developed further in Docket No. 820537-TP, Intrastate Access Charges for Toll Use of Local Exchange Services. In that docket we stated that access charges, both switched and special, should be billed to the end-user because we believed it was important for end-users to understand what entities were actually providing each portion of their service. In addition, we also wanted to ensure that large end-users received the benefits of bulk discounts, rather than the IXC's. Because of technical limitations, end-user billing was implemented only for private line and special access services.

In Docket No. 890505-TL, we restructured private line and special access services in order to more accurately reflect the cost of providing these services. The restructuring is reflected in numerous subsequent tariff filings.

By Order No. 28477, issued August 2, 1991 in Docket No. 890183-TP, we introduced limited competition into the private line and special access markets by Alternative Access Vendors (AAVs). In authorizing AAVs, we identified such benefits as multiple providers of these services, provision to niche markets of services that the LECs either could not or did not offer, route diversity, and possibly even lower rates for these services.

The restructure of dedicated services and the advent of AAVs supports the proposition that the resale prohibition should be revisited. On September 17, 1994, a workshop was held to discuss the concerns of parties regarding the resale of current tariffed private line and special access services. The parties represented at the workshop included all large LECs, Alltel, AT&T, some AAVs and Department of General Services. Certain comments indicate that the current resale prohibition disadvantages customers who would like to receive a single bill for all of their private line and special access services. The only expressed concern with allowing resale was with the billing of private line services. BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and

Telegraph Company (Southern Bell) stated that it believed resale of these services is appropriate at this time. However, Southern Bell's only concern was the current inability to bill IXCs for private line service without some modifications to its billing system due to the fact that its private line service is billed from a different billing system which they considered to be an end-user driven system. To accommodate the problem, Southern Bell proposed to allow resale of private line services from the access tariff. Southern Bell stated that the structure and rates were basically at parity between the two tariffs for their company. It appears this is true for the other companies as well except for some small nonrecurring elements. Southern Bell also believes the access tariff was established for wholesale purposes versus the private line tariff which is end-user driven. Most parties that attended the workshop indicated that resale of private line and special access would benefit the customer more than anybody else through added efficiency in handling of their private line and special access circuits.

As discussed in greater detail below, it now appears appropriate to authorize the resale of private line and special access services provided by LECs.

II. RESALE OF SPECIAL ACCESS

Special access service is typically defined as the transmission path to directly connect an IXC point-of-presence (POP) and an end-user's premises. Notwithstanding our earlier belief that direct billing by each entity providing service better serves customers, it now appears that end-users in today's telecommunications industry are sufficiently sophisticated to realize which entity is providing the various portions of their telecommunication services. Further, it also appears that the telecommunications industry has evolved into a competitive industry where multiple providers of telecommunications services will compete for the provision of services to end-users. Special access may become one of the most competitive telecommunications services in the near future. With the introduction of competition for special access services, the need for an end-user to know whether the facilities from which they receive service are leased or owned by their provider is of less importance than the price and quality of the service.

Allowing AAVs to resell and bill end-users for special access will give customers a choice between multiple providers of special access services. In addition, allowing AAVs to bill their end-users for these services will standardize the billing procedures

for special access between the intrastate and interstate arenas, provided an entity wanting to bill for special access on an intrastate basis receives an AAV certificate. This standardization will allow an end-user to receive a single bill for special access service.

The introduction of increased competition into the special access market through resale may even result in end-users receiving lower bills for special access services. As a result, there could be some loss of revenues to the LECs due to the increased competition. However, it appears that the decrease in revenue will be minimal since we are only allowing resale of current tariffed services which do not have bulk provisions built into the tariffs.

Upon consideration of the foregoing, we find it appropriate to allow the resale of LEC provided special access service.

III. RESALE OF LEC PROVIDED PRIVATE LINE SERVICE

A private line service is a dedicated service which provides a direct path for communications between two (2) locations and is not directly connected to the public switched network. The service typically consists of two local channels and an interoffice channel, if applicable.

Our original decision to prohibit the resale of LEC private line service was due to the service being priced below cost. However, in 1990, we approved the restructure of interexchange LEC private line service to ensure that LECs recovered their costs for providing the services. All large LECs have subsequently restructured intraexchange private line service. Most small LECs concur in Southern Bell's tariff.

Currently, there is certain ambiguity between the provision of private line by interexchange carriers (IXCs) and Alternate Access Vendors. In Docket No. 890183-TP, Generic Investigation into the Operations of Alternate Access Vendors, we authorized AAVs to provide intraexchange and interexchange private line service between affiliated. In addition, we determined that an AAV could provide a special access line which is a part of a dedicated interexchange private line between affiliates, and a special access line to an IXC's switched network with no affiliate restriction.

In Docket No. 880812-TP, we allowed IXCs to provide transmission facilities within in Equal Access Exchange Areas (EAEAs). With the ability to provide transmission facilities within the EAEA, IXCs could provide interexchange private line service in conjunction with the LEC providing the local channels with no affiliated restriction. However, if the IXCs utilized an AAVs network for the local channels the affiliated restriction would apply. The provisions of Sections 364.335 and 364.337, Florida Statutes, that relate to IXCs do not contain an affiliate restriction; thus, a discrepancy between the IXCs' and AAVs' authority exists. We find it appropriate to clarify this situation. An entity certificated as an AAV may resell a LEC's private line services by purchasing the like services from the access tariff. The private line services purchased from a LEC and resold by an AAV must be provided between affiliated entities. In addition, an IXC can resell an interexchange private line service under its existing IXC certificate with no affiliate restriction, provided the LEC provides the local channel on each end of the private line service. However, if an IXC utilizes an AAV to provide the local channels, the affiliate restriction will apply.

As mentioned above, the only concern raised to date is the billing of private line services. Southern Bell proposes to require an entity to purchase private line services by purchasing the like services from the Dedicated Access Tariff. Southern Bell has indicated that the rates and rate structure for its Private Line and Special Access Tariffs (Dedicated Access Tariff) are the same. Excluding the intraexchange private line services of a few small LECs, the same is true for other companies, with the caveat that there are some minor differences in nonrecurring rates.

Eliminating the resale restrictions on LECs' private line service will enhance the ability of other providers to extend their network to more end-users, which in turn will provide additional competition with the LEC in the offering of private line services. In addition, elimination of the resale restrictions may allow AAVs to provide services to niche markets untapped by the LECs such as interLATA private line service, thus possibly increasing the local channel revenues of the LECs. End-users may also benefit by receiving one bill for all of their private line services, and possibly having an overall lower bill for these services. It is not clear the extent to which the LECs will lose revenue if resale of private line services is allowed. However, it does not appear that there will be a considerable shift in revenue since the private line services will be resold at currently tariffed rates from the access tariff.

Upon consideration of the foregoing we find it appropriate to allow the resale of LEC provided private line service.

IV. MODIFICATION OF LEC TARIFFS

As discussed above, we have determined to remove the prohibition on the resale of LEC provided special access and private line services. This requires that the current LEC tariffs for these services be modified consistent with our decisions. As mentioned, no party has raised any concerns with reselling currently tariffed private line and special access services except for Southern Bell. Southern Bell states that its billing systems are unable to bill IXCs for private line service without certain modifications. As a result, Southern Bell proposes to allow resale of these services from its access services tariff. Southern Bell states the access tariff was developed to handle wholesale LEC services, while the private line tariff is more end-user driven. We note that private line and special access are both dedicated services between two (2) locations with basically the same rates and rate structures. Therefore, at this point, entities that want to resell private line and special access services shall be allowed to purchase the like portions of the dedicated service from the access tariff.

There appears to be little benefit to having two tariffs for these types of services notwithstanding Southern Bell desire to have a wholesale tariff separate from its end-user tariff. However, the move to competition as well as the increasing desire by customers to choose their services warrants a very flexible service and billing arrangement. We also believe that the LECs should transition their Private Line and Special Access tariffs to a Dedicated Access Services tariffs. This transition will provide any entity, whether end-user or carrier, the ability to purchase dedicated services for their networks with no user restrictions except as defined in the other issues. This will be more practical in the long run since it will be increasingly difficult to differentiate retail and wholesale applications.

Upon consideration of the foregoing each LEC shall file a tariff reflecting our decision set forth above. The tariffs shall contain the following modifications:

1. Modify the title of the special access portion of the Access tariff to be identified as "Dedicated Access Services".

2. Add language to the private line tariff that requires anybody wanting to resell private line service must purchase the service or portions of the service from the dedicated access services tariff.
3. Eliminate from the access tariff any language which restricts resale of private line or special access services.
4. Eliminate any language which restricts entities from billing end-users for special access.
5. Add language that requires an entity to be a certificated AAV if it intends to resell intraexchange private line and special access services.
6. Add language that requires an entity to be either a certificated AAV or IXC if it intends to resell interexchange private line service.

The tariffs shall be filed within 90 days from the issuance date of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the prohibition of the resale of local exchange company provided special access service shall be eliminated as set forth in the body of this Order. It is further

ORDERED that the prohibition of the resale of local exchange company provided private line service shall be eliminated as set forth in the body of this Order. It is further

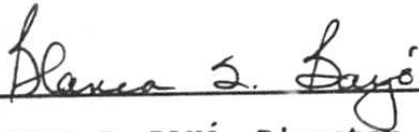
ORDERED that tariffs reflecting the decisions set forth in the body of this Order shall be filed within 90 days from the issuance date of this Order. It is further

ORDERED that this Order shall become final and effective unless an appropriate petition is filed in accordance with the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that this docket shall remain open.

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By ORDER of the Florida Public Service Commission, this 13th
day of December, 1994.



BLANCA S. BAYÓ, 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.

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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 3, 1995.

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.

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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.