



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M- AND
REPORTING

DATE: November 24, 1998
TO: BLANCA BAYO, DIRECTOR OF RECORDS AND REPORTING
FROM: DIANA CALDWELL, DIVISION OF APPEALS
RE: CORRECTION TO RECOMMENDATION - DOCKET NO. 960312

Attached is a corrected recommendation for Docket No. 960312-TI. The corrections are as follows:

Page 3, first paragraph, the citation to a Commission order was corrected from 20489 to PSC-95-1582-FOF-TI.

Page 5 and 6, Statement of Estimated Regulatory Cost Summary: The first paragraph is deleted and substituted with four paragraphs.

I would have made the first change on page three at the agenda conference, but because I am making a formal correction on pages five and six, I felt it was appropriate to also make the other at the same time. Thank you for your attention. I regret any inconvenience this may have caused you and your staff.

I have contacted Mary Bane personally and she has approved this procedure. I will forward the e-mail her response when she returns from a meeting.
Attachment

DWC

c: Commissioners
Mary Bane
Carol Purvis

CORREC.DWC

AT&T makes the argument that setting the caps lower than AT&T's current tariffed rates constitutes a change in Commission policy. However, that change in policy occurred prior to the proposal of these rules. AT&T's rates were regulated by the Commission when it was the dominant carrier and the Commission found that the non-dominant carriers could not charge any more than the dominant carrier. By Order number PSC-95-1582-FOF-TI 20489 the Commission found AT&T no longer was the dominant carrier and ceased regulating AT&T's rates. Because AT&T is no longer the dominant carrier, it is reasonable for the Commission to no longer require other rates to be no greater than what AT&T is charging. To do so would be arbitrary.

The caps for operator service and usage rates are for those customers who have no relationship with the preselected carrier at a pay telephone or in a hotel. Therefore, it is in the public interest to set rates at a reasonable level. Because AT&T is no longer the dominant carrier and many companies charge rates lower than AT&T, staff believes it is time to change Commission policy regarding tying the cap to AT&T. Staff has proposed rates for both operator assistance and per minute usage that we believe are fair and reasonable. While staff does not have current cost studies to support these rates, staff believes that technological advancement in this area has reduced the cost rather than increased it. Therefore, staff recommends that the operator rates should be set at \$1.75 for non-person-to-person, \$3.25 for person-to-person, and a usage rate of \$.30 per minute.

In addition, AT&T suggested two further changes to Rule 25-24.630, F.A.C. The first allows an annual increase to the rate caps set by the rule of no more than 20 percent. AT&T argued that the caps were similar to the procedure by which price-regulated LECs may raise their rates for nonbasic services¹ and costs associated with regulatory proceedings to revisit the capped rates and the loss of revenue associated with the provision would be eliminated.

¹ 364.051(6) (a), Florida Statutes, provides in part:

. . . except that a price increase for any non-basic service category shall not exceed [six] percent within a 12-month period until there is another provider providing local telecommunications service in an amount not to exceed 20 percent in a 12-month period,

Staff rejected this proposal. Competition is supposed to drive prices down. When caps are set, there seems to be the tendency for companies to price their services near or at the cap regardless of cost. If additional increases are allowed such as 20 percent per year, the rates could increase as companies price their services near or at the cap.

AT&T also suggests amending Rule 25-24.630(1) to add the phrase: "0+ or 0- [call] made from a pay [tele]phone or in a call aggregator context". Staff agrees that this language is necessary as it clarifies which services rates will be capped.

BellSouth's filing was more a statement of understanding or interpretation of the rules than comments. Because BellSouth's interpretation is consistent with the Commission's, nothing further need be addressed.

GTE suggests the Commission prescribe caps for per-minute and surcharge rates that do not exceed existing Commission-approved, tariffed rates. GTE argues that companies could not raise rates any higher than the highest rate on file for the various types of services and the Commission will avoid unduly interfering with companies' marketing and pricing strategies.

Section 364.3376(3), Florida Statutes, provides:

For operator services, the commission shall establish maximum rates and charges for all providers of such services within the state.

Staff believes that GTE's suggestion does not meet the purpose of the statute which is to establish maximum rates and charges for all providers of such services. GTE's suggestion seems to establish maximum rates and charges for each provider. End users of operator services who do not dial around to their preferred carrier are captive to the operator service chosen by the provider and may not have other choices available to him. Staff believes it is in the public interest to set the rates of those specific services uniformly for all providers

Pursuant to the forgoing discussion, Staff recommends the following changes be made to the rules as it was proposed:

Rule 25-24.002 - Delete the reference to "and regulations" as agencies only have authority to adopt rules. Add sections 364.335 and 364.3376, Florida Statutes, to the law implemented.

Rules 25-24.600 and 25-24.610 - Delete reference to "1995" Florida Statutes. Years should not be included in the rules when citing statutes.

Rule 25-24.630 - Add "0+ and 0-" and "made from a pay telephone or in a call aggregator context". As discussed earlier, this language clarifies the services to which the rate caps apply

Statement of Estimated Regulatory Cost Summary:

Operator service providers will be able to increase or decrease their rates dependent upon whether they are presently charging at or below the current cap. Staff defines the present cap as being controlled by Commission Order 20489. According to Order 20489, the rate an operator service provider may charge for a 0+ intraLATA call may not exceed the applicable LEC time-of-day rate plus operator/calling card charges and a fixed set use charge of \$.25 if the call is placed from a pay telephone. For interLATA calls the rate may not exceed the applicable AT&T time-of-day rate, plus operator/calling card charges and a fixed set use charge of \$.25 if the call is placed from a pay telephone. The rate cap contained in the proposed rule amendments makes no distinction between intraLATA and interLATA rates.

Because LEC tariffed rates for 0+ intraLATA calls are presently below the proposed rate cap, these rates could potentially increase if the proposed rule amendments become effective. Based upon the highest tariffed rates on file for an LEC as of September 2, 1998, per minute charges for an 0+ intraLATA call could increase by \$.05 per minute (from \$.25 to \$.30); surcharges for person-to-person calls could increase by \$.25 (from \$3.00 to \$3.25); and surcharges for a non-person-to-person call could increase by \$.25 (from \$1.50 to \$1.75).

Operator service providers whose rates for 0+ interLATA calls are equivalent to AT&T's currently filed tariffed rates would be required to decrease their rates if the proposed rule amendments become effective. Based upon AT&T's tariff effective May 1, 1998, the rates an operator service provider could charge for an 0+ interLATA call per minute could increase by \$.04 (from \$.26 to \$.30); surcharges for person-to-person calls could decrease by \$3.25 (from \$6.50 to \$3.25); and, surcharges for non-person-to-person could decrease by \$.70 (from \$2.45 to \$1.75).

AT&T is the only respondent to staff's data request that stated it would be required to decrease rates below its present levels as a result of the proposed rule amendment. According to

AT&T, reducing its rates to the proposed rate cap for the non-person-to-person surcharge would reduce annual revenues by \$5.169 million.

~~Operator service providers will be able to increase or decrease their rates dependent upon whether they are presently charging at or below the current cap. Staff defines the present cap as the rates contained in staff's memorandum to all interexchange carriers dated August 18, 1998. Therefore, if an operator service provider is charging at the present interLATA rate cap, it could increase its per minute rates by \$.02 (from \$.28 to \$.30) but would have to decrease its operator surcharges by \$1.65 for a Person to Person call (from \$4.90 to \$3.25) and by \$.50 for a Non Person to Person call (from \$2.25 to \$1.75). To the best of staff's knowledge all incumbent local exchange companies are presently charging at or below the cap. AT&T is the only respondent to staff's data request that stated it would be required to decrease rates below its present rates as a result of the proposed rule amendment. According to AT&T, the annual impact of reducing its rates to the proposed rate cap would be \$5.169 million.~~

Under the proposed rules, an operator service provider wishing to raise its rates above the cap would have to petition the Commission for a waiver of the rules or seek to have the rate caps changed through a rulemaking proceeding. Rulemaking proceedings generally take about nine months and would consume staff resources. Otherwise, the rule is not expected to result in any direct costs to this agency or other state or local government entities.

Several parties (AT&T, MCI and WorldCom) stated placing specific rate caps in the rules would increase their costs because they would have to go to rulemaking each time they wanted to increase rates above the cap. AT&T stated it would incur annual costs of \$150,000 plus possible forgone revenues during the time the rulemaking proceeding took place. Neither MCI nor WorldCom quantified their costs. Though a rulemaking proceeding would be costly for both regulated entities and the Commission, simply allowing companies to file tariffs listing their rates would not accomplish the objective of Section 364.3376(3), F.S., which requires the Commission to establish maximum rates and charges for all intrastate operator services.

DOCKET NO. 960312-TI
DATE: November 19, 1998

REVISED
NOVEMBER 24, 1998

ISSUE 2: Should a notice of change for the rule amendments as adopted be noticed in the Florida Administrative Weekly and if no challenge is filed, filed with the Secretary of State, and the docket be closed?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Unless a rule challenge is filed, the rules as adopted should be noticed and then filed with the Secretary of State without further Commission action. The docket may then be closed.

From: Diana Caldwell
To: Mary Bane
Subject: fwd: Correction

---NOTE-----11/23/98--1:57pm--
Apparently I need to file a corrected
Recommendation for Docket No. 960312.
There is a summary to the SERC that had
substantial modifications to it and
apparently I did not copy the correct file
into the document. No one caught it until
after the Rec was filed.

Carol P. said I need to let you know
first.

Fwd-by:-Mary-Bane-----11/24/98-11:34am-
Fwd to: Carol Purvis
CC:
Blanca Bayo, Diana Caldwell, Maria
Woodward

.....
O.K. to make revisions to recommendation
on Docket No. 960312..
