

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

### -M-E-M-O-R-A-N-D-U-M-

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**DATE:** MARCH 4, 1999

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

**FROM:** DIVISION OF LEGAL SERVICES (BEDELL) *CB MCB*  
DIVISION OF COMMUNICATIONS (OLLILA) *SMO*

**RE:** DOCKET NO. 980459-TP - FLOW-THROUGH OF 1998 LEC SWITCHED  
ACFSS REDUCTIONS BY IXCS, PURSUANT TO SECTION 364.163(6),  
F.S.

**AGENDA:** 03/16/99 - REGULAR AGENDA - ISSUES 1 & 2 - PROCEDURAL -  
ISSUE 3 - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\980459.RCM

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#### CASE BACKGROUND

During the 1998 Legislative Session, the House and the Senate passed revisions to Section 364.163(6), Florida Statutes, including one that modifies existing requirements for switched access rate reductions and the flow-through of those reductions to customers.

The 1998 revision to Section 364.163(6), Florida Statutes, requires that:

Any local exchange telecommunications company with more than 100,000, but fewer than 3 million, basic local telecommunications service access lines in service on July 1, 1995, shall reduce its intrastate switched access rates by 5 percent on July 1, 1998, and by 10 percent on October 1, 1998.

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The 1998 revision also requires that:

Any interexchange telecommunications company whose intrastate switched access rate is reduced as a result of the rate decreases made by a local exchange telecommunications company in accordance with this subsection shall decrease its intrastate long distance rates by the amount necessary to return the benefits of such reduction to its customers but shall not reduce per minute intraLATA toll rates by a percentage greater than the per minute intrastate switched access rate reductions required by this act.

The revisions continue:

The interexchange telecommunications carrier may determine the specific intrastate rates to be decreased, provided that residential and business customers benefit from the rate decreases.

By PAA Order No. PSC-98-0795-FOF-TP, issued June 8, 1998, the Commission ordered the access rate reductions and flow-throughs consistent with the above-cited revisions to Section 364.163, Florida Statutes. No protests to the order were filed. Thereafter, GTE and Sprint-Florida reduced their intrastate switched access rates by a total of approximately \$18 million, annualized, effective July 1, 1998. Their intrastate switched access rate reductions effective October 1, 1998, totaled approximately \$34 million on an annualized basis. The total, annualized effect of the 1998 intrastate switched access reduction was approximately \$52 million.

Of the over 220 interexchange carriers (IXCs) contacted by staff for the 1998 access flow-throughs, approximately 180 were not required to flow through reductions because they do not purchase switched access. The remainder are virtually all in compliance.

This recommendation addresses two outstanding procedural matters and one show cause matter.

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should MCI's September 28, 1998, Request for Extension of Time to File Flow-through Tariffs be granted?

**RECOMMENDATION:** Yes; although the tariffs were filed late, the customers have received the full benefit of the flow-through reductions. (Bedell)

**STAFF ANALYSIS:** On September 28, 1998, MCI Telecommunications Corporation (MCI) and SouthernNet, Inc. d/b/a Telecom\*USA and d/b/a Teleconnect (collectively, Petitioners) filed their Request for Extension of Time to File Flow-through Reduction Tariffs. As grounds for their request, Petitioners allege that they could not meet the deadline because of the short time frame between the filing of the Local Exchange Carriers' filing information and the due date for Petitioners' filing of tariffs. Petitioners requested an extension of time to October 21, 1998, and suggested that tariffs should be given a retroactive effective date of October 1, 1998. Petitioners also state that they will insure that Florida consumers will receive the full benefit of the reduction through a retroactive credit effective back to October 1, 1998. Petitioners filed the flow-through reduction tariffs on November 9, 1998.

Staff recognizes that the Commission should be careful in giving tariffs a retroactive effective date. It is well established that retroactive ratemaking is prohibited. However, in this case, the reduction was statutorily mandated by a date certain and the back-dating of the tariffs inures to the benefit of customers. These tariffs effect a reduction, not an increase. Further, to require the tariffs to be re-adjusted to reflect the two week delay in filing would be inefficient and unreasonable. Therefore, staff recommends giving the tariffs a retroactive effective date.

Accordingly, staff recommends that Petitioners' request be approved. Although the tariffs were filed later than required by Order No. PSC-98-0795-FOF-TP, and two weeks later than the requested extension, the actual flow-through reduction has been accomplished and all customers of Petitioners have received credits for the full rate reduction amount by the end of December, 1998. Thus, the purpose of the statute has been fully realized, as though accomplished on October 1, 1998. Therefore, staff recommends that

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the Request for Extension of Time be Granted and the flow-through reduction tariffs be given an effective date of October 1, 1998.

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**ISSUE 2:** Should the Commission grant Utilicore Corporation's January 12, 1999 request for a sixty-day extension of time in which to comply with the October 1, 1998 flow-through provisions?

**RECOMMENDATION:** No. Utilicore should be ordered to comply with the flow-through provisions within ten days of the Commission's decision on this issue. **(Bedell)**

**STAFF ANALYSIS:** As discussed in more detail in Issue 3, Utilicore Corporation (Utilicore or the company) has not yet complied with the flow-through order. After nearly six months of calls and requests, Utilicore sent a letter dated January 12, 1999, requesting an extension of sixty days in order to comply with the September 30, 1998 deadline. Granting this extension would equate to giving this company an extension in excess of six months. Staff believes that this is not reasonable and is unfair to the other carriers who have complied. In addition, until the company provides us with the appropriate information, we do not know if customers have been entitled to a rate reduction since October 1, 1998. Therefore, staff recommends that this request should be denied.

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**ISSUE 3:** Should the Commission order Utilicore Corporation to show cause in writing why it should not be fined \$1,000 for refusal to comply with the provisions of Order No. PSC-98-0795-FOF-TP, issued June 8, 1998, and Section 364.163(3), Florida Statutes (1998)?

**RECOMMENDATION:** Yes. Utilicore Corporation has failed to file any information or tariffs required by Order No. PSC-98-0795-FOF-TP and Section 364.163(3), Florida Statutes (1998). Therefore, staff recommends that the Commission should require Utilicore to show cause in writing within 21 days of the issuance of the show cause order why it should not be fined \$1,000 for refusal to comply with a Commission order. **(Bedell)**

**STAFF ANALYSIS:** By Order No. PSC-98-0795-FOF-TP, issued June 8, 1998, and by operation of Section 364.163(6), Florida Statutes, as amended in 1998, any IXC whose intrastate switched access rate is reduced as a result of the rate decreases made by a local exchange company in accordance with Section 364.163, Florida Statutes, is required to decrease its intrastate long distance rates by the amount necessary to flow through the benefits of the reduction to its customers. The statutes required a July 1, 1998 reduction as well as an October 1, 1998 reduction. Utilicore Corporation (Utilicore or the company) has failed to respond concerning the October 1, 1998 reduction.

On September 2, 1998, staff sent a letter to Utilicore advising it of the October 1, 1998 switched access rate reduction and flow-through requirements. Follow-up calls were made. Key regulatory personnel left the company. On December 17, 1998, when Utilicore stated that they would need an extension of time, staff informed Utilicore that a written request for an extension should be filed as soon as possible. None was received. By certified letter dated December 30, 1998 (also faxed), Utilicore was informed that it was out of compliance and that a written response should be sent by January 14, 1999. The certified receipt was never returned to staff. On January 12, 1999, Utilicore sent a letter requesting an extension of sixty days and stating that the company believes that the reduction in switched access fees effective October, 1998, is less than \$100.00, but could not certify that fact at that time. Staff attempted to contact Utilicore to inform the company that sixty days was too long a period of time given the time already lapsed. The sixty days expires on March 14, 1999. However, due to a family emergency of the Utilicore contact person, staff was unable to reach anyone at Utilicore to impart this information.

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In this docket, compliance has been accomplished by all but three of the two hundred and twenty interexchange carriers required to comply with the flow-through provisions. For the companies other than Utilicore, some degree of compliance has been accomplished and staff is only awaiting documentation. Only Utilicore remains totally out of compliance. Utilicore's inability to determine what flow-throughs may be required, its indifference to calls and letters from the Commission, and its failure to request an extension of the September 30, 1998 deadline until January 12, 1999, are the basis for staff's recommendation that the Commission should order Utilicore to show cause in writing within 21 days why it should not be fined for failure to comply with Order No. PSC-98-0795-FOF-TP and the provisions of Section 364.163(6), Florida Statutes.

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**ISSUE 4:** Should this docket be closed?

**RECOMMENDATION:** If staff's recommendation in Issue 3 is approved, then Utilicore will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed. If Utilicore timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding.

Staff recommends that if Utilicore fails to respond to the Order to Show Cause, the fine will be deemed assessed. If the fine is not received within five business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection.

In this event, this docket should remain open until all necessary tariffs or information has been received to confirm that the IXCs flow-throughs are complete for 1998. (Bedell)

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