

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Approval of IntraLATA
Toll Dialing Parity Plans.

DOCKET NO. 990546-TP
ORDER NO. PSC-99-1373-PAA-TP
ISSUED: July 16, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING INTRALATA TOLL DIALING PARITY PLANS

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

For purposes of this Order, except as otherwise noted, "LEC" refers to the ten incumbent local exchange companies, "ALEC" refers to all other local service providers other than the LECs, and "local service providers" refers to both LECs and ALECs.

In Order No. PSC-95-0203-FOF-TP, issued on February 13, 1995, we concluded that intraLATA presubscription (ILP) was in the public interest. We directed the large local exchange companies (LECs), BellSouth, GTEFL, Centel and United, to implement ILP in Florida by year-end 1997. We concluded that the small LECs should be allowed to delay implementation of ILP until receipt of a bona fide request

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(BFR).¹ Once a BFR is received the small LECs must implement ILP within a reasonable time period to be negotiated by the parties, with any disputes that arise being referred to this Commission for resolution.

The large LECs completed ILP implementation in April 1997. Currently, the only small companies that have implemented ILP are ALLTEL Florida, Inc. and TDS/Quincy Telephone Company.

In February 1996, the Telecommunications Act of 1996 (the Act) was signed into law. Section 251(b)(3) of the Act directs each local service provider to provide dialing parity to competing providers of telephone exchange and telephone toll service. On August 8, 1996, the Federal Communications Commission (FCC) released Order FCC 96-333 in CC Docket No. 96-98; this order required that each local service provider implement toll dialing parity no later than February 8, 1999.

On August 22, 1997, the United States Court of Appeals for the Eighth Circuit Court (Court) concluded that the FCC had exceeded its jurisdiction in promulgating its dialing parity rules. In Docket No. 96-3519, the Court vacated the FCC's dialing parity rules, 47 C.F.R. 51.205-51.515, as they apply to intraLATA telecommunications.

On January 25, 1999, the United States Supreme Court, in *AT&T v. Iowa Utilities Board*, reversed in part the rulings of the Eighth Circuit Court that had vacated the dialing parity rules. The Supreme Court held, inter alia, that the FCC has general jurisdiction to implement the 1996 Act's local competition provisions.²

On March 23, 1999, the FCC issued Order 99-54 in CC Docket No. 96-98. In that order, pursuant to section 1.3 of its rules, the FCC extended its deadline for full implementation of intraLATA toll dialing parity. The FCC order requires, among other things, that:

¹Small LECs were not required to entertain a BFR until January 1, 1997.

² *AT&T v. Iowa Utilities Board*, 119 S.Ct. at 730.

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No later than April 22, 1999, all LECs³ must file intraLATA toll dialing parity plans with the state regulatory commission for each state in which the LEC³ provides telephone exchange service if the plan has not yet been filed with such state commissions. Once a state commission has approved a plan, the LEC³ must implement its plan no later than 30 days after the date on which the plan is approved. Any plan that provides for the implementation of intraLATA dialing parity by a date subsequent to 30 days after approval by the state commission will be deemed in violation of Commission rules.

In addition, FCC 99-54 provides that:

On June 22, 1999, if a state commission has not yet acted on a LEC's intraLATA toll dialing parity implementation plan, the LEC must file that plan with the Common Carrier Bureau (Bureau). By June 23, 1999, the Bureau will release a public notice initiating a comment cycle for the Bureau's consideration of any LEC plan filed with the Bureau. A state commission may continue to act on a plan until the Bureau has acted upon that plan. (emphasis added) (§7)

We have received two late-filed ILP implementation plans. While FCC 99-54 requires that local service providers file their intraLATA toll dialing parity plans by April 22, 1999, the FCC order provides, as noted above, that state commissions may continue to act on dialing parity plans that are received thereafter. FCC 99-54 states that if a state commission has not ruled on a local service provider's dialing parity plan by June 22, 1999, the local service provider must file its intraLATA toll dialing plan with the FCC. We believe that any local service provider that has not filed an intraLATA toll dialing parity plan with this Commission or whose intraLATA toll dialing parity plan is addressed in this Order should file its intraLATA toll dialing parity plan with the FCC's Common Carrier Bureau, since we did not rule on these plans until June 29, 1999. Knology of Florida filed its plan on May 17, 1999,

³ In this order and the FCC dialing parity rules, the term "LEC" refers to both LECs and ALECs; this term describes any provider of telephone exchange service or exchange access. (Part 51, Subpart A, §51.5)

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and Time Warner AxS of Florida, L.P., filed its plan on May 27, 1999. These late filings are the subject of this Order.

II. APPROVAL OF LATE-FILED INTRALATA TOLL DIALING PARITY PLANS

As stated above, FCC's dialing parity order indicates that:

No later than April 22, 1999, all LECs must file intraLATA toll dialing parity plans with the state regulatory commission for each state in which the LEC³ provides telephone exchange service if a plan has not yet been filed with such state commissions. Once a state commission has approved a plan, the LEC must implement its plan no later than 30 days after the date on which the plan is approved.... On June 22, 1999, if a state commission has not yet acted on a LEC's intraLATA toll dialing parity implementation plan, the LEC must file that plan with the Common Carrier Bureau (Bureau). By June 23, 1999, the Bureau will release a public notice initiating a comment cycle for the Bureau's consideration of any LEC plan filed with the Bureau. A state commission may continue to act on a plan until the Bureau has acted upon that plan. (emphasis added) (FCC 99-54, ¶7)

In the FCC's Orders that address dialing parity, the passage quoted above is one of the few instances where the FCC discusses the state commissions' approval of local service providers' dialing parity plans. Unfortunately, the FCC has not specifically outlined this approval process.

In Order No. PSC-95-0203-FOF-TP, we specified the fundamental conditions for implementing intraLATA presubscription for all Florida LECs, although this Order allowed Florida's small LECs to implement ILP only after the receipt of a bona fide request (BFR). To evaluate the plans, we reviewed our prior decisions on intraLATA presubscription, in conjunction with the dialing parity rules promulgated in the FCC's Second Report and Order in CC Docket No. 96-98 (FCC 96-333). Specifically, we have analyzed each implementation plan to ensure it meets the requirements of the FCC's rules, as well as those requirements in our Orders that comport with the FCC rules, consistent with our decision in this same docket on other company's ILP plans.

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In its orders, the FCC has outlined the elements that the local service providers' dialing parity plans should include, e.g., a 2-PIC option and the availability of No-PIC status. SEE FCC 96-333, ¶48, 78. Similarly, we have determined in prior decisions that some basic tariff provisions and customer contact protocols were necessary. These provisions included that a No-PIC status with the capability to dial-around be provided, and that a no-charge presubscription window be provided for existing intraLATA customers.

Paragraph 77 of FCC 96-333 requires all LECs to provide consumer notification and carrier selection procedures in their dialing parity plans. This requirement is satisfied using the customer contact protocols outlined in Order No. PSC-96-1569-FOF-TP, which requires LECs to inform their customers of the availability of intraLATA toll services in a competitively neutral manner. The incumbent LECs have since been relieved of all restrictions on contact protocols except those affecting new customers.

Based on our review of the plans submitted by Knology of Florida and Time Warner AxS of Florida, L.P., both plans comport with the applicable rules and orders. Accordingly, we hereby approve these plans.

Based on the foregoing, it is

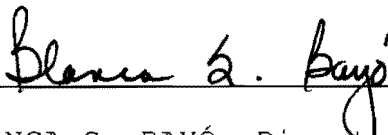
ORDERED by the Florida Public Service Commission that intraLATA toll dialing parity plans for Knology of Florida and Time Warner AxS of Florida, L.P. are approved. It is further

ORDERED that this docket shall remain open.

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, 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" attached hereto. It is further

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By ORDER of the Florida Public Service Commission this 16th
day of July, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

WPC

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 that is available under Section 120.57, 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 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. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, 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 August 6, 1999.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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.