

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of FLORIDA INTEREXCHANGE)	DOCKET NO. 890307-TL
CARRIERS ASSOCIATION for rejection of)	
tariff revision of SOUTHERN BELL)	ORDER NO. 22674
TELEPHONE AND TELEGRAPH COMPANY and)	
tariff revision of UNITED TELEPHONE)	ISSUED: 3-13-90
COMPANY OF FLORIDA)	
)	

The following Commissioners participated in the disposition of this matter:

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

ORDER DISPOSING OF MOTION
FOR RECONSIDERATION OF ORDER NO. 22122

BY THE COMMISSION:

I. Background

In August 1987, Southern Bell Telephone and Telegraph Company (Southern Bell) filed a petition to compel IXCs to comply with Rule 25-24.480(3), Florida Administrative Code. This rule requires each interexchange carrier (IXC) to report monthly to the LEC the number of minutes of intraEAEA toll traffic carried over the IXC's facilities. The Rule further requires the IXC to pay the existing MTS rates to the LEC for such traffic.

Because of problems with gathering actual intraEAEA minutes of use (MOU), by Order No. 19014 we required Southern Bell to develop a surrogate to be used in lieu of actual minutes of intraEAEA traffic. Southern Bell submitted a proposed surrogate methodology that dealt only with switched intraEAEA traffic. The Commission approved the use of the surrogate as well as certain other procedures for compensation for intraEAEA traffic. See Order No. 20484.

Although the order did not specifically require that tariffs be filed, Southern Bell and United Telephone and Telegraph Company (United) filed tariffs to implement the new

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procedures. The Florida Interexchange Carriers Association (FIXCA) filed a petition protesting the tariffs. In the course of examining the tariffs, certain problems arose associated with implementation of Order No. 20484. By Order No. 22122, we approved the compensation tariffs subject to certain modifications. Principally, we suspended reporting and compensation on intraEAEA special access minutes of use until a surrogate is developed by Southern Bell and approved by us, limited backbilling of IXCs for compensation to October 1, 1988 and adopted a statewide surrogate for intraEAEA switched MOU.

On November 16, 1989, Southern Bell filed a Motion for Reconsideration of Order No. 22122. On November 28, 1989, FIXCA and MCI Telecommunications Corp. (MCI) filed responses.

Southern Bell requests reconsideration of our decisions on three issues: 1) suspension of measurement and compensation for intraEAEA special access, 2) time of implementation of compensation for intraEAEA special access MOU and 3) backbilling. In addition, Southern Bell also seeks authority to audit the IXCs special access usage.

II. IntraEAEA Special Access Compensation

With respect to the suspension of special access compensation, Southern Bell argues that the Commission's decision in Order No. 22122 is inconsistent with Order No. 13750, the original order which established the reporting requirements, and with Rule 25-24.480(3). The Company also repeats its prior claim that the IXCs have this data, that they are not supposed to be carrying this traffic anyway and the fact that "measurement" is expensive should not be an "excuse" for not reporting.

FIXCA and MCI argue, in response, that Southern Bell misunderstands the main reason for adoption of the surrogate in lieu of reporting actual minutes; IXCs cannot measure and record intraEAEA minutes. MCI states that if measurement were possible, that surrogates would not be necessary. FIXCA asserts that Southern Bell did not indicate in the industry meetings that the surrogate that it proposed was only a partial solution or that Southern Bell expected reporting to continue on special access. "By redefining the surrogate as an incomplete substitute for reporting, it becomes no substitute at all." FIXCA states that the surrogate procedure is a

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compromise representing a "balancing of competing imperfections," that Southern Bell is overrecovering on the switched access surrogate by 60 percent based on its own data, and that its motion should be denied.

Upon consideration, Southern Bell has not revealed any matter that we failed to consider or misapprehended in making our determination in Order No. 22122. As explained in the Order, special access reporting and compensation was suspended because the IXCs could not report their usage and because Southern Bell did not propose a surrogate. Southern Bell's argument that its lack of special access data is justification for continued IXC reporting is simply a repetition of its prior arguments. The fact that Southern Bell does not have actual MOU does not preclude development of a surrogate. Accordingly, Southern Bell's motion for reconsideration on the suspension of intraEAEA special access compensation is denied.

We note that no other LEC has attempted to require special access reporting since the development and approval of the surrogate and compensation rate in Order No. 20484.

III. Implementation of IntraEAEA Special Access Compensation

With respect to Southern Bell's second point of contention, the Company argues that the Commission intended the suspension of special access compensation to continue only until the issue is decided in Docket No. 880812 rather than until Southern Bell develops a surrogate. Southern Bell also states that the Commission intended that during the suspension, the IXCs should record the number of intraEAEA special access minutes and escrow payments, and that the order should reflect this.

Order No. 22122 states that the suspension will be lifted when Southern Bell proposes a surrogate and it is approved. The order also notes the then upcoming proceedings in Docket No. 880812, the Commission's investigation into toll monopoly access (TMAs). Order No. 22122 clearly states our intent. We did not require IXCs to measure and record intraEAEA usage and escrow payments. Rather we intended to revisit the issue of compensation in Docket No. 880812.

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IV. Backbilling

Southern Bell also seeks reconsideration of our decision to authorize backbilling of the IXCs only to October 1, 1988. The Company argues that it should be entitled to backbill as far back as the IXCs are permitted to require Southern Bell to refund for overcharges. Otherwise, the Company argues, it is "inequitable and inconsistent".

FIXCA notes, in its response, that it had worked out an agreement with United to backbill to October 1988. FIXCA further notes that it had chosen to negotiate rather than dispute the backbilling issue in an effort to permit the Commission and the industry to move forward. FIXCA states that the scope of the Commission's intraEAEA prohibition has never been fully resolved, and points to the Commission's recognition of that in Order No. 22122. FIXCA states that the order provides a workable interim solution until the policy issues are decided in DN 880812. Finally, FIXCA states that Southern Bell ignores the history of the compensation issue and the balancing which the Commission and the other parties have achieved, and that Southern Bell's petition should be denied.

MCI states, in its response, that the backbilling argument was raised at both the November 29, 1988 and July 11, 1989 agendas. In Order No. 22122, the Commission found that "it has not been entirely clear what traffic the IXCs are to compensate or how it should be done," and "the total amount due the LECs is small from the LECs' point of view." In addition, MCI notes that the Commission considered the time and effort required to try to determine proper compensation amounts for prior periods. MCI asserts that Southern Bell is trying to reargue the same facts, and that its petition is an attempt to undermine an industry consensus on intraEAEA compensation in which no party obtained all the relief that it sought.

Southern Bell raises nothing on this issue that has not been previously addressed. We agree with the arguments of MCI and Sprint. Southern Bell's motion on this point is denied.

V. Southern Bell's Request for Audit Authority

Finally, Southern Bell raises a new issue to this proceeding by seeking the authority to audit IXCs' intraEAEA switched and special access minutes in order to check IXC usage reports test the validity of the switched access surrogate.

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FIXCA and MCI state that Southern Bell's request for authority to audit should also be denied, primarily because the issue was never raised in the docket and is, therefore, inappropriate to raise on reconsideration. They further allege two flaws in Bell's logic. First, the statewide surrogate cannot be precisely tested without a complete statewide audit of all IXCs, an "extravagant undertaking" in light of Bell's "limited financial exposure." Second, since most IXCs cannot measure and record intraEAEA usage, Southern Bell is asking to audit a procedure that cannot be, and is not, performed.

Upon consideration, Southern Bell's request for audit authority is denied. Initially we note that a request such as this is not the proper subject for a motion for reconsideration since it has not previously been raised. More importantly we agree that an audit would make little sense under these circumstances.

VI. Oral Argument

Southern Bell filed a request for Oral Argument along with its Motion for Reconsideration. There has been no formal hearing in either Docket No. 870894, Southern Bell's original Petition to Compel Compliance by the IXCs, or this docket. As a result, we allowed parties to participate at agenda conference on this matter. Accordingly, Southern Bell's request for Oral Argument is superfluous.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Southern Bell Telephone and Telegraph Company's Motion to Reconsider Order No. 22122 is denied as set forth in the body of this Order. It is further

ORDERED that Southern Bell's request for authority to audit interexchange carriers intraEAEA special access minutes of use is denied as set forth in the body of this Order. It is further

ORDERED that this docket be closed.

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By ORDER of the Florida Public Service Commission,
this 13th day of MARCH, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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by: Kay Meyer
Chief, Bureau of Records

NOTICE OF 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 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.