

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Approval of IntraLATA
Toll Dialing Parity Plans.

DOCKET NO. 990546-TP
ORDER NO. PSC-99-1255-PAA-TP
ISSUED: June 25, 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
AND REQUESTS FOR IMPLEMENTATION SUSPENSION

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.

On February 13, 1995, we issued Order No. PSC-95-0203-FOF-TP. In this Order, we concluded that intraLATA presubscription (ILP) was in the public interest. We directed the large local exchange companies (LECs), BellSouth Telecommunications, Inc., GTE Florida, Inc. (GTEFL), and Centel and United, to implement ILP in Florida by year-end 1997. With regard to the small LECs, we concluded that these companies be allowed to delay implementation of ILP until

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receipt of a bona fide request (BFR).¹ Once a BFR had been received the small LECs would have to implement ILP within a reasonable time period to be negotiated by the parties. Any disputes that arise being would be 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 passed 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) issued 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) 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 the FCC's rules, the FCC extended its deadline for implementation of intraLATA toll dialing parity. The FCC Order requires 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.

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 LEC 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 LEC 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, on June 22, 1999, if a state commission has not yet acted on a local service provider's intraLATA toll dialing parity plan, the FCC Order requires that the local service provider must file that plan with the FCC's Common Carrier Bureau.

We have received several ILP implementation plans. In this Order, we will address whether those plans should be approved. In addition, we have also received five petitions requesting suspension of the FCC implementation date. Section 251(f)(2) of the Act allows rural carriers⁴ to petition a state commission for a suspension or modification of the application of the dialing parity requirements. Therefore, we will also address these implementation suspension petitions.

II. APPROVAL OF INTRALATA TOLL DIALING PARITY PLANS

As stated above, paragraph 7 of the FCC's dialing parity order, FCC 99-54, 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 LEC provides telephone exchange service if a plan has not yet been filed with such state commissions. Once a state

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)

⁴ A rural carrier is a local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide.

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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.

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

While Order No. PSC-95-0203-FOF-TP specified the conditions for implementing intraLATA presubscription for all Florida LECs, this Order allowed Florida's small LECs to implement ILP only after the receipt of a BFR. However, in FCC 99-54, the FCC requires all local service providers to file plans for intraLATA dialing parity with the state commissions by April 22, 1999. 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 reviewed each implementation plan to ensure it met the requirements of the FCC's rules, as well as those requirements in our orders on intraLATA presubscription.

In its orders, the FCC has outlined the elements that the local service providers' dialing parity plans should include, e.g., 2-PIC option and No-PIC status. SEE FCC 96-333, ¶¶ 48 and 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 notifications 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. These protocols require LECs to inform their customers of the availability of intraLATA toll services in a competitively neutral manner. We have since relieved the LECs of all restrictions on contact protocols except those affecting new customers.

Based on our review of the plans submitted by the local service providers shown in Table I, we find that all of the plans comport with the applicable rules and orders. However, Frontier Communications of the South (Frontier), GT Com (GTC), ITS

Communications (ITS), Northeast Florida Telephone Company (Northeast,) and Vista-United Telecommunications (Vista) are unable to implement their plans within 30 days of our approval of the plans as required by Paragraph 7 of FCC 99-54. Each of these five LECs is seeking a temporary suspension of this implementation timetable as allowed by Section 251(f)(2) of the 1996 Telecommunications Act. Notwithstanding these suspension requests, which are addressed in a later portion of this Order, we hereby approve those plans.

TABLE I

AT&T Communications of the Southern States, Inc.
e.spire Communications
Florida Digital Network
Focal Telecommunications
Frontier Communications of the South
GT Com
Hyperion Communications
Intermedia Communications
ITC^DeltaCom
ITS Communications
Northeast Florida Telephone Company
MediaOne Florida Telecommunications
NetworkPlus
Onepoint Communications
Teligent
US LEC of Florida
Vista-United Telecommunications
WinStar Wireless

III. PETITIONS FOR IMPLEMENTATION SUSPENSION

FCC Order 99-54 states that "[O]nce 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." While not all of the LECs listed in Table II provided below have technically filed a plan with this Commission, we previously adopted an overall plan which is applicable to all Florida local exchange companies, in Order PSC-95-0203-FOF-TP. In FCC 99-54, the FCC acknowledged that Florida had implemented an overall plan. However, for the small LECs implementation of the ILP plan is contingent upon receipt of a bona fide request (BFR); this appears to be contrary to Paragraph 58 of FCC 96-333. In paragraph 58 of FCC Order 96-333, the FCC considered the arguments of LECs that sought to make their toll dialing parity obligation contingent upon receipt of a BFR, but concluded that special implementation schedules for smaller LECs are not necessary because these LECs may petition their state commissions, pursuant to Section 251(f)(2), for suspension of the application of the dialing parity requirements. Section 251(f)(2) states:

A local exchange carrier with fewer than 2 percent of the Nation's subscribers lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification-

- (A) is necessary-
 - (I) to avoid a significant adverse economic impact on users of telecommunications services generally;
 - (ii) to avoid imposing a requirement that is unduly economically burdensome; or
 - (iii) to avoid imposing a requirement that is technically infeasible; and

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(B) is consistent with the public interest, convenience and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

As of May 17, 1999, Frontier, GTC, ITS, Northeast, and Vista had filed with this Commission petitions for suspension of the requirements of Section 251(b)(3) of the Act. Section 251(b)(3) is one of the provisions of the Act that can be suspended by a state commission.

According to its petition, Frontier requests that we suspend and modify the FCC's implementation schedule for it to implement toll dialing parity effective July 20, 1999. Frontier serves several exchanges in Florida and Alabama, with all of the exchanges being served out of its central office (CO) in Atmore, Alabama. Frontier's toll dialing parity plan in Alabama is scheduled to go into effect July 20, 1999. Accordingly, Frontier believes that from a customer standpoint, there is a need to implement toll dialing parity in both states at the same time. Frontier asserts that to do otherwise would be confusing and expensive.

GTC seeks suspension and modification of the FCC's implementation schedule to implement toll dialing parity on March 31, 2000. Except for the old Gulf Telephone territory (Taylor County), GTC is not technically capable of implementing ILP. GTC is in the process of replacing numerous CO switches, and until these switches have been replaced, GTC cannot provide toll dialing parity throughout its service territory. While GTC could provide toll dialing parity in the old Gulf Telephone territory, it believes to do so in only one portion of its company's territory would be confusing to customers and expensive to the company.

Unlike GTC, ITS currently has the appropriate switch in place. However, ITS needs to have its switch manufacturer's personnel install and activate switch functionalities to permit toll dialing parity, and due to the sudden need for the switch manufacturer personnel service throughout the country, ITS is not certain when personnel will be available to attend to the ITS switch. Therefore, ITS is seeking a decision by this Commission to suspend

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and modify the FCC's toll dialing parity implementation schedule to permit ITS to implement toll dialing parity on or before September 30, 1999.

According to their petitions, Northeast and Vista have been preparing to provide toll dialing parity as part of their normal switch upgrades. Both companies have identified a list of tasks that must be accomplished before ILP can be implemented. However, the tasks cannot be completed until after the FCC's implementation deadline; therefore, each company filed a petition requesting suspension of the FCC's ILP implementation schedule. Some of the tasks identified include providing notification to IXCs and subscribers, updating business office practices and customer service protocols, and modifying billing systems. Because some of the tasks identified require a certain number of days notice to customers and carriers, and because neither company has sufficient personnel to handle all of the tasks simultaneously, both Northeast and Vista believe that it would be technically infeasible and unduly economically burdensome to accomplish all the tasks before September 30, 1999.

Upon review of the petitions filed by Frontier, GTC, ITS, Northeast, and Vista, and consideration of the criteria outlined in section 251 (f) (2) of the Act, we find that it is appropriate to grant the petitions for suspension or modification of the FCC ILP implementation schedule. Each company has provided information that demonstrates that imposition of the current FCC's implementation schedule could impose a requirement that is unduly economically burdensome or technically infeasible at this time. We therefore grant the petitions for suspension of the FCC's toll dialing parity requirements for those LECs identified in Table II pursuant to Section 251(f) (2). Each LEC whose petition is granted shall implement ILP no later than the date specified below in Table II. Each such LEC shall also provide documentation certifying when it has completed implementation of toll dialing parity.

TABLE II	
LEC	IMPLEMENTATION DATE
Frontier Communications of the South, Inc. (Frontier)	July 20, 1999
GTC, Inc. (GTC)	March 31, 2000
ITS Telecommunications Systems, Inc. (ITS)	September 30, 1999
Northeast Florida Telephone Company, Inc. (Northeast)	September 30, 1999
Vista-United Telecommunications (Vista)	September 30, 1999

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the intraLATA toll dialing parity plans for the companies specified in Table I in the body of this Order are approved. It is further

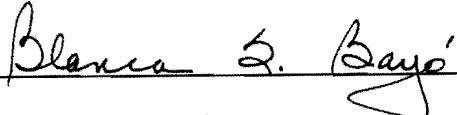
ORDERED that Petitions for Suspension for the companies specified in Table II of this Order are approved subject to the implementation requirements of this Order. It is further

ORDERED that this docket shall remain open to monitor implementation for those local exchange companies whose petitions for suspension of the FCC's toll dialing parity requirements were granted and other related matters. It is further

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.

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By ORDER of the Florida Public Service Commission this 25th
day of June, 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 July 16, 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.