FLORIDA PUBLIC SERVICE COMMISSION
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MEMORANDUM

MAY 30, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CANZANO)
DIVISION OF COMMUNICATIONS (CHASE)

RE: DOCKET NO. 960290-TP - PETITION BY AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. TO REQUIRE CARRIERS TO FILE INTERCONNECTION AGREEMENTS, IN COMPLIANCE WITH SECTION 252(A) OF THE TELECOMMUNICATIONS ACT OF 1996

AGENDA: REGULAR AGENDA - JUNE 11, 1996
PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\960290TP.RCM

CASE BACKGROUND

On March 1, 1996, AT&T Communications of the Southern States, Inc. (AT&T) filed a letter requesting that the Florida Public Service Commission require the filings of all existing interconnection agreements between local exchange telecommunications companies and other local exchange telecommunications companies pursuant to Section 252(a)(1) of the Telecommunications Act of 1996.

On May 20, 1996, AT&T sent a letter to staff clarifying its request.

ISSUE 1: Pursuant to AT&T's request, which interconnection agreements should be required to be filed in compliance with Section 252(a)(1) of the Telecommunications Act of 1996?

RECOMMENDATION: Staff recommends that Section 252(a)(1) of the Telecommunications Act of 1996 requires the filing of interconnection agreements between local exchange telecommunications carriers competing in the same geographic markets entered into before or after the enactment of the Act.

Existing interconnection agreements between competitive carriers in the same geographic markets that have not yet been filed should be filed by the incumbent local exchange company within 14 days from the issuance of the order.

However, if the Commission agrees with AT&T that all existing interconnection agreements must be filed and approved, then staff recommends that there be staggered filings by category of agreement every 30 days as described in the staff analysis. Staff also recommends that the companies not be required to serve AT&T with copies of such agreements. Once filed with the Commission, the documents will be public records and AT&T would be able to review the documents. Further, because of the potential quantity of documents that would need to be served on AT&T as well as other potential carriers, it would be too burdensome on the incumbent LEC.

STAFF ANALYSIS:

ATT's Request

AT&T Communications of the Southern States, Inc. (AT&T) filed a letter with the Commission on March 1, 1996. Specifically, AT&T states that Section 252(a) of the Telecommunications Act of 1996 (Act) requires interconnection agreements, including those negotiated before the date of the Act, between incumbent local exchange telecommunications carriers and other carriers to be submitted to the appropriate state commission. AT&T requests the Commission require filing, within one week, of all existing interconnection agreements between local exchange telecommunication companies, as defined by Section 364.02(6), Florida Statutes, certificated by the Commission and other carriers, including other local exchange companies, alternative local exchange companies, and alternative access vendors, in accordance with Section 252(a) of the Act.

AT&T also requests in the March 1, 1996 letter that copies of such agreements be served on AT&T at the time that they are filed so that AT&T can participate in the review of such agreements pursuant to Section 252(e) of the Act. AT&T asserts that it can aid the Commission in its approval of the agreements and also enable AT&T to protect its own interests since AT&T may need to obtain interconnection services under such agreements pursuant to Section 252(i) of the Act, prior to obtaining an interconnection agreement of its own.

On May 20, AT&T sent a letter to staff clarifying its previous

letter. The arguments presented in that letter will be mentioned in the section of the recommendation regarding AT&T's interpretation of the Act.

AT&T states that the Act expressly requires that the terms of the existing interconnection agreements be made available without discrimination to any requesting carrier seeking to exchange or terminate local and local toll traffic. AT&T also states that at a minimum, the terms and conditions under which a large LEC already interconnects with another LEC provides a needed baseline for prospective new local competitors by facilitating meaningful negotiation. Moreover, AT&T asserts that such agreements afford prospective entrants at least the "safety net" of existing terms and conditions while they pursue their own negotiations.

Analysis of Section 252 of the Act

AT&T poses a question that is problematic to resolve. One can certainly interpret Section 252 of the Act to require that all existing interconnection agreements between LECs and other LECs be submitted to the State commission. However, one can also interpret this section to mean that all interconnection agreements between competitive carriers in the same markets entered into before or after the enactment of the Act be filed. That interpretation would mean that agreements entered into prior to the passage of the Act, such as the agreement between BellSouth and FCTA which was agreed to in December, 1995, must be submitted and approved according to Section 252 of the Act; however, such interpretation also means that agreements such as those existing between LECs for EAS on certain routes would not be required to be submitted for Commission approval under Section 252.

An analysis of both interpretations is set forth below. Although one may interpret Section 252 either way, staff believes that the more appropriate interpretation is to require only those existing agreements negotiated for purposes of competition with the incumbent LEC be filed for approval under Section 252.

a) Analysis of AT&T's interpretation

AT&T states that the plain reading of Section 252(a)(1) requires all existing interconnection agreements be submitted for approval by the State commission. Specifically, Section 252 states:

> (a) Agreements Arrived at Through Negotiation. -
> (1) Voluntary Negotiations. - upon receiving a request

> for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section. (emphasis added)

AT&T submits that the phrase "all interconnection agreements" includes those interconnection agreements entered into with other LECs in adjacent or nearby territories for the interchange and termination of local and "local toll" traffic between them. AT&T states that it understands there are many such agreements between LECs in Florida. Typically, such agreements are between the larger LECs and small independent companies (ICOs) to facilitate the flow of traffic between customers in the LEC's territory and the ICO's territory. AT&T further understands that there are similar agreements existing between larger LECs and smaller ICOs providing for the interconnection with or access to various elements of the LEC network. Staff notes that if the Commission accepts AT&T's interpretation, then staff believes that it would also include interconnection agreements between incumbent LECs and IXCs.

Under this interpretation, all existing interconnection agreements must be submitted to the Commission for approval under Section 252(e) of the Act. If the Commission approves AT&T's interpretation that all existing interconnection agreements must be approved, then the list of interconnection agreements that would need to be approved includes, but is not limited to: LEC to all FPSC certificated telecommunications carriers and providers; LEC to all FPSC certificated utilities that provide telecommunications services; LEC to commercial mobile radio service providers; and LEC to pagers. The Commission would then have 90 days to approve or reject such agreements. Theoretically, this could include a vast number of agreements. If approved, staff would recommend there be staggered filings required by category of agreement to meet the 90-day timeframe, and the agreements could be filed by category every 30 days. Under Section 252(e), the Commission could only reject a negotiated agreement if it discriminates against a telecommunications carrier not a party to the agreement, or the implementation of the agreement is not consistent with the public

interest.

Also, Section 252(i) states that

> A local exchange carrier shall make available any interconnection service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

AT&T suggests that this enables it to protect its own interests since AT&T may need to obtain interconnection services under such agreements pursuant to Section 252(i) of the Act, prior to obtaining an interconnection agreement of its own.

AT&T states that keeping these agreements out of the process established by section 252 of the Act not only violates the plain words of the statute, but also may give rise to discriminatory treatment in violation of Section 364.16(3), Florida Statutes. Section 364.16(3) provides that each LEC shall provide access to and interconnection with its telecommunications facilities to any other provider of local exchange telecommunications service requesting access and interconnection at nondiscriminatory prices, rates, terms, and conditions.

Finally, AT&T asserts that by not mandating that these agreements be filed, all legitimate public policy objectives and the antitrust laws will be subverted. AT&T submits that these agreements are precisely the kinds of agreements that the Act seeks to foster and make available to all. AT&T states that the only conceivable rationale for not subjecting these agreements to the section 252 process is that the agreements are available only to LECs who agree not to compete against each other. AT&T asserts that such a condition would contravene the core purposes of the Act and the Florida law just as it would Section 1 of the Sherman Act.

If the Commission approves AT&T's interpretation, staff also recommends that the companies not be required to serve AT&T with copies of such agreements. Once filed with the Commission, the documents will be public records and AT&T would be able to review the documents. Further, because of the potential quantity of documents that would need to be served on AT&T as well as other potential carriers, it would be too burdensome on the incumbent LEC.

b) Analysis of Staff's Interpretation

Another interpretation of the plain meaning of Section 252(a)(1) in context of reading Part II of the Act is that agreements that are to be filed are those negotiated for purposes of interconnection in a competitive market. Part II of the Act is titled "Development of Competitive Markets." Section 251 is titled "Interconnection" and Section 252 is titled "Procedures for Negotiation, Arbitration, and Approval of Agreements." This part of the Act regards the framework surrounding the development of a competitive telecommunications market. With the new legislative framework at both the state and federal levels, the industry is shifting from a regulated, rate-based, rate of return monopolistic industry to one that is competitive. Staff believes that AT&T's interpretation of the language at issue does not consider the broader context of Sections 251 and 252. Staff believes the Commission should interpret the languages taking into consideration the new regulatory scheme as explained below.

Specifically, Section 252(a)(1) states that upon request for interconnection pursuant to Section 251, an incumbent local exchange carrier may negotiate an agreement that must be submitted to a State commission for approval. The sentence at issue states, "The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section." Read in context with the other sentences in that paragraph and in the context of Sections 251 and 252, one could plainly interpret that the types of interconnection agreements that are required to be filed with the State commissions are all of those interconnection agreements which an incumbent local exchange carrier has entered into pursuant to the Act. A fair reading of this in the context of Part II of the Act means the types of existing interconnection agreements that must be filed are those interconnection agreements between competitive carriers in the same markets entered into before or after the enactment of the Act.

Various states have enacted legislation for development of competitive markets prior to the enactment of the Act. It is reasonable to assume that the language at issue is referring to those competitive interconnection agreements rather than LEC to adjacent LEC type of interconnection arrangements. A clear example would be the BellSouth/FCTA agreement that was signed prior to the enactment of the Act which must be submitted for approval by the State commission pursuant to Section 252(a).

In addition, Section 252(d)(1) states that determinations made by a State commission of the just and reasonable rate for interconnection shall be based on the cost, determined without reference to a rate-of-return or other rate-based proceeding, of providing the interconnection. Existing interconnection arrangements, other than those between carriers competing in the same market, were entered into during the old regime of rate-of-return regulation. Examples of such agreements are those arrangements made between LECs for EAS pursuant to Commission order requiring implementation of EAS. The companies were always free to request rate increases from the Commission if necessary. It does not make sense to require those types of agreements to be filed for approval under Section 252 because they were entered into under a different regulatory regime in a non-competitive market. The pricing standards would have been based on rate-of-return regulation that existed at the time such agreements were made. Nor does it make sense to allow a company entering the competitive market to choose specific provisions from agreements entered into during rate-of-return regulation.

Accordingly, staff recommends that Section 252(a)(1) of the Telecommunications Act of 1996 requires the filing of interconnection agreements between competitive carriers in the same geographic markets entered into before or after the enactment of the Act. Existing interconnection agreements between competitive carriers in the same geographic markets that have not yet been filed should be filed by the incumbent local exchange company within 14 days from the issuance of the order.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if no person whose substantial interests are affected files a protest within 21 days of the issuance date of the order from this recommendation, the order shall become final.

STAFF ANALYSIS: Yes, if no person whose substantial interests are affected files a protest within 21 days of the issuance date of the order from this recommendation, the order shall become final.