

State of Florida



Public Service Commission

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RECORDS AND REPORTING

DATE: SEPTEMBER 24, 1998

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

FROM: DIVISION OF LEGAL SERVICES (BEDELL) *LB MCB*
DIVISION OF COMMUNICATIONS (OLLILA) *S.O.*

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

AGENDA: 10/06/98 - REGULAR AGENDA - PROCEDURAL - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

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

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, will total approximately \$34 million on an annualized basis. The total, annualized effect of the 1998 intrastate switched access reduction will thus be approximately \$52 million.

Of the over 220 interexchange carriers (IXCs) contacted by staff for the 1998 access flow-throughs, approximately 180 are 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.

DISCUSSION OF ISSUES

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

RECOMMENDATION: Yes, although the tariffs were filed late, the customers will receive the full benefit of the flow-through reductions. (BEDELL)

STAFF ANALYSIS: On June 29, 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 a two week extension of time and suggested that tariffs should be given a retroactive effective date of July 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 July 1, 1998. Petitioners filed the flow-through reduction tariffs on July 15, 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. In addition, tariffs have been filed and approved with retroactive effective dates in other instances in response to FCC orders and other FPSC orders. 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, the actual flow-through reduction has been accomplished and all customers of Petitioners have or will receive credits for the full rate reduction amount. Thus, the purpose of the statute has been fully realized, as though accomplished on July 1, 1998. Therefore, staff recommends that the

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

ISSUE 2: Should the Petition For Waiver filed by Network Plus be granted?

RECOMMENDATION: No. Petitioner has failed to demonstrate that waiver of the requirements of Section 364.163(6), Florida Statutes, as revised, would be in the public interest. (BEDELL)

STAFF ANALYSIS: On August 31, 1998, Network Plus, Inc. d/b/a Hale and Father (Network Plus), filed a Petition for Waiver of Section 364.163(6), Florida Statutes, as revised. Network Plus is an intrastate interexchange carrier. In the petition for waiver of the statute, Network Plus alleges that to further reduce its already low rates to reflect the flow-through of access rate reductions would create a financial hardship on the company. Network Plus also alleges that the reduction would amount to only a "marginal" savings to its customers. Network Plus further alleges that its customers are already receiving the "lowest rate" possible and that the mandated rate reduction would cause the company to provide service at or below cost.

The Petition for Waiver was filed pursuant to the provisions of Section 364.337(4), which provides in pertinent part:

A certificated intrastate interexchange telecommunications company may petition the commission for a waiver for some or all of the requirements of this chapter The commission may grant such petition if determined to be in the public interest.

Thus, the Commission has jurisdiction to entertain the petition filed by Network Plus to waive a provision of Chapter 364, Florida Statutes. It should be noted that this is the first time the Commission has been asked for a waiver pursuant to Section 364.337(4), Florida Statutes for purposes of waiving access reductions.

Staff disagrees with the argument that the company would suffer an undue hardship by complying with the flow-through requirements. First, Network Plus has not stated with particularity the exact financial harm that it would incur. Intuitively, one would think that the flow-through reduction should represent a zero dollar net effect. In actual application this may not be true, but the net effect of the reduction should not be so great as to cause significant financial harm. Again, however, we do not have even an estimate of net effect of the reductions (taking into account the concomitant access rate reduction) on Network Plus. For this reason, staff recommends that the petition be denied. Having failed to establish economic harm, Network Plus has failed to demonstrate any public interest issue that would support a waiver of Section 364.163(6), Florida Statutes.

In conclusion, staff recommends that the petition be denied for failing to state a request for relief that is sufficient for the Commission to find that it is in the public interest to waive the provisions of Section 364.163(6), Florida Statutes, as revised.

ISSUE 3: If staff's recommendation in Issue 2 is approved, what must Network Plus do in order to ensure that its customers receive the benefit of GTE Florida's and Sprint-Florida's July 1, 1998 and October 1, 1998 switched access rate reductions?

RECOMMENDATION: If staff's recommendation in Issue 2 is approved, Network Plus should file, within ten business days of the Agenda Conference, revised tariff pages implementing the access flow-through of GTE Florida's and Sprint-Florida's July 1, 1998 and October 1, 1998 switched access rate reductions. Documentation supporting this tariff filing should meet the requirements of Commission Order No. PSC-98-0795-FOF-TP, issued June 8, 1998. In addition to its tariff filing, Network Plus should submit a proposal for staff's review that describes how it plans to compensate its customers for the late filing of the access flow-throughs, and when this compensation will occur. Once Network Plus has compensated its customers for the late filing of the access flow-throughs, it should so certify in a letter to staff.
(OLLILA)

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STAFF ANALYSIS: If staff's recommendation in Issue 2 is approved, staff believes that Network Plus should take immediate steps to ensure that it is in compliance with Section 364.163(6), Florida Statutes, Commission Order No. PSC-98-0795-FOF-TP, issued June 8, 1998, and the Commission order that will result from this recommendation. The June 8, 1998 order provides specific Commission-ordered requirements that an interexchange company must follow in filing its tariff, such as required documentation. Staff believes that Network Plus is required to follow those documentation requirements.

Staff believes that it is appropriate for Network Plus to file its tariff reductions quickly, in order that its customers may see the benefit of the rate reductions as soon as possible. Staff believes that ten business days after the Agenda Conference is sufficient time for Network Plus to submit a tariff filing for the rate reductions and to prepare its proposal describing how it will compensate its customers for the time period during which the rate reductions should have been in effect but were not.

Since Network Plus' tariff filing will be subsequent to both the July 1, 1998, and October 1, 1998, required filing dates, staff believes it is appropriate for Network Plus to flow-through the total of its expense reductions at one time. In addition, staff believes that Network Plus should also compensate its customers for the period of time the reductions should have been in effect, but were not in effect, since Section 364.163(6), Florida Statutes, states:

Any interexchange telecommunications company whose intrastate switched access rate is reduced as a result of the rate decrease made by a local exchange telecommunications company in accordance with the subsection shall decrease its intrastate long distance rates by the amount necessary to return the benefits of such reduction to its customers.

Since staff does not have knowledge of Network Plus' billing system, staff believes that Network Plus can best determine how it will compensate its customers for the time the rate reductions were not in effect, but should have been.

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Therefore, staff recommends that, if staff's recommendation in Issue 2 is approved, Network Plus should file, within ten business days of the Agenda Conference, revised tariff pages implementing the access flow-through of GTE Florida's and Sprint-Florida's July 1, 1998 and October 1, 1998 switched access rate reductions. Documentation supporting this tariff filing should meet the requirements of Commission Order No. PSC-98-0795-FOF-TP, issued June 8, 1998. In addition to its tariff filing, Network Plus should submit a proposal for staff's review that describes how it plans to compensate its customers for the late filing of the access flow-throughs, and when this compensation will occur. Once Network Plus has compensated its customers for the late filing of the access flow-throughs, it should so certify in a letter to staff.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open until all of the LEC reductions and the IXC's flow-throughs are complete for 1998. (BEDELL)

STAFF ANALYSIS: This docket should remain open. Once the LEC reductions and the IXCs flow-throughs are complete for 1998, this docket should be closed administratively.