

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Flow-through of 1998 LEC  
switched access reductions by  
IXCs, pursuant to Section  
364.163(6), F.S.

DOCKET NO. 980459-TP  
ORDER NO. PSC-98-1437-PCO-TP  
ISSUED: October 26, 1998

The following Commissioners participated in the disposition of  
this matter:

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

ORDER GRANTING REQUEST FOR EXTENSION OF TIME  
AND DENYING PETITION FOR WAIVER OF STATUTE

BY THE COMMISSION:

During the 1998 Legislative Session, revisions to Section  
364.163(6), Florida Statutes, were passed. One revision modified  
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:

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.

The 1998 revision also requires:

Any interexchange telecommunications company  
whose intrastate switched access rate is  
reduced as a result of the rate decreases made

DOCUMENT NUMBER-DATE

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1998 RECORDS/REPORTING

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 and it became final and effective on June 29, 1998.

#### REQUEST FOR EXTENSION OF TIME

On June 29, 1998, MCI Telecommunications Corporation (MCI) and SouthernNet, Inc. d/b/a Telecom\*USA or 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' 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 would insure that Florida consumers received 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.

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.

Accordingly, we believe it is appropriate to grant Petitioners' Request for an Extension of Time. 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, the Request for Extension of Time is granted.

#### PETITION FOR WAIVER

On August 31, 1998, Network Plus, Inc. d/b/a Hale and Father, Inc. (Network Plus), filed a Petition for Waiver of Section 364.163(6), Florida Statutes, as revised. Network Plus is an intrastate interexchange carrier. In this petition, 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. 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, we have jurisdiction to entertain the petition filed by Network Plus to waive a provision of Chapter 364, Florida Statutes. This is the first time a waiver pursuant to Section 364.337(4), Florida Statutes for purposes of waiving access reductions has been filed.

We do not agree with the company that it 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. Although the flow-through reduction should represent a zero dollar net effect, in actual application this may not be true; however, the net effect of the reduction should not be so great as to cause any significant financial harm. Again, however, we have no estimate of net effect of the reductions (taking into account the concomitant access rate reduction) on Network Plus. 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.

Accordingly, the Petition for Waiver of Section 364.163(6), Florida Statutes, is denied for failing to state a request for relief sufficient for this Commission to find that it is in the public interest to waive the provisions of Section 364.163(6), Florida Statutes, as revised.

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 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Request for Extension of Time filed by MCI Telecommunications Corporation and SouthernNet, Inc. d/b/a Telecom\*USA or Teleconnect is granted. It is further

ORDERED that the Petition for Waiver of Section 364.163(6), Florida Statutes, filed by Network Plus, Inc. d/b/a Hale and Father, Inc. is denied. It is further

ORDERED that Network Plus, Inc. d/b/a Hale and Father, Inc. shall file, no later than October 16, 1998, revised tariff pages with supporting documentation, implementing the July 1, 1998, and October 1, 1998, switched access rate reductions. It is further



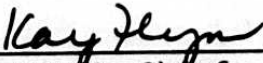
ORDER NO. PSC-98-1437-PCO-TP  
DOCKET NO. 980459-TP  
PAGE 5

ORDERED that Network Plus, Inc. d/b/a Hale and Father, Inc. shall submit a proposal for compensating customers for the late filing of access flow-throughs. It is further

ORDERED that upon completion of compensation, Network Plus, Inc. d/b/a Hale and Father, Inc., shall so certify by letter to this Commission. It is further

ORDERED that this docket shall remain open for processing the October switched access rate reductions.

By ORDER of the Florida Public Service Commission this 26th day of October, 1998.

  
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KAY FLYNN, Chief  
Bureau of Records

( S E A L )

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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 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.

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.

ORDER NO. PSC-98-1437-PCO-TP  
DOCKET NO. 980459-TP  
PAGE 6

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.