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March 29, 2002

Ms. Blanca S. Bayo, Director  
Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, Florida 32399-0850

**HAND DELIVERY**

RECEIVED FPSC  
02 MAR 29 PM 3:44  
COMMISSION  
CLERK

Re: Docket No. 000075-TP

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of US LEC of Florida Inc. ("US LEC") are the following documents:

1. Original and fifteen copies of US LEC's Prehearing Statement; and
2. A disk containing a copy of the Prehearing Statement.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,

*Martin P. McDonnell*

Martin P. McDonnell

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cc: Parties of Record

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03627 MAR 29 02

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into appropriate )  
methods to compensate carriers for )  
exchange of traffic subject to Section 251 )  
of the Telecommunications Act of 1996. )  
\_\_\_\_\_)

Docket No. 000075-TP  
(Phase II)

Filed: March 29, 2002

**PREHEARING STATEMENT OF  
US LEC OF FLORIDA INC.**

Pursuant to Order No. PSC-00-2229-PCO-TP issued November 22, 2000, Order No. PSC-00-2350-PCO-TP issued December 7, 2000, Order No. 00-2452-PCO-TP issued December 22, 2000, Order No. PSC-01-0632-PCO-TP issued March 15, 2001 and Order No. PSC-02-0139-PCO-TP issued January 31, 2002, US LEC of Florida Inc. (hereinafter referred to as "US LEC") hereby files its Prehearing Statement addressing the remaining Phase II issues.

**APPEARANCES**

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DOCUMENT NUMBER DATE

03627 MAR 29 02

FPSO-000075-000075 CLERK

**A. WITNESSES**

**ISSUES**

**Direct**

None.

**Rebuttal**

None.

**B. EXHIBITS**

None.

**C. STATEMENT OF BASIC POSITION**

The Federal Communications Commission's ("FCC") rules and orders, in accordance with the Federal Communications Act of 1996 ("Act"), encourages state commissions to develop policies to promote competition among incumbent local exchange companies ("ILECs") and alternative local exchange companies ("ALECs"). ALECs should have an opportunity to meaningfully negotiate their local calling areas with the ILECs. The establishment of a reasonable default "local calling area" for parties unable to agree on a definition would assist in meaningful negotiations. The Commission should not establish the ILECs' traditional local calling areas as the default local calling area, as that would stifle a meaningful negotiating process, hamper meaningful competition, and restrict the consumers' options. If carriers are unable to reach agreement, the Commission should establish LATA-wide local calling as the default definition of local calling area for purposes of intercarrier compensation.

The Commission should establish a compensation mechanism governing transport and delivery or termination of traffic subject to Section 251 of the Act to be used in the absence of the parties reaching agreement or negotiating a compensation mechanism. US LEC encourages the

Commission to retain reciprocal compensation as the appropriate default compensation mechanism. Reciprocal compensation is competitively neutral and appropriately imposes costs on the cost-causer; the calling party. On the other hand, bill-and-keep is neither efficient nor competitively neutral and inappropriately imposes costs on the receiver of telephone calls, even if those calls are unwanted. Bill-and-keep may also trigger arbitrage and produce a financial windfall to ILECs.

#### **D. STATEMENT OF ISSUES AND POSITIONS**

**Issue 13: How should a “local calling area” be defined, for purposes of determining the applicability of reciprocal compensation?**

**(a) What is the Commission’s jurisdiction in this matter?**

**US LEC:** Sections 251 and 252 of the Act and Section 120.80(13), Florida Statutes, both clearly grant the Commission jurisdiction to define a “local calling area” for purposes of determining the applicability of reciprocal compensation. See also Florida Interexchange Carriers v. Beard, 624 So.2d 248 (Fla. 1998).

Section 251(b)(5) of the Act imposes on each carrier the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications. The FCC has interpreted Section 251(b)(5) to authorize state commissions to determine what geographic areas should be considered “local areas” for the purpose of applying reciprocal compensation obligations under Section 251(b)(5). In the FCC’s *Local Competition Order* (FCC 96-325), the FCC stated that it expects the states to determine whether interstate transport and termination of traffic should be governed by Section 251(b)(5) reciprocal compensation obligations or whether intrastate access charges should apply to the portions of their local service areas that are different.

Section 120.80(13)(d), Florida Statutes, grants the Commission the authority to carry out its duties pursuant to the Act and authorizes the Commission to employ procedures consistent with the Act.

**(b) Should the Commission establish a default definition of local calling area for the purpose of intercarrier compensation, to apply in the event parties cannot reach a negotiated agreement?**

US LEC: In the event parties cannot reach a negotiated agreement, the Commission should establish a default definition of local calling area for the purpose of intercarrier compensation.

- (c) **If so, should the default definition of local calling area for purposes of intercarrier compensation be: (1) LATA-wide local calling, (2) based upon the originating carrier's retail local calling area, or (3) some other default definition/mechanism?**

US LEC: LATA-wide local calling should be the default definition of local calling area for purposes of intercarrier compensation.

**Issue 17: Should the Commission establish compensation mechanisms governing the transport and delivery or termination of traffic subject to Section 251 of the Act to be used in the absence of the parties reaching agreement or negotiating a compensation mechanism? If so, what should be the mechanism?**

- (a) **Does the Commission have jurisdiction to establish bill-and-keep?**

US LEC: FCC Rule 51.713 grants the Commission jurisdiction to establish bill-and-keep, but limits the Commission's discretion to impose a bill-and-keep compensation regime to situations wherein "the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to Section 51.711(b) of this part."

- (b) **What is the potential financial impact, if any, on ILECs and ALECs of bill-and-keep arrangements?**

US LEC: A bill-and-keep arrangement would have significant financial impact as the cost-causer (originating caller) would not be responsible for the cost of the call. That cost would be unfairly incurred by the recipient of the phone call. Additionally, the LEC that originates more calls than it terminates would receive a financial windfall from the arrangement.

- (c) **If the Commission imposes bill-and-keep as a default mechanism, will the Commission need to define generically "roughly balanced?" If so, how should the Commission define "roughly balanced?"**

US LEC: The Commission will need to define generically "roughly balanced" if the Commission imposes bill-and-keep as a default mechanism. Traffic should be considered "roughly balanced" when the difference between the amount

of traffic terminated by each carrier is statistically insignificant and is expected to remain so. Once the traffic meets a threshold of 1 million minutes per month, and is out of balance by more than 5%, then traffic should no longer be considered in balance, and reciprocal compensation should apply. For the last 5 years, traffic balance has not occurred between US LEC and any ILEC in Florida. Therefore, US LEC would object to the Commission creating a rebuttable presumption in this generic docket that traffic is roughly balanced.

- (d) What potential advantages or disadvantages would result from the imposition of bill-and-keep arrangements as a default mechanism, particularly in comparison to other mechanism already presented in Phase II of this docket?**

US LEC: Bill-and-keep only offers any advantage to carriers when the exchange of local traffic is statistically balanced. The parties would still need to calculate their local minutes of use (MOU) on a monthly basis to ensure that the traffic is statistically balanced. When traffic is statistically balanced, the advantage would be that carriers would not bill and pay each other every month for terminating the other party's traffic. However, the parties could achieve the same result simply by negotiating a bill-and-keep reciprocal compensation arrangement.

A default bill-and-keep reciprocal compensation mechanism is disadvantageous for a number of reasons. Bill-and-keep inappropriately imposes costs on the recipient of a phone call, whether the recipient wants the call or not. Additionally, a bill-and-keep default mechanism would not encourage carriers to negotiate as a carrier that originates more calls than it terminates would want bill-and-keep as it would create a financial windfall for that carrier. Bill-and-keep encourages carriers to seek customers that originate more telephone calls than they receive, and discourages carriers from seeking customers that terminate more phone calls than they originate.

Reciprocal compensation should be the default mechanism as it encourages parties to reach agreement, is cost based and competitively neutral.

- E. STIPULATED ISSUES:** None.
- F. PENDING MOTIONS:** None.
- G. PENDING REQUESTS FOR CONFIDENTIALITY:** None.

**H. ANY REQUIREMENT SET FORTH IN ORDER NO. PSC-02-0139-PCO-TP  
ISSUED JANUARY 31, 2002 THAT CANNOT BE COMPLIED WITH: None.**

**I. ANY DECISION OR PENDING DECISION OF THE FCC OR ANY COURT  
THAT HAS OR MAY EITHER PREEMPT OR OTHERWISE IMPACT THE  
COMMISSION'S ABILITY TO RESOLVE ANY OF THE ISSUES PRESENTED FOR  
RELIEF IN THIS MATTER: None.**

Respectfully submitted,

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-- and --

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 29th day of March, 2002:

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