State of Florida

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Public Service Commission

July 15, 1996

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Billed Party Preference for InterLATA 0+ Calls - Second Further Notice of Proposed Rulemaking - CC Docket No. 92-77

Dear Mr. Caton:

Enclosed are the original and ten copies of the Florida Public Service Commission's comments in the above docket. Please date-stamp one copy and return it in the enclosed self-addressed stamped envelope. We are also forwarding a copy of our comments on disk to Adrien Auger of the Common Carrier Bureau.

Sincerely,

Cynthia B. Miller
Associate General Counsel

CBM/jb
Enclosure

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:	)	
	)	
Billed Party Preference for InterLATA 0+ Calls	)	CC Docket No. 92-77
	)	
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SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

On June 6, 1996, the Federal Communications Commission (FCC) issued its Second Further Notice of Proposed Rulemaking (NPRM) requesting comments on its proposal to require interexchange carriers (IXCs) offering operator services through payphones and other aggregator locations to disclose their rates to callers before the call is completed and to establish a benchmark rate for such calls. The Florida Public Service Commission (FPSC) is pleased to provide comments on these issues. We have organized our comments to follow, as closely as possible, the structure and paragraph numbering of the NPRM.

A. Disclosure of Price on All Operator Service Calls

Requiring a price disclosure message before each 0+ call is completed from a pay telephone or call aggregator location would be an effective way to inform consumers but would not provide the kind of rate relief that is needed and could be costly to the operator services provider (OSP). Also, such a message would add time to the processing of each 0+ call which many consumers might view unfavorably. In addition, consumers may tire of and tune out a redundant message on all 0+ calls, and consequently, the message

would not obviate the need to establish a benchmark. Finally, such a message on calls that are already reasonably priced would provide no benefit to consumers. Therefore, of the suggestions proposed, the FPSC believes requiring a price disclosure message only before those calls which will exceed a benchmark rate is a more appropriate policy than requiring such a message for all calls. Even if a price disclosure message is only required on a limited basis, the end user is largely captive and may really have no other alternative but to forgo placing the call. Thus, price disclosure messages appear only marginally useful. (¶ 15)

B. Setting a Benchmark

The benchmark should be set at a fixed rate and adjusted annually. Setting the benchmark at a fixed rate will be the least confusing for both consumers and IXCs and will provide the best protection for consumers. Requiring IXCs to keep their rates under an absolute benchmark may also exert downward pressure on the excessively high commission payments that some OSPs offer to location owners to obtain their business. Reduction of excessively high commissions might work to stimulate competition by allowing more smaller OSPs to compete. We agree with Ameritech that tying the benchmark to the rate level that generates a consumer complaint is inappropriate. Charges that do not exceed the complaint threshold may still greatly exceed costs, and consumers deserve

protection from excessively high rates whether or not they have the knowledge or perseverance to file a complaint with a regulatory agency. We believe the benchmark should be set at an average of the dominant carriers' rates. Small IXCs have expressed concerns that such a benchmark would be unfair and anticompetitive for them as they may have higher costs that justify a higher rate. If that is the case, these small IXCs should have the option of filing rate justification data with the FCC to obtain permission to charge a rate above the benchmark with appropriate disclosure to the end-user. (¶ 16, 17, 18, 19, 20)

2. Other Benchmark Issues

The FPSC agrees that using an average of the dominant carriers' rates as a basis for setting a benchmark will yield a benchmark that will be realistic and perceived as fair from a consumer standpoint. We agree with the FCC's conclusion that consumers base their rate expectations on the charges they are billed for calls placed from their residences or with calling cards of one of the three largest IXCs. (¶ 23)

Allowing an additional price margin of some percentage to be added to the average of the dominant carriers' rates to produce a benchmark which is an absolute rate ceiling is reasonable. We believe the percentage should not exceed the 15% suggested. (¶ 24)

The FPSC favors setting the benchmark annually (average of the dominant three carriers' rates plus some percentage) and agrees that doing so would make it easier for OSPs to set their rates once a year and remain in compliance with the benchmark. Setting the benchmark annually would also mean that IXCs would not have to change their rate to match every rate cut made by any of the three dominant OSPs. (¶ 25)

The FPSC agrees it will be necessary to structure the benchmark to incorporate the variety of ways that an 0+ call can be made and billed. (¶ 26)

C. Consequences of Exceeding the Benchmark

It has been suggested that OSPs exceeding the benchmark should be required to do one of the following: (1) provide cost support to the FCC for their rates; (2) provide a message warning callers that their rates may be higher than expected; or, (3) provide the price of the call. Of these three, the FPSC believes that providing the price of the call is the most straightforward. We agree with the Colorado PUC Staff's statement that "...disclosure of prices prior to consummation of a transaction is a basic tenet of our economic system..." However, it is the FPSC's opinion that any of the suggested time consuming disclosure messages would be unnecessary if the FCC were to adopt an absolute benchmark which IXCs were prohibited from exceeding.

IXCs are already required to disclose their rates to consumers if asked and are required to post signage explaining how consumers can obtain rate information. Disclosure requirements have not stopped price gouging. Notifying the caller of the potential charges for completing the call may not be beneficial, if the customer does not have knowledge of the rates and charges of other competing carriers and "dial-around" options. The situation is quite different between a caller who makes an 0+ call from their residence and a call from a payphone. Individuals have a different relationship with the presubscribed carrier at their residence. The residential customer has an ongoing relationship with the carrier. It is unlikely that the presubscribed carrier would attempt to charge unreasonable rates and charges, because the customer can easily choose a different carrier. However, this is not the case with the use of a payphone. A payphone is a tool of necessity or convenience with which the end user has no ongoing relationship with the service provider. Callers do not research rates and charges for 0+ calls from various providers before using a payphone. The same caller at a payphone who needs to make an 0+ call in a pinch may not have any knowledge of the OSP serving the payphone or knowledge of a reasonable level of rates and charges for such a call. Nor are they likely to be able to take the time to look for another telephone, even if there may be one available in the hotel lobby or several blocks away. The FCC should exert

its authority to impose an absolute cap to protect consumers. (¶ 29, 34)

The FPSC fails to comprehend how the disclosure requirements alone will "...eliminate prices charged in excess of competitive rates..." as stated by the FCC. Enforcement of a disclosure requirement will most likely have to take place after the fact. For example, the consumer will complain after he has been overcharged, and the FCC must then ask the consumer if he remembers hearing a warning message. Assuming the FCC could accurately determine after the fact whether the IXC provided the message, the problem remains that even if a message was given, as the FCC required, the consumer was still overcharged from his point of view (i.e. more than the benchmark/reasonable rate). (¶ 35, 36, 37)

We believe that the FCC's adoption of a rate cap would provide the most protection to consumers from overcharges and send the clearest signal to OSPs about appropriate rates. The FPSC adopted a rate cap tied to AT&T's rates in 1991, and as a result has been able to enforce compliance with the cap and authorize refunds to customers from fourteen OSPs found to be exceeding the cap (Attachment A).

D. Forbearance from Applying Informational Tariff Filing Requirements

The FCC seeks comment on whether to forbear from applying tariff filing requirements to non-dominant interexchange OSPs if

they either provide an audible disclosure of the applicable rate and charges prior to connecting any interstate 0+ call from a payphone location, or certify that they will not charge more than an FCC-established benchmark for such calls. The FPSC supports the position that the FCC should seek avenues other than tariffs to ensure that non-dominant interexchange OSPs charges or practices are just and reasonable, and are not unjustly and unreasonably discriminatory. However, we do not support the use of the forbearance authority in the Telecommunications Act of 1996 (the Act) as the vehicle to eliminate interstate tariff requirements. We believe the FCC's broad regulatory powers can be used to accomplish the desired outcome, without implementing forbearance provisions in the Act which might have repercussions at the state level.

As discussed in Section C, the FPSC does support the establishment of benchmark rates and charges for interstate 0+ calls from a payphone location. We believe that a benchmark or ceiling for rates and charges will afford a high level of consumer protection against price gouging and be far more effective than requiring tariffs or audible disclosure. (¶ 40, 42)

The FPSC agrees that informational tariff filing requirements at the interstate level may not ensure that charges, surcharges and practices for interexchange operator services are just and reasonable. However, we believe that competitive conditions and

information needs vary between the federal and state levels. Based on our high level of interaction with end users, some ready source for intrastate service and price information is needed. Therefore, the decision to use tariffs at the state level is based on a somewhat different set of considerations than might apply at the federal level. (¶ 41)

In the matter of eliminating tariff filings for non-dominant interexchange OSPs, we agree that the absence of tariffs may promote competition and deter tacit price coordination. However, the absence of tariffs will only eliminate one method used by carriers to seek information about their competitors. We believe that owners of payphones seek the most rewarding compensation from competing carriers. The payphone owner is not concerned with the level of rates and charges assessed against captive customers. Therefore, competition exists among OSPs to serve payphone owners, not to serve end users. We do not believe that the provision of pricing information by the OSP at the point of purchase is a solution to the problems experienced by consumers. Consumers using payphones are often in transit and captive. They are not in the position to exercise rational purchasing decisions. We believe that a mandatory price ceiling will protect consumers from abusive rates and charges by OSPs. (¶ 43)

If the FCC finds that it should eliminate the requirements for informational tariffs by non-dominant OSPs, then we recommend that

these service providers be required to maintain at their premises price and service information and billing records at a designated location for inspection by regulators and consumers. The price and service information and billing records should be subject to a minimum retention period and held at the same designated location as the current records and information. (¶ 44)

E. Range of Rates Informational Tariffs

If the FCC adopts a benchmark rate for 0+ calls, the FPSC agrees that the FCC should adopt a policy to eliminate the interstate requirement to maintain an informational tariff by OSPs. We believe that as long as the OSP is in compliance with the benchmark standard, then the informational tariff is not necessary for consumer protection purposes. Certification by OSPs to maintain rates and charges below the benchmark is unnecessary since a deviation above the ceiling means the OSP is in violation of the Commission's rule. If informational tariffs are retained, there should be a requirement to provide specific rates and charges as is the practice in Florida today. Specific rates and charges enable customers to better understand how they are being charged and to more readily calculate the total charges for a call. (¶ 47)

F. Inmate-Only Phones in Correctional Institutions

The FPSC has found collect calls placed from correctional facilities to be the source of many consumer complaints about

overcharging. We have had eight docketed cases requiring refunds to consumers in the last five years (Attachment B). This is one of the reasons we support an absolute rate cap as explained previously.

Because inmates cannot receive calls and are restricted to the presubscribed carrier of the correctional facility, and the persons they call cannot select the carrier before they accept the charges, inmates and the parties they call are forced to pay whatever rate the OSP chooses to charge. Requiring full price disclosure to the called party before the call is completed would not be an effective way to prohibit unreasonable rates because the called party cannot choose another carrier to complete the call. If the called party wants to speak to the inmate, he must accept the call regardless of the price disclosed. (¶ 49)

However, there are other simple methods available that could offer protection to billed parties from price gouging for calls placed from correctional facilities. (¶ 48) One way to avoid these problems, using instrument implemented fraud control devices, is to allow inmates to place calls to personal 800 numbers to reach their families and/or legal counsel. In this way, the called party can use whatever IXC he prefers and will retain control of the rates he is billed. The correctional facility can still retain control over the numbers the inmate calls as it has the ability, through CPE, to prohibit calls to all but previously authorized numbers, blocking

all other numbers so that the inmate cannot dial around. Administration of such a system however, might be a burden on inmate facilities that currently rely on operator service providers to maintain fraud control systems in return for an outbound calling monopoly. The inmate facility may also experience a reduction in commission payments. (¶ 49)

Another way to assure that calls from correctional facilities are billed at reasonable rates is to allow inmates to use debit cards. Because debit cards represent long distance service purchased in advance at a predetermined rate, neither the caller nor the called party should experience rate shock. Debit cards could be purchased by inmates and/or their families on their behalf. Again, the correctional facility could exercise security measures by screening the access number the inmate would use to place the call before allowing the card to be used. The FPSC authorized the use of debit cards for local calls from prisons in 1991 and capped the rate that could be charged. (¶ 49)

Now that CPE solutions to control fraud in confinement facilities are readily available, the FPSC believes it is appropriate to review the justification for restricting all inmate outbound calls to a single provider. If, after investigation, it is determined that instrument implemented fraud control devices satisfactorily restrict inmate access and prevent abuse of the telephone network, there may be justification for allowing the

inmate population to dial specific toll free numbers, i.e., the public defender, to provide some competition for inmate services where none exists today. Moreover, an added benefit may be savings to inmate families, legal counsel and public defenders from reduced telephone charges. (¶ 49)

Respectfully submitted,

Cynthia Miller
Senior Attorney
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

DATED: July _____, 1996

Comments of the Florida Public Service Commission
Docket No. CC 92-77

Attachment A

OVERCHARGES BY OSPS FOR CALLS PLACED FROM PAY TELEPHONES

DOCKET #	COMPANY	FINE AMOUNT	OTHER ACTION
950039	2001 TELECOMMUNICATIONS		Refund $ 8,240
950787	ADTEL		Refund $ 1,198
950064	CLEARTEL COMMUNICATIONS		Refund $ 6,800
950788	MCI		Refund $ 21,866
920888	OPTICOM		Refund $ 7,310
950040	PHONETEL		Refund $ 30,514
951168	QUEST COMMUNICATIONS		Refund $ 18,516
930007	SOUTHNET SERVICES	$ 10,000	Refund $ 17,000
931238	TELALEASING		Refund $ 27,619
950024	TRINITY HOLDINGS		Refund $ 232
951102	U.S. LONG DISTANCE		Refund $ 67,296
950135	UNITED TELEPHONE LD		Refund $225,052
940748	LONDON COMMUNICATIONS	$ 6,000	Refund $ 8,795
940719	VOCAL MOTION	Action Pending	

Comments of the Florida Public Service Commission
Docket No. CC 92-77

Attachment B

OVERCHARGES FROM CONFINEMENT FACILITIES

DOCKET #	COMPANY	FINE AMOUNT	OTHER ACTION
910666	Peoples Telephone	$100,000	Refund $653,000
910666	International Telecharge	$250,000	Refund $750,000
910875	Equal Access Corp.	$200,000	Cert. Cancelled
910888	Integretel, Inc.		Changed Procedures
920687	Own Your Own Phone	$500	Refund $ 7,063
930416 950149	North American Intelecom North American Intelecom	$25,000	Refund $414,000
960617	MCI Telecommunications Corp.	Pending	Pending

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:	)	
	)	
Billed Party Preference for	)	CC Docket No. 92-77
InterLATA 0+ Calls	)	
	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of the Florida Public Service Commission has been furnished to the parties listed below this _____ day of July, 1996.

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Comments of the Florida Public Service Commission
Docket No. CC 92-77

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