

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE

Docket No. U-20883-Subdocket C - In re: Louisiana Public Service Commission, ex parte. In Re: The development of rules and regulation applicable to the entry and operations of, and the providing of services by, competitive and alternate access providers in the local, intrastate and/or interexchange telecommunications market in Louisiana. (State Universal Service)

(Decided at Business and Executive Session held March 23, 2005)

BACKGROUND

Universal Service and the elements that comprise Universal Service in Louisiana are defined by the Louisiana Public Service Commission (“Commission” or “LPSC”) in the Commission’s General Order dated May 22, 1995, and as set forth in Section 501 of the Commission’s Regulations for Competition in the Local Telecommunications Markets, as amended (“Local Competition Regulations”).¹ Those provisions currently provide for “[a]ccess to a calling plan for a local calling area sufficiently large to encompass a user’s community of interest but no greater than 40 miles”.²

Docket U-20883, Subdocket C was opened to address the possible creation of a State Universal Service Fund. In this phase (“Phase 1”) of Docket No. U-20883, Subdocket C, Staff focused its review on addressing the sole issue of the requirements found in Section 501(A)(11) of the Local Competition Regulations. Specifically, Staff is concerned with developing the most effective way to structure the State Universal Service Fund (“SUSF”) to fund the requirements for service provision as defined in Section 501(A)(11).

The provision of service as defined in Section 501(A)(11) tracks the elements and features of the Local Optional Service (“LOS”) calling plans that all incumbent local exchange carriers (“ILECs”) must provide throughout the State of Louisiana. The Commission has defined LOS as “a service which provides 7 digit dialed local calling, outside the Local Calling Area but within the LATA, from all originating wire centers to

1. The most current version of the Local Competition Regulations is contained in “Appendix B” to the General Order dated July 24, 2002.

² See Section 501(A)(11) of the Local Competition Regulations.

terminating wire centers within 40 miles or within a parish on a usage sensitive basis established in Order No. U-17949-N”.³

LOS first became a tariffed service in 1989 after the Commission concluded that the public interest warranted statewide implementation of a Local Optional Service calling plan by South Central Bell and the rural incumbent local exchange carriers. The Commission stated that “the plan is essential to modernize telephone tariffing in rural areas, facilitate the flow of information in these areas, and reduce the inequities that result from the application of tolls to intrastate telephone calls of short distances”.⁴ As the stated intent of the Commission, the implementation of LOS was to be a major step in making such calls more “local” in nature. There are currently two LOS offerings in effect: basic LOS and “LOS B.” The basic LOS calling plan permits customers to enjoy unlimited usage for all calls made within the base rate area up to a flat rate charge of \$15.00 per month. Subscriber calls that fall outside of the base rate area, up to forty miles, are subject to reduced usage sensitive rates under the LOS B calling plan. Both LOS calling plans are offered on a completely optional basis to subscribers.

At the time the Commission ordered statewide implementation of the LOS calling plans in 1989, it recognized that the incumbent local exchange carriers would incur revenue losses as a result of the offerings. Thus, in order to avoid having the rural ILECs experience adverse revenue and earnings impacts, the Commission required that “South Central Bell shall adjust its portion of shared intraLATA revenues with the independents to ensure that the independents’ revenues are unaffected both now and in the future”.⁵

In the General Order dated April 25, 1996, issued in Docket No. U-17949, Subdocket F, the Commission ordered the incumbent local exchange companies to implement 1+ presubscription for intraLATA toll calls in Louisiana. One of the effects of the implementation of 1+ presubscription, however, would have dissolved the BellSouth “pool” – the funding mechanism for LOS – as required under LPSC Order No. U-17949-A. Absent Commission intervention, the implementation of 1+ presubscription would place the rural ILECs in the position of being obligated to continue to offer the LOS calling plans at below cost but without the receipt of the needed subsidy (i.e. the support from the BellSouth pool). In recognition of the Commission’s twin goals to

³ See Commission Order No. U-23267 at page 7.

⁴ See Commission Order No. U-17949, Subdocket B, page 3.

⁵ Id at page 8.

implement 1+ presubscription and to preserve the LOS calling plans, a settlement was reached among the parties in Docket No. U-23267. The settlement was approved by the Commission at the November 18, 1998 Business and Executive Session. The settlement – referred to as the Interim LOS Preservation Plan – created a fund to provide an interim and explicit subsidy to all ILECs with the exception of BellSouth Telecommunications, Inc. to support the provision of LOS.

The current level of funding through the Interim LOS Fund that is available to rural ILECs in support of their mandatory, statewide LOS offerings is approximately \$42.2 million annually. The settlement agreement reached among the parties excluded Competitive Local Exchange Carriers (“CLECs”), cellular/CMRS/PMRS providers and independent companies from contributing to the Interim LOS Fund. The Commission appointed a third-party administrator to oversee the mechanics of the fund (i.e. contributions to and disbursements from the fund). The Interim LOS Preservation Plan was designed to remain in effect until the earlier of the third anniversary date of the Plan or when the Federal Communications Commission (“the FCC”) issued its rules regarding universal service as it relates to rural telephone companies. At that time, under the provisions of the Plan, the Commission *may initiate a docket* to review the status of the Plan in order to determine if *any changes need to be made to the Plan*.

The events that trigger the review of the Interim LOS Preservation Plan provide the Commission with an opportunity to evaluate how the LOS calling plans should be treated in the context of universal service. In an appreciation of the relationship between the rural ILECs’ LOS offerings and the Commission’s defined universal service obligations, Staff submitted a list of preliminary issues and requests for comments in Docket No. U-20883, Subdocket C, Phase 1 on August 4, 2004.

A total of six parties submitted comments on August 24, 2004 in response to Staff’s request: AT&T, ITC^DeltaCom Communications, Inc. (“DeltaCom”), Cox Louisiana Telecom, LLC (“Cox Communications”), the Joint Wireless Carriers⁶, BellSouth Telecommunications, Inc. (“BellSouth”), and the Small Company Committee of the Louisiana Telecommunications Association (“Small Company Committee” or “SCC”). Based upon its analysis and the comments of the parties, Staff developed and

⁶ The Joint wireless carriers are comprised of Nextel, T-Mobile and Verizon Wireless.

issued a proposed set of recommendations on December 23, 2004. The parties to the proceeding were invited to respond to Staff's proposed recommendations with a second set of comments by January 25, 2005. AT&T, Sprint Communications Company, L.P. ("Sprint"), the Joint Wireless Carriers, BellSouth, and the Small Company Committee submitted comments on January 25, 2005 in response to Staff's Proposed Recommendation. In its final recommendation issued on March 11, 2005, Staff provided a summary of the positions taken by each party in both sets of comments is presented with respect to each issue. The Staff's Final Recommendation on each issue preceded the summary of the commenting parties' positions. A discussion of Staff's Final Recommendation, as well as the merits and shortcomings of the parties' positions was provided in the discussion of each issue.

JURISDICTION

The powers and duties of the Louisiana Public Service Commission are contained in Article IV § 21 of the Louisiana Constitution of 1974. As stated therein, the Commission has the authority to:

“regulate all common carriers and public utilities and has all other regulatory authority as provided by law. The Commission shall adopt and enforce reasonable rules, regulations and procedures which are necessary for the discharge of its duties including other powers and duties as provided by law.”

Pursuant to its constitutional authority, the Commission adopted the Local Competition Regulations referenced throughout this Recommendation. As stated in the Preamble to the Regulations,

The Commission imposes these Regulations for competition within local service areas in order to encourage competitive entry, **preserve and advance universal service**, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers while ensuring that the rates charged and services rendered by telecommunications services providers are just and reasonable. (Emphasis added.)

As previously stated herein, Section 501 of the Commission's Local Competition Regulations contains the definition of Universal Service and Provides as follows:

A. The Commission incorporates and restates herein the definition of Universal Service as adopted by the Commission in General Order dated May 22, 1995 and as amended herein:

The Commission hereby defines universal service to consist of the following:

1. Residential and single-line business access to the local exchange network, including usage and measured usage within the local service area.
2. Touchtone capability.
3. White page directory listing (residential and business).
4. Access to directory assistance (local).
5. Directory distribution (publication and distribution of at least one annual local directory).
6. Access to 911 service (where established by La. R.S. 45:791 et seq.).
7. Affordable line connection (for service initiation).
8. Access to long distance carriers and operator services.
9. Access to the telephone relay system.
10. Access to customer support services, including billing.
11. Access to a calling plan for a local service area sufficiently large to encompass a user's community of interest (but no greater than 40 miles).

B. The Commission hereby declares that the definition of universal service shall be subject to modification by the Commission as technology and customer needs change. Also, the Commission reserves the right to modify the definition of universal service as a result of any FCC and/or federal decrees, orders, or legislation.

While the Commission has to date not established a State Universal Service Fund, it is delegated the authority to do so pursuant to its Constitutional authority, and Section 254(f) of the 1996 Telecommunications Act⁷, which provides as follows:

“State Authority: A State may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.”

⁷ 47 USC § 254(f).

STAFF'S RECOMMENDATION

Following detailed review of the comments submitted by the parties to this proceeding, and consistent with its authority stated above, the Commission Staff issued a series of recommendations as contained in its Final Recommendation filed into the docket. Staff's individual recommendations were as follows:

1. Staff recommends that the current level of support -- \$42.2 million – received by the rural ILECs through the Interim LOS Preservation Fund should be converted to an explicit universal service support mechanism. The functionality and service characteristics of LOS fall squarely within the requirements defined in Section A.11. Thus, Staff recommends that the provision of the Commission-ordered LOS calling plans be treated as a component of a carrier's universal service obligations consistent with Section A.11.
2. Staff recommends that the level of support that the rural ILECs currently receive under the Interim LOS Preservation Plan should be continued as part of the SUSF in order to sustain the provision of statewide LOS.
3. Staff recommends that there is no need to adopt a different mechanism to disburse funds or change the level of support provided to each rural ILEC once the Commission establishes the SUSF. The current mechanism to disburse amounts from the Interim LOS Fund to the rural ILECs is on a per access line basis and should continue to be used as the disbursement mechanism for the SUSF.
4. Staff recommends that the Commission undertake a review of the need for a SUSF to support the provision of service under Section A.11. every three years. The contributions from the TSPs into the SUSF should be assessed annually.
5. Staff recommends that SUSF support pursuant to Section A.11. flow to any carrier on a per line basis provided the carrier offers LOS calling plans in compliance with the Commission-ordered functionality and terms of service, including retail rate regulation. Any recipient carrier should be designated as a Carrier of Last Resort by the Commission in order to become eligible to receive support from the SUSF.
6. Staff recommends that contributions to the SUSF be based upon the intrastate telecommunications end-user revenues of all TSPs providing service in Louisiana.
7. Staff recommends that all TSPs operating in Louisiana, including wireless carriers, contribute to the SUSF.
8. Staff recommends that each TSP contributing to the SUSF should be free to decide whether to explicitly recover the contribution through an end-user surcharge appearing on the monthly bill or to build the amount into the cost of the carrier's service offerings.
9. Staff recommends that the Commission adopt the same selection process, including the same qualification criteria, used to retain the third-party administrator of the Interim LOS Fund. The contract for administrative services should be for a three-year term consistent with Staff's recommended review period of the need for and the size of the fund. Staff further recommends that contributions to the SUSF be remitted by each TSP on a monthly basis. Disbursements to carriers should also be provided on a monthly basis.

COMMISSION'S CONSIDERATION

Staff's Final Recommendation was considered by the Commission at its March 23, 2005 Business and Executive Session. On motion of Commissioner Field, seconded by Commissioner Blossman, and unanimously adopted, the Commission voted to accept the Staff recommendation with the following additional provisions:

Provision No. 1 - The interim LOS preservation plan shall remain in effect until this Order becomes executory, final, and non-appealable. In lieu of Section 4 of the Staff recommendation insert "In order to ensure the timeliness of the LOS data, all TSPs who offer LOS shall file with the Commission Staff in April of each year confidential reports indicating the LOS penetration rates and minutes of use for the Company during the previous 12 months. The confidential report shall be made available subject to an appropriate non-disclosure agreement on an aggregate basis to any TSP requesting same. This information will allow the Commission upon notice in a hearing an applicant consideration of all relevant LOS cost of service factors to 1) Make adjustments to the State Universal Service Fund if the data indicates a material change in LOS penetration and on minutes of use, and 2) order an adjustment in the draw of any TSP that is experiencing material change in LOS penetration rates and on minutes of use. Adjustments ordered by the Commission shall occur within 30 days of the Commission's Order. However, if the amount of the adjustment is substantial the Commission may, in order to accommodate long-term business planning decisions, allow the TSP to implement the adjustment in phases over an additional time period not to exceed two years from the date of the Commission Order.

IT IS THEREFORE ORDERED THAT:

1. Staff's Final Recommendation, as attached hereto as "Attachment A" is adopted with the following modification: Section 4/Recommendation 4 shall be modified to read as follows: "In order to ensure the timeliness of the LOS data, all TSPs who offer LOS shall file with the Commission Staff in April of each year confidential reports indicating the LOS penetration rates and minutes of use for the Company during the previous 12 months. The confidential report shall be made available subject to an appropriate non-disclosure agreement on an aggregate basis to any TSP requesting same. This information will allow the Commission upon notice in a hearing an applicant consideration of all relevant LOS cost of service factors to 1) Make adjustments to the State Universal Service Fund if the data indicates a material change in LOS penetration and on minutes of use, and 2) order an adjustment in the draw of any TSP that is experiencing material change in LOS penetration rates and on minutes of use. Adjustments ordered by the Commission shall occur within 30 days of the Commission's Order. However, if the amount of the adjustment is substantial the Commission may,

in order to accommodate long-term business planning decisions, allow the TSP to implement the adjustment in phases over an additional time period not to exceed two years from the date of the Commission Order.

2. The interim LOS preservation plan established by Order U-23267 shall remain in effect until this Order becomes executory, final, and non-appealable.
3. This Order shall be effective immediately.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
April 29, 2005

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/S/ JAMES M. FIELD
DISTRICT II
VICE CHAIRMAN JAMES M. FIELD

/S/ JACK "JAY" A. BLOSSMAN
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