

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 22, 1999

COMMISSIONER PRESENT:

Leonard A. Weiss

CASE 94-C-0095 - Proceeding on the Motion of the Commission to
Examine Issues Related to the Continuing
Provision of Universal Service and to Develop a
Regulatory Framework for the Transition to
Competition in the Local Exchange Market.

ORDER APPROVING INTRALATA TOLL
DIALING PARITY PLANS
AND DIRECTING RELATED ACTIONS

(Issued and Effective June 22, 1999)

PROCEDURAL BACKGROUND

By an order issued September 27, 1995, the Commission established interconnection and inter-carrier compensation requirements to level the playing field during the transition to local exchange competition.^{1/} As part of these requirements, all local exchange carriers (LECs) were directed to provide intraLATA presubscription (ILP) plans.^{2/} LECs that did not previously meet this requirement were directed to file a plan with the Commission by December 26, 1995.

^{1/} Case 28425, Opinion 94-11; Opinion and Order Concerning IntraLATA Presubscription (issued April 4, 1994).

^{2/} IntraLATA presubscription (ILP) refers to equal access to competing interexchange carriers (IXCs) for InterLATA toll and inter-region regional calling plan (RCP) calls. ILP allows end users to designate a presubscribed carrier for intraLATA toll calls without having to dial an access code (10-10-XXX).

The Telecommunications Act of 1996 requires all local exchange companies to provide "dialing parity."^{1/} On August 8, 1996, the Federal Communications Commission (FCC) adopted an implementation schedule for local dialing parity that required all LECs to file intraLATA toll dialing parity plans with their respective state commissions by February 8, 1999.^{2/} However, on August 22, 1997, the United States Court of Appeals for the Eighth Circuit vacated the FCC's dialing parity rules that pertained to intrastate telecommunications traffic, holding that such rules exceeded the Commission's jurisdiction.

In its January 25, 1999 decision, the United States Supreme Court reversed the Eighth Circuit and subsequently reinstated the FCC's intraLATA dialing parity rules, including the February 8, 1999 deadline. As a result, the FCC recently waived the original implementation date and has directed those carriers without approved plans to file a plan by April 22, 1999 for evaluation and approval by state commissions. On April 13, 1999, the New York Public Service Commission (Commission) issued a Notice that all local exchange carriers that had not filed an

^{1/} Dialing parity is defined as the ability "to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier)." 47 U.S.C. Section 3(15). The Commission's intraLATA presubscription requirement is consistent with this definition.

^{2/} Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and order and Memorandum and Order. 11 FCC Rcd 19392 (1996). 47 C.F.R. Section 51.211. 47 U.S.C. section 271(e)(2) provides a different timetable for the Regional Bell Operating Companies, including New York Telephone d/b/a Bell Atlantic-New York.

intraLATA presubscription plan as required in the Commission's September 17, 1995 Order had to do so by April 22, 1999.^{1/}

ILP Plan Requirements

The FCC's Second Report and Order outlined intraLATA toll dialing parity requirements and included a general description of information to be provided in local exchange carrier dialing parity plans. The FCC directed that such plans must contain detailed information, including (1) the proposed date for dialing parity implementation for each exchange that the LEC operates in each state, (2) the method the LEC proposes to enable customers to select alternate providers of toll service, and (3) the LATA with which the LEC proposes to associate.

The FCC concluded that "dial-tone" providers should not be permitted to assign to themselves new customers who do not affirmatively choose a toll provider. Rather, when new customers establish local dial tone service and do not choose an intraLATA toll carrier, the customer will be assigned a "no PIC" designation (Primary Interexchange Carrier). If a customer has a "no PIC" designation, the end user must use an access code to route their intraLATA calls until the customer makes a permanent, affirmative selection.

The FCC established a "full 2-PIC" method as the minimum presubscription standard, which allows customers to presubscribe to the same or a different telecommunications carrier for interLATA and intraLATA toll calls.

In response to the Commission's September 27, 1995 Order and the Second Report and Order, thirty eight ILECs appearing in Appendix 1 presently offer ILP in New York and two do not. Of those not presently offering ILP, Citizens Telephone of Hammond recently filed a plan that anticipates ILP conversion

^{1/} Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Order dated March 23, 1999, requires a state commission to act on local exchange carrier intraLATA toll dialing parity implementation plans by June 22, 1999.

on July 15, 1999 and Fishers Island Telephone does not offer ILP because there is no toll calling within its LATA/Independent Marketing Area.

Nine competitive local exchange carriers (CLECs) included in Appendix 2 made the required ILP filings to the Commission in response to the above mentioned orders.

LECs Required to File New ILP Plans

One ILEC and twenty-three CLECs included in Appendix 3 submitted intraLATA toll dialing parity implementation plans for the Commission's evaluation and approval in conformance with the April 13, 1999 Notice. The submitted ILP plans contain varying degrees of detail and specificity; the plans substantially comply with the FCC's intraLATA toll dialing parity requirements.

Eight CLECs in Appendix 4 indicated that they already provide ILP in conformance with the FCC's intraLATA dialing parity requirements. Of those CLECs, five companies submitted ILP plans with their filing to the Commission.

Nine CLECs in Appendix 4 responded that they currently provide resold local exchange service and, therefore, rely on their underlying carrier to provide ILP. Those resellers further indicated, however, that should they initiate facilities-based telecommunications services they would file the required plan to provide ILP for Commission approval. Two resellers did file ILP implementation plans in anticipation of providing facilities-based local exchange service.

Twenty-one CLECs from the Local Exchange Routing Guide (LERG) and the Telecommunications Competition Monitoring Reports (TCMR) that offer significant local exchange service in New York that have not responded to the Commission's Notice to file ILP implementation plans. Those companies are listed in Appendix 5.

CONCLUSION

The Commission approves the intraLATA presubscription plans submitted by the incumbent local exchange carriers (ILECs) and the CLECs listed in Appendices 1 and 2, respectively, because

those plans have been previously submitted and those companies are providing ILP in conformance with the Commission's directives, subject to any modifications the Commission deems appropriate.

The Commission also approves the ILP implementation plans recently submitted by LECs listed in Appendix 3 because they substantially comply with the FCC's intraLATA toll dialing parity requirements, subject to any modifications that may be required in the future. Also, such plans that are developed in conformance with FCC and Commission directives and submitted to those regulatory commissions for approval will be implemented in accordance with dialing parity requirements. Additionally, the Commission may monitor compliance with ILP regulations and may follow up on any resulting consumer complaints.

With respect to the CLECs included in Appendix 4, eight indicate they are already providing ILP in conformance with FCC and Commission directives. For those CLECs that have not already submitted a plan to the Commission, such carriers should do so within 30 days from the issuance of this Order. Nine other resellers, who now rely on their underlying local exchange carrier for ILP, should file their own ILP implementation plans with the Commission should they implement facilities-based telecommunications service.

The CLECs listed in Appendix 5 must file ILP implementation plans with the Commission within 30 days from the issuance of the Commission's order. All carriers implementing ILP plans or who have plans currently in place must provide notification to their subscribers of the availability of toll dialing parity (including description and date of availability of ILP) by means of a letter, bill insert or other appropriate notice.

Competitive local exchange telecommunications companies first applying to the Commission for a Certificate of Public Convenience and Necessity (CPCN) to operate in New York must submit an acceptable ILP implementation plan with their application for a CPCN. Such plans will be reviewed for

compliance with applicable FCC and Commission requirements in the context of the application review.

Prompt action in this matter is required and an emergency measure under State Administrative Procedure Act (SAPA) section 202(6) is necessary for the preservation of the general welfare of residents of New York State since New York customers can preselect any provider of telephone exchange service or telephone toll service without having to dial extra digits to route a call to that carrier's network. Accordingly, compliance with additional notice and comment provisions of SAPA section 202(1) would be contrary to the public interest.

It is ordered:

1. The intraLATA presubscription implementation plans submitted by the carriers listed in Appendices 1, 2 and 3 are approved.

2. The Competitive Local Exchange Carriers listed in Appendices 4 and 5 shall file intraLATA presubscription implementation plans with the Commission within thirty (30) days from the issuance of this Order unless carriers have already submitted such plans to the Commission and such plans must be implemented within 30 days of approval by the Commission.

3. All Local Exchange Carriers implementing intraLATA presubscription implementation plans or already providing intraLATA presubscription shall provide notification within sixty days (60) from the issuance of this Order to their subscribers of the availability of toll dialing parity (including description and date of availability of ILP) by means of a letter, bill insert or other appropriate notice or submit evidence indicating that such notice has already been provided.

4. Local exchange telecommunications corporations first applying to the Commission for a Certificate of Public Convenience and Necessity (CPCN) to operate in New York as a facilities-based carrier must submit an acceptable intraLATA presubscription implementation plan with their application for such a certificate.

5. This Order is adopted on an emergency basis pursuant to State Administrative Procedure Act Section 202(6).

6. This proceeding is continued.

(SIGNED)

Commissioner

Incumbent LEC (ILEC) ILP Implementation pursuant to the Second Report and Order and Memorandum, Opinion and Order adopted August 8, 1996 in FCC Docket 96-98 or PSC Order in Case 94-C-0095 adopted September 27, 1995:

<u>Company</u>	<u>Implementation Date</u>
ALLTEL	3/01/97
Armstrong	7/01/97
Berkshire	7/01/97
Cassadaga	6/16/97
Champlain	7/01/97
Chautauqua and Erie	4/01/97
Chazy & Westport	7/01/97
Citizens of Hammond	No ILP
Citizens Utilities	1/01/96
Crown Point	7/01/97
Delhi	7/01/97
Deposit	7/01/97
Dunkirk & Fredonia	6/16/97
Edwards	9/01/97
Empire	7/01/97
Fishers Island	No IntraLATA Toll
Frontier - Ausable	5/01/97
Frontier - New York	5/01/97
Frontier - Rochester	1/02/96
Frontier - Seneca-Gorham	5/01/97
Frontier - Sylvan Lake	5/01/97
Germantown	7/01/97
Hancock	7/01/97
Margaretville	7/01/97
Middleburgh	7/01/97
Newport	7/18/97
Nicholville	7/01/97
New York Telephone	9/23/96
Ogden	7/01/97
Oneida County Rural	7/01/97
Ontario	7/01/97
Oriskany Falls	1/01/96
Pattersonville	7/01/97
Port Byron	6/01/96
State	7/01/97
Taconic	4/01/97
Township	7/01/97
Trumansburg Home	7/01/97
Vernon	7/01/97
Warwick Valley	1/01/97

CLECs that filed ILP Plans in response to the September 27, 1995
Commission Order in Case 94-C-0095:

Cablevision Lightpath, Inc.
MFS Telecom
Metropolitan Fiber systems of New York
MFS Intelnet of New York
MFS Telephone of New York
RCN
Teleport Communications Group
Teligent
Time Warner

LECS that filed ILP plans in response to the Commission's
April 13, 1999 Notice:

ILECs: Citizens Telephone of Hammond

CLECs: Adelphia Telecommunications, Inc.
 AlexisCom, Inc.
 Allegiance Telecom of New York, Inc.
 AT&T's Digital Link Service
 Choice One Communications of New York, Inc.
 CTC Communications, Inc.
 CTSI, Inc.
 ACSI Local Switched Services d/b/a e.spire
 Focal Communications Corp. of New York
 Global NAPs, Inc.
 Hyperion Telecommunications. Inc.
 Intermedia Communications, Inc.
 International Telecom, Ltd.
 Net2000 Communications Services, Inc.
 Network Plus, Inc.
 NEXTLINK New York, Inc.
 ADVAMTEL, LLC d/b/a Plan B Communications, Inc.
 Prism N.Y. Operations, LLC (formerly Transwire)
 Teleport Communications Group
 Telignet, Inc.
 Time Warner Telecom, Inc.
 Time Warner Rescom - New York, L.P.
 WinStar Wireless of New York, LLC

CLECS that responded to the Commission's April 13, 1999 Notice that already provide ILP or provide resold local exchange service and rely on their underlying carrier to provide ILP:

Already Provide ILP:

Allegiance Telecom of New York, Inc.
Brooks Fiber Communications of New York, Inc.
FairPoint Communications Corp.
Intermedia Communications, Inc.
MCImetro Access Transmission Services, Inc.
Teligent, Inc.
Time Warner Telecom, Inc.
Time Warner Rescom - New York, L.P.

Resellers that rely on
Underlying Carrier for ILP:

American Network, Inc.
Eagle Communications, Inc.
LCI Inter.Telecom Corp. d/b/a Qwest Comm. Svcs.
Net2000 Communications Services, Inc.
Network Plus, Inc.
Onsite Access Local, LLC
Preferred Carrier Services Inc.
ADVAMTEL, LLC d/b/a Plan B Communications, Inc.
Telergy

CLECs that have NOT filed ILP Plans with the Commission

ACC National Telecom
ARC Networks
Business Long Distance, Inc.
Cable and Wireless
Community Telephone
CoreComm, Inc. (formerly USN Communications)
Essex Communications
Frontier Communication's International
Frontier Telemanagement
Frontier Local Services
LDM Systems, Inc.
McGraw Communications
Megatel Corporation
Metcom Access, Inc.
Metropolitan Communications d/b/a Met Tel
Northland Networks
Omniplex Communications Group LLC
Public Interest Network Services, Inc.
Sprint Communications
Telecon Communications
Timely Information Corporation