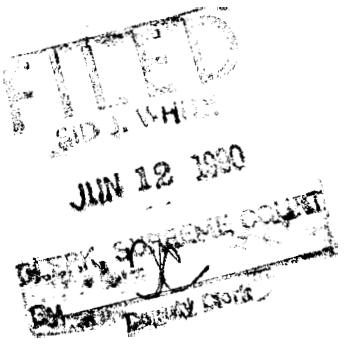
IN THE SUPREME COURT OF FLORIDA



INTERNATIONAL TELECHARGE, INC., Appellant,	)	
vs.	)	Case No. 75,282
FLORIDA PUBLIC SERVICE COMMISSION, Appellee.	)	

On Appeal From Order No. 20489 of
The Florida Public Service Commission

ANSWER BRIEF OF RESPONDENT
SOUTHERN BELL TELEPHONE & TELEGRAPH COMPANY
AS A PARTY OF RECORD IN THE PROCEEDINGS BELOW

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PRELIMINARY MATTERS

Southern Bell and Telegraph Company filed its Petition for Leave to Intervene in the proceedings below on March 10, 1988 [A at 13, which Motion was granted by Order of the Florida Public Service Commission in its Order Authorizing Intervention, dated April 28, 1988 [A at 4]. Pursuant to §350.128(3), Fla. Stat. (1989), Southern Bell Telephone and Telegraph Company, as a party who entered an appearance of record in the proceedings below before the Florida Public Service Commission, herewith files with this Court its Answer Brief in support of its interests in this appeal.

Appellant, International Telecharge, Inc., is referred to in this brief as **"Appellant."** Respondent, Southern Bell Telephone & Telegraph Company, is referred to as "Southern Bell." Appellee, Florida Public Service Commission, is referred to as the "Commission."

Pursuant to Florida Rule of Appellate Procedure **9.220**, this Answer Brief is accompanied by an appendix. References to Southern Bell's appendix appear as **"[A** at _____]." References to the hearing transcript are designated "[T at ____]." References to Appellant's initial brief appear as "[AB at ____]."

SUMMARY OF ARGUMENT

The Commission's decision to continue its long standing and well-established policy requiring that all 0+ and 0- intraLATA traffic be exclusively reserved to the local exchange company ("LEC"), and to apply that policy to AOS providers to the same extent and in the same manner as it has been applied to other interexchange carriers ("IXCs") providing service within the state of Florida, is within the discretion of the Commission, is properly supported by substantial competent evidence in the proceeding below and does not unlawfully discriminate against AOS providers.

Contrary to Appellant's argument that the Commission's decision to retain its existing 0+ and 0- routing requirements is "based on policy assumptions that lack evidentiary support," the Commission's decision in this regard is based on clear and long-standing Commission rules that have been enunciated repeatedly by the Commission in numerous proceedings over the past six years, and which have twice been considered and upheld by this Court. Appellant's attempts to show that the Commission's stated policy reserving 0+ and 0- intraLATA calls to the LECs either does not exist or should be distinguished are all without merit.

Appellant's arguments that the Commission's application of its existing policy to AOS providers is discriminatory,

results in invidious differential treatment of similarly situated parties and is anticompetitive are untrue and irrelevant. The record below would not have supported a decision to allow AOS providers to provide local exchange service and this Court has previously approved the imposition of reasonable interim limits on competition in order to protect the public interest and assure an orderly transition to a competitive marketplace in the telecommunications area. The Commission's decision to maintain its existing policies pending their further review in other pending dockets where such policies can be reviewed in their larger context is a proper and permissible exercise of the Commission's regulatory authority.

The substantial record evidence developed in the proceedings below supports the Commission's decision to continue to reserve the routing of 0+ and 0- calls to the LECs. In particular, the record shows that AOS providers are, in many instances, not capable of providing the kinds of services - including emergency services - which end user callers within the state of Florida expect when dialing 0+ and 0- in order to access the local telecommunications network. All of this evidence strongly supports the Commission's decision in the proceeding below that it is not in the public interest to require the transient public to go first through an AOS operator in order to reach the LEC

operators by changing the Commission's previously mandated 0+ and 0- intraLATA routing procedure which is well accepted, understood and expected by the general public.

ARGUMENT

I. THE COMMISSION'S DECISION TO MAINTAIN ITS POLICY THAT ALL 0+ AND 0- INTRALATA TRAFFIC BE EXCLUSIVELY RESERVED TO THE LEC IS WITHIN THE DISCRETION OF THE COMMISSION, IS PROPERLY SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE IN THE PROCEEDINGS BELOW AND DOES NOT UNLAWFULLY DISCRIMINATE AGAINST AOS PROVIDERS.

A. The Commission's existing policy on the routing of intraLATA 0+ traffic is clear and applies to all IXCs, including AOS providers.

In Section IV(a) of Appellant's initial brief filed with this Court [AB at p. 39], Appellant asserts that there is "no basis" for the Commission's requirement that all 0+ intraLATA traffic be exclusively reserved to the LEC. Appellant argues further that the Commission's Order No. 22243 somehow draws an "unfair distinction" between ordinary residential and business customers and the AOS provider's clients - hotels, motels, hospitals, universities and pay telephone owners - in the use of autodialers to transmit intraLATA calls. Each of the arguments made by Appellant is without merit.

In the first instance, it should be recognized that the Commission itself is undoubtedly the primary authority as to what its policies are, and the Court should give great

deference to the Commission's interpretation of its prior orders absent a substantial showing by the party seeking to challenge the Commission's interpretation. See, e.g., Storrs v. Pensacola & A.R. Co., 29 Fla. 617, 11 So. 226 (1892); Wilson v. Pest Control Company, 199 So.2d 777 (Fla. 4th DCA 1967); see also, §120.68(12), Fla. Stat. (1989). In this case, Appellant has failed to make such a showing. The issue of whether 0+ intraLATA traffic should be reserved to the LEC has been considered numerous times in various dockets by the Commission in the past. In each and every case, the Commission has strongly and unequivocally reaffirmed its continuing commitment to its prior policy of reserving 0+ traffic to the LEC.

The Commission first specifically considered the issue of carriage of 0+ intraLATA and inter-EAEA traffic in Order No. 13912, issued December 11, 1984, disposing of Petitions for Reconsideration and Clarification of Commission Order 13750, in which the Commission had established Toll Monopoly Areas ("TMAs") and Equal Access Exchange Areas ("EAEAs"). In this Order, the Commission unequivocally stated as follows:

> AT&T-C requests clarification of the order [no. 137501 as it relates to the carriage of intraLATA inter-EAEA traffic. Our intent in this Order and in previous ones is for the LEC to be the carrier of all intraLATA 1+ and 0+ traffic.

Order No. **13912** at **3** (emphasis added) [A at **23**]. It is difficult to imagine a more clear and unequivocal statement of policy by the Commission on the exact point presently being challenged by Appellant before this Court. In fact, one AOS provider's witness admitted that the "plain meaning" of the language cited is that all 0+ traffic is reserved for the LEC (T at **89**).

The Commission has repeatedly reaffirmed this clearly stated policy in subsequent dockets. Thus, in Order No. **14621**, issued July **23, 1985**, the Commission reaffirmed its existing policy as follows:

> . . . As stated previously, we have determined that for intraLATA calls, the LECs shall carry 1+ and 0+ traffic.
>
> * * *
>
> In Order No. **13912**, in Docket **No. 820537-**TP, we stated that **"the** LEC is to be the carrier of all intraLATA 1+ and 0+ **traffic."** While there is apparently some confusion about whether we intended that the reservation of 1+ and 0+ to the LEC for intraLATA traffic applied to OUTWATS as well as MTS, we believe that 1+ and 0+ dialing is appropriately reserved to the LEC for all intraLATA traffic, both MTS and OUTWATS.

Order No. **14621** at **6; 11-12** [A at **40; 45-46**]. This policy was again reaffirmed in Order No. **16343** issued on July **14, 1986**, wherein the Commission re-examined and extended the existence of TMAs and EAEAs. The consistency with which

these policies have been enunciated and applied by the Commission over the years lends strong credence to the Commission's finding as to the existence and scope of these policies in the proceeding below.

B. Appellant's attempts to distinguish the Commission's prior policies as not applicable to AOS providers are without merit.

In the teeth of these unequivocal prior pronouncements of the Commission, the Appellant tries to construe the Commission's previous orders in such a way as to show that the Commission's policy has never applied to AOS providers and to argue, on that basis, that the Commission's present attempt to apply that policy to AOS providers under the guise of simply extending existing policy, "confirms that such policy is patently arbitrary." [AB at 41]. In this regard, the Appellant's argument is simply without merit.

The first leg of Appellant's argument asserts that Order No. 13912 only prohibits an IXC from handling "presubscribed" 1+ and 0+ intraLATA traffic. In that Order, after unequivocally stating that the LEC is to be "the carrier of all intraLATA 1+ and 0+ traffic," the Commission goes on to state that this policy applies "notwithstanding our definition of equal access which requires that presubscription be available." (emphasis added) [A at 23]. Having twice emphasized the point, the Commission reiterates:

> This definition [of equal access] should be interpreted to mean that customers in an EAEA would be able to presubscribe to an IXC for interLATA and interstate traffic, but not for intraLATA, inter-EAEA traffic.

Order No. 13912 at 3. [A at 23]. Based on this language, Appellant apparently makes the leap of logic asserted in its brief that, since this language only specifically refers to the elimination of the availability of presubscription for intraLATA, inter-EAEA traffic, Order No. 13912, therefore, **"only"** prohibits an IXC from "handling" presubscribed 1+ and 0+ intraLATA traffic. [AB at 40]. Nothing could be further from the truth. The import of this statement is not that it prohibits the IXC from "handling" presubscribed 1+ and 0+ intraLATA traffic; rather, it is that it prohibits the existence of presubscribed 1+ and 0+ intraLATA traffic (which, of course, also has the effect of preventing an IXC from handling such traffic). Accordingly, Appellant's argument is totally wrong and its intended inference - that there is some class of intraLATA toll traffic (i.e., **"nonpresubscribed"** 1+ and 0+) which IXCs have always been allowed to carry - is clearly incorrect.

Since it is clear then that nonpresubscribed intraLATA inter-EAEA traffic is **all that can exist** under the Commission's orders, the Commission's prior determination in

Order No. 13750 that "the LECs shall generally have toll transmission monopolies in EAEA's," together with its strong emphasis in Order No. 13912 that "all intraLATA 1+ and 0+ traffic" be reserved to the LEC, makes it evident that these orders establish a clear policy that all 1+ and 0+ traffic is to be carried by the LEC, without regard to the concept of presubscription.

Having discredited the argument that there exists some class of intraLATA toll traffic which IXCs have always been permitted to carry, the remainder of Appellant's arguments as to why the Commission's 0+ restrictions do not apply to them are rendered moot. However, even if considered on their own, these arguments also lack merit.

For example, in the second portion of its argument, Appellant argues that in Order No. 14621, the Commission has approved the use of access codes to reach the IXC directly without using LEC facilities for the completion of intraLATA 0+ calls. What Appellant fails to point out is that this alleged approval by the Commission of direct access-code based access to the IXC on which Appellant *so* heavily relies was given solely in the context of the consideration of a statewide WATS offering, an area expressly made competitive and excluded from the TMAs and EAEAs established by the Commission in Order No. 13750. [A at 11]. Since the

Commission established EAEA toll competition in the WATS and MTS resale area in its original order, it is neither surprising nor probative of the issues on appeal in this case that the Commission has permitted the use of access codes to access directly the IXC in the context of a tariff-approved WATS offering. This is no different than permitting such direct access code dial up of the IXC in another area excluded from the LEC toll monopoly area - the interLATA market - and is just as irrelevant.

Consequently, it is clear that the second leg of Appellant's argument fails because the Commission's approval of access code dialing in Order No. 14621 is limited to the already competitive WATS area and does not stand for the broad proposition that Appellant contends (i.e., that nonpresubscribed access code dialing has always been permitted to circumvent the LEC toll monopoly areas). If this were true, the entire concept of toll monopoly areas established by the Commission would be a nullity.

Lastly, Appellant attempts to justify the use of an autodialer to override the 0+ dialing of the end user and convert an otherwise garden variety 0+ call into an access code dialed call routed through the AOS provider and not the LEC. In support of its argument, Appellant states that the Commission has "specifically determined that it would not

regulate the provision of such autodialing equipment in the competitive marketplace." [AB at 41]. As authority for this proposition, Appellant cites Commission Order 13364, issued June 1, 1984, in connection with In re: Revisions to Americall LDC, Inc's Tariff to Include Special Equipment, Docket No. 840151-TI. Order No. 13364, it should be noted, was issued by the Commission over five (5) months prior to the initial establishment of TMAs and EAEAs in Order No. 13750. Consequently, based on hornbook principles of construction, the Commission's later pronouncements would govern. Moreover, the order cited simply declines to require "the tariffing of devices" such as automatic dialers in connection with their sale by resellers. Certainly this order does not stand for the sweeping proposition which the Appellant has asserted: that the Commission has approved the use or deployment of automatic dialers to circumvent or defeat established Commission policies regarding the routing of 0+ calls. In fact, the AOS providers' erroneous views in this area is precisely the reason that, in connection with its determination of whether the provision of alternative operator services was in the public interest, the Commission felt the need to reaffirm its long-standing policy that 0+ traffic is exclusively reserved to the LEC.

In summary, in support of Appellant's argument that the

Commission's action in applying its long-standing 0+ routing restrictions to AOS providers is "patently arbitrary," Appellant relies on a legally nonexistent form of intraLATA traffic, an inapplicable direct access code dialing authority, and a tariff decision that predates every Commission order bearing on these issues and which is, in any event, irrelevant. Viewed in this context, it is clear that Appellant's argument in this appeal must fail.

C. The Commission's decision to continue its policy of exclusively reserving 0+ traffic to the LECs does not discriminate among similarly situated parties.

With regard to the Appellant's final argument on appeal of the Commission's 0+ intraLATA routing restrictions, Appellant argues that the Commission has somehow created an "unfair distinction in the use of autodialers to transmit intraLATA calls" between residential and business customers and the hotels, motels, hospitals, universities and pay phone owners who are the AOS provider's clients. [AB at 42]. It does not appear from a review of the record below that Appellant has previously raised this argument, and on that ground alone the argument should be rejected. Bonded Transportation, Inc. v. Lee, 336 So.2d 1132 (Fla. 1976); Wvrembek v. Frey, 231 So.2d 222 (Fla. 4th DCA 1970).

However, even if considered, the Court need not tarry long over this argument since the resolution is simple: To

the extent that the Commission's rules limit, indirectly, the actions of a hotel, motel, hospital or university served by an AOS provider, that is of no legal consequence. In any event, the limitations established by the Commission in its order below on the AOS provider's services will apply equally as well regardless of whether those services are being given on behalf of the hotels, motels, hospitals or universities who are the AOS provider's current clients, or to residential or business customers who use autodialers, and may, in the future, become AOS provider's clients; therefore, no differing treatment exists. The same is true when one compares the situation of the AOS provider's clients directly to that of business and residential customers. The Commission, in Order No. 20489, expressly declined to assert jurisdiction over telephone charges imposed by the hospitality industry, and therefore the Commission's Orders in the proceeding below do not restrict the owners of a hotel, motel, hospital or university from using autodialers for their own account to any greater or lesser extent than it does general residential or business customers. Furthermore, even if a difference in regulatory treatment did exist, it would be reasonable and appropriate. An end user who chooses to use an autodialer on his own telephone line has made the concious and knowing decision to do so. The user of an AOS provider's service to place a 0+ intraLATA call expects that

the appropriate LECs operators and facilities will handle that call, not that the call will be routed in some other fashion. Viewed in this light, it is abundantly clear that there is no differing treatment between similarly situated parties and therefore no colorable claim of a violation of equal protection.

Pay phone owners, on the other hand, are subject directly to the jurisdiction of the Commission to the same extent as are AOS providers, and under Commission Orders No. **20129** and **20610** are, to the same extent as AOS provider's and other IXCs, subject to the Commission's limitations on intraLATA 0+ and 0- routing. Thus, again, the argument that there exists some differential treatment lacks any factual or legal basis.

D. The Commission's continuation of its existing policy on the routing of intraLATA 0- traffic is supported by substantial competent evidence in the record and does not discriminate against AOS providers.

As stated in the Appellant's brief, both Order No. **20489** and **22243** found that, consistent with long-standing Commission policy, all 0- traffic must be routed to the LEC. In support of its argument that this decision is unsupported by competent substantial evidence, the Appellant ignores massive portions of the record in the proceeding below by

simply concluding that "the primary reason for [the Commission's decision to route 0- calls to the LEC] is that routing of 0- calls to the LEC is consistent with the North American Numbering Plan, which the PSC has endorsed." [AB at 42]. With this broad brush, the Appellant seeks to evaporate the very substantial, and numerous, other bases, clearly supported in the record, on which the Commission grounded its decision to continue routing 0- calls to the LEC.

Just as in the case of 0+ traffic routing discussed earlier in this brief, this requirement is simply a continuation of the Commission's long-standing policy with regard to the routing of 0- traffic. Order No. 14454, issued on June 10, 1985, in Docket Nos. 820537-TP, 840380-TI, 830285-TP, and 840364-TI, clearly reflects the Commission's original rationale for requiring 0- routing to the LECs, saying:

> It is this Commission's determination that alternative methods of meeting the free emergency access requirement, where the 911 emergency number is not available, should only be permitted when such alternatives are provided in addition to the ability to access the toll operator by dialing 0 free of charge and without the need to deposit a coin, card, or token . . . We do not feel it is in the public interest for us to approve the deviation from practices and procedures for assistance in emergencies which are now universally understood and accepted.

Order No. 14454 at 3 (emphasis added) [A at 30]. In determining to retain its existing policy regarding 0- routing of intraLATA traffic, the Commission considered many factors. It found, for example, that "emergency interrupt and verification services are only provided by the LEC operators." Further, some operator services which are performed by all LEC operators are offered only by some AOS providers. [T at 741]. Services using telecommunication devices for the deaf is an example of this type service. LECs are required to provide such service, while only one AOS provider indicated that it provided such service, and that AOS provider indicated that it was a service "just recently embarked on." (T at 728). End users desiring these type services, which are not universally offered by AOS providers, should not be required to go first to an AOS provider before being able to use these services. On this basis, the Commission clearly found in its Order that:

> We believe the public interest is far better served if an end user is able to obtain the full range of operator services offered by the LEC operators without having to first go through an AOS operator.

Order No. 20489, p. 12. In addition, the Commission found in its Order that there is substantial technical difficulty and customer inconvenience involved in the AOS provider's attempt to return 0- calls to the LEC. Thus, the Commission again clearly stated in its Order No. 20489 that:

> Many of the AOS providers rely on a procedure known as **"splash-back"** which creates a loud tone on the line as the call is "splashed-back" to the LEC. The record establishes that this method is unreliable, time-consuming and annoying to the end user. An end user should not have to rely on such a system to reach a LEC operator. The only way to reach a LEC operator is through zero, since LECs can not be accessed through a **10XXX** code, **a 950** number, or an **800** number, and that method should not be jeopardized.

Order No. **20489** at **12.** Thus, it can be readily seen that the entire record supported the Commission's decision to confirm its long standing policy resewing 0- calls to the LEC. The Appellant's argument, predicated on the notion that the Commission simply adopted some theoretical numbering plan in the absence of substantial competent evidence, is totally without merit.

As to the argument that the Commission's decision to reserve 0- traffic to the LECs somehow ensconses AT&T as the dominant carrier in the interexchange market, such is not the case.[1] Order No. **20489** clearly specifies "that the LEC shall

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[1] While Southern Bell does not believe that it is particularly relevant to the issues pending in this appeal, recognizing that Southern Bell is the only party subject to the requirement, some response should perhaps be made to Appellant's repeated, unsupported and wholly conclusory assertion that the Commission's decision violates the Modified Final Judgement (the "MFJ") established in the case of United States v. AT&T, **552** F. Supp. **131** (D.D.C **1982).** The history and application of the equal access requirements of the MFJ is long and complex, and it is not necessary to delve too deeply into that in order to refute Appellant's allegations. We think we need go no further than to quote the recent Opinion of the District Court, issued May **8, 1990,** at p. **12,** wherein the District Court states unequivocally

take the local inquiry and service calls, as well as the intraLATA calls, but shall return the interLATA calls to the presubscribed phone being used to make the call." Order No. 20489 at 11. Therefore, the plan established by the Commission does not "ensconse" any particular IXC, but merely continues, in the public interest, the reservation of 0+ and 0- intraLATA calls to the LECs as has been the case since Order No. 13750 in 1984.

Even the Appellant concedes that the testimony presented below establishes that the most efficient and simple plan is to allow one operator to handle all calls [AB at 45]. What the Appellant is really asking this Court to do is to reweigh the evidence on appeal, give greater credence to their experts than those of their opponents, and substitute the Court's judgement in lieu of the Commission's. Such a ruling would be inappropriate. See, AT&T Communications, Inc. v. Marks, 515 So.2d 741, 745 (Fla. 1987) (hereinafter referred to as "AT&T Communications"). The substantial evidence of

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that ". . . BellSouth . . . [is] in full compliance with the equal access provisions of the decree, and nothing further need be done," [A at 103] to show that Appellant's arguments in this area are baseless. In addition, the Opinion contains a worthwhile discussion, in the pay telephone context, of the inherent technological difficulties which have hampered the full implementation of equal access with regard to transient end users, the fact that allowing premesis owners to select the IXC is only an interim solution, and the continuing efforts that are being made to develop the necessary capabilities to allow the transient public to reach their chosen IXC from any telephone. [A at 109-1181.

record below showed the limitations in the technical capabilities of the AOS providers in the areas of call verification and interruption, telecommunications services to the deaf, emergency **911** services, problems with "splash back", etc., as well as the disturbing variation in capabilities among the AOS providers. When these are viewed against the requirement that the LECs provide universal, ubiquitous service under comprehensive Commission regulation and regular supervision - a requirement which is neither imposed on (nor could be complied with by) AOS providers - the Commission's decision that the public interest is far better served if the end user is first able to obtain the full range of operator services offered by the LEC cannot be deemed anything other than reasoned, fully supported by the record and within the proper discretion of the Commission. Therefore, Appellant's appeal should be rejected by this Court.

E. Florida statutes and the prior decisions of this Court authorize the imposition of restrictions on competition in the public interest and in order to assure an orderly transition to a competitive market.

Based upon the foregoing, it is clear that the Appellant's arguments as to why the Commission's long-standing policy on 0+ and 0- dialing does not exist or does not apply to them are without merit, and on this ground alone

Appellant's appeal should be rejected. However, some response should be made to Appellant's repeated assertion that the Commission's decision is **"anticompetitive"** and therefore, somehow, wrongful.

In the first instance, it should be recognized that the imposition of some restrictions on unbridled competition are permitted in the public interest. As this Court recognized in AT&T Communications, supra. at **744,** Florida law does not "require the sudden and unconditional injection of competition . . . without regard to the chaos that thereby might ensue." Some competitive restrictions are inherent in the establishment of local monopoly service, and certainly the preservation, in the public interest, of the financial security of the LECs was and is a major consideration in the original establishment of TMAs and EAEAs in Order Nos. **13750** and **13912.** Moreover, as this Court recognized in AT&T Communications, supra. at **743,** the Florida legislature has also recognized that the preservation of a local exchange company's franchise is an important public interest consideration. Thus, §364.335(4), Fla. Stat. (1989) provides:

> The commission shall not grant a certificate for a proposed telephone company, or for the extension of an existing telephone company, which will be in competition with or duplicate the local exchange services provided by any other telephone company unless it first determines that the existing facilities are inadequate to meet the reasonable needs of the public and it first amends

> the certificate of such other telephone company to remove the basis for competition or duplication of services.

The record below clearly shows that any change in the Commission's 0+ and 0- policy would likely result in an adverse impact on LEC revenues (T at pp. 1039-1042). Moreover, no AOS provider in the proceeding below even attempted to demonstrate that the service presently provided by any LEC, particularly Southern Bell, is inadequate. Consequently, under §364.335(4), Fla. Stat. (1989), not only was the Commission's decision in the proceeding below correct on the merits of its public interest determination, but the record in the proceeding below does not contain substantial competent evidence which would even allow the Commission to have opened 0+ and 0- intraLATA traffic to the AOS providers. The provision of local operator assistance is the provision of local exchange service, and, as such, it is part and parcel of the package of services which Southern Bell, and the other LECs, are solely authorized under Florida law to provide in their service territories. The law is abundantly clear under §364.335(4), Fla. Stat. (1989), that in order to obtain the authority to compete with a company holding a certificate of public convenience and necessity, the party seeking to provide competitive service must clearly demonstrate that the service provided by the certificated

provider is inadequate. The record below is inadequate to have even authorized the Commission to allow competition in the provision of local exchange telephone service.

Secondly, this Court, in its previous rulings on the establishment of TMAs, EAEAs and the 1+ and 0+ routing restrictions, has clearly established the principle that the imposition of reasonable interim limits on competition in order to protect the public interest and assure an orderly transition to a competitive marketplace, are permissible. In Order No. 20489, the Commission clearly stated that, both with respect to its determination that "AOS providers shall route all zero plus (0+) intraLATA or intermarket calls to the LEC," as well as its decision that "all zero minus (0-) traffic shall be routed to the LEC," will be considered on a generic basis in connection with the Commission's "pending investigation into EAEAs, TMAs, 1+ restriction to the LECs and elimination of the access discount in Docket No. 880812-TP." Thus, the Commission's decision to maintain its current policy and to apply that policy to AOS providers in the same manner and to the same extent as other IXCs within the state of Florida, falls squarely within the rationale used by this Court in the case of Microtel, Inc. V. Florida Public Service Commission, et al., 483 So.2d 415 (Fla. 1986) (hereinafter referred to as "Microtel"). In Microtel, the Court approved the Commission's establishment of an "orderly transition to

full competition" through the use of an "interim plan" which is a "well reasoned and carefully crafted response . . . to the legislative direction [of establishing competition in intrastate long distance telephone service] and to the public interest." Microtel at 418-419.

Specifically, in this proceeding, the issue before the Commission was whether it was in the public interest to permit the provision of alternative operator services. The essence of the Commission's decision in Order 20489 is that for a limited interim period, pending full review of the matter in Docket No. 880812-TP, it is not presently in the public interest to permit AOS providers to carry 0+ and 0- intraLATA, inter-EAEA traffic. The AOS industry is a new development [T at 35]. Based on Microtel and the subsequent opinions of this Court in U.S. Sprint Communications Company v. Marks, 509 So. 2d 1107 (Fla. 1987) and AT&T Communications, supra., it is clear that the Commission has the discretion to maintain and establish reasonable interim limits on competition in order to assure the orderly transition to full competition in new markets. As this Court clearly stated in Microtel, Florida law does not "require instant, unlimited competition in all . . . services." Microtel at 418-419. As such, the Commission's decision in the proceeding below is further supportable as a reasoned

interim restriction, established in the public interest, in order to maintain an orderly transition to full competition in this area.

CONCLUSION

The Commission opened the docket in the proceeding below in response to a growing number of consumer complaints regarding excessive pricing, lack of notice and the inability of end users to be able to access their preferred long distance carrier from hotels, motels, hospitals and privately - owned pay telephones. The record below supports the Commission's decision to continue to reserve the routing of 0+ and 0- calls to the LECs. The Appellant's various efforts to show either that the Commission's long-standing policy either does not exist or should be distinguished are totally without merit. Appellant's claims of differential treatment and anti-competitive effects of the Commission's orders in the proceeding below are both untrue and irrelevant.

In the final analysis, what the Appellant is asking this Court to do is to substitute its judgement for the Commission's and upset the long-standing expectations of the public with regard to 0+ and 0- dialing. The Commission's decisions in Order No. **20489** and **22243** rejected this effort as contrary to the public interest, and we respectfully submit that this Court should do the same and affirm the Commission's decisions in Order Nos. **20489** and **22243** to reserve the routing of intraLATA, inter-EAEA 0+ and 0- traffic exclusively to the LEC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by United States mail this 12th day of June, 1990 to:

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