IN THE SUPREME COURT OF FLORIDA

McCAW COMMUNICATIONS OF FLORIDA, INC.

appellant,

v.

SUSAN F. CLARK, etc., et al.

appellees.

Case No. 86,866

Public Service Comm'n
Docket No. 940235-TL

ANSWER BRIEF OF INTERESTED PARTY BELLSOUTH TELECOMMUNICATIONS, INC.

MAHONEY ADAMS & CRISER, P.A.
William W. Deem
Florida Bar No. 512834
3300 Barnett Center
P.O. Box 4099
Jacksonville, FL 32201-4099
(904) 354-1100
(fax) 798-2697

COUNSEL FOR BELLSOUTH TELECOMMUNICATIONS, INC.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

II. Statutes **Page(s)**

INTRODUCTORY STATEMENT

This appeal involves a windfall created by circumstances changed over time, and a single company's effort to frustrate the orderly regulation of an entire industry in order to retain that windfall. For the reasons set forth below, this appeal is not well taken. The order on appeal should be affirmed.

The Florida Public Service Commission (the "Commission") is responsible for regulating the provision of telecommunications services in Florida. The Commission's ultimate benchmark is a public interest standard which requires ensuring reliable service at affordable rates, and promoting the development of additional products and services as technology progresses. See e.g. § 364.01, FLA. STAT. (1995). This is an incredibly complex task but one to which the Commission is uniquely suited by virtue of its regulatory and telecommunications expertise and its public interest mandate.

The appellant, McCaw Communications of Florida, Inc. ("McCaw"), bears no resemblance to the Commission. McCaw has no public interest mandate; the rates it charges its customers are not regulated and its motivation is its own profit. McCaw has no expertise in regulating an entire industry and balancing the competing interests within that industry; it is but one player in a small segment of that industry. Nevertheless, McCaw would have this Court circumvent the Commission's continuing regulation of the telecommunications industry -- an industry which evolves with amazing rapidity -- by limiting the Commission's ability to deal with changing circumstances. McCaw would have this Court substitute McCaw's preferred regulation, which in this instance consists of a 1980s surrogate regulatory scheme applied in a

1990s environment, not because it would benefit consumers or enhance innovation but simply because it is more profitable for McCaw.

As set forth below, this is inappropriate. The regulatory scheme created by the Florida Legislature is intended to benefit the citizens of the State of Florida, and the Commission is designated as the arbiter of how the public's interest is best served. For this reason the judiciary defer to the Commission's expertise. BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits that this is a classic situation for the exercise of that judicial deference, and asks that the order on appeal be affirmed.

STATEMENT OF THE CASE AND FACTS

McCaw's statement of the case and facts are unduly colored by argument. BellSouth hereby submits its own.

Statement of the Case. The Commission initiated Docket 940235-TL in order to investigate and determine, on a generic basis, the appropriate rates, terms and conditions for interconnection by cellular and other wireless carriers with the networks of local exchange carriers. Among the issues to be addressed was whether the then current formula for mobile service provider usage charges was still appropriate or whether it should be revised or abandoned.[1] R.1. See Order PSC-95-1247-FOF-TL at 4 (hereinafter "Order" or the "Order on appeal").[2]

---

[1]The Commission had previously declined to address these issues in another docket, number 930915-TL, because only one industry player, BellSouth, was a party to that docket. The Commission deferred to a generic investigation in which all interested parties could be heard and considered, and that was the basis for commencing docket 940235-TL.

[2]References to the Record on Appeal will be designated "R.[page number]".

The participants in the docket were BellSouth Mobility, Inc., the Florida Mobile Communications Association, Inc., the Florida Public Telecommunications Association, Inc., GTE Florida Incorporated, GTE Mobilnet Incorporated, appellant McCaw, BellSouth, United Telephone Company of Florida, ALLTEL of Florida, Inc., the Office of the Public Counsel, and the Commission's Staff. Order at 1-2. BellSouth's petition for leave to intervene, R.8-9, was granted by the Commission on May 5, 1994. R.20-21.

All parties (except Staff and Public Counsel) submitted prefiled testimony, both direct and rebuttal, and exhibits. Extensive prehearing discovery was conducted, including written interrogatories and depositions, and much of the discovery and deposition testimony was submitted to the Commission in the form of exhibits. Hearing Exhibits 1-38.[3] A hearing was held on March 27 and 28, 1995, at which all parties had an opportunity to present direct testimony and conduct cross examination. Tr. Vol. 1-4, pp. 1-579.[4] The parties submitted post-hearing briefs on April 28, 1995. R.546-771. On August 15, 1995, at the Commission's request, R.841-44, the parties submitted supplemental briefs on the effect of the recent legislative amendments to Florida Statutes Chapter 364, and on August 24, 1995, several parties filed answer or reply briefs on the same issue. R.849-995.

The docket culminated on October 11, 1995, in Order PSC-95-1247-FOF-TL, which is the Order on appeal here. R.996-1037. McCaw claims to have filed its notice of appeal from

---

[3]Exhibits are maintained in the Record in the order they were admitted. They have not been assigned Record page numbers.

[4]The hearing transcript in the Record on Appeal retains the numbering provided by the court reporter rather than separately assigned Record page numbers. References to hearing transcript pages will be designated "Tr.[page]", as opposed to other Record references, which are cited "R.[page]" or "Hearing Exhibit ___".

this Order on November 13, 1995. R.1038-1043.

Statement of Facts. Local Exchange Companies ("LECs") such as BellSouth provide local "landline" telephone service to consumers. Mobile Service Providers ("MSPs") such as appellant McCaw provide "wireless" cellular telephone and paging services. In order for an MSP's cellular customer to communicate with a landline LEC customer, the MSP must "interconnect" with the LEC's landline system utilizing "switching" equipment owned and operated by the LEC. The central issue on appeal is the method for determining the amount of compensation to be paid by MSPs to LECs when they interconnect with and utilize the LEC's landline system. While the rates charged by MSPs to their customers are not regulated, the Commission does regulate the interconnection rates of LECs.

In 1988 the Commission adopted a formula for use in determining certain MSP interconnection rates. Order 20475 (hereinafter the "1988 Order", which is appendix pages A.50-81 to the Initial Brief of the Appellant). As set forth in more detail below, the formula tied MSP interconnection usage rates to certain components of the intrastate "access charges" paid to the LECs by inter-exchange carriers or "IXCs" (long distance companies such as Sprint or AT&T). These IXC access charges have been reduced over time, resulting in a coincident reduction in the amounts paid by MSPs in the form of usage rates for interconnection with the LECs' networks. Significantly, the IXC intrastate access charges are continuing to undergo dramatic reductions, including massive reductions which were made by BellSouth in 1995 and which are expected to be made in 1996 pursuant to a prior order of the Commission.[5] The impetus for these latest reductions has nothing to do with mobile interconnection. Therefore,

[5]See PSC Order PSC-94-0172-FOF-TL, dated February 11, 1994.

continued blind adherence to IXC access charges in setting MSP rates would result in a windfall reduction of McCaw's costs of MSP interconnection.

In the Order on appeal, the Commission severed the link between MSP interconnection usage rates and the charges paid by IXCs for intrastate long distance access, thereby preventing McCaw from riding the coattails of the prospective IXC access charge reductions and realizing its windfall. That is why McCaw has filed this appeal.[6]

The 1988 Order

Cellular telephone service was not available anywhere in Florida until 1984, Hearing Exhibit 1, and there was no procedure in place to regulate mobile interconnection charges. From 1984 until 1988, MSPs interconnected with LEC networks first under rates negotiated between LECs and MSPs and later under tariffs which were approved by the Commission on an "experimental" basis.[7]

On June 30, 1987 the Commission opened docket 870675-TL to specifically address the services to be offered and the rates to be charged for MSP interconnection. 1988 Order at 4. That docket culminated in Order 20475, issued December 20, 1988; the Commission's first

---

[6]Interestingly, McCaw never once disputes that the Commission has the authority to set MSP interconnection rates. Further, aside from asserting that current interconnection usage rates were above the LECs' cost levels -- which of itself does not require any modification to the rate levels -- McCaw made no evidentiary showing that current levels are inappropriately high. McCaw's argument at the administrative level focused on denying BellSouth's claims that current rates were too low, and the Commission declined to increase rates as BellSouth would have hoped. Accordingly, McCaw's complaint here is not that the current rates are too high, because it failed to produce any evidence to that effect, but rather that it wants to participate in upcoming IXC access charge reductions, to obtain windfall increases in its (McCaw's) profit margins.

[7]See Order 20475 at 3-5. Order 20475 was issued in Commission docket 870675-TL on December 20, 1988. It is attached to the Initial Brief of the Appellant as appendix pages A.50-81. Order 20475 will hereinafter be referred to as the "1988 Order".

comprehensive attempt to regulate rates and services provided and to be provided in this new, rapidly evolving industry.

The 1988 Order created a composite usage rate for mobile-to-land MSP interconnection consisting of a combination of two components, local and toll, both of which were based on the rates paid by IXCs for interconnection, which are known as "access charges". 1988 Order at 17-19. IXC access charges generally have two major components, traffic-sensitive charges, covering costs that vary with usage, and non-traffic sensitive charges. The local component of the mobile interconnection formula, which was to be weighted 80%, was comprised of the traffic-sensitive elements of the intrastate switched access charges paid by IXCs -- local switching and local transport. The toll component of the formula, weighted at 20%, was comprised of full switched access charges, that is, both the traffic-sensitive elements and the non-traffic sensitive elements of IXC access charges. 1988 Order at 18-19. Importantly, the Commission also ordered that the parties would not have to return to the Commission each time IXC access charges were changed; MSP interconnection rates would fluctuate as IXC access charges fluctuated. 1988 Order at 12. This is the so-called "linkage" which was severed by the Order on appeal.

The Commission announced several reasons for linking MSP interconnection usage rates to IXC access charges. The primary reasons can be categorized as follows:

(1) Recovery of average embedded costs - The Commission recognized that the LECs had to at least recover their costs. The MSPs had argued for pricing based solely on the LECs' mobile-specific costs, but the Commission considered instead the LECs' average embedded costs. 1988 Order at 11, 20. The Commission specifically disclaimed any intent to

rely solely on cost data, however, emphasizing that other factors are also important. 1988 Order at 11.[8]

(2) Consistency among like users - The Commission made the point that the rates and rate structure being adopted were roughly equivalent to those approved for other interconnectors to the LECs' local network, e.g. commercial payphone companies and shared tenant service providers. 1988 Order at 18.

(3) Ease and efficiency - The Commission relied heavily on the fact that access charges were already in place and, therefore, were an easy surrogate; much easier than setting separate MSP interconnection rates via a contested tariff process. 1988 Order at 18.

CHANGED CIRCUMSTANCES 1989 - 1995

The telecommunications industry is characterized by the rapidity with which it evolves. With respect to mobile telecommunication, for example, it was not until 1984 that cellular service was first introduced, yet by 1991 cellular service was offered in every one of Florida's 18 metropolitan statistical areas and 11 rural service areas. By 1995 there were two facilities-based carriers offering cellular service in each of these markets. Hearing Exhibit 1. This rapid evolution -- and the attendant changes in the relationship between the industry's players -- requires a high level of cooperation among the Commission and the various industry participants.

During the time following the 1988 Order a number of circumstances changed, altering the interplay between LECs and MSPs and, particularly, the impact of the formula set forth in

[8]See e.g. §364.065, Fla. Stat. with respect to the kinds of factors involved in rate setting. This is important because McCaw's brief refers only to a desire to reduce interconnection rates to the level of the LEC's costs, as though that were an entitlement, and completely ignores all of the other factors.

the 1988 Order. The following is a summary listing of the evidence in this respect, and its impact on matters of legitimate concern to the Commission.

IXC Access Charge Reductions

As stated, the 1988 Order tied MSP interconnection rates to the access charges paid by IXCs, and the Commission contemplated that the MSP interconnection rates would fluctuate as the IXC access charges fluctuated. Since 1988, however, access charges have fallen dramatically. Furthermore, these have not always been gradual reductions or reductions due to technological or business efficiencies. In 1994, for example, the Commission approved a settlement between the Office of the Public Counsel and BellSouth that requires total rate reductions of $765 million for the years 1994 through 1997. See Order PSC-94-0172-FOF-TL. This has caused and will continue to cause a substantial reduction in the access charges paid by IXCs which, because of the formula linking MSP interconnection and access charges, also caused (and will continue to cause) MSP interconnection usage rates to decrease dramatically. These access charge reductions will continue at least into 1996.

Furthermore, there has been a concerted effort to eliminate the discrepancy between interstate access charges, set by the FCC, and intrastate access charges, set by the Commission. This has now also been codified in the 1995 revisions to Florida Statutes Chapter 364, which require intrastate IXC access charges to be reduced to 1994 interstate levels. There are a number of diverse factors involved in this regulatory mandate, but none of them involve mobile interconnection.

The "ratcheting" effect of the prospective access charge reductions impacts LECs and MSPs in a number of respects, all of which are of legitimate concern to the Commission and all

of which were taken into account by the Commission in entering the Order on appeal.

(i) Reduction in LEC revenues and in MSP costs - The Commission obviously has a legitimate interest in ensuring that LEC revenues are not reduced to a level which, in the Commission's opinion, is inconsistent with the public interest in ensuring the provision of telecommunications services by commercially viable companies. This is particularly so where, as with BellSouth, the telecommunications provider at issue has a "carrier of last resort" obligation to guarantee service to all who want it.

In the hearing below the Commission was presented with specific evidence as to BellSouth's costs for mobile-to-landline usage. Tr.483 and Hearing Exhibit 26. Furthermore, BellSouth witness Nancy Sims testified as to a "depooling arrangement" under which LECs originating MSP traffic must pay other LECs to terminate that traffic on the other LECs' networks, often at rates higher than are paid by the MSP in the first instance, i.e. it costs the LEC more to transport and terminate the traffic than it receives from the MSP.[9] Ms. Sims also specifically testified that because the formula in the 1988 Order arbitrarily chooses "traffic sensitive" access charge elements as the elements on which MSP interconnection rates will be based, if access charge reductions continue to be passed through to MSP interconnection rates LECs' revenues will be reduced below their cost of providing MSP interconnection on a LATA-wide basis. Tr.430.

The converse of this problem, of course, is that as access charge reductions have flowed through to reduce the LECs' mobile interconnection revenues, the MSPs' costs of providing their

---

[9]No witness disputed this claim. McCaw's witness Maass did suggest other alternatives to deal with the problem, besides severing the linkage between access charges and MSP interconnection rates, such as a surcharge or additive to the inter-company rate. Tr.525-26.

service have been concomitantly reduced. The evidence adduced at the hearing was that as a result of these reductions over the past seven years, current MSP interconnection rates -- the rates frozen at current levels by the Commission's decision to sever the linkage with access charges in the Order on appeal -- are now reasonable and fair to both the LECs and the MSPs. Mr. William Cabrera of the Florida Mobile Communications Association, testified as follows:

> Q: Are the current rate terms and conditions for type 1 and 2A interconnection appropriate?
>
> A: Yes, for the most part those rates appear to be fair and reasonable, both to mobile carriers [MSPs such as appellant McCaw] and to the LECs [such as BellSouth] . . .

Tr.162. Indeed, McCaw's witnesses, Mr. Kurt Maass and Mr. John Giannella, asserted only that current interconnection charges were sufficient to cover LEC's costs and provide a markup. They presented no evidence that current mobile interconnection rates were too high, beyond assertions that current rate levels were above the LECs' cost levels, or that McCaw had some objectively discernable need for interconnection charges to be reduced from current levels.[10]

The Commission was also able to consider whether, during the seven years since the 1988 Order linked mobile interconnection rates to access charges, Florida consumers had benefitted from the flow-through of access charge reductions to mobile interconnection charges. The evidence showed that they had not. BellSouth's charges for mobile interconnection have been reduced by at least 42% since 1989. Tr.66. The MSPs, however, have not passed these savings along to the Florida consumer. In Miami, for example, a market served by appellant

---

[10]McCaw apparently views the windfall opportunity to participate in switched access charge reductions as a "fundamental benefit", Tr.527-28, but is never able to explain how or why McCaw should have an entitlement to participate in IXC rate reductions which have nothing to do with wireless service.

McCaw, consumer rates have come down only 17% from 1985 levels. Tr.111-12. The Commission had this evidence before it in deciding whether MSPs should continue to receive a windfall benefit by passing through IXC access charge reductions via the linkage with mobile interconnection rates.[11]

(ii) Discrepancies between MSP rates and the rates charged to other kinds of local service providers - A primary difference between mobile interconnection and inter-exchange switched access (i.e. access to LEC networks by long distance IXCs like AT&T or Sprint) is that most mobile interconnection is primarily local and intra-LATA while most switched access is inter-LATA. Wireless service can be viewed as a substitute for local service whereas IXC switched access is a supplement to local service. Tr.276. Therefore, there is no basis to contend that mobile interconnection rates must equal IXC switched access rates because they are not the same thing. The linkage of IXC access charges and mobile interconnection rates in the 1988 Order was no more than a surrogate, and the issue here is the Commission's decision to no longer require blind adherence to IXC access charges as a surrogate for mobile interconnection rates, and to instead set static rates at the current level and encourage negotiation.[12]

The Commission was cognizant of the difference between mobile interconnection and IXC switched access, and the fact that MSPs were more analogous to other providers of primarily local service than they were to IXCs, when it issued the 1988 Order. The 1988 Order

---

[11]As noted in Order 18598, cited by McCaw, it was the Commission's intent in directing access charge reductions that the reductions flow through to the consumer. See Order 18598 at 87 FPSC 12:454.

[12]McCaw witness Maass acknowledged that there were differences between wireless access and IXC switched access, though he contended that IXC switched access charges were still a good "surrogate" for mobile interconnection charges. Tr.524-25.

specifically noted that the MSP interconnection formula adopted would yield the rough equivalent of the rates charged to other providers of local service:

> These rates and rate structure are roughly equivalent to those we have approved for other interconnectors to the local network, i.e. PATS [pay telephone companies] and STS [shared tenant service] providers.[13]

1988 Order at 11, 18. This factor -- consistency in rates, terms and conditions for similar interconnection services -- is even more important now as the industry evolves, because it is becoming increasingly difficult to distinguish between local and toll traffic. Tr.342. In the hearing below, however, the Commission heard specific evidence that because of the dramatic IXC access charge reductions, and the flow-through of those reductions to MSP interconnection rates, MSP interconnection rates are now well below the rates charged for interconnection to other providers of local service such as pay phone companies and shared tenant service providers. Tr.489-90.[14]

The 1988 Order has proven to be a disincentive to negotiations among LECs and MSPs

The mobile telecommunications industry is dynamic; growing and evolving with startling speed. Tr.421-22. The interconnection needs of this industry change constantly with the types of service offered, the types of technology employed, and the geographic scope of service areas. Id. Furthermore, the emerging Personal Communications Services market will likely require

---

[13]Shared tenant service is a tariffed arrangement in which, e.g., an apartment building owner will provide local service to his tenants.

[14]Indeed, because of the 80:20 weighting given the "local" and "toll" components of the composite usage rate, MSP interconnection rates also remain lower than even the IXC access charges on which they were based. In the future, all interconnection rates may move to the same levels, but that movement has been thwarted by the weighting schedule and linkage previously adopted by the Commission.

additional, unique mobile interconnection arrangements. Id. All of this requires a substantial level of flexibility and cooperation among the various industry players, in order to efficiently deal with the change wrought by the industry's evolution. Id. With respect to mobile interconnection, however, the interplay between the 1988 formula's linkage to IXC access charges and the mandated reduction in those charges has proven to impair flexibility and cooperation.

All parties agree that it is a good thing for LECs and MSPs to resolve their issues by negotiation See e.g. Tr.97, 141 (Maass - McCaw); Tr.421-22 (Sims - BellSouth); Tr.547-48 (Bailey - GTE). Among the benefits of negotiation are:

(1) more rapid availability of new services;

(2) customized interconnection arrangements;

(3) administrative ease;

(4) potential combinations of the multiple technologies used by MSPs; and

(5) tailored service arrangements.

Tr.269-70. The linkage to access charges, however, proved to be a disincentive for MSPs to negotiate with the LECs because the status quo guaranteed them a prospective windfall rate reduction. Tr.329; Tr.487. Indeed, McCaw witness Maass admitted that McCaw had at one point reached a tentative agreement with BellSouth concerning changes BellSouth proposed to make -- including breaking the linkage between IXC access charges and mobile interconnection rates -- but withdrew its agreement once it found out how large BellSouth's required access charge reductions would be, i.e. how large a windfall McCaw would give up by negotiating. Tr.138-39.

The record contains testimony to the effect that negotiation between LECs and MSPs works -- and works well -- in other states which do not link mobile interconnection to IXC access charges.[15] Tr.269-70; Tr.318; Tr.427. Since the 1988 formula was implemented, however, McCaw witness Maass is unaware of a single instance in which McCaw negotiated an agreement with an LEC in Florida. Tr.138-40.

Problems with differing elements of the 1988 Formula

The single factor most heavily weighted in the 1988 Order's analysis was the ease with which the surrogate formula could be administered:

> In our opinion, access charges should be used as the basis for setting the single composite rate for mobile usage because they are currently in place and thus should be administered easily and efficiently.

1988 Order at 18. Currently, however, the formula is neither easy nor efficient.

First, the 1988 Order assumes that the intrastate switched access rate structure will remain constant. At least one LEC, however, has eliminated a component employed in the formula as a discrete element in its access tariff. BellSouth no longer employs a "line termination charge", having combined it with the local switching access rate component. In 1988 these were separate rate elements and they were used differently. Each individual LEC must find a way to accommodate this change in the access rate structure in order to continue to

[15]It should be noted the Order on appeal is by no means revolutionary. Florida's prior linkage of mobile interconnection rates and IXC access charges is not the norm, and by severing the linkage the Commission did not break new ground but merely rejoined the mainstream.

use the 1988 formula. This renders the 1988 formula, if not obsolete, then not nearly as easy and efficient a surrogate as it was when the 1988 Order was entered.[16] Tr.429-30.

This problem is compounded by the Switched Access Local Transport Restructure filing which was pending before the Commission at the time of the hearing below and which will make yet additional changes to the structure of the access charges to which mobile interconnection was linked in the 1988 Order. Tr.430. Moreover, given the rapidity with which the telecommunications environment is evolving, it is reasonable to expect additional switched access rate structure changes in the foreseeable future. Tr.430.

Additionally, the composite structure employed in the 1988 formula, when coupled with the fact that IXC access charges have and will continue to drop dramatically, creates differing incentives with respect to how LECs reduce their access charges. If, for example, an LEC implements an access charge reduction by reducing the local switching element of its rate structure, the reduction will flow through 100% to the MSPs because this is an element of both the 20% toll portion of the formula and the 80% local portion of the formula. On the other hand, if an LEC reduces its carrier common line charge, that flows through only 20% because it is an element of the toll portion of the formula, but not the local portion. Tr.490. This differential incentive is an unintended result of the composite rate structure adopted in the 1988

---

[16]McCaw notes that the Commission considered this claim in Order PSC-94-0288, attached to McCaw's initial brief as appendix pages A.43-49, and declined to release BellSouth from the 1988 formula on this basis. McCaw fails to acknowledge, however, the Commission's specific holding that while the formula might continue to be useable in the "short run", it could ultimately be rendered obsolete and, therefore, since this issue affects more than just BellSouth, the Commission wanted to initiate a generic investigation involving all of the players. That generic investigation was conducted in docket 940235-TL and led to the Order on appeal, in which the Commission did decide, based on the evidence presented, that continued linkage was inappropriate.

Order, and has in fact reduced the ease and efficiency that the Commission hoped to engender in that Order.[17]

THE ORDER ON APPEAL

At the close of the evidence, the Commission made several determinations, all of which led to the ultimate decision to sever the linkage between IXC access charges and mobile interconnection rates, freezing those rates at current levels.[18]

First, the Commission noted that IXC intra-state access charges would continue to be dramatically reduced over the next few years (and in fact the 1995 revisions to Florida Statutes chapter 364 mandated a return to the level of 1994 inter-state IXC access levels). Order at 15. The Commission also noted that mobile service had grown substantially in the time since the 1988 formula was implemented. Order at 15. The Commission determined that given the increased use of mobile services, the magnitude of the impact on LEC revenues would be undesirably large if the IXC access rate reductions continued to flow through to mobile interconnection rates. Order at 15.

---

[17]See Order on appeal at 14-15. While the Commission did not believe that this had yet caused any major market distortions, it did not want the problem to continue until it did in fact become a major problem. The Commission specifically held that the upcoming major access charge reductions could cause "undesirably large" reductions in revenue to the LECs if the mobile interconnection flow-through requirement continued.

[18]It should be noted that the Order dealt with a broad array of issues in addition to the linkage question. For example, in addition to severing the linkage with IXC access charges the Commission decreased the amount which MSPs are required to pay for a specific type of interconnection. Indeed, the decision to sever access charges but keep the current rate structure could be termed a compromise between the positions espoused by the MSPs, which wanted no change at all, and the LECs, which wanted not only to sever the linkage but to completely abandon the current interconnection rate structure and negotiate from scratch.

Second, the Commission determined that it would be beneficial to promote negotiations among the industry players, stating:

> there is an important role for negotiations to address new services, rates, and other issues affecting network interconnection and the efficiency of those interconnections.

Order at 14.[19] The Commission found, however, that because of the expectation that IXC access charges will continue their downward trend, the 1988 formula was serving as a disincentive to negotiations. Why should MSPs negotiate if they know their interconnection rates will drop dramatically if they simply do nothing? Accordingly, the Commission determined that severing the link between IXC access charges and mobile interconnection rates would facilitate future negotiations between LECs and MSPs. Order at 15.

Third, the Commission determined that because of the composite nature of the 1988 formula and the mandated decrease in IXC access charges, the formula was no longer easy to administer -- LECs were reducing elements of the access charge differentially because under the formula some kinds of reductions would flow through 100% to mobile interconnection rates while others would flow through only 20%. The Order states:

> We believe LEC pricing decisions on switched access rates are being influenced by the existence of the flow-through requirement. That is, when LECs determine which switched access rate elements to reduce, they must consider the fact that some elements are flowed through to the MSP usage formula in both the local and the toll components, while others just to the toll component. The LECs have become somewhat unwilling to reduce the Local Switching and Local Transport

---

[19]The Commission noted that it was already the Commission's established policy, and that of the FCC, that LECs and MSPs negotiate in good faith as to the terms and conditions of mobile interconnection. Order at 13. See In re Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, 9 FCC 1411, ¶229 (March 7, 1994).

> rate elements to the degree they otherwise would have because of the impact of the flow through requirement.

Order at 14-15. Though the Commission did not believe that this had yet caused any major market distortions, the Commission declined to wait until it did, and acted prospectively.

Finally, the Commission found that current MSP interconnection rate levels -- which had already been reduced substantially from 1988 levels due to the linkage with access rates -- were satisfactory except for one specific type of interconnection (type 2B, for which the rate was reduced at the MSPs' request). Order at 15. The Commission specifically noted that no party (including McCaw) had presented evidence that the current rates were unsatisfactory except BellSouth, which had alleged the current rates were too low, and the Commission rejected BellSouth's claims. Id.

SUMMARY OF THE ARGUMENT

This case involves only two questions. First, was there any evidence at all on which the Commission could have based its conclusion that IXC intrastate access charges should no longer be utilized as a surrogate for mobile interconnection usage rates. Second, if the Commission's decision to "sever the linkage" was appropriate, has McCaw carried its burden of showing that the current mobile interconnection usage rates, which the Commission adopted when it severed the linkage with IXC access charges, are inappropriate rates.

The record is replete with evidence justifying the Commission's abandonment of the surrogate formula. The Commission chose to discontinue blindly linking mobile interconnection usage rates to IXC access charges based on evidence that those access charges, and thus the mobile interconnection usage rates derived from them, were being impacted (i.e. reduced) by

factors which had nothing to do with mobile interconnection. There was also specific evidence as to IXC access charge reductions, past and future, as well as the impact those reductions have had and would continue to have on the LECs in the event the linkage was not severed. Further, there was direct testimony as well as circumstantial evidence that the existence of the linked formula was proving to be an impediment to negotiations among LECs and MSPs. All parties and the Commission agreed that negotiations are desirable and, therefore, this too justifies severing the linkage. Clearly the Commission could have concluded that severing the linkage between access charges and mobile interconnection usage rates was in the public interest, and this Court should defer to the Commission's expertise rather than substituting its own view of the public interest for that of the Commission.

With respect to the Commission's decision to set mobile interconnection usage rates at the then current level under the 1988 formula, those rates are clothed with a presumption that they are just and reasonable. It is for the party challenging the propriety of the rates to show that they are not appropriate, and McCaw presented no evidence to this effect. Indeed, in addition to having specific cost data for its review, and specific testimony as to the effect that further rate reductions could have, the Commission heard specific testimony from a mobile service provider trade association -- which counsel for McCaw declined to cross-examine -- to the effect that current rates were perfectly appropriate and fair for both LECs and MSPs. There can be no question, then, that the Commission's decision to set rates at their current levels is a well-founded decision.

ARGUMENT AND CITATION OF AUTHORITY

In the final analysis, McCaw simply complains that the Commission did not accept McCaw's view of the evidence, and its view as to what the policy of this State should be with respect to mobile interconnection rates. The fact is, however, that the legislature has chosen the Commission, not McCaw, to set policy on behalf of the State, and not even the Office of the Public Counsel, the citizens' *ad litem* representative before the Commission, saw fit to appeal the Commission's ruling. McCaw's reasoning is driven not by the public good but by its own profit motive. Objectively viewed, the record below is more than adequate to support the Commission's determination. The Court should continue its long-standing policy of deference to the Commission's expertise, public interest mandate and policy-setting role.

I. The doctrine of "administrative finality" has no application here. There is a record basis for the Commission's policy determination to cease utilizing IXC access charges as a fluid surrogate for MSP interconnection rates.

The so-called doctrine of "administrative finality" counsels that while an agency may always modify its orders, at some point its orders must pass from its control and become final, to be altered only on a showing of changed circumstances. See Peoples Gas Systems, Inc. v. Mason, 187 So. 2d 335 (Fla. 1966); Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679, 681 (Fla. 1979). McCaw's brief, however, grossly overstates the extent of this concept by attempting to extend it to an agency's ability to change an existing policy -- the agency's base theory as to how the public interest can best be served. Peoples Gas and Austin Tupler pertained to an agency's ability to modify an order in a discrete case or controversy involving individual litigants. If those cases truly held that an agency could not change its policies except

on a showing of changed conditions, then the election of new cabinet officers every four years would truly be a non-event -- the new cabinet would be locked in to the policies of the prior administration unless it could make an evidentiary showing to support a change. It is, simply put, an untenable position.

Peoples Gas recognizes the difference between an agency's quasi-judicial and quasi-legislative capacities. The need or expectation of finality is much less compelling in a situation in which the agency exercises routine and continuing oversight, such as the Commission's regulation of mobile interconnection rates, as opposed to where an agency adjudicates a discrete dispute that is particular to the litigants, as was the case in Peoples Gas and Austin Tupler. As stated by this Court:

> We understand well the differences between the functions and orders of courts and those of administrative agencies, particularly those regulatory agencies which exercise a continuing supervisory jurisdiction over the persons and activities regulated. . . . Further, whereas courts usually decide cases on relatively fixed principles of law for the principal purpose of settling the rights of the parties litigant, the actions of administrative agencies are usually concerned with deciding issues according to a public interest that often changes with shifting circumstances and passage of time. Such considerations should warn us against a too doctrinaire analogy between courts and administrative agencies and also against inadvertently precluding agency-initiated action concerning the subject matter dealt with in an earlier order.

Peoples Gas, 187 So. 2d at 339 (emphasis added). The Court's cautionary reasoning is directly applicable here. The 1988 Order set rates, terms and conditions for mobile interconnection. Are we to assume that the Commission can never revisit rates, terms and conditions unless and until it makes a threshold evidentiary showing that conditions have changed in the eight years since the prior order's entry? Of course not. McCaw's logic is flawed; the doctrine of

administrative finality was never meant to preclude an agency's continuing oversight and rate-setting authority.

In any event, however, the record below clearly demonstrates that circumstances have changed since the 1988 Order was entered, justifying the Commission in revisiting the 1988 Order.[20] The following is a summary:

1. IXC access rates have been reduced, dramatically, in the eight years since the 1988 Order.

2. Much of the IXC access charge reduction has flowed through to mobile interconnection rates, such that those rates have been reduced as much as 42%.

3. The reduced mobile interconnection rates have not flowed through to consumers. McCaw's rates to its customers have been reduced only 17% over a corresponding period.

4. Mobile interconnection rates no longer approximate the rates charged to other local interconnectors such as pay phone operators and shared tenant service providers, as they did when the 1988 Order was entered.

5a. While mobile interconnection rates remain above LECs' mobile-specific costs, continued rate reductions (particularly reductions not in any way tied to cost reductions) will drop rates below mobile-specific costs.

5b. "Depooling" arrangements have been implemented which could require an LEC to pay more to terminate a mobile call on another LEC's network than the LEC receives from the MSP for interconnection.

6. The access charge rate structure has changed, eliminating the ease (and consistency) with which the 1988 formula was once administered.

7. The combination of mandated reductions in IXC access charges and the "linkage" between access charges and mobile interconnection usage rates has created an

---

[20]Even as posited by McCaw, the doctrine of administrative finality apparently does not touch upon the nature and extent of the changed circumstances or the kinds of departures from prior policies they require; presumably that would fall within the agency's policy-making discretion. The crucial inquiry here is whether there was any change from prior circumstances, not how the agency should react to that change.

incentive for LECs to reduce access charges differentially, depending on whether a particular element flows through at 100% or only 20%.

8. The combination of mandated reductions in IXC access charges and the "linkage" between access charges and mobile interconnection usage rates has created a disincentive to negotiate on the part of the MSPs, including in particular appellant McCaw.

Each of these considerations is of legitimate interest to the Commission, each of them is a change since the date of the 1988 Order, and each of them warranted the Commission's revisiting the linkage issue. Accordingly, the Commission did not run afoul of the doctrine of administrative finality. Simply put, the Commission was created to provide continuing oversight, and cannot do so -- particularly in an industry as dynamic and rapidly evolving as telecommunications -- if it is limited to the status quo.

II. There is competent substantial evidence to support the Commission's decision to set rates at their current levels and discontinue the use of IXC access charges as a fluid surrogate.

McCaw correctly asserts that the Commission's order should not be arbitrary but rather should be supported by competent substantial evidence. See e.g. Manatee County v. Marks, 504 So. 2d 763, 764-65 (Fla. 1987). McCaw neglects to mention, however, that in reviewing the Commission's action the Court's role is limited to determining whether there was competent substantial evidence on which the Commission could have acted. It is the Commission's prerogative to evaluate and choose between conflicting evidence, and to determine what inferences to draw from the evidence. Id. The Court will not re-weigh or re-evaluate the evidence, even if it might have reached a different result had it been the decision-maker. Id. If there is any evidence on which the Commission could have based its decision, then the Order on appeal must be affirmed.

Furthermore, while McCaw mentions in passing the presumption of correctness with which the Commission's orders are clothed, see United Telephone Co. v. Public Service Comm'n, 496 So. 2d 116, 118 (Fla. 1986), McCaw neglects to acknowledge the burden it must bear as a result. As the party seeking to overturn the Commission's order, McCaw has the burden of demonstrating to this Court that the Commission's order was arbitrary or unsupported by any competent evidence. See Manatee County, 504 So. 2d at 765. If McCaw fails to carry this burden then the Order on appeal must be affirmed.

McCaw's discussion of the evidence is deficient in several respects. First, McCaw simply ignores much of the evidence, any part of which would be sufficient to sustain one or more of the Commission's determinations.[21] Second, McCaw at times misstates the Commission's reasoning, creating "strawman" theorems which are more easily attacked. Finally, McCaw spends most of its brief simply arguing as to the weight of the evidence or the policy direction the Commission should take -- inviting this Court to ignore the standard of review and actually supplant the Commission as fact-finder and policy-setting authority. For these reasons, McCaw's appeal is not well taken.

In analyzing the record it is crucial to bear in mind precisely what end results are being challenged. This appeal involves two independent determinations, either or both of which must be upheld if there is any basis whatsoever to support them. First, the Commission determined that mobile interconnection usage rates would no longer blindly follow IXC access charges -- which are influenced by a variety of factors having nothing to do with mobile service -- pursuant

[21]See e.g. Appellant's Brief at 14, asserting that "the only support in the record...." As shown herein, the record is replete with evidence not mentioned by McCaw.

to the formula adopted in 1988, as the IXC access charges fluctuated up or down. In other words, the Commission decided to cease the use of IXC access charges as a fluid surrogate for mobile interconnection usage rates. McCaw terms this "severing the linkage" between mobile interconnection charges and IXC access rates, and complains because the access rates charged to IXCs are expected to decrease and therefore the "linkage" guaranteed McCaw a rate reduction too.

Second, having abandoned IXC access charges as a surrogate for mobile interconnection usage rates, the Commission decided to set mobile interconnection rates at their current levels with the exception of type 2B mobile interconnection, as to which the Commission ordered a reduced rate. It is not clear whether McCaw challenges this determination because of its fervent focus on the "linkage" issue.

(a) There is competent substantial evidence in the record to support the Commission's decision to "sever the link" between IXC access charges and mobile interconnection rates.

The record is replete with evidence affording a basis for the Commission's decision to stop using IXC access charges as a surrogate for mobile interconnection usage rates. Indeed, the very nature of a surrogate charge is justification enough. Though the Commission decided in 1988 to use IXC access charges as a surrogate for wireless interconnection, that was a policy determination made in 1988. McCaw has no "entitlement" to have that policy continue, and to have its interconnection rates set (or reduced) according to factors which have nothing to do with wireless interconnection.

Consider for example Commission Orders 17053 and 19677, which were cited by McCaw to show that it has been known that IXC access charges are being reduced, and Order

PSC-94-0172, requiring additional reductions as part of the settlement of BellSouth's rate case and investigatory dockets. The intrastate access charge reductions have been driven by factors such as the FCC's interstate rate structure, concerns that consumers (particularly heavy long-distance users) will bypass LECs in interconnecting with IXCs, policy determinations as to the allocation of non-traffic sensitive costs between local and toll users, agreed methods of returning funds to consumers, and a host of other factors. There is no relationship between the IXC access charge reductions (including the prospective reductions which have motivated this appeal) and mobile interconnection and, logically, this should be enough to justify the Commission's abandonment of access charges as a surrogate for mobile interconnection usage rates.[22]

The Commission was aware of the upcoming IXC access charge reductions. The Commission received testimony from witness Nancy Sims that if mobile interconnection rates continued to be tied to access charges, which are scheduled to be substantially reduced, the interconnection rates would eventually be reduced below cost. Furthermore, the Commission noted the increase in wireless traffic since 1988. Based on all of this evidence the Commission could have reasonably concluded that it was undesirable for mobile interconnection rates to

---

[22]See e.g. Orders 19677 and 17053, attached as appendix exhibits A and B, which discuss the differences in the inter- and intra-state access charge rate structure and the fact that the two rate structures cover non-traffic sensitive costs differently, causing inter-state access charges to be lower. Furthermore, the settlement of BellSouth's last rate case requires millions of dollars in IXC access charge reductions. None of this has anything to do with mobile interconnection. The MSPs' participation in the IXC access charge reductions thus far by virtue of the linkage in the 1988 formula has been a windfall for them, but there is no legitimate reason why it must continue.

continue to be wedded to IXC access charges, which continue to be reduced for reasons which have nothing to do with mobile interconnection.[23]

In other words, the Commission was justified in concluding that if mobile interconnection rates continued to be reduced in blind lockstep with IXC access charges, the impact of the 1988 formula on LEC revenues could become undesirably large. This supports the Commission's determination to severe the linkage and stop using access charges as a surrogate for mobile interconnection rates. Order at 15.[24]

McCaw attacks Ms. Sims' testimony by asserting that other evidence shows current interconnection rates are still above the LEC's costs of providing mobile service. That argument fails for several reasons. First, it is for the Commission to weigh and interpret the evidence, not McCaw. See United Telephone Company v. Mayo, 345 So. 2d 648, 654-55 (Fla. 1977). The time for closing argument is past. Further, the Commission not only had the testimony of Ms. Sims but it also had detailed cost data and testimony in the form of Hearing Exhibit 26; this constitutes "competent substantial evidence" and ends the inquiry. It is for the Commission, not McCaw, to weigh and evaluate this evidence and decide how to set rates based thereon. Moreover, McCaw's position assumes that it has some entitlement to mobile interconnection "at

---

[23]This is especially so given the Commission's intent that IXC access charges be passed along to the consumer. Despite the over 42% reduction in Wireless interconnection rates, McCaw has passed along only 17% in reductions to the consumer, diverting the rest to its own bottom line. The Commission is clearly justified in departing from blind reliance on a surrogate which has not proven to benefit the consumer.

[24]The Commission also noted that the volume of mobile traffic had grown immensely since the time of the 1988 Order, thereby increasing the relative impact of the flow-through of access charge reductions under the formula. This plus the fact that access charges would continue to be reduced in the future led the Commission to conclude, reasonably, that access charges are no longer an acceptable surrogate for mobile interconnection rates. Order at 15.

cost". The LECs, however, also have fixed, facilities and other costs plus they are entitled to seek to make a profit. It is for the Commission to determine what the LECs' margins should be, and cost is but one of many factors.[25]

McCaw also attacks Ms. Sims' testimony concerning the depooling arrangement and the threat this portends for LEC revenue requirements by suggesting an alternative solution. Tr.525-26. In so doing, however, McCaw acknowledges that there is a problem which needs to be fixed. It is for the Commission, not McCaw, to decide upon a remedy. See General Tel. Co. v. Marks, 500 So. 2d 142, 146 (Fla. 1986) (fact that utility proposed an alternate method does not mean that the Commission's method is unreasonable). Ms. Sims' testimony affords an evidentiary basis for the Commission's decision. That ends the inquiry here. The Court may not substitute its own remedy for that chosen by the Commission.

In addition to threatening the LEC's revenues, there is evidence that the flow-through of the IXC access charge reductions has destroyed one of the bases for the 1988 formula. McCaw contends that the 1988 Order was based on the (flawed) notion that the two traffic sensitive access charge elements, local transport and local switching, were chosen to constitute the 80% local component of the formula because "these two elements alone approximated the service associated with a local call". Appellant's Brief at 13. That is wrong. The 1988 Order actually held that:

> These rates and rate structure are roughly equivalent to those we have approved for other interconnectors to the local network, i.e. PATS [payphone companies] and STS [shared tenant services] providers.

---

[25]See § 364.065, FLA. STAT. (1993). Rates are set with a myriad of factors in mind in addition to cost. Indeed, the 1988 Order specifically declined to set interconnection usage rates based solely on cost levels. See 1988 Order at 11.

1988 Order at 18. The unrebutted testimony below was that because of the dramatic IXC access charge reductions since 1988 and the blind flow-through of those reductions to mobile interconnection rates, the rates charged McCaw and the other MSPs are now substantially lower than the rates charged payphone companies and shared tenant services providers. This too provides a rational basis for the decision to abandon the linkage.

Furthermore, given the dynamics of the wireless industry, and particularly the rapidity with which it evolves, it is easily reasonable for the Commission to conclude that negotiations among the various industry players is desirable and should be encouraged. The interconnection needs of this industry change constantly with the types of service offered, the types of technology employed, and the geographic scope of service areas, and the emerging Personal Communications Services market will only require additional, unique mobile interconnection arrangements. Tr.269-70; Tr.422. All of this requires a substantial level of flexibility and cooperation among the various industry players. Indeed, even McCaw was in favor of negotiations. Tr.97; Tr.421-22; Tr.426-27.

The Commission received specific evidence, however, that because IXC access charges were being reduced, the linkage between those access charges and mobile interconnection rates was proving to be a disincentive to good faith negotiation. Tr.329. The Commission specifically heard that negotiations had been successful in other states which did not employ a linked surrogate but had never once been successful in Florida. Tr.269-70; Tr.318; Tr.427. Moreover, the Commission considered the testimony of a McCaw witness, Mr. Maass, who acknowledged that McCaw had negotiated an agreement with BellSouth and reneged only after

learning how large of a windfall rate reduction they would be foregoing by negotiating. Tr.138-39.

The Commission could reasonably conclude from the foregoing evidence that negotiations are desirable. Further, the Commission could and did reasonably conclude that the linkage to IXC access rates -- a surrogate rate-setting device chosen primarily for convenience (see 1988 Order at 18) -- was proving to be an impediment to negotiations. Order at 15. Without question, then, there is evidence to support the Commission's decision to sever the linkage with access charges in order to encourage future negotiation among LECs and MSPs. This logic is simple, unassailable and should alone be dispositive of this appeal. Cf. Florida Power & Light Co. v. Beard, 626 So. 2d 660, 663 (Fla. 1993)(Commission could eliminate previously required clauses in standard offer contracts in order to encourage desirable conduct).

The foregoing, while sufficient, is not the extent of the evidentiary bases justifying the Order on appeal. For example, the 1988 formula was based in large part on a perception that because access charges were already in place, it would be an easy-to-administer surrogate. The 1988 formula, however, contemplated a stable IXC access charge rate structure, and the Commission received evidence that the access charge rate structure has now been changed and will continue to be changed. While this has apparently not yet caused a major problem, there is no requirement that the Commission wait until the situation does become problematic. The choice between a proactive response and a reactive response is clearly within the Commission's discretion.

Finally, the component nature of the 1988 formula has also eliminated the ease of application the formula was to engender. Because the required access charge reductions can

flow through to mobile interconnection at either a full 100% level or a diluted 20% level, LECs are incented to reduce access charge components differentially, and the Commission specifically found that they were already beginning to do so. Order at 14. While this has apparently not yet caused any major market distortion, it is clearly within reason, based on the evidence, for the Commission to act prospectively and avoid distortion in the future.[26]

McCaw contends that the evidence on this issue was "ambiguous", and that the inference drawn by the Commission on this basis is "problematic". Appellant's Brief at 18. This argument, however, is absolutely irrelevant under the competent substantial evidence standard. It is the Commission's job to resolve ambiguities or even conflicts in the evidence, not McCaw's or this Court's. See Manatee County, 504 So. 2d at 764-65; Southern Bell Tel & Tel. Co. v. Public Service Comm'n, 443 So. 2d 92, 95 (Fla. 1983); Florida Retail Federation, Inc. v. Mayo, 331 So.2d 308, 311 (Fla. 1976). If there is any evidence to support the Commission's determination, and clearly there is, then that determination must be affirmed.

In summary, the record is replete with evidence sufficient to support the Commission's decision to cease utilizing a surrogate and divorce mobile interconnection usage rates from IXC access charges. Access charges are undergoing dramatic reductions for reasons unrelated to the provision of wireless service. Continued blind linkage of mobile interconnection usage rates to IXC access charges will both impact LEC revenues and, perhaps more importantly, act as an

---

[26]McCaw points to the fact that the Commission initially considered this claim in docket 930915, and declined to sever the linkage on this basis in order PSC-94-0288. That docket, however, was initiated by BellSouth alone. The Commission specifically noted, in denying relief, that it wanted to initiate a generic docket to fully consider the issue with all of the various industry players and not just BellSouth. This holding in no way precludes the Commission from now severing the linkage, after having heard the evidence and fully considering all issues.

impediment to negotiations concerning how to deal with the evolution of this industry segment. Furthermore, experience with the linkage from 1988 to date has caused mobile interconnection rates to diverge dramatically from the rates charged to other providers of primarily local service, such as payphone companies and shared tenant service providers. Finally, the formula no longer meets the primary criterion of the 1988 Order -- ease of application. Access charge rate structures have changed since 1988 and, moreover, the linkage to shrinkage access charges and the composite nature of the formula incents companies to implement access charge reductions differentially, so as to minimize the impact on their mobile interconnection revenues.

The Commission, in exercising its public interest mandate, could have concluded from any or all of these that it makes logical sense to now cease using a surrogate for wireless interconnection and sever the linkage with IXC access rates. For this reason the Order must be affirmed.

(b) There is competent substantial evidence in the record on which the Commission could have based its decision to set wireless interconnection rates at their current levels.

After deciding that IXC access charges should no longer be used as a fluid surrogate for mobile interconnection rates, the Commission had to determine what the new rates would be. The Commission decided that, except for one specific kind of mobile interconnection, type 2B, mobile interconnection rates would be set at the levels currently in place.[27] In other words,

[27]The Commission decided that the rate for Type 2B mobile interconnection would be reduced from current levels. McCaw has not contested the Commission's decision to reduce this rate, even though it too constitutes a departure from the 1988 Order.

the Commission decided that current levels were appropriate, but declined to require the rates to continue to fluctuate as the former surrogate, IXC access charges fluctuated.

The record contains substantial competent evidence to support this decision. First and foremost is the fact that neither McCaw nor anyone else presented evidence that the current mobile interconnection rate level was too high and had to be reduced, except with respect to type 2B interconnection, which the Commission did reduce.[28] Existing rate levels are entitled to a presumption that they are just and reasonable. See Metropolitan Dade County Water and Sewer Board v. Community Utilities Corp., 200 So. 2d 831, 832 (Fla. 3d DCA 1967); United Tel. Co. v. Mann, 403 So. 2d 962, 968 (Fla. 1981). The MSPs' presentation of evidence with respect to type 2B interconnection (which is not an issue here), coupled with their failure to present evidence that rates for other kinds of interconnection were too high, forms a rational basis for the Commission's conclusion that other than for type 2B, current rates are appropriate. The Commission could and reasonably did rule on this basis:

> As detailed in this order, we believe that the current rate levels are satisfactory, except for the rate for type 2B interconnection. It is prudent to hold those rates at their current levels, rather than allow them to continually move downward, which would occur with the usage rates under the current formula. No party has stated a major objection to the current usage rate levels except [BellSouth]. From our review of the available evidence, we conclude that the cost recovery and contribution levels [to BellSouth] are satisfactory.

Order at 15 (emphasis added).

Moreover, witness William Cabrera, testifying on behalf of the Florida Mobile

---

[28]McCaw did present evidence that current rates were above the LECs' cost levels, but that standing alone is insufficient to require a rate reduction or even indicate that a reduction is advisable. As noted in the 1988 Order, many factors go into a rate determination in addition to cost. McCaw has no entitlement to service at cost.

Communications Association, specifically stated that current rates are fair and reasonable, both to LECs and MSPs:

> Q: Are the current rate terms and conditions for type 1 and type 2A interconnection appropriate?
>
> A: Yes, for the most part those rates appear to be fair and reasonable, both to mobile carriers and to the LECs. . . .

Tr.162. Mr. Cabrera also testified that current interconnection rates for the "land-to-mobile" option are also appropriate. Tr.164. Counsel for McCaw, Mr. Self, specifically declined to cross-examine Mr. Cabrera. Tr.177.

In asserting that the Commission had no basis on which to base its decision that current rates are appropriate, McCaw's brief never once addresses the fact that neither McCaw nor anyone else ever presented evidence showing that current, non-type 2B interconnection usage rates were too high. Nor does McCaw address the fact that there was specific testimony in the record to the effect that the current interconnection usage rate levels were perfectly appropriate. Both of these factors are sufficient to support the Order on appeal.

III. There is no merit to McCaw's claim that it is now at the unfettered mercy of a monopolist. The Commission specifically reserved jurisdiction to set rates and specifically disclaimed an intent to prejudge anything.

The Commission (i) eliminated the use of IXC access charges as a surrogate for wireless interconnection rates, (ii) set usage rates at their current levels, and (iii) encouraged the LECs and MSPs to attempt to resolve any problems or new issues via negotiation. Now, in a stunning role reversal, McCaw contends that this was inappropriate because absent linkage with access

rates, the LECs will have no motive to negotiate because it is no longer preordained that interconnection rates will be reduced by default.[29] Appellant's Brief at 21-22.

First, a desire to motivate negotiation was not the only basis for the Commission's decision to eliminate the use of access charges as a surrogate for wireless interconnection. Any one of the evidentiary bases discussed above will suffice under the competent and substantial evidence rule.

Second, McCaw simply asks this Court to draw its own inference from the evidence. That is not appropriate. If the Commission's inferences are reasonably drawn they may not be supplanted by the Court's -- even if the Court would have ruled otherwise had it sat in the Commission's place. See e.g. Manatee County, 504 So.2d at 764-65; Gulf Power Co. v. Florida Public Service Comm'n, 453 So. 2d 799, 803 (Fla. 1984). The Commission reasonably inferred from the evidence that the existence of the linkage between access charges and wireless interconnection rates discouraged negotiation; the Court should not substitute its own judgment in place of the Commission's reasonable interpretation.

Finally, McCaw is not without recourse if it attempts unsuccessfully to negotiate some issue or concern. Contrary to McCaw's assertion, the Commission declined to remove itself from this field in favor of negotiation. Rather, the Commission specifically retained jurisdiction to establish network interconnection rates, terms and conditions. Order at 14. If the parties are able to negotiate and agree they are free to do so but if, as McCaw posits, negotiations are

---

[29]As set forth above, it was McCaw which withdrew from a negotiated agreement after it learned how much of a rate reduction it could obtain by default, when IXC access charges were reduced. The evidence shows that it was the linkage with access rates, not the converse thereof, which impaired negotiations.

unsuccessful, the Commission remains the ultimate arbiter of what those rates, terms and conditions shall be. Order at 14.

Furthermore, McCaw's primary concern appears to be that without linking interconnection rates to IXC intrastate access charges, which are now statutorily mandated to be reduced to 1994 interstate levels, it will not be able to force interconnection rates down to the LECs' cost level. Appellants' Brief at 21-23. However, McCaw cites no authority for the contention that it is entitled to the benefit of IXC access charge reductions or that it is entitled to mobile interconnection at cost. Indeed, McCaw's own witness acknowledged that IXC switched access and mobile interconnection are two different things. Maass rebuttal at 4-5 McCaw simply asserts that IXC access charges are a good surrogate for mobile interconnection rates, but fails to describe how this translates into an entitlement on the MSPs' part to benefit from reductions in the rates LECs charge to IXCs.

McCaw also contends that the 1995 revisions to Florida Statutes chapter 364 will eliminate the Commission's jurisdiction to set rate levels for all LECs which choose to elect price regulation. This argument is flawed in several respects.

First, as McCaw admits, the 1995 revisions to chapter 364 do not apply to the proceedings below. Appellant's Brief at 22. See § 364.385, FLA. STAT. (1995).[30]

Second, Mccaw's position is wrong. McCaw's concern is that under newly revised § 364.163, mobile interconnection rates could be frozen and not subject to the Commission's price regulation for a period of time. If McCaw's interconnection rates are to be frozen, McCaw

[30]The revised statutes are inapplicable in proceedings which had already reached the hearing stage as of July 1, 1995. The hearing below occurred in March 1995.

wants those rates to include the IXC access charge reduction which occurred in Fall 1995 and another scheduled to go into effect in Fall 1996. The fact is, however, that the new statutes appear to apply to "network access services" provided by an LEC to a "telecommunications company". Mobile service providers are specifically excluded from the definition of a "telecommunications company". See § 364.02(3) and (12), FLA. STAT. (1995).

Third, as of the date of the Order it was by no means certain which if any of the LECs would elect price regulation under § 364.051(1), FLA. STAT. (1995). The Commission specifically declined to prejudge any dispute arising by reason of the application of the Order on appeal under the newly revised statutes:

> This does not, as a matter of law, prejudge the issue of what rates would be applicable to a local exchange company electing price regulation effective January 1, 1996. If necessary, that decision will be made when there is an actual case or controversy.

Order at 7. Accordingly, the new statutes afford no basis to attack the propriety of the Order below which, as McCaw admits, is not subject to or governed by the revised statutes.[31]

CONCLUSION

The essential issue here is whether mobile interconnection usage rates must continue to be blindly wed to IXC access charges, despite the fact that those access charges are being impacted by a host of factors which have nothing whatsoever to do with mobile interconnection.

---

[31]BellSouth does not by this appeal, or as a result of anything asserted herein, intend to definitively take any position with respect to the import of the new law because there is currently no case or controversy pending with respect to it. The discussion herein is simply designed to illustrate why McCaw's complaints with respect to the new statute are unavailing in the absence of an actual case or controversy.

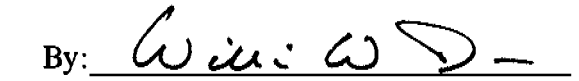
Common sense alone answers this question in the negative. McCaw's brief is in its entirety no more than an exercise in avoiding the logical, common sense answer to this question.

As set forth above, the record contains competent, substantial evidence from which the Commission could have concluded, and did conclude, that the use of IXC access charges as a surrogate for mobile interconnection usage rates is no longer desirable. The record also contains no evidence warranting a departure from existing rates; indeed it contains evidence that existing rates are appropriate. Accordingly, the Order on appeal should be affirmed.

Respectfully submitted,

MAHONEY ADAMS & CRISER, P.A.
Marshall M. Criser
Florida Bar No. 016613
William W. Deem
Florida Bar No. 512834
P.O. Box 4099
Jacksonville, FL 32201-4099
(904) 354-1100

R. DOUGLAS LACKEY, ESQ.
DAVID M. FALGOUST, ESQ.
BellSouth Telecommunications, Inc.
675 W. Peachtree Street, N. E.
Atlanta, GA 30375
(404) 335-0747

By: 

COUNSEL FOR BELLSOUTH

CERTIFICATE OF SERVICE

I certify that a true and correct copy of BellSouth's Answer Brief in Case No. 86,866 has been sent by U.S. Mail on this 16th day of February, 1996, to the following:

David Smith, Esq.
Division of Legal Services
Florida Public Service
Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Jack Shreve, Public Counsel
Office of the Public Counsel
111 W. Madison St., Room 812
Tallahassee, FL 32399-1400

Floyd R. Self, Esq.
Messer, Caparello, Madsen,
Goldman & Metz, P.A.
P. O. Box 1876
Tallahassee, FL 32302-1876

C. Everett Boyd, Esq.
Ervin, Varn, Jacobs,
Odom & Ervin
305 S. Gadsden St.
Tallahassee, Fl 32301

Patrick K. Wiggins, Esq.
Wiggins & Villacorta, P.A.
501 E. Tennessee St.
Tallahassee, FL 32301

Richard Fletcher
GTE Florida Incorporated
106 E. College Ave., Suite 1440
Tallahassee, FL 32301

Anthony Gillman, Esq.
GTE Florida Incorporated
201 N. Franklin St.
Tampa, FL 33602

Carl V. Povelitis
GTE Mobile Communications
245 Perimeter Center Parkway
Atlanta, GA 30346

Kenneth A. Hoffman
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
215 S. Monroe St., Suite 240
Tallahassee, FL 32302-0051

Angela B. Green, Esq.
Florida Public Telecommunications
Association
125 S. Gadsden St., Suite 200
Tallahassee, FL 32301

Mr. George Lee
ALLTEL Florida, Inc.
206 White Ave., SE
Live Oak, FL 32060

Mr. F. Ben Poag
Sprint/United - Florida
315 S. Calhoun St., Suite 740
Tallahassee, FL 32301

Mr. A.D. Lanier
Gulf Telephone Company
115 W. Drew St.
Perry, FL 32347

Mr. Robert M. Post, Jr.
Indiantown Telephone System, Inc.
15925 S.W. Warfield Blvd.
Indiantown, FL 34956

Jeffrey Wahlen, Esq.
Macfarlane, Ausley, Ferguson &
McMullen
227 Calhoun St.
Tallahassee, FL 32301

Robert G. Beatty
c/o Nancy Sims
150 S. Monroe St., Suite 400
Tallahassee, FL 32301

Mr. Daniel V. Gregory
Quincy Telephone Company
107 W. Franklin St.
Quincy, FL 32351

Mr. John Vaughn
St. Joseph Telephone and
Telegraph Company
502 Fifth St.
Port St. Joe, FL 32456

Mr. Jerry M. Johns
United Telephone Company of
Florida
555 Lake Border Drive
Altamonte Springs, FL 32703

David Ervin, Esq.
Young Van Assender, et al.
225 S. Adams St., Suite 300
Tallahassee, FL 32301

Mr. John A. Carroll, Jr.
Northeast Florida Telephone
Company, Inc.
130 N. Fourth St.
Macclenny, FL 32063-0485

Mr. Jeff L. McGehee
Southland Telephone Company
210 Brookwood Road
Amore, AL 36502

Mr. Ferrin Seay
The Florala Telephone Company, Inc.
522 N. Fifth St.
Florala, AL 36442

Ms. Lynn B. Hall
Vista-United Telecommunications
3100 Bonnet Creek Road
Lake Buena Vista, FL 32830

Wm. W. D. —

Appendix A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into NTS Cost Recovery - Phase II	)	DOCKET NO. 860984-TP
	)	ORDER NO. 19677
	)	ISSUED: 7/15/88

The following Commissioners participated in the disposition of this matter:

KATIE NICHOLS, Chairman
THOMAS M. BEARD
GERALD L. GUNTER
JOHN T. HERNDON
MICHAEL McK. WILSON

APPEARANCES: JOHN P. FONS, Esquire, Aurell, Fons, Radey & Hinkle, Suite 1000, Monroe-Park Tower, Post Office Box 10154, Tallahassee, Florida 32302, and ROBERT J. MCKEE, JR., Esquire, 1200 Peachtree Street, N.E., Atlanta, Georgia 30357, on behalf of AT&T Communications of the Southern States, Inc.

THOMAS R. PARKER, Esquire, Post Office Box 110 MC 7, Tampa, Florida 33601, on behalf of General Telephone Company of Florida.

DAVID B. ERWIN, Esquire, Mason, Erwin & Horton, Suite 202, 1020 East Lafayette Street, Tallahassee, Florida 32301, on behalf of ALLTEL Florida, Inc., Florala Telephone Company, Inc., Gulf Telephone Company, Indiantown Telephone System, Inc., Northeast Florida Telephone Company, Inc., Quincy Telephone Company, St. Joseph Telephone and Telegraph Company, Southland Telephone Company, and Vista-United Telecommunications

LEE L. WILLIS, Esquire, Ausley, McMullen, McGehee, Carothers & Proctor, Post Office Box 391, Tallahassee, Florida 32202, on behalf of Central Telephone Company of Florida.

LEN S. ANTHONY, Esquire, 4300 Southern Bell Center, 675 West Peachtree Street, N.E., Atlanta, Georgia 30375, Joaquin R. Carbonell, Esquire, P. O. Box 20100, Miami, Florida 33102, on behalf of Southern Bell Telephone and Telegraph Company.

ALAN N. BERG, Esquire, Box 5000, Altamonte Springs, Florida 32715-5000, on behalf of United Telephone Company of Florida.

RICHARD D. MELSON, Esquire, Hopping, Boyd, Green & Sams, Post Office Box 6526, Tallahassee, Florida 32301, Kenric E. Port and Michael Henry, 400 Perimeter Center Terrace, N.E., Suite 400, Atlanta, Georgia 30346, on behalf of MCI Telecommunications Corporation.

BARRETT G. JOHNSON, Esquire, 116 South Monroe Street, P. O. Box 1308, Tallahassee, Florida 32302, on behalf of the Florida Interexchange Carriers Association.

APPENDIX EXHIBIT "A"

FLOYD R. SELF, Esquire, Messer, Vickers, Caparello, French and Madsen, Post Office Box 1876, Tallahassee, Florida 32302, and Stephen P. Bowen, 11th Floor, 1850 M Street N.W., Washington, D.C. 20036 on behalf of US Sprint Communications Company.

DANIEL R. LOFTUS, Esquire, Holt, Cummings, Conners and Barry, 222 3rd Avenue, North, Nashville, Tennessee 37219, on behalf of the Florida Ad Hoc Telecommunications Users Committee.

PATRICK K. WIGGINS, Esquire, and WINGS S. BENTON, Esquire, Ranson and Wiggins, 325 West Park Avenue, Tallahassee, Florida 32302, on behalf of Microtel, Inc.

CHARLES J. BECK, Esquire, Office of Public Counsel, c/o Florida House of Representatives, The Capitol, Tallahassee, Florida 32399-1300, on behalf of the Citizens of the State of Florida.

TRACY HATCH, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0850, on behalf of the Commission Staff.

PRENTICE P. PRUITT, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0850, Counsel to the Commissioners.

PARTIES

Local Exchange Companies (LECs)

ALLTEL Florida, Inc. (ALLTEL)
Central Telephone Company of Florida (Centel)
Florala Telephone Company, Inc. (Florala)
GTE-Florida (General)
Gulf Telephone Company (Gulf)
Indiantown Telephone System, Inc. (Indiantown)
Northeast Florida Telephone Company, Inc. (Northeast)
Quincy Telephone Company (Quincy)
St. Joseph Telephone and Telegraph Company (St. Joe)
Southern Bell Telephone and Telegraph Company (Southern Bell)
Southland Telephone Company (Southland)
United Telephone Company of Florida (United)
Vista-United Telecommunications (Vista-United)

Interexchange Carriers (IXCs)

MCI Telecommunications (MCI)
AT&T Communications of the Southern States (ATT-C)
US Sprint Communications Company (Sprint)
Microtel, Inc. (Microtel)

Other Parties

Office of the Public Counsel (Public Counsel)
Florida Interexchange Carriers Association (FIXCA)

TABLE OF CONTENTS

ORDER ON NTS COST RECOVERY-PHASE II

BY THE COMMISSION:

I. BACKGROUND

By Order No. 12765, the Commission adopted a plan for the recovery of nontraffic sensitive (NTS) costs from access services. The plan was to combat uneconomic bypass while maintaining as much contribution to NTS costs as the market would bear. To accomplish this, the Commission adopted the concept of tapers and end-user billing in both special and switched access services.

For special access (dedicated private line facilities), the Commission restructured private line tariffs, adopting unbundled elements with bulk rate discounts to reflect facilities actually used and cost savings realized. The Commission also adopted contract rates and end-user billing for special access. This gave the local exchange companies (LECs) the flexibility and the information needed to compete in the market and provided end-users with the necessary information to compare the price of LEC facilities and services with those of interexchange carriers (IXCs), facilities vendors and privately-owned facilities.

For switched access, the Commission adopted access rates and elements, including the Carrier Common Line (CCL) element that mirrored the National Exchange Carrier Association's (NECA) interstate rates approved by the Federal Communications Commission (FCC). In addition, we also implemented a capacity charge to be billed to IXCs. This capacity charge, the Busy Hour Minute of Capacity (BHMOC) charge, was designed to encourage efficient usage of carriers' networks. The access

charge rates, including the BHMOC, were set at a level to maintain the local exchange company toll and toll-related revenues on a predivestiture business-as-usual basis following the actual divestiture of the Bell Operating Companies. Our original plan required that the terminating CCL charge be billed to IXCs while the originating CCL charge is billed to end-users. The originating rate was to have been tapered such that the price per minute of use (MOU) declines as total minutes of use increase. This was intended to allow the deloading of NTS costs for medium and large customers while maintaining a higher level of contribution from low-usage customers.

From the outset the Commission recognized that its plan could not be implemented in its entirety when adopted. Therefore, the Commission ordered certain restrictions and exceptions and delayed implementation of part of its NTS recovery mechanisms. Specifically, the MOU taper for originating CCL usage was delayed until end-user billing was implemented. End-user billing for switched access was delayed until equal access was achieved within an Equal Access Exchange Area (EAEA). In the meantime the Commission retained the existing CCL charge billed to IXCs.

This docket was initiated in mid-1986 to re-address the level and mechanisms for NTS cost recovery. The proceeding was split into two phases due to the complexity of the issues of NTS cost recovery. Phase I was devoted to an examination of the appropriate level of NTS costs to be recovered from access charges. Phase II addressed the appropriate mechanisms with which to recover NTS costs.

Other than for corrections to the access revenue target resulting from errors in our initial calculations and for two Florida Supreme Court decisions reversing our treatment of certain Southern Bell divestiture-related expenses and a change in the way gross receipts tax is collected, we have not made any major changes to the levels or structure of access charges. In December of 1986, the Commission issued a Notice of Proposed Agency Action, Order No. 17053, seeking to reduce the level of access charges. This Order was issued in part to narrow a widening gap between our intrastate access charges and the FCC's interstate access charges. It was also based in part on the industry's (IXCs and LECs) espoused belief that our intrastate access charges are too high and must be "deloaded" (reduce the amount of NTS recovered) immediately in order to avoid uneconomic bypass, arbitrage, etc. The Order proposed to reduce the CCL charge. As a result of the Order, all the LECs, except Southland, reduced their CCL charges in 1987.

Notwithstanding the CCL charge reductions, Phase I was our first full re-examination of the level of NTS cost recovery via the CCL and BHMOC since 1985. Hearings for Phase I were held during September 14, 16-17, 1987, to address the appropriate rate levels for NTS cost recovery. Order No. 18589, issued December 24, 1987, contains our decisions regarding Phase I. The most significant feature of that order is the Commission's decision to allow each LEC to set its own specific rate levels for the recovery of NTS revenues. Hearings for Phase II were held March 16 and 17, 1988, to determine the appropriate mechanism for the recovery of NTS revenues by the LECs. Our decisions are reflected below.

II. INTRODUCTION

In Phase I we decided that the most appropriate way to deal with the various access-charge-related problems is to allow company-specific NTS recovery levels. Having answered the question of "How much" the next question is "How will the NTS revenues be recovered by the LECs?" Historically, we have utilized the CCL charge for this task. The CCL charge stems from the FCC's access charge structure that we adopted at the divestiture of the Bell operating companies from AT&T. We also created the BHMOC rate element as a residually priced mechanism to recover access revenues at a level equal to predivestiture toll settlements. The BHMOC revenues contribute to the recovery of NTS costs. A number of NTS recovery proposals were advanced, ranging from retention of the CCL charge and BHMOC charge to totally new NTS revenue recovery plans. As discussed below, the decision to allow company-specific NTS recovery levels substantially reduces the need for a complete change in NTS recovery mechanisms. It appears that the proper course to follow is to retain the existing CCL and BHMOC mechanisms and to implement LEC requested access reductions by reducing BHMOC. Reduction of the BHMOC will also reduce the complexity of our current access structure. In addition, we have established certain guidelines to govern the implementation of any access charge reductions.

III. STRUCTURE OF NTS RECOVERY

In the course of this proceeding the parties advanced so many different ideas about what specific method should be used to recover the NTS revenues that a matrix was devised for comparison purposes. The matrix is attached to this Order as Appendix A.

The matrix is divided into two parts. The first summarizes the multi-element plans and the second summarizes the single element plans. In multi-element plans, each element is shown separately. The matrix shows the features of each plan including any special comments.

Notwithstanding the multitude of specific NTS recovery plans identified in the matrix, the plans fall generally within four catagories:

1. CCL-Type Charges

The CCL charge is a time-of-day sensitive rate assessed for each minute of switched access purchased by an IXC. The total revenues collected through the charge will vary, depending on the level of switched access usage. The CCL can be avoided by using some other form of access connection, either by subscribing to special access (service bypass) or by the use of customer or carrier-owned facilities (facilities bypass).

Most of the parties in this docket have recommended retaining the CCL element as currently structured. The prevailing reasons for retention are that: (1) the element is in place and working, (2) it is recovering some contribution from the users of the local loop, (3) it is applied to access minutes which are readily measurable, (4) it does not create market distortions and (5) it is not controversial.

ATT-C argued for total elimination, United argued for partial elimination and Centel argued for restructuring the CCL charge to recover 25% of total NTS separations costs.

2. BHMOC-Type Charges

The BHMOC charge is a fixed monthly rate per busy hour minute of switched access capacity ordered by IXCs. Unlike the CCL charge, the BHMOC charge is more closely linked to peak usage rather than total usage. The BHMOC charge is calculated and assessed for each IXC connection to a LEC switch. The revenues collected through this charge will vary depending on the level of access capacity installed by the IXCs. The BHMOC charge can be avoided in the same manner as the CCL charge.

Most of the parties in this docket have suggested total elimination of this element. The main reasons are: (1) it is controversial, (2) it creates market distortions, (3) it is difficult to administer, and (4) it is unique to Florida, not an interstate element as well.

3. Minutes-of-Use-Based Flat Rate Charges

These are flat monthly rates assessed to IXCs based on their respective shares of a LEC's revenue requirement for providing the total switched access minutes. The LEC's NTS revenue requirement is determined and then proportioned among the IXCs according to their share(s) of the total access minutes. The revenues collected through this charge are fixed to an NTS revenue requirement. The price per switched access minute will vary from month to month. The MOU-based flat rate charges can be avoided in the same manner as the CCL charge. ATT-C, Centel, Northeast and Indiantown have endorsed MOU-based flat rate charges.

4. Uniform Social Access Service-Type Charges[1]

These are generally flat monthly rates, derived from a LEC's fixed NTS revenue amount, assessed to IXCs based on their market shares as determined by total voice equivalent channel capacity. That is, the LEC's NTS revenue amount is proportioned among the IXCs according to their respective market share including private line. ULAS cannot be avoided by special access or private line facilities. Quincy endorses a variant of ULAS.

---

[1]The Uniform Local Access Service (ULAS) proposal was created by Dr. Ben Johnson on behalf of the Florida Association of Concerned Telephone Companies. It has been advanced at the Commission as an alternative NTS recovery plan since 1983. See Orders Nos. 12765 and 15481.

Attached to this Order as Appendix B is a summary list of the plans actually advocated at the hearing by their respective supporters. Included with each party's plan is a brief summary of the identified effects of each plan on the LECs and IXCs.

As with all new proposals, the exact effects of the proposed mechanisms are unknown. However, the summary of effects illustrates the parties' projections of the probable effects for the LECs and the IXCs. Although many mechanisms were proposed, there was a great deal of agreement on certain points.

Most of the witnesses testified that access charges are too high and that they must be reduced in order to keep a viable switched network in Florida. Some witnesses pointed to the fact that some IXCs are misreporting their intrastate usage because Florida's rates are so high. On the other hand, some of the smaller LECs are concerned that, if access charges are reduced, the reductions will necessitate larger revenue demands placed upon already diminishing revenue sources. They are also concerned that access charge reductions will threaten their existing access charge subsidies. If such a situation occurred, the small LECs' rates would be increasing because of competition, but competition's benefits would not be forthcoming to these companies' customers. Further, while most of the LEC witnesses advocated access charge reductions, each one advocating a reduction also admitted that he would not want a reduction without simultaneous increases in rates for other services so that the LEC would remain revenue neutral. It is against this backdrop that we must evaluate and determine the most appropriate method to recover NTS revenues.

A. Retention Or Restructuring Of The CCL Charge

Most of the parties in this docket have recommended retaining the current CCL element as structured, three parties have recommended modifications, and one party suggested eliminating the element altogether. The four proposals for changing the CCL element are described separately below. Because our reasons for retaining the CCL charge as currently structured apply equally to all these proposals we will address the merits of each plan together in our conclusions set forth below.

1. Retain the CCL Charge

GTE-Florida, Indiantown, Northeast, Southern Bell, MCI, Microtel, Sprint, FIXCA and Public Counsel favor retaining the CCL element as currently structured. Sprint's witness Cornell captured the group's sentiments stating: "The CCL charge is a usage-sensitive charge. To the extent NTS costs are recovered with access charges, they should be recovered with a usage-sensitive rate element because a usage-sensitive charge introduces less distortion into the market than any other access charge mechanism that has been proposed."

Quincy's witness Prestridge and Southern Bell's witness Denton summarized the advantages of the CCL element arguing that the CCL element is not controversial; it is in place and working as part of the carrier access billing system (CABS) program; it recovers some contribution from toll usage of the local loop; it is easily applied to readily measurable access minutes; that

it does not create market distortions; that it does not attempt to recover costs on a flat rate basis; and that it is currently used on both the interstate and intrastate levels. These witnesses summarized the disadvantages, arguing that the CCL revenues do not necessarily equate to cost-based revenue recovery; that additional revenue support is required from other access elements; and that there is pressure to mirror the interstate CCL rate. Quincy further stated that, while the CCL element should be retained, the originating and terminating rates should be equal.

2. ATT-C PLAN

ATT-C's plan is called "Managing Support for Local Services" (MSLS). ATT-C's witness Guedel described it as follows:

> MSLS would require that each LEC first establish its specific, fixed annual [NTS] dollar requirement. This amount could be determined from 1987 actual NTS recovery adjusted for the effects of annualizing any NTS reductions implemented during that year. This annual amount would then be divided by twelve to yield a fixed monthly revenue figure. Each LEC would then calculate the market share for each IXC in its territory. The calculated market share percentage for each IXC would then be multiplied by the monthly revenue figure to yield the actual liability of each IXC for the given month.

Witness Guedel further specifies that market share will be based on each IXC's total originating and terminating CCL minutes of use. Originating CCL minutes would be discounted by 43%, giving them less weight than nondiscounted terminating minutes. The market share for any one IXC would be determined by dividing the individual IXC's minutes of use by the LEC-specific total of all CCL minutes. Witness Guedel further argued that the annual fixed dollar amount be capped at 1987 levels because the current level of NTS costs recovered through access charges is too high and should be reduced.

Witness Guedel also argues that the plan can fight uneconomic bypass by IXCs and large users in two ways. First, since the amount of revenue paid by users to LECs would no longer be dependent upon minutes used, the large user loses his current incentive to reduce traffic in order to reduce to access charges embedded in his IXC's rates. Second, the weighting process will reduce the incentives for originating bypass.

The advantage to the plan is that it can fight bypass as described. However MCI's witness Beard identified several disadvantages of ATT-C's plan. First, the plan does not appear to give other IXCs sufficient discounts for their nonpremium access. Second, the plan may provide ATT-C with a competitive advantage and, third, the plan does not take into account growth in access lines or local loops.

As to ATT-C's competitive advantage, MCI's witness Beard argues that, if NTS revenues are capped at present levels and then recovered from the IXCs based on their present market share, there is a tendency to freeze the

IXCs at their present market share. He further explains that, if MCI increases its market share, the other IXCs' market shares will decrease, particularly ATT-C's due to its large market share. As a result, MCI's total NTS costs increase while ATT-C's NTS total costs decrease. He argues that ATT-C can use this reduction in NTS costs to reduce its prices to consumers and that MCI cannot match this price reduction, because MCI's NTS costs are increasing.

Two of Florida's small LECs, Northeast and Southland, objected to ATT-C's proposal because it does not account for growth in loops. As Southland's witness Wolfe stated, "Southland is a small LEC with only two major revenue sources, access and local service. Access minute growth and corresponding NTS revenue growth is used to keep upward pressure off our local rates. Capping NTS revenue will harm Southland because we don't have a mechanism to cap our NTS expenses." United also maintains that the plan fails to accommodate possible increases in NTS expenses but suggests that it would be willing to consider the plan if a modification addressing this flaw were made.

Sprint suggests that, while the company cannot support ATT-C's plan, modifying it to provide for recovery of a capped NTS amount via a usage-sensitive CCL rate, and requiring ATT-C to fully recover such CCL charges would minimize Sprint's concerns. ATT-C responded, arguing that appropriate NTS revenue level is appropriate because even the L[illegible] acknowledge that NTS revenues are growing faster than NTS-related costs. Finally, Southern Bell argued that ATT-C's plan is inconsistent with the Commission's decision in Phase I that a fixed NTS revenue requirement is inappropriate.

Centel Plan

Centel's witness Moller stated that the CCL rate element should be restructured and repriced. Specifically, Centel proposes "to make its originating CCL rate a flat rate based on NTS cost. The terminating CCL rate will be a flat rate based on the number of lines or trunks terminated at the carrier's point of connection. The NTS costs assigned to originating and terminating CCL charge should not exceed 25% of the company's total NTS cost." Centel also proposes to institute a subscriber line charge (SLC).

Quincy, Northeast, and Indiantown support the SLC proposal. Quincy supports the SLC plan even if not uniformly instituted by all LECs.

Witness Guedel responded to Centel's proposal arguing that "Presubscribed lines are not an appropriate measure of market share for NTS cost allocations because there is no correlation between an IXC's presubscribed access lines and the amount of traffic that the IXC carries. This creates an inequitable recovery of NTS costs among IXCs."

4. United Plan

United proposed two major changes to the CCL element. First, because originating 800 service usage is more difficult to bypass, the terminating CCL rate should be applied to originating 800 Service access minutes. Second, the originating CCL should be eliminated in order to meet the threat of service bypass. In support of the second proposal, United's witness Griffin argued that, because bypass generally takes place on the originating side of the network, eliminating the CCL charge is the most that can be done to meet bypass threats. He also stated that reducing the CCL to zero would bring uniformity with the interstate CCL rate.

Witness Griffin also identified several perceived benefits flowing from United's proposals: Eliminating the originating CCL provides incentives for IXCs to enter some LEC markets that do not presently experience any significant competition; the terminating CCL rate element allows the LEC to maximize revenues from bypassers of originating switched access that still use the LEC's facilities to terminate traffic; and the terminating CCL allows the LEC to maximize revenues in markets that may not generate significant originating interexchange traffic. In response to the issue of how United's proposal would affect other LECs, witness Griffin stated that it would be improper to impose a zero CCL rate level on all companies.

Several parties responded to United's proposal. MCI's witness Beard argued, "The purpose of the NTS cost recovery [CCL] rate element is to recover the fixed costs of the switched network. Therefore, originating and terminating switched minutes of use should be used as a mechanism to recover those fixed costs." GTE-Florida's witness Menard questioned what was to be gained from eliminating the originating CCL charge when the charge is already not being assessed to WATS service. Quincy's witness Prestridge and FIXCA's witness Gillan voiced concerns about the propriety of creating incentives for IXCs in the access charge structure. As witness Gillan stated:

> The concern with this unbalanced recovery scheme is that it provides an IXC that originates traffic only in United's territory an access cost advantage... This problem is an extension of the geographic averaging concerns, ...made here more complex by the potential for discrimination. The important point is that the Commission's access plan should not influence an IXC's choice to serve statewide or focus regionally. These decisions should be driven by marketing and customer demand, and the access environment should be a neutral consideration.

5. Conclusion

Having considered the CCL restructuring plans submitted by the parties we find that the CCL rate element should be retained as currently structured. With respect to Quincy's proposal, making the originating and terminating CCL rates uniform would disrupt LEC revenues

because either the terminating CCL rates would have to be lowered, which would result in a revenue decrease, or originating CCL rates would have to be increased. Such disruption is not necessary or desirable. Our decision in Phase I to allow company-specific NTS revenue recovery levels has dramatically reduced the pressure to create new and complicated recovery schemes. The issue is not so much one of "how" as it is "how much". LEC-specific NTS levels mitigates this problem. The net effect of all the alternatives proposed was a reduction in NTS revenue levels. We believe that simplification of our existing access structure will better serve the public interest than cluttering it with new and untried mechanisms.

ATT-C's plan would be even more disruptive to the LECs. It would eliminate two elements that are currently in place and recovering costs adequately. It would require the LECs to implement a new methodology to determine their costs annually. But, most importantly, it would disrupt the amount of NTS revenues that the LECs receive and use to offset access charges that are not recovering their costs, and to provide for growth in NTS costs. We agree with Southern Bell that ATT-C's plan is inconsistent with our decision in Phase I. The MSLS plan would require each LEC to establish a specific, fixed annual NTS revenue requirement. We rejected an NTS revenue requirement in Order No. 18598 and we do so again here.

Centel's plan is basically the same as ATT-C's MSLS plan except that it allocates the revenue based on different criteria. For originating access, it allocates based on the number of feature group D lines subscribed to by the various carriers. For terminating access, it allocates based on the trunk capacity ordered by each carrier. Our criticisms of ATT-C's plan apply equally to Centel's plan. Sprint further pointed out that the plan could only be used in LEC service areas where equal access is fully available.

We agree with ATT-C's witness Guedel that there is no direct correlation between the number of access lines presubscribed to a particular IXC and the amount of traffic that that IXC carries. Consequently, Centel's plan may not result in the fair distribution of NTS costs that it intended. Further, Centel's plan is also based on a 25% NTS revenue requirement; we reject it as we did ATT-C's plans.

With respect to United's plan, we fail to see any advantage in reducing the CCL rate to zero. Such a plan would be clearly inappropriate for at least the smaller LECs. Further, we also agree with witnesses Gillan's and Prestridge's concerns that we not create distortions in the toll markets by giving regional LECs unintended cost advantages. Accordingly we also reject United's plan. The structural changes recommended by Quincy, Centel, United and ATT-C would either complicate or create problems within an element that is currently functioning without problems. Such complications are unneeded. Since the existing CCL charge is not "broke" we decline to fix it.

B. RETENTION OR RESTRUCTURE OF THE BHMOC

The majority of the parties in this docket including Centel, Southern Bell, GTE-Florida, United, MCI, FIXCA, Sprint, ATT-C and Microtel have suggested total elimination of the BHMOC. The only parties not recommending elimination are Indiantown, Northeast, Quincy and Public Counsel.

The parties advocating elimination share a common complaint; they argue that it is an administrative burden and creates market distortions. Microtel's witness Finch argued that administration of the BHMOC consumes an inordinate amount of time and money just verifying the LECs' bills for the BHMOC.

Sprint's witness Cornell testified that the BHMOC distorts the IXC's choice of how to carry traffic and may result in different costs per unit of traffic for NTS recovery for different IXCs. FIXCA's witness Gillan opposed any change to the BHMOC, arguing that the Commission should continue its deliberate movement towards simplifying the access charge environment. Quincy's witness Prestridge and Southern Bell's witness Denton summarized the advantages and disadvantages of the BHMOC as follows: The BHMOC element is in place and working; it recovers some contribution from the toll usage of customers' loops and it does not limit revenue recovery to a flat rate. In a negative vein, they also argued that the BHMOC is controversial; it creates market distortions; it is confusing to IXCs because it is unique to Florida; and it does not equate to cost-based revenue recovery.

As a corollary to the elimination of the BHMOC, GTE-Florida, Centel and MCI suggested recovering the lost BHMOC revenues by transferring them to the CCL charge. United and Southern Bell suggested recovering the lost BHMOC revenues through increases in those rates that are priced below cost.

In support of their desire to eliminate the BHMOC, Sprint and Southern Bell state that Florida has the highest or one of the highest access charge rates in the nation. However, they cite no evidence in this docket to support such a statement. Contrary to these claims, the evidence in the record indicates that half of Georgia's LECs have company-specific NTS access rates that are higher than Florida's and that United experiences higher NTS access rates in Missouri than it does in Florida.

ATT-C argues that the BHMOC element should be eliminated and replaced with the same flat rate mechanism which was discussed above regarding the CCL charge.

Quincy is the only party that recommended that the BHMOC element be retained and expanded. Quincy argued that the BHMOC should be expanded to incorporate the concept of the universal local access service (ULAS) proposal that was described in Order No. 15481, Docket No. 820537-TP. The ULAS plan provided for a flat monthly rate assessed to IXCs based on their market shares as determined by total voice equivalent interEAEA channel capacity including private line. Quincy would have us apply the BHMOC as a flat rate to each IXC's special access connections.

In response to Quincy's ULAS-type plan, United argues that Quincy has provided no rationale for implementation of a ULAS-type element. Sprint's witness Cornell argued that making a carrier's payments for NTS recovery depend on a measure of

capacity is virtually certain to distort network design by the carrier. She further argues that this will work against efficient network design and the most efficient provision of services to Florida's consumers.

In addition, witness Cornell believes any attempt to develop a new measure of capacity would be costly and time consuming due to the necessity of designing and implementing new procedures for measurement and data collection. She also argued that Quincy's ULAS proposal will encourage development of private bypass networks.

Upon consideration, we find that the BHMOC should be retained as currently structured and that no new rate elements should be adopted. We agree with witness Gillan that we should continue to simplify the access environment. Access charge reductions can be accomplished by the LECs simply by reducing existing elements. There is no need to add confusion to access charges by adding a new mechanism for their recovery. We are cognizant of the problems with the BHMOC. However, it also appears that completely eliminating an access element would be a drastic action which may cause greater problems than leaving the element in place. In addition, Public Counsel pointed out that the Commission previously rejected these same arguments against the BHMOC in 1984. As we explained in Order No. 13934, the BHMOC was designed to encourage efficient use of network facilities by stimulating off-peak calling. With a flat-rated CCL charge during off-peak periods, a company has an incentive to maximize the use of its network during these times. The combination of both a BHMOC charge and a CCL charge provides a fair balance of one charge based upon peak usage and another charge based upon overall usage.

It is important to note that no revenue impact for each of the above plans was provided by its respective sponsor. It would be inappropriate to accept any such plan without a thorough review and consideration of such impact.

C. Intra/InterLATA NTS Rate Uniformity

By Order No. 17743 we ordered the LECs to implement bill and keep of intraLATA LEC toll revenues using the Modified Access Based Compensation (MABC) Plan. Under the MABC plan the originating LEC bills and keeps the toll revenues for all intraLATA calls. When an intraLATA call is terminated by a LEC other than the originating LEC, the terminating LEC charges terminating access charges to the originating LEC to compensate for the costs associated with terminating the call.

When the MABC plan was implemented on January 1, 1988, we applied the existing terminating interLATA access rates to intraLATA LEC-to-LEC traffic to minimize confusion and because we determined those rates to be a reasonable surrogate for intraLATA termination. As implemented, this plan applies only to bill and keep of intraLATA MTS, WATS, and 800 traffic. IntraLATA private line revenue continues to be pooled and distributed to the LECs under a settlements process until intraLATA private line and interLATA special access can be restructured and the intraLATA private line pool dissolved.

As a result of the application of interLATA terminating access charges to certain intraLATA traffic, we are faced with the question of whether intraLATA access rates should mirror interLATA rates. As usual the parties are split on the issue.

The IXCs argue that inter- and intraLATA rates should be the same. Sprint and MCI further urged that access charges be imputed to all LEC toll traffic. Southern Bell's witness Denton argued generally that the rates should be the same but also stated that the rates should not be mirrored if the restructure of private line is the only revenue source available to offset access charge reductions. Centel argued that if the rates are mirrored then a company's inter- and intraLATA costs should be aggregated to develop a uniform rate.

Quincy, Indiantown, and Northeast argued that inter- and intraLATA access rates should not be uniform. As stated by Quincy's witness Prestridge, the MABC plan is different from that of the interLATA pricing scheme; one of the major differences being that the MABC plan does not contain originating access charges. He further argued that, since the MABC was only implemented January 1, 1988, intraLATA rates should not be changed until the LECs have had adequate experience with the plan and can determine what changes if any are needed. Finally, he argued that, with intraLATA private line revenue still under pooling, intraLATA access rates should not be changed until intraLATA private line pricing is restructured and put on a bill and keep basis.

We agree with witness Prestridge that the interLATA and intraLATA access charge mechanisms are different. Therefore, we do not believe that the intraLATA access rates should be changed automatically to match the interLATA access rates. The LECs still have the right to carry all intraLATA 1+ calls and the EAEAs have not been opened to full competition. IntraLATA access charges exist only on toll calls between LECs and not on intraLATA calls originating and terminating within a single LEC's territory. The intraLATA LEC-to-LEC toll traffic represents only 10 percent of the total intraLATA LEC toll traffic. We agree that the LECs need billing experience with the MABC plan before they can determine with reliability what the impacts of revising the intraLATA access rates would be and if the MABC plan itself needs fine tuning. We further agree that both the intraLATA switched and private line services should be placed on a bill and keep basis before intraLATA switched access rates are changed. Therefore, upon consideration, we find it appropriate that, if a LEC changes its interLATA access charge rates, we will not require that its intraLATA access rates be automatically changed to conform to its interLATA access rates.

D. High-volume Access Charge Discounts

Historically the goal of regulation has been to insure that all customers of regulated monopoly services pay reasonable rates for those services. Prior to divestiture, all telecommunications customers were captives of "the telephone company." However, the advent of competition has brought the emergence of non-LEC alternatives to switched access for certain high volume customers. We, as regulators, are now faced with two potentially conflicting goals: maintenance of reasonable prices for still captive customers and retention of large-users on the LECs' switched networks through incentive access pricing.

By Order No. 12765 we adopted a policy of incentive pricing in the form of bulk-rate tapered minutes of use charges. Our purpose in adopting the bulk rate discount policy was twofold. First, we believed that discounts could keep

large users from moving totally off the switched network through facilities bypass. Second, we believed that discounts could keep large users from migrating to special access service and engaging in service bypass.

Experience has shown that our concerns underlying the first goal are not as pressing as we once believed. The record in Phase I of this proceeding demonstrated that facilities bypass is not yet a significant problem in Florida. However, service bypass is and continues to be a problem. It is important to note that the record indicates that service bypass is more a function of the price relationship between special and switched access service than it is a function of the price of switched access alone. This suggests that incentive pricing for switched access alone will not solve the service bypass problem. As GTE-Florida stated, most large users have already migrated to lower special access service. Further, it appears that the customer already subscribing to special access will not change back to switched access if a bulk rate discount is offered. Only new customers considering special access will be susceptible to discounts; however, the current price of special access is so low that any discounts would be ineffective.

No one has yet presented a bulk-rate discount plan for implementation. GTE-Florida did, however, provide an example of a plan that it proposed to the FCC called "Preferred Switched Access" (PSA). As described by witness Menard, "The PSA tariff is basically a tariff that offered discounted switched access service to replace the special access service that large customers use to send traffic through an unbundled [ ] offering such as [ATT-C's] Megacom."

The tariff is designed so that it covers both the average incremental cost of access and the marginal cost of access. This allows the company to reduce the access rates for large-volume PSA customers while keeping the rates for all other customers constant and still generate ample revenues.

Under the PSA rate structure, a minimum charge of $1,500 applies to total usage. The minimum charge is designed to target the service to large users. For those minutes up to the minimum, the rate is $.02 per minute with a 35% discount for evening and a 50% discount for night and weekend. Once the $1,500 minimum is reached, all dollars of usage are discounted at 55%.

Witness Menard strongly cautioned against an intrastate PSA service until special access has been repriced. She suggests that special access be repriced to a higher rate to create a better price relationship so that a discounted switched access rate can be targeted between regular switched access and special access. She underscored the inter- and intrastate rate disparities by pointing out that the breakeven point between interstate special access and switched access is approximately 30,000 minutes, while the intrastate breakeven point is approximately 9,000 minutes.

Under the PSA tariff, the switched access discounts are billed direct to the end-user. Witness Menard argued that switched access discounts for high-volume users should not be billed to IXCs because there would be no way of insuring that the carrier passed through those savings to the customer. She also stated that it would be more practical to bill the end-user because it would be difficult to identify the bulk-rated traffic if the carrier were billed.

As we said earlier, there is no specific discount plan before us for consideration. Moreover, we agree with witness Gillan that we should not now adopt a generic pricing scheme targeted to large-users. Notwithstanding that, however, we strongly encourage all LECs to develop and submit bulk discount switched access plans for our review. We continue to believe that such plans will be an increasingly important tool in mitigating both types of bypass while maximizing usage of the LECs' switched networks and providing economic alternatives to large volume users. We also believe that bulk-rate discounts will help relieve the pressure for across-the-board access reductions in response to bypass pressures.

E. End-user Billing

As part of our overall plan for access charges, we adopted the concept that switched access charges should be billed directly to end-users. See Order No. 12765. We believed then that end-user billing would serve two purposes. First, it would educate consumers about the real cost of access and give them information necessary to make an informed economic decision about whether to continue subscribing to switched access. Second, it would allow the local exchange companies to implement tapered discounts so that the average cost for large users would be less than for casual customers.

When we adopted the concept, we knew that end-user billing could not be implemented until at least an entire equal access exchange area (EAEA) had been converted to equal access. Since the four large LECs are well down the road to equal access conversion, we must determine now whether it should be implemented in light of current conditions. As discussed below, it does not appear as though it would be practical to institute end-user billing for the general customer base.

The technical transport of every switched network call consists of three segments: (1) the originating LEC's transport of the call from the customer's premises to the IXC's point of presence (POP); (2) the IXC's interexchange transport of the call from the originating POP to the terminating POP and (3) the terminating LEC's transport from the IXC's terminating POP to the called number's premises. Switched access charges apply only to originating and terminating segments.

Currently, originating and terminating access charges are billed by the respective LECs to the IXC. The IXC treats these charges as part of its costs and determines a rate for carrying the entire call from originating end to terminating end. The interexchange carrier bills this rate to the end-user. The end-user sees one bill for the call and it appears on the customer's bill as though the interexchange carrier provided the entire call. End-user billing would provide a customer with separate bills for a single call: the access portion the LEC carries, and the POP to POP portion that the IXC carries. If a LEC provides billing service for an IXC, the two charges will appear on one bill. However, if the IXC provides its own billing, the two charges will appear on two different bills.

It appears from the record that end-user billing can be technically implemented for most calls, but it also appears that it could not be implemented in a cost-effective manner. Southern Bell's witness Denton stated that the companies may be technically able to bill originating Feature Group D access but

is unable to bill end users Feature Group A access charges, terminating access charges for all feature groups, and access charges for calling card, third number billed, collect and coin telephone calls.

Notwithstanding the technical ability to implement some end-user billing, a number of witnesses commented on its impracticability. Witness Denton argued that switching from billing aggregate amounts of access minutes of use to a few IXCs to millions of end-users will mean added administrative costs as a result of the increased number of customers to be billed access charges. He also testified that different billing periods would make it hard for customers to audit or reconcile separate LEC and IXC charges for a given call.

The adverse impact of the plan would not be restricted to LECs but would extend to IXCs and end-users also. Witness Gillan stated that the concept had merit, however, he also stated that the interexchange carrier market has so developed that imposition of end-user billing needlessly disrupts important customer-supplier (IXC) relationships. As witness Gillan further testified, end user billing inserts the local exchange carrier between long-distance companies and their customers which weakens the name and product recognition that the IXC industry has labored to achieve.

In addition, Sprint's witness Cornell argued that the technical inability to bill access charges to end users for FGA and FGB calls would place nondominant IXCs at an unjustified competitive disadvantage. She explained that because local exchange companies cannot identify individual customers' use of Feature Group A access, and cannot determine the called number with Feature Group B access, a discount would add to the distortions where equal access does not exist.

United suggests that an alternative approach might be to target end-user billing only to high volume customers. We note that this is the approach proposed for GTE-Florida's interstate PSA tariff. This plan will implement end-user billing of originating access charges to certain high volume customers. As we mentioned earlier, GTE-Florida's witness Menard cautions against Florida adopting a similar approach at this time because the current cost of special access relative to switched access is so low that this type of a reduced switched access plan would not be taken by the customers towards whom the plan is targeted.

It may be that some form of end user billing for certain types of high volume customers has merit. However, it also seems evident from this record that while end-user billing for many end-users can technically be billed for some feature groups it cannot be done without imposing added billing costs on the LECs, creating customer confusion, and potentially disrupting the IXC market place. Accordingly, we find it appropriate to retreat from our prior decision to institute general end-user billing for switched access charges. We do leave open the possibility of end-user billing under certain appropriate circumstances.

IV. IMPLEMENTATION OF ACCESS REDUCTIONS

A. Element to be Reduced

All of the parties in this docket, except United and Quincy, testified that all optional access reductions should be applied to the same rate element. However, there is a minor split between two groups as to the manner in which the reductions should be structured.

The first group is comprised of those parties who advocate elimination of the BHMOC. If this were done, the CCL would be the only remaining access element to reduce. The parties in this group are Southern Bell, GTE-Florida, MCI and ATT-C. ATT-C specifically argues that the current dual-element NTS recovery system creates unneeded administrative costs without adding anything to the recovery process and that, therefore, the BHMOC should be eliminated and the CCL restructured. MCI's witness Beard stated that, "the first choice should be to eliminate the BHMOC and set the CCL at an appropriate level to recover the reduced amount of NTS revenues."

The second group argues that the BHMOC should be reduced with the goal of eventually eliminating this element. FIXCA, Centel, Microtel and Sprint support this proposal.

As FIXCA's witness Gillan stated, "All rate reductions should occur through a lowering of the BHMOC charge until that rate element is eliminated from each exchange carrier's tariff. Such a program will greatly simplify the access environment, move the intrastate tariff closer to its interstate counterpart, eliminate distortions in the interexchange market caused by interexchange carriers paying different access rates for identical service, and avoid significant rate/revenue shocks experienced by exchange and interexchange carriers during the transition."

Two parties, United and Quincy, argued that each company should be allowed to modify either the CCL or BHMOC rates as needed.

Consistent with our decision above, we reiterate that the BHMOC will not be eliminated. Neither do we agree that each company should be able to apply the optional reductions to whichever element they chose as advocated by United and Quincy. Allowing LECs to reduce either element at will would create confusion among the IXCs. We agree with Microtel's witness Finch's statement that "...the Commission should try and maintain some type of uniform structure for administrative reasons" by reducing the same element.

While the BHMOC element serves to promote the efficient use of the network it does appear to be more difficult to administer than the CCL element. Accordingly, we find that the BHMOC shall be the access charge element that shall be reduced when a LEC's request for an access reduction is granted.

B. Range of Access Rate Disparity

In an environment of company-specific access charges a rate disparity will occur between each local exchange company. From the record in the proceeding, three general positions have emerged on the rate disparity issue. Several parties take the position that in a bill and keep environment it does not make

sense to limit the degree of rate disparity and that each company should charge the amount necessary to cover its costs. The second position is that some limit on the magnitude of rate disparity may be appropriate but only in conjunction with a high cost fund. The third position is that, due to the potential adverse effects of wide disparities in access rates, the disparity should be limited to at most 1-2¢ per minute of use.

Centel, GTE-Florida, Southern Bell, United and ATT-C are against any limitation. Centel's witness Moller stated that "...the acceptable range is whatever it takes to recover these NTS costs." Witnesses Menard and Denton express similar sentiment. Witness Denton further explained that it is most likely the smaller LECs that would experience a significant impact of relatively high CCL rates. However, he also states that the statewide impact of a smaller LEC's higher access rates on an IXC is not significant. Finally, witness Denton agreed that, conceptually, a wide rate disparity may prevent or delay an IXC's entry into some LECs' territories.

Quincy, Northeast and Indiantown argue that, if the Commission chooses to limit the disparity of access rates between LECs, it should also develop a High Cost Fund (HCF) to ensure that all LECs are able to continue recovering their NTS costs. Quincy's witness Prestridge outlined several potential detrimental impacts from allowing wide variances in company-specific access rates. He pointed out that significant variances can lead to arbitrage by IXCs between LECs with different rates but which both serve a large EAS area. In such a situation, one can route more terminating traffic into the less expensive access charging company which will then be terminated over trunks provided in part by the smaller LEC with generally more expensive access charges. He also pointed out that wide variances create the potential for geographic toll rate de-averaging by IXCs. This can result in severe price discrimination against end users in rural, high-cost low-density serving areas. In addition, witness Prestridge argued that "No LEC should have to charge disproportionately high access rates when compared to the other LECs in the state under a company-specific rate scenario. If there are revenue requirements for high-cost low-density companies that are greater than the level of access revenues recovered through a reasonable level of access charges, then there must exist a high cost fund for those companies."

Gulf's, St. Joe's, and Florala's witness Griffin also testified in support of a HCF or subsidy and further, to an access disparity limitation of 1-2¢ per minute between LECs. In support of limiting the disparity to 1¢ per minute, witness Gillan stated that "...differential access charges would reduce the number of competitive options and cause the coverage of competitive alternatives to shrink." He explained that since ATT-C averages its access costs statewide, a regionalized carrier will be disadvantaged if its serving LEC's access rates are significantly higher than the statewide average. Under such a scenario customers may be deprived of competitive alternatives due to widely varying access rates. Witness Gillan further notes that de-averaged access rates have the potential to prevent the spread of competition to other areas of the state and the potential to eliminate competition where it now exists. He concluded by stating "It may come to a point where the Commission would have to make the very difficult decision of permitting an access charge reduction in some parts of the state that would have the effect of eliminating competition in some other part of the state."

We share the concerns regarding competition expressed by witness Gillan. We note that these are not phantom concerns. Gulf's, Florala's and St. Joe's witness T. Griffin, Southland's witness Wolfe, United's witness J. Griffin, Northeast's witness Carroll, and Indiantown's witness McGinn, all indicated that there are central offices in their companies' territories which have equal access capability but for which no IXC has yet requested equal access. Thus, even without financial disincentives some companies and customers of those companies are not experiencing benefits from competition. We do not believe it is in the public interest to exacerbate an already fragile situation by allowing too wide a disparity in access rates.

In Phase I of this docket, we established a $.50 per access line revenue amount as a guideline for limiting access rate disparity between the LECs. We believe this is still the appropriate limit. As set forth above, we determined that all access rate reductions shall be taken from the BHMOC. Consistent with that decision, we find it appropriate to set the guideline maximum rate disparity for the BHMOC at a value of $2.73. This amount is the difference between the current uniform BHMOC of $6.60 and the LEC with the lowest reduced BHMOC rate based on a 50¢ per line revenue reduction limit. Proposals which exceed these guidelines should be considered only as particular company circumstances would justify.

C. Recognition of Stimulation in Access Reductions

A question arose in this proceeding regarding whether stimulation in access usage resulting from a decrease in access charges should be factored into the calculation of the amount of the access rate decrease. Historically, we have required ATT-C to factor stimulation into its toll rate reductions stemming from access reductions. We have not previously required the LECs to incorporate stimulation in their prior access reductions. We address both situations below.

1. LEC Access Reductions

As stated above, we are considering applying stimulation to access reductions for the first time. Microtel, GTE-Florida, Southern Bell, United, MCI, ATT-C, Ad Hoc, Sprint and Public Counsel all recommended that the LECs include stimulation in their access charge reductions. Microtel's witness Finch stated that, "LECs are monopoly providers of service and should be required to further lower their access rates due to demand stimulation." Public Counsel supports including stimulation because it increases the benefit of access reductions to the citizenry. In addition, GTE-Florida's witness Menard stated that, "If interLATA end-user toll rates are reduced, stimulation can be calculated for the LECs access rates."

Northeast and Indiantown argued that stimulation should not be taken into consideration in access reductions. Witness Gillan stated that, "Factoring stimulation into it [access reductions] only makes sense in the context of a frozen revenue requirement or a known revenue requirement which was explicitly rejected in Phase I." Witnesses Gillan and Cornell argued that, because the Commission has not set an NTS revenue requirement or target amount that the LECs should recover, a mechanism such as stimulation which would return the LECs to a

certain target amount is irrelevant. In addition, Centel's witness Moller pointed out that if access rates are reduced by raising other end-user charges, stimulation could be offset by a decrease in the usage of the other services.

We appreciate the fact that inclusion of stimulation confers a greater benefit to end-users through larger reductions in access charges. We are also concerned with stimulation as it affects a LEC's earnings level. For example, if a LEC wishes to offset its overearnings with an access reduction it may be necessary to build in stimulation in order to take the LEC's earnings below its authorized earnings ceiling. However, it appears there may be a potential technical and financial problem with determining, whether there is any stimulation and further, the specific stimulation level. As Indiantown's witness McGinn stated that, "...without expensive and sophisticated analysis of Indiantown Telephone System, Inc. data, it would be impossible to determine any stimulation effects."

Our experience with past access reduction supports this. Even though CCL rates were reduced by 41.9% in 1987, neither Gulf nor Centel could identify any stimulation. Further, Southern Bell stated that "With our switched access demand models, we have not been able to determine the exact stimulative effect of the access charge reductions in 1987."

Upon consideration, we believe it appropriate to require the LECs to consider stimulation in access reductions. However, we also recognize the difficulty involved in determining the precise amount of stimulation and acknowledge that in some cases no stimulation results. Accordingly, we find it appropriate to require each LEC to include in its petition for an access reduction a stimulation estimate or a statement as to why one is not provided. We will more closely consider stimulation in the context of each LEC's request for an access reduction.

2. ATT-C MTS and WATS Rate Reductions

Historically, we have required ATT-C to include stimulation in the calculation of its toll rate reductions. However, several of the other IXCs argued that ATT-C should not be required to account for stimulation. Their primary objections centered around three points, (1) the marketplace should be allowed to resolve stimulation, (2) the estimated stimulation amount is amorphous, and (3) the other IXCs are not able to match ATT-C's stimulation level. As witness Gillan stated, "The Commission should permit market decisions to resolve the "stimulation" issue, and the Commission should not factor speculative market reactions into ATT-C's mandated rate change." He further stated, "It's my position that the first assumption that starts to become tenuous as you move into a market environment is whether or not one particular market entrant... is truly going to experience X degree of stimulation. When you have competition you have to start estimating what the individual firm's stimulation would be ...with competition you lose a lot of precision and you lose a lot of the reasons for using stimulation."

Microtel's witness Finch argued that, "because of the competitive market place, ATT-C's stimulation could be different than MCI and Microtel's.... IXCs are unable to match ATT-C's access charge flow-throughs on a dollar for dollar basis without incurring reduced margins."

The four largest LECs -- GTE-Florida, Southern Bell, Centel and United -- indicated that ATT-C should build stimulation into their toll reductions. The three smaller LECs that participated in this docket, Indiantown, Northeast and Quincy, had no response. Public Counsel argues that ATT-C should include stimulation in order to pass the full benefits of stimulation to end-users.

ATT-C itself expressed some concern over the amorphous nature of stimulation. It pointed out that "...it is virtually impossible to determine when stimulation is occurring, much less measuring its occurrence with any precision. With respect to ATT-C's toll reductions in 1987, based upon the best information available to ATT-C, the stimulation appears to be less than was estimated." We appreciate the various parties' support for including stimulation in ATT-C's toll reductions. The LECs and Public Counsel would like intrastate toll charges to be reduced as much as possible and adding stimulation reduces them a bit more. Public Counsel would also like to see the customers of Florida receive the full benefit of access and toll reductions.

However, we have some concerns about mandatory stimulation for ATT-C's toll reductions. To require ATT-C to build stimulation into their toll reductions would interject a regulatory-imposed distortion into the toll market place. When access rates are reduced, the other IXCs will receive the same cost reduction as ATT-C but as witness Finch pointed out, probably will not receive the stimulation that ATT-C receives. In order to remain competitive with ATT-C the other IXCs will have to reduce their toll rates by an amount proportionately greater than their reduction in expense. The net result is an inappropriate "squeeze" on the rates of ATT-C's competitors. We agree with witnesses Gillan and Cornell that we should not inject any unnecessary distortions into the toll market. We also agree that the better course is to allow the market to resolve the stimulation issue for ATT-C. Moreover, this is consistent with our decision in Phase I to promote a market-based NTS recovery mechanism.

Upon consideration, we find that the toll marketplace should be allowed to resolve the issue of stimulation for ATT-C; ATT-C shall not be required to build anticipated stimulation into their toll reductions.

D. Conditions and Timing of Access Reductions

Southern Bell, FIXCA, MCI and Microtel propose that any initial reductions should be implemented as soon as possible. Indiantown, Northeast and Quincy stated in their prehearing positions that any access reductions should occur no sooner than six months after the conclusion of the Phase II proceeding. Centel's and GTE-Florida's witnesses testified that all access rate reductions should be implemented at the same time. GTE-Florida's witness Menard stated, "If the Commission wishes all initial proposals to be implemented at the same time to help insure appropriate toll reductions by ATT-C, a date should be established for all proposals to be filed." Centel's witness Moller stated that "Changes to all access rates should be implemented at the same time by all LECs. The Commission should set a date by which all changes should be filed and a date when the changes would be effective. Future changes to the access tariff should be filed annually in the same manner as interstate access

charges... This method of access filings allows all changes to be aggregated and the IXCs can adjust their rates knowing there will not be further changes until the next year." In contrast, United, ATT-C, Ad Hoc and Public Counsel argued that the Commission should allow each company to act independently with no synchronization of reductions with the other LECs.

Upon consideration, we believe that it is appropriate that the LECs sychronize their access reductions as much as possible in order to flow through all toll reductions to consumers at one time. We are concerned that, if each LEC reduces its access charges at different times, many of the reductions will be too small to pass on to consumers. This situation occurred with ATT-C as a result of the staggered implementation of our 1987 CCL reduction. In order to keep this from continually occurring, we find it appropriate to require that LECs requesting access rate changes intended for 1988 should file them with the Commission by October 15, 1988. We will make every effort to address any proposals in an expedited manner. For subsequent requests for access reductions, we find it appropriate to require all requests for reduction by October 15 for implementation on the following January 1. Notwithstanding this requirement, we recognize that it may be necessary for a LEC to implement an access reduction in order to resolve earnings problems or as a result of rate proceedings or at some other time. Those reductions may be handled as circumstances dictate.

In Phase I, Order No. 18598, we established a list of guidelines that the LECs must follow when requesting a change to its NTS access rates. For the convenience of the parties, we reiterate those guidelines here:

(1) Any request by any LEC for a change in access rates shall include a description of that LEC's long range plans or overall goals regarding the rates or rate structure that it envisions for the future.

(2) The petitioning LEC must fully justify any requested change in access rates. It would be our preference but not a requirement that a LEC's initial request for a change to its access rates be limited to an aggregate amount of 50 cents per access line per month.

(3) No automatic revenue offsets to a LEC's request for reduction in access rates will be allowed. Any proposal to offset access revenue reductions must be fully justified. Any proposal for offsetting revenue increases shall include an evaluation of all possible alternative revenue sources including but not limited to rates for ancillary services, private line and special access services.

(4) In evaluating a LEC's request to change its access charge rates, we will use the 1986 data acquired in this proceeding unless more current data is made available. Therefore, the petitioning LECs may wish to provide the most current 12 months of data with their proposal.

V. MISCELLANEOUS ISSUES

A. Inter- and IntraLATA Access Charge Subsidies

In view of our decision, as discussed above, to allow company specific BHMOC rates, we are faced with the subsidiary question of whether our existing interLATA access subsidy mechanism should be continued in a company-specific access environment. By Order No. 13934, issued December 21, 1984, we decided that interLATA access charges would no longer be pooled and that a bill and keep method would be implemented. By Order No. 14452, we implemented bill and keep for interLATA access charges. We also established a subsidy mechanism to allow those LECs experiencing a loss from access bill and keep to remain revenue neutral. Order No. 17321, which contains the most current revision of the interLATA bill and keep subsidy mechanism, shows that five LECs currently receive a subsidy: ALLTEL, Gulf, Indiantown, Northeast, and St. Joe. The total subsidy fund amounts to $4,647,000 which is approximately 1 percent of the total billed interLATA access revenue.

Of the IXCs, only ATT-C took a position on this issue, arguing that access subsidies should not continue in a company-specific access charge environment. Centel, GTE-Florida, United and Southern Bell argued against retention of the access subsidies in the face of company-specific access charges. Southern Bell argued that company-specific access rates coupled with rate increases in other services, are sufficient to warrant elimination of the subsidy. Quincy's witness Prestridge stated that access subsidies should not continue in a company-specific environment. However, he qualified that by stating "If there are revenue requirements for high cost low density companies that are greater than the level of access revenues recovered through a reasonable level of access charges, then there must exist a high cost fund for those companies." In addition, he also conceded that there is very little difference between a high cost fund and the interLATA access subsidy mechanism in place today.

Florala's, Gulf's and St. Joe's witness Griffin argued in support of retaining the interLATA subsidy. He explained that if St. Joe combined its terminating CCL, BHMOC and subsidy revenues into a single CCL rate, St. Joe's daytime CCL rate would be 20 to 25 cents per minute. He further explained that when St. Joe provides equal access he expects few carriers will be willing to pay 25 cents per minute for access.

Upon consideration, we find it appropriate to retain the interLATA access subsidy mechanism in its current form. The access subsidy mechanism is another tool to mitigate the affects of access rate disparities. It will help us discourage arbitrage and to minimize the disincentives for IXCs' entry into smaller, low density LECs' territories. This will in turn promote wider opportunities for all customers to enjoy the benefits of competition. With respect to creation of a High Cost Fund, we see no need to implement a new subsidy mechanism when the existing one serves the same function and can be tailored to meet the needs of the LECs as they arise.

B. Commission's Authority to Authorize High-Volume Discounts for Switched Access charges

When we determined to re-address the issue of implementing discounts for high-volume switched access users, ATT-C raised the issue of whether any such discount would be unlawfully discriminatory in violation Sections 364.08 and 364.14, Florida Statutes. None of the parties taking a position on this issue or addressing it in their briefs argued that bulk switched access discounts for high-volume end-users would be per se unlawful in violation of Sections 364.08 and 364.14. Each of the responding parties basically agreed that, if all similarly situated persons are treated equally, there is no unlawful discrimination.

While none of the parties argued that bulk-rate switched access discounts were generically unlawful, each of the responding parties made varying comments about the concept of bulk-rate access charge discounts. ATT-C advanced a number of factors which it argued should be used to evaluate whether a specific plan is unlawfully discriminatory. GTE-Florida agreed that ATT-C's factors, except one, were appropriate to a determination of unlawful discrimination. GTE-Florida took issue with ATT-C's argument that network operational efficiencies should be accounted in the discriminatory determination. GTE-Florida argued that use of such criteria is inappropriate because it runs counter to historical value of service telecommunications pricing. GTE-Florida further points out that no single factor or group of factors is determinative. ATT-C, Sprint and United argued that, without a specific plan before the Commission in this proceeding, no final decision could be made.

GTE-Florida's final point argued that the issue of whether bulk switched access discounts is unlawfully discriminatory is not ripe for decision because of the technical difficulties of billing access charges to end-users and because the discrepancy between switched access rates and special access rates renders any discount plan meaningless in the market place.

Southern Bell pointed out that bulk rate discounts for switched access are no different than the existing discounts offered to WATS customers compared to MTS customers. Southern Bell also stated that it is concerned that a high volume discount for switched access may be inconsistent with the Modified Final Judgement (MFJ) and 47 U.S.C. §202.

Southern Bell did not explain how or why high-volume discounts may be inconsistent with the MFJ or 47 U.S.C. §202. Southern Bell's MFJ concerns presumably stem from the provision of the MFJ that requires the rates for carrier interconnection be equal per unit of traffic. The Commission has viewed that provision as requiring that all carriers be treated equally with respect to the rates they pay. This provision has not been viewed as a requirement that a carrier be charged the same rate for every unit carried by that carrier. It has been the view of the Commission that this provision was intended to prohibit discrimination between different carriers for interconnection. This provision does not prohibit rate structures other than flat-type rate structures.

Section 202(a) of Title 47, United States Code, provides that:

> It shall be unlawful for any common carrier to make any adjustment or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

The prohibitory language in Section 202 is substantially the same as Sections 364.08 and 364.14, Florida Statutes. Only undue or unreasonable discrimination is prohibited. The federal case law interpreting Section 202 supports this reading. This interpretation is also consistent with the parties' interpretations of Sections 364.08 and 364.14. It does not appear that there is any inconsistency between a high-volume discount access plan and the MFJ or Section 202.

We agree with the parties that, as long as similarly situated persons are treated substantially alike, bulk rate discounts for switched access charges for high-volume end-users are not unlawfully discriminatory. Further, it does not appear that Southern Bell's concerns with the MFJ and Section 202 are well founded. We also agree that, when a specific discount plan is submitted to the Commission for implementation, such plan must be evaluated on its particular facts to determine whether it may be unlawfully discriminatory. Accordingly, we find that as long as all similarly situated persons are treated equally, a bulk-rate switched access discount for high-volume end-users is not unlawfully discriminatory in violation of Sections 364.08 and 364.14, Florida Statutes. We will examine any specific plan that may be proposed on its own special facts to determine if it is unlawfully discriminatory.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each and all of the specific findings herein are approved in every respect. It is further

ORDERED that the Carrier Common Line Charge shall be retained in its current form as set forth in the body of this Order. It is further

ORDERED that the proposals submitted by the parties for restructuring the CCL charge are rejected as set forth in the body of this Order. It is further

ORDERED that the Busy Hour Minute of Capacity charge shall be retained in its current form as set forth in the body of this Order. It is further

ORDERED that intraLATA CCL and BHMOC rates need not be automatically conformed to match changes in interLATA CCL and BHMOC rates as set forth in the body of this Order. It is further

ORDERED that direct end-user billing for access charges shall not be implemented for all end-users as set forth in the body of this Order. It is further

ORDERED that the BHMOC rate element shall be reduced for implementation of any access charge reductions as set forth in the body of this Order. It is further

ORDERED that the range of access charge disparity shall be limited as set forth in the body of this Order. It is further

ORDERED that the LECs shall consider anticipated stimulation in the calculation of the amount of any access rate reduction as set forth in the body of this Order. It is further

ORDERED that AT&T Communications of the Southern States, Inc. shall not be required to incorporate anticipated stimulation into the calculation of the amount of any MTS and WATS rate reductions made as a result of access charge reductions as set forth in the body of this Order. It is further

ORDERED that the conditions and timing of any access rate reductions shall be consistent with the body of this Order. It is further

ORDERED that the interLATA access subsidy mechanism shall be retained in its current form as set forth in the body of this Order. It is further

ORDERED that any bulk rate discount plans submitted for implementation shall be examined for discriminatory effect as set forth in the body of this Order. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 15th day of JULY, 1988.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

TH

by: Kay Flynn
Chief, Bureau of Records

APPENDIX A

BTS Exclusions As Described By Sponsoring Party

[1] Title/Sponsoring Party	[2] Description	[3] Fixed Interexchange Requirement	[4] Usage Sens. or Flat Rate	[5] Effective Rate Per Unit of Traffic Equal?	[6] Location of Measurement	[7] Non-Premium Discounts	[8] If Rev. Req. Capped, How Frequently is Allocator Adjust	[9] Plan Approved?	[10] Plan Implemented?	[11] T.O.D. Sensitive	[12] Originating Zone or Terminating	[13] Permanent Or Interim	[14] Comments
I. Multi-Element Plans													
A. Current Plan FPSC, Maisey	BBHOC-Requiring switched access capacity charge	no	flat	yes	LEC end off.	yes	n/a	yes	yes, FL	no	yes	interim	
	CCLC-800 charge		usage							yes, orig.	no	permanent	
B. United No. 1	BBHOC-phase out	no	flat	yes	LEC end off.	yes	n/a	no	no	no	yes	permanent after phaseout	BBHOC & Orig. CCLC would be phased in end users in long run via CALC.
	CCLC-Traffic Sensitive Recovery mechanism; terminating only; Phase-out originating charge; apply term. to open end WATS/ 800 services.	no	usage	yes	LEC end off.	yes	n/a	no	no	yes, Orig. during phase-out	no	permanent after phaseout	local rates, local user rates and/ or other rate adjustments.
	Special Access provide BTS contribution	no	flat	yes	LEC end off.	n/a	n/a	no	no	no	yes	permanent	Special Access BTS contribution addresses special access bypass.
C. FPSC-Staff	BBHOC-current Florida mech.	no	flat	yes	LEC end off.	yes	n/a	yes	yes, FL	no	yes	permanent	
	CCLC at rate levels approved by Commission.		usage		LEC end off.	yes		yes	yes, FL	yes, orig.	no	permanent	
D. Southern Bell No. 1; GTFL	Eliminates BBHOC. Shift recovery to other LEC services.	n/a	n/a	n/a	n/a	n/a	n/a	no	no	n/a	n/a	n/a	Flash Cut
	CCLC Basket-Based	no	usage	yes	LEC end off.	yes				no	yes	permanent	
E. Southern Bell No. 2	BBHOC-recovering switched access capacity charge. Shift portion to end user in 1-3 yrs.	Revised Annually	flat	yes	LEC end off.	yes	revenue requirement adjusted annually	yes	yes, FL	no	yes	interim	Plan transitions to permanent in 2-3 years. Eliminates BBHOC
	CCLC-Determine std. based CCLC.	no	usage				n/a	no	no			permanent	
F. MCI-Public Counsel, Maisey (Special Access)	BBHOC-allocator assumed at LEC'S POP. Proposed by Dr. Johnson.	yes	flat	no	voice-equiv. capacity converted to chan nels at POP	yes	flexible	yes	yes	yes	n/a	permanent	If circuits are used, rate per unit of traffic is not equal. Does apply to Special Access and LEC

KEY: n/a = Not Applicable
Does the exclusion apply to Private Lines ?

[1] Title/Sponsoring Party	[2] Description	[3] Fixed Revenue Requirement	[4] Usage Sens. or Flat Rate	[5] Effective Rate Per Unit of Traffic Equal?	[6] Location of Measurement	[7] Non-Premise Discounts	[8] If Rev. Req. Capped, How Frequently is Allocator Adjust	[9] Plan Approved?	[10] Plan Implemented?	[11] T.O.D. Sensitive	[12] Originating Line or Terminating	[13] Permanent Or Interim	[14] Comments
F. (Cont.) GLAS OPC, Quincy (Special Access)	CCLC-st rate levels approved by the Commission.	no	usage	yes	LEC end off.		n/a		yes, PL	yes, orig.	no		bypass.
G. BTS DOU ALLO-CATOR, Public Counsel	ALLOCATOR Mech. assumed on switched DOUs at carrier's switch.	yes	flat	yes	toll network side of IEC switch	yes	flexible	yes	yes, PL	yes	n/a	permanent	Does partially apply to Special Access and IEC bypass.
	CCLC-st rate levels approved by the Commission	no	usage		LEC end off.	yes	n/a		yes, PL	yes, orig.	no		
II. Single Element Plans													
A. FCC plan-Southland, BCI	Only CCLC	no	usage	yes	LEC end off.	yes	n/a	no	no	yes, orig.	no	interim	Plan interim, ultimately over all BTS towards end users.
B. FLAT RATE plan-BTI-C	Fixed revenue distribution. Based on percent of switched access DOUs.No CCLC	yes, less over time	flat	yes	LEC end off.	yes	recalculated 3 or 6 month intervals.	no	no	no	yes	interim 3-5 year phasedown	Plan includes shift of BTS to end users over 3-5 years.
B. FLAT RATE plan-Northwest, Indiana Town	Fixed revenue distribution. Based on percent of switched access DOUs.No CCLC	yes, less over time	flat	yes	LEC end off.	yes	monthly	no	no	no	yes	permanent 3-5 year phasedown	Amount per average access line adjusted with CPI.
C. U.S. Sprint Do. I	Only CCLC	no	usage	yes	LEC end off.	yes	n/a	no	no	yes	yes	permanent	CCLC rate set at sustainable level requiring some shifting of BTS cost to local services. Plan avoids recalculation of CCLS rate level to meet a predetermined revenue requirement.
D. Central plan	Company specific BTS costs distributed among IECs per access line tariffed rate.	yes	flat	no	LEC end off.	n/a	flexible	no	no	no	n/a	permanent	Number of access lines each carrier is charged for will be determined each month.

NOTES: n/a = Not Applicable
None of the mechanisms apply to Private System Bypass

APPENDIX B

SUMMARY OF NTS RECOVERY PLANS

ATT-C: The plan incorporates the recovery of a fixed dollar amount allocated among toll providers in proportion to their relative monthly access minutes of use. It also advocates the capping and eventual elimination of the BHMOC and ultimately the CCL.

Effects:

(1) The LECs' access related expenses would not be capped.
(2) The plan recovers NTS costs with a traffic sensitive mechanism (MOU-based allocation).
(3) The plan would likely be less burdensome to administer than the current BHMOC.
(4) The plan appears to not give other IXCs enough discount in their NTS costs for nonpremium access.
(5) Spreading a capped NTS amount based on market shares may tend to freeze those market shares.
(6) Changes in market share, while reducing access charges on a per minute basis, will reduce costs of those with large market shares more than those with smaller shares.

Centel: The plan would recover 25% of local loop revenue requirement from CCL on a flat rate basis. The amount assessed to any given IXC is based on the number of lines preselected by that IXC's customers.

Effects:

(1) The plan is not applicable to LECs with less than 100% equal access.
(2) The plan may be more administratively efficient.
(3) The plan does not account for Feature Groupes A and B related NTS costs in the allocation mechanism.
(4) There appears to be no correlation between presubscription and customer usage. Customers can use 10XXX and the revenues would go to the alternate carrier while the NTS charges would be allocated to the presubscribed carrier.
(5) The plan would tend to advantage larger IXCs because greater amounts of traffic can be carried over larger trunk groups. This will tend to lower the per-minute access costs.

GTE-Fla.: This plan eliminates the BHMOC by shifting recovery of those revenues to the CCL charge and other LEC services. GTE-Florida also advocates discounted access charges for large customers at the interstate level although no intrastate offering has been proposed yet.

Effects:

(1) When LECs go to company-specific rates, those currently receiving subsidies will have CCL rates significantly higher than today.

GTE-Florida (continued):

(2) End-user billing disrupts the relationship between the IXC and its customers.
(3) The plan eliminates the administrative burden of the BHMOC.
(4) IXCs would have to know which LEC's customers were due a discount if NTS rates were de-averaged.
(5) End-user billing may disrupt the relationship between the IXC and its customers.
(6) The LECs would incur additional expense to bill end users.

MCI: The originating and terminating CCL-type recovery mechanism should be maintained in the short run. Long-run NTS costs should be recovered from end-users on a flat-rate basis. The BHMOC should be eliminated. Reductions should be on a cent-per-minute basis to help preserve the status quo of competition.

Effects:

(1) Flat rate plans recover the same amount regardless of the individual customers' usage.
(2) The plan eliminates the administrative burden of BHMOC.
(3) Implementation of an end-user subscriber line charge will reduce costs to IXCs.
(4) Implementation of a formula for cents-per-minute reductions would add to administrative costs.

Microtel: Eliminate the BHMOC and/or allow IXCs to disconnect unneeded circuits from the network during seasons of low use. Also, do not increase the CCL or special access rates significantly at this time.

Effects:

(1) Elimination of the BHMOC will reduce administrative costs.
(2) Elimination of the BHMOC without increasing other access rates for LECs may cause an increase in rates for other LEC services.

Quincy: Retain the CCL charge and the BHMOC. In addition, Quincy advocates a subscriber line charge in combination with a ULAS concept. Under the ULAS concept, all NTS costs would be recovered as a flat rate from IXCs based on an IXC's total interexchange transmission capacity. Quincy's version of the ULAS plan would apply the BHMOC rate to special access circuits in addition to switched capacity. Quincy also advocates a high-cost fund.

Effects:

(1) If rates are too far from the statewide average, the "small niche" IXCs may be discouraged from entering a LEC's area.
(2) The high-cost fund is conceptually similar to the current access subsidies.
(3) ULAS may be as difficult to administer as the current BHMOC.

S. Bell: Southern Bell proposed two plans:

(1) Retain the CCL charge but set it at a market-based level and eliminate the BHMOC. Other underpriced services should be increased to recover the lost BHMOC and CCL charges.
(2) Same as #1 except increases to other services are phased-in over a set time period.

Effects:

(1) Originating CCL charge is not collected from WATS. Thus, reducing CCL charge of the BHMOC mitigates the potential losses to LECs.
(2) Market based CCL charge may not recover necessary costs, requiring increases in rates for other services.

United: This plan would eliminate the BHMOC, increase rates to special access, basic local service, local usage and ancillary services (to maintain revenue neutrality) and implement structural changes to the CCL by applying terminating CCL to 800 service and eliminating CCL on originating access.

Effects:

(1) LECs that originate more calls than they terminate would be disadvantaged.
(2) Bypass conditions in most LEC territories would not warrant a zero CCL rate.
(3) There may be rate shocks to particular types of services if the BHMOC revenues are recovered from the CCL charge.
(5) Elimination of the BHMOC will ease an administrative burden.

STAFF: Maintain the status quo. Retain the CCL and BHMOC rate elements. Reduce access charges through the BHMOC rate element as individual company circumstances permit.

Effects:

(1) Usage-derived revenue is not directly related to NTS costs.
(2) The BHMOC charge is difficult to administer.
(3) Little if any costs are incurred to retain current structure.
(4) Charges, if they create artificially high rates, may induce IXCs to misreport intrastate access usage.
(5) The BHMOC charge is unique to Florida. BHMOC bills are difficult to reconcile.

Appendix B

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Intrastate telephone access charges for toll use of local exchange services.	)	DOCKET NO. 820537-TP
In re: Investigation into NTS cost recovery.	)	DOCKET NO. 860984-TP ORDER NO. 17053 ISSUED: 1-2-87

The following Commissioners participated in the disposition of this matter:

JOHN R. MARKS, III, Chairman
GERALD L. GUNTER
JOHN T. HERNDON
KATIE NICHOLS
MICHAEL McK. WILSON

NOTICE OF PROPOSED AGENCY ACTION

ORDER REDUCING ACCESS CHARGES

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for formal proceeding pursuant to Rule 25-22.29, Florida Administrative Code.

By Order No. 12765 the Commission established its plan for implementing access charges for use of the local exchange companies' (LECs) local networks by interexchange carriers (IXCs). That portion of the plan which is relevant to the actions we propose herein is directed toward the recovery by the LECs of non-traffic sensitive (NTS) costs. Our original NTS cost recovery plan had two primary goals. First, we desired to combat the uneconomic bypass of the LECs' local networks by IXCs and large, high-volume end-users. Second, we decided to maintain as much contribution from access charges toward NTS cost recovery as the interexchange market would bear. To accomplish these goals, we adopted a plan which provided that the originating carrier common line (CCL) charge would be restructured as a tapered minutes-of-use (MOU) charge which would decline as total MOU increase. Further, the tapered originating CCL charge would be billed directly to the end-user. A tapered CCL charge insures that the NTS costs are "deloaded" from access charges for specific medium and large customers while maintaining a higher level of contribution from low usage customers. In addition, billing of the originating CCL charge directly to end-users would insure that AT&T Communications of the Southern States, Inc. (ATT-C) did not receive a competitive advantage from the MOU tapers due to its "lions-share" of the total access minutes relative to the other IXCs. Once set, the access charge rates would be adjusted only because of market forces and would not be reset based on an interstate/intrastate allocation of NTS costs or by a rate of return process.

When we initially established our access charge plan, we recognized that the LECs were not then technically capable of matching specific end-users with their originating traffic. Such technical capability would be available only when technical equal access was universally available within an equal access exchange area (EAEA). Therefore, direct billing of a tapered originating CCL charge to end-users was delayed until equal access is available EAEA-wide. Until such time, we decided that the existing flat-rate CCL charge billed to the IXCs would be retained.

During 1983/84, when we were initially establishing our intrastate access charge structure, the F.C.C. was implementing its interstate access charge structure. The F.C.C.'s solution for NTS recovery is a flat-rate subscriber line charge (SLC) applied to all local exchange subscribers regardless of toll usage. At that time inter- and intrastate toll and access charge rates were substantially the same. While facilities bypass by large end-users was perceived as a potential threat, there was no evidence that bypass was an immediate problem. Further, because of the basic similarity between inter- and intrastate access and toll rates, arbitrage of interstate services through misreporting of jurisdictional traffic was not a problem.

Three years later, our plan for the recovery of NTS costs is still not technically possible and our access charge rates have remained basically unchanged. In the meantime, the F.C.C.'s access charge plan has progressed with ever increasing levels of the SLC coupled with corresponding decreases in interstate access and toll rates. This disparity between inter- and intrastate rates in conjunction with increasing interest and activity on the part of large end-users concerning facilities bypass alternatives has been the driving force behind the outcry from the IXCs and the LECs that our intrastate access rates are too high and must be "deloaded" immediately in order to avoid uneconomic bypass and arbitrage.

A comparison of our current originating intrastate CCL rates shows that they are 2.2 cents and .37 cents higher per minute than interstate rates in the day and evening periods, respectively. Our terminating CCL rate is .91 cents higher per minute than the interstate terminating CCL rate. Our current originating CCL rate in the night/weekend period is .94 cents lower per minute than the interstate CCL rate. If the busy hour minute of capacity charge (BHMOC) is converted to a per minute charge and combined with our CCL charge, our intrastate day rates are 5.9 cents per minute higher than the interstate day rates. This wide disparity is strongly related to the fact that there is no BHMOC rate element in the interstate access charge rate structure. In addition, a further reduction in interstate access charges is expected in early 1987 and further reductions are anticipated. This will only serve to aggravate the problems stemming from the existing interstate/ intrastate access charge rate disparity.

While the access rate disparity has increased bypass pressures, it has also contributed substantially to the disparity between inter- and intrastate MTS and WATS rates (including the OUTWATS and 800 Service). As recently as July 1983 our intrastate MTS rates were at or below interstate levels for all mileage bands. While our current MTS rates are lower by as much as 12 cents per minute than ATT-C's interstate MTS rates in the shorter mileage bands, our intrastate rates are as much as 13 cents per minute higher in the longer mileage bands. A comparison of our intrastate WATS rates with ATT-C's interstate WATS rates reveals that our intrastate rates are higher than interstate rates for all but the highest usage level rate.

The disparity between inter- and intrastate rates alone indicates that there is a problem with our rate levels that will ultimately encourage bypass and arbitrage. However, an analysis of the limited data available to us produces no conclusive results regarding the level of bypass. While the data suggests that there is not a large amount of bypass currently in existence, we believe that the potential threat of bypass is looming ever larger. We also believe that the lack of current widespread bypass is in large part attributable to this Commission's often expressed commitment to

establish an appropriate level of NTS cost recovery from each class of toll customer. Consistent with this we have continually cautioned medium and large users to exercise restraint in considering a decision to bypass on the basis that our plan, when implemented, could ultimately render a decision to bypass uneconomic.

It is clear to us that the increasing disparity between the inter- and intrastate rates and the commensurate growth in bypass pressures is a problem that cannot be ignored despite the current lack of widespread bypass. We note that we currently have a proceeding in progress that is intended to be a complete examination of the issues regarding NTS cost recovery including the appropriate amount of NTS costs to be recovered from toll and access rates, and the appropriate mechanisms with which to recover NTS costs. We are determined to proceed with the NTS cost recovery proceedings as they are currently scheduled. However, in order to reduce bypass pressures during the pendancy of our NTS proceeding, we find it appropriate to require the LECs to reduce intrastate CCL charges effective February 1, 1987. The new CCL rate shall be:

	Day	Evening	Night/Weekend
Originating CCL	$0.0304	$0.0198	$ 0.0122
Terminating CCL	0.0382	0.0382	0.0382

We recognize that any reduction in existing access charge rates may result in net revenue losses to the LECs. Each of the LECs, except Southern Bell, stated at the agenda conference at which we considered the matters before us that, while they agreed that access charges should be reduced, they did not believe that the reductions should be attempted without also simultaneously implementing a corresponding mechanism to produce an offsetting revenue increase. The nine small LECs stated that any access charge reduction should be made only on a revenue neutral basis.

While the revenue effects of reducing access charges are of great concern to us, we do not intend at this time to make any specific decisions regarding the recovery of any lost access charge revenues. We believe that, in addition to local rates, each LEC has various additional sources of revenues available to it which may be used to partially or totally offset any lost access charge revenues. As only one example, we note that the Tax Reform Act of 1986 will result in a tax expense savings for each LEC. This savings may offset the access revenue reduction and, if the tax savings is sufficient, a LEC could reduce its access charges as we have directed herein and still suffer no net revenue loss.

We reiterate that we are expressly declining to make any provision in this order for any generic mechanisms to offset any access revenue losses. We believe that the affected LECs will be better served if we determine on a case-by-case basis whether any offsetting revenue sources are needed for each specific LEC and if so, the appropriate means of securing those additional revenues. To that end, if any LEC protests our proposed reductions in access charges, such protest shall not affect nor serve as a stay of the implementation of the reduced access charge rates by those LECs which do not protest the access charge reductions. For those LECs which protest the access charge reductions, we will determine from the nature of the protests whether the issues raised by the protestants may appropriately be treated generically in one proceeding or whether company-specific proceedings would be more appropriate.

As discussed previously, our proposed actions are directed towards reducing the inter- and intrastate access and toll rate disparity and the associated bypass pressures. Therefore, in addition to reducing access charges as set forth above, we also find it appropriate to require ATT-C to reduce its MTS, OUTWATS and 800 Service rates. The reductions should be spread proportionately between each of the services according to the revenue currently generated by each service. This is the same methodology which was previously utilized in the settlement agreement reached between the Public Counsel and ATT-C as approved by Order No. 16070. The total amount of the reduction in MTS, OUTWATS and 800 Service rates will be based on the total amount of the reduction in access charges which are actually implemented by the LEC's pursuant to this Order.

With respect to ATT-C's intrastate MTS rates, we note that the rates for the first three mileage bands are currently below ATT-C's current interstate rates for the equivalent mileage bands. Reducing these rates would only further aggravate the rate disparity problems which we are attempting to mitigate by our actions in this Order. Therefore, we find it appropriate that ATT-C's MTS rates in the first three mileage bands shall remain unchanged and that the MTS rate reductions be made across-the-board for each of the mileage bands above the first three. With respect to the reductions in ATT-C's WATS rates, the actual rate reductions shall be spread evenly across-the-board for each usage band.

It is a basic tenet of economics that, when the price of a good or service declines, consumers will purchase greater quantities of such good or service. This phenomenon is known as stimulation. Because we have proposed a substantial reduction in MTS and WATS in conjunction with the proposed decrease in access rates, we believe that there will be a significant increase in toll volume due to stimulation. In order to flow through the full benefits of the access reductions to end-users and to avoid any revenue windfalls to ATT-C as a result of the access reductions, we believe that the reduced MTS and WATS rates should reflect the effect of stimulation. Therefore, we find it appropriate to require ATT-C to recognize and account for stimulation in its calculations of the actual reduced rates for MTS and WATS. The effective date for the required reductions in MTS and WATS rates shall be February 1, 1987, consistent with the effective date of proposed reductions in access charges.

Reducing ATT-C's MTS and WATS rates will help insure that the benefits of the access charge rate reductions are flowed through to the end-use customers. It is these customers, particularly the high-volume users, who are the principal bypass candidates. Further, the reduction in ATT-C's MTS and WATS rates will avoid any windfall to ATT-C through ATT-C's reduced access charge expense. While we are requiring ATT-C to reduce its MTS and WATS rates, we do not find it necessary to require any of the other IXCs to reduce their rates. Based on the information provided to us by ATT-C, ATT-C will realize 92.4% of the total industry access charge expense savings resulting from the access rate reductions. Since ATT-C's rates are the competitive standard for the industry and because ATT-C receives far and away the largest access charge savings, we believe that the remaining IXCs will follow ATT-C's rate reductions in order to remain competitive.

By Order No. 16180 the Commission established maximum and minimum rate levels for ATT-C's MTS and WATS services. The maximum or "cap" was set at the existing MTS and WATS rate levels in effect as of April 30, 1986. The purpose for setting the rate caps at those levels was to insure that under conditions existing at that

time no ratepayers could be made worse off through increased toll charges without ATT-C providing full cost justification for any increases above the then existing rates.

At the time we established the rate caps we did not contemplate a reduction in access charges of the magnitude which we have proposed by this Order. As previously discussed, the access revenue losses that may be experienced by the LECs as a result of implementing our proposed access rate reductions must be recovered from some other source. One of the likely sources is basic local rates. While it is clear that toll customers will benefit from the MTS and WATS reductions, this benefit may well come at the expense of local ratepayers. Further, if the caps were left at their current levels, we foresee a situation where the local ratepayers must shoulder the burden of replacing lost access revenues and at a later time be subject to an increase in toll rates from ATT-C without any cost justification for such an increase.

In order to prevent such a situation, we find it appropriate to reduce the rate cap on ATT-C's MTS and WATS rates in the same manner as we have done for actual rates themselves. The new caps shall be based on the actual amount of access charge savings generated by the LECs' implementation of the access reductions previously discussed. However, we also find it appropriate that the calculation of the maximum rate levels shall be done without regard to the revenue effects of an increased calling volume which ordinarily occurs from stimulation of customer demand due to a decrease in toll rates. This will protect ATT-C's rate caps from any adverse effects which could result from less than projected stimulation levels. The effective date of the change in rate caps shall be February 1, 1987, consistent with the other rate reductions proposed herein.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each of the local exchange companies shall reduce their originating and terminating carrier common line charges to the levels set forth in the body of this Order, effective February 1, 1987. It is further

ORDERED that any protest by a particular LEC of the proposed reduction in access charges will not affect this Order becoming effective for the remaining LECs who do not protest. It is further

ORDERED that AT&T Communications of the Southern States, Inc. shall reduce its MTS and WATS rates in the manner and in the amount set forth in this Order effective February 1, 1987. It is further

ORDERED that ATT-C's maximum rate levels as established by Order No. 16180 are hereby reduced as set forth in the body of this Order.

By ORDER of the Florida Public Service Commission, this 2nd day of JANUARY, 1987.

Steve Tribble

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

TH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (1985), to notify parties of any administrative hearing or judicial review of Commission orders that may be available, as well as the procedures and time limits that apply to such further proceedings. This notice should not be construed as an endorsement by the Florida Public Service Commission of any request nor should it be construed as an indication that such request will be granted.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.29, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.29(4), Florida Administrative Code, in the form provided by Rule 25-22.36(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 23, 1987. In the absence of such a petition, this order shall become effective January 24, 1986, as provided by Rule 25-22.29(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on January 24, 1987, any party adversely affected may request judicial review by the Florida Supreme Court by the filing of a notice of appeal with the Director, Division of Records and Reporting and the filing of a copy of the notice and filing fee with the Supreme Court. This filing must be completed within 30 days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.