IN THE SUPREME COURT OF FLORIDA

FLORIDA INTEREXCHANGE CARRIERS ASSOCIATION, ET AL.,	
Appellants,	CASE NO. 86,957
vs.	
FLORIDA PUBLIC SERVICE COMMISSION, ET AL.,	
Appellees.	

ANSWER BRIEF OF APPELLEE FLORIDA PUBLIC SERVICE COMMISSION

ROBERT D. VANDIVER
General Counsel
Florida Bar No. 344052

Richard C. Bellak
Associate General Counsel
Florida Bar No. 341851

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0862
(904) 413-6092

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SYMBOLS AND DESIGNATIONS OF THE PARTIES

Appellee, Florida Public Service Commission is referred to as the Commission. Appellant, Florida Interexchange Carriers Association is referred to as FIXCA. Appellant MCI Telecommunications Corporation is referred to as MCI. BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company is referred to as Southern Bell. Citations to the hearing transcript are designated Tr.____, and hearing exhibits are referred to as Exh._____. Citations to the Commission agenda conference on July 31, 1995 are designated A.C.___. The Appendix to the Brief is designated App.

Acronyms

ALEC	Alternative Local Exchange Companies
AAV	Alternative Access Vendors
ECS	Extended Call Service
InterLATA	Long haul long-distance
IntraLATA	Short haul long-distance
IXC	Interexchange carrier
LATA	Local access and transport area
LEC	Local Exchange Company

The Commission rejects appellants MCI and FIXCA's Statement of the Case and Facts because, while lengthy, they fail to include the basic facts on which the Commission Order, PSC-95-1391-FOF-TL (Order), App. A, is based. In addition, they are argumentative in that they focus on presenting the case that was argued below to this Court again, instead of the facts necessary to apply the standard of appellate review. Further, they contain legal conclusions.[1]

Standard of Review: Whether the Commission's Order is supported by competent, substantial evidence and complies with the essential requirements of law.

STATEMENT OF THE CASE AND FACTS

Order No. PSC-94-0172-FOF-TL (Stipulation Order), App. B, contains the initial background facts relevant to this case. As therein noted, Docket No. 920260-TL, concerning Southern Bell's rates (revenue requirements and Rate Stabilization Plan), had a January 24, 1994 hearing date scheduled to resolve over a five-week period those rate issues and others in related dockets that had been consolidated. Stipulation Order, p. 1-4.

However, the January 24, 1994 hearing was first continued and then cancelled, while a proposed Stipulation and Implementation Agreement were filed, considered, and, on January 18, 1994, approved by the Commission, six days prior to the scheduled hearing date.

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[1] See, e.g., Initial Brief of Florida Interexchange Carriers Association (FIXCA), p. 4, para. 1.

By its terms, the Stipulation Order, p. 32, 38-39, required Southern Bell, inter alia, to refund $25 million dollars in rates on October 1, 1995, with the refund method to be determined in a future hearing. Also by the terms of the Stipulation Order, p. 9, Docket No. 920260-TL remained open. The hearing subsequently held July 31, 1995, at which various proposals to effectuate the $25 million dollar rate refund were considered and Southern Bell's proposed Extended Call Service (ECS) on 288 South Florida routes was approved, was conducted within Docket No. 920260-TL.

At the hearing, conflicting testimony was presented by the parties as to whether the ECS plan would re-monopolize the affected routes and whether the plan met the "imputation" requirement of Section 364.051(6)(c), Florida Statutes (1995), applicable to "non-basic" service.[2] In addition, a threshold legal issue was presented to the Commission as to which these supposedly central issues of "basic/non-basic" and "imputation" were merely subordinate:

> Commissioner Deason: Let me ask the question: Has it already been resolved during the prehearing process as to whether the new law [revised Chapter 364] is applicable at all to the Commission or whether the Commission is constrained at all by the new law since this is a docket pending before the new law took effect [in 1995]?
>
> (PSC Counsel) Mr. Elias: I don't think the question has been resolved.

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[2] Though the Commission heard testimony that the ECS plan would re-monopolize these routes because the imputation requirement of Section 364.051(6)(c) would not be met, testimony to the contrary on both points was also presented. Tr. 59-63; 364-368.

> Chairman Clark: I think it is correct that it was not specifically identified in that one.
>
> Commissioner Deason: Well, then the next question is, should that be a legal issue as to whether the Commission is even constrained by the new law, or whether, since this was a docket opened prior to the new law, whether we process it under the old law? [e.s.]
>
> Mr. Elias: I think that's a fair issue.

Tr. 437. See also, Tr. 338-340.

While appellants stressed the benefits of competition as the "policy" component consistent with their position on the legal and factual issues, there were also policy concerns raised by the Commission panel during the hearing as to FIXCA's claim that ECS was non-basic service subject to the imputation requirement.

> Commissioner Johnson: [If ECS is non-basic service], [Southern Bell] would have the ability ... to raise those rates [which had been lowered pursuant to the settlement], and then how will they actually have those [$25 million of] rate reductions that we required of them [in the Stipulation Order issued February 11, 1994]?[3]

A.C. 21-22.

Similarly, as further noted at the hearing by Commissioner Deason:

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[3] Pursuant to Section 364.051(6)(a), rates on non-basic service may be raised 20% within a twelve month period. Moreover, the $48 million projected ECS revenue reduction, noted at p. 5 of MCI's Initial brief, is subject to a 50% "stimulation" factor. Tr. 123. In other words, the lowered rates would be expected to stimulate increased calling on these routes, thus mitigating 50% of the revenue reduction. Therefore, MCI's claim, Initial Brief, p. 5, that this amount is well in excess of the $25 million [rate reduction] is incorrect and misleading. The $48 million reduction does not have "room" for adding imputed amounts to the rate charged while still achieving the $25 million rate reduction required by the Stipulation Order.

> And there are going to be hundreds of thousands of customers out there who are wanting to know what happened to this plan that is going to give us some toll relief? We say, "Well, there's a new law and there's going to be competition". And they say, "That's all well and good, but why am I having to pay for the next six months or a year? I want some relief now". That's what we are going to hear.

Tr. 340.

> I would have some doubt as to whether the legislature envisioned putting handcuffs on this Commission and preventing us from looking at EAS routes which were -- part of this docket [which] was opened long before this law came into effect -- as to whether [FIXCA's analysis] is the appropriate way to dispose of overearnings in the public interest. [e.s.]

Tr. 338.

The Commission held that ECS is a basic service, that Southern Bell's proposal should be evaluated under the prior telecommunications law, and that ECS need not pass an imputation test.

SUMMARY OF ARGUMENT

Appellants have not met their burden to demonstrate the Commission's presumedly valid Order to be erroneous. City of Tallahassee v. Mann.

Pursuant to savings clause Section 364.385(2), the proceedings in Docket No. 920260-TL, in which Southern Bell's ECS plan was approved, are governed by prior law because those proceedings were pending prior to July 1, 1995. A hearing scheduled for January 24, 1994 in that docket was only cancelled because the Commission approved a stipulation on January 18, 1994. The proceedings had progressed to the stage of hearings at that time. The hearing on July 31, 1995 in which the ECS plan was approved was not a new proceeding, but part of the already pending, docketed proceedings in Docket No. 920260-TL.

Pursuant to savings clause Section 364.385(3), the Stipulation Order remained in effect. Though the comprehensive regulatory framework of the Stipulation Order was inconsistent with the Commission's regulatory mission under revised Chapter 364, Section 364.385(3) provided the authority for the Commission to implement the $25 million rate refund to Southern Bell's customers as required by the Stipulation.

Since, under prior law, other similar ECS plans were considered basic service, the Commission was correct in determining the ECS plan at issue in this case to be basic service.

The Commission's construction of statutes it administers is entitled to great weight. P.W. Ventures v. Nichols.

Appellants' assumption that the Court will reweigh contested evidence presented at the hearing as to the issues of re-monopolization and imputed amounts claimed to be required in rates was improper. The Commission had competent, substantial evidence that re-monopolization would not occur. City Gas Company of Florida v. Florida Public Service Commission.

Though there was no need for a finding on the contested issue of imputation amounts because basic service rates require no imputed charges to be added, it is improper for appellants to assume that the Court will adopt appellants' view of that contested issue absent any Commission finding. City Gas, supra. For the Court to do so would usurp the Commission's rate setting prerogatives. Florida Retail Federation v. Mayo; International Minerals and Chemical Corp. v. Mayo.

Appellants' analysis of how competition should be fostered is inappropriate where stipulated refunds to Southern Bell's customers would be delayed and disrupted. The statute appropriately fosters competition and is the proper means to that end. Sections 364.161; 364.162.

The goal of fostering competition does not require that applicable regulatory law be ignored or ousted. Florida Cable Television Ass'n. v. Deason.

Appellants' requested remedies would cause the Court to usurp the Commission's rate setting prerogatives, contrary to Florida Retail Federation, supra, and International Minerals and Chemical Corp., supra.

Both appellants waived any available remedy. MCI's request for reduced switched access charges is precluded by the Stipulation Order. FIXCA's request for interconnection terms and resale is inconsistent with statutory procedures governing those matters. Sections 364.161; 364.162.

ARGUMENT

I. APPELLANTS HAVE NOT MET THEIR BURDEN TO DEMONSTRATE THE COMMISSION'S PRESUMPTIVELY VALID ORDER TO BE ERRONEOUS.

In City of Tallahassee v. Mann, 411 So. 2d 162, 164 (Fla. 1981), this Court held that the Commission's order

> will be clothed with a presumption of validity. It will be the [challenging party's] burden to overcome that presumption by showing a departure from the essential requirements of law.

In briefing of a combined total of more than 50 pages, appellants have thoroughly discussed their own theory of this case, but hardly mentioned the salient points of the analysis in the Commission's Order at all, let alone demonstrated error.

One of the key differences between the Commission's analysis and appellants' is found on p. 6 of the Order. There, Section 364.385(2), Florida Statutes (1995) is quoted:

> Proceedings including judicial review pending on July 1, 1995, shall be governed by the law as it existed prior to the date on which this section becomes a law. No new proceedings governed by the law as it existed prior to January 1, 1995, shall be initiated after July 1, 1995. [e.s.]

As Commissioner Deason repeatedly pointed out at the hearing in the transcript excerpts noted, supra, the proceedings at issue, Docket No. 920260-TL, were not only pending on July 1, 1995, but pending prior to the revision of Chapter 364 itself. Appellants have not demonstrated this conclusion to be erroneous, but have only tried to confuse the analysis by referring to hearings within the docket as "proceedings", rather than the docket itself:

> ... the Stipulation left the application of the required rate reductions to particular services to be decided by the Commission in future proceedings. [Citing the Stipulation Order, at 15, 17-18]. [e.s.]

MCI Initial Brief, at 2-3, FIXCA Initial Brief, at 20-21.

However, an examination of the citation relied upon by MCI shows no reference to "future proceedings". Instead, the Stipulation Order, p. 17-18, states

> 10. The PARTIES agree that the FPSC shall conduct hearings to determine the rate design by which the amounts set forth in Paragraph 5 above shall be disposed of. [e.s.][4]

As noted in the Statement of the Case and Facts, the July 31, 1995 hearing in which the ECS plan was approved was part of the same Docket No. 920260 proceedings which were pending prior to July 1, 1995. Thus, consistent with Section 364.385(2), Florida Statutes, the Commission's conclusion that Docket No. 920260-TL is governed by prior law, i.e., unrevised Chapter 364, is correct.

This conclusion, when applied to the basic/non-basic service issue, confirms that appellants have not demonstrated the Commission's presumptively valid order to be erroneous. Appellants' analysis rests upon an interpretation of the first sentence of Section 364.385(2) in isolation:

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[4] MCI itself uses the word "proceeding" appropriately when it chooses to do so. Thus, MCI notes that "In 1992, ... the Commission initiated a proceeding ....[Docket No. 920260-TL]. That proceeding was ultimately consolidated with four other Commission dockets involving Southern Bell. [e.s.] MCI Initial Brief, p. 1-2. The Court should decline appellant's attempt to mislabel future hearings as future proceedings when those hearings are part of the same, already pending, docketed proceedings.

> All applications for extended area service, routes, or extended calling service pending before the Commission on March 1, 1995, shall be governed by the law as it existed prior to July 1, 1995.

Appellants argue that because the ECS plan was proposed May 15, 1995, i.e., after March 1, 1995, it must be governed by the definitions in current Section 364.02. They define "basic local telecommunications service", Section 364.02(2), as

> extended calling service in existence or ordered by the Commission on or before July 1, 1995.

and "non-basic service", Section 364.02(8), as service

> other than a basic...service.

The Commission, however, in accord with settled principles of statutory construction, looked at the statute as a whole, rather than a single sentence in Section 364.385(2) in isolation. State v. Hayles, 240 So. 2d 1 (Fla 1970).

In particular, Section 364.385(3) had to be considered as well, and read together with the rest of the statute:

> (3) Florida Public Service Commission Order No. PSC-94-0172-FOF-TL [Stipulation Order] shall remain in effect ....

The ECS plan at issue was not merely an "application for extended area service", it was also a proposal to meet the requirements of the Stipulation Order, which requirements "remain in effect" explicitly by the terms of Section 364.385(3), Florida Statutes.

Though the hearing to consider the plan was held on July 31, 1995, this was not a new proceeding, but part of the Docket No.

920260-TL proceedings that had been pending prior to July 1, 1995. They are, therefore, "governed by the law at it existed prior to [June 18, 1995]" explicitly by the terms of Section 364.385(2), Florida Statutes.

As a further confirmation, Section 364.385(2) states that any adjudicatory proceeding which had not progressed "to the stage of hearing by July 1, 1995" could, with the consent of all parties, be governed by the prior law. This not only confirms that "proceedings" are not "hearings",[5] but also that the Docket No. 920260-TL proceedings are clearly governed by the prior law even without the consent of all parties, because those proceedings had "progressed to the stage of a hearing" in January, 1994. As previously noted, the January 24, 1994 hearing was continued and then cancelled only because of the settlement activity and resulting Stipulation approved six days earlier on January 18, 1994.

Since, under prior law, ECS was "basic service", Section 364.02(2), the Commission Order treating the ECS plan at issue as basic service is correct. Docket Nos. 910179-TL; 911034-TL; Order No. PSC-94-0572-FOF-TL; App. C.[6]

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[5] A contrary conclusion would result in gibberish: "Any proceeding which had not progressed to the stage of a proceeding..."

[6] As in the ECS plan at issue here, the rates in Order 0572 are capped and considered part of basic local service. There, as here, the plan was implemented as revenue reduction pursuant to the Stipulation order.

Although appellants attempt to place the burden on the Commission to refute arguments that appellants present as presumptively valid, appellants have the burden to demonstrate error. City of Tallahassee v. Mann, supra. As this Court noted in P.W. Ventures, Inc. v. Nichols, 533 So. 2d 281, 283 (Fla. 1988),

> the contemporaneous construction of a statute by the agency charged with its enforcement and interpretation is entitled to great weight .... The courts will not depart from such a construction unless it is clearly unauthorized or erroneous.

II. APPELLANTS' PRESUMPTION THAT THE EVIDENCE WILL BE REWEIGHED IS IMPROPER.

As the Court has often stated,

> It is not this Court's function on review of a decision of the Public Service Commission to re-evaluate the evidence or substitute our judgment on questions of fact.

City Gas Company of Florida v. Florida Public Service Commission, 501 So. 2d 580, 583 (Fla. 1987).

Despite this, FIXCA states as "fact", Initial Brief, p. 3, that "ECS re-monopolizes these routes". The re-monopolization issue was, however, the subject of conflicting testimony. See, Tr. 59-72; 371-372. Evidence was presented that competition would continue because Southern Bell can provide only intraLATA service whereas competitors can offer intraLATA, interLATA, interstate and international services. Moreover, these can be offered to consumers in discount plans which include all of these services. There are also AAV's (alternative access vendors) certificated to operate in Florida offering alternatives to Southern Bell's access services. Tr. 60-63.

Thus, the Commission had competent, substantial evidence on which to reject the "re-monopolization" and "re-monopolization in perpetuity" arguments. Order, p. 13. In addition, the Commission specifically permitted IXC's to compete on these routes. Order at 20-21.

Similarly, as to the imputation issue, the Commission not only heard testimony along the lines of the argument presented by appellants, but also testimony that ECS met the imputation requirements of Section 364.051(6)(c). See, Tr. 363-368.[7]

The Commission made no finding on this issue because the holding that ECS was basic service made such a finding unnecessary.[8] Order, p. 8. For the Court to adopt appellants' view of this contested issue without the Commission itself making a decision on the basis of all of the evidence would usurp the prerogative of the Commission, not the Court, to set rates. Florida Retail Federation v. Mayo, 331 So. 2d 308, 312 (Fla. 1976); International Minerals and Chemical Corp. v. Mayo, 336 So. 2d 548, 551 (Fla. 1976). Accordingly, appellants' arguments on imputation are as inappropriate as their presumption that the Commission's finding on re-monopolization will be reweighed.

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[7] In approximate terms, while FIXCA's witness compared average ECS revenue of $.06 and access charges of $.07 per minute, Southern Bell's witness testified as to ECS revenue of $.13 and access charges of $.05 per minute. Tr. 364-365.

[8] Only rates charged for non-basic service need to meet imputation requirements. Section 364.051(6)(c), Florida Statutes (1995).

The Commission further notes that Section 364.162(1), Florida Statutes (1995), provides for negotiations between ALECs (Alternative Local Exchange Companies) and LECS for the resale of services and facilities. Section 364.162(2) in turn provides that the Commission may establish interconnection rates, terms and conditions if the negotiations are unsuccessful.

Where the legislature has provided the mechanism for fostering competition in these markets, it is singularly inappropriate for appellants to claim that disrupting the process of providing agreed-upon rate refunds to Southern Bell's customers is either a reasonable or necessary means to foster competition. The Commission's interpretation of the savings clauses, Section 364.385(2) and (3), is consistent with not disrupting that process, which adds further support for the correctness of that interpretation. As Commissioner Deason noted at the hearing, it is doubtful, given the pendency of the rate docket long before the new law, that

> the legislature envisioned putting handcuffs on this Commission...

which would substantially delay these refunds. Tr. 338-340. Section 364.385(3).

Indeed, the application of the Section 364.385(2) and (3) savings clauses to all of the relevant facts as set forth in the foregoing analysis demonstrates that the legislature allowed the Commission to carry out the Stipulation Order without any such disruption.

III. APPELLANTS' POLICY-BASED ARGUMENTS DO NOT SUPPORT THEIR CONTENTION THAT THE COMMISSION'S ORDER IS ERRONEOUS.

The evolution toward more competitive telecommunications markets, though given a substantially greater forward motion in the 1995 revision of Chapter 364, has been ongoing for some time. During that time, this Court has rejected contentions, such as those made by appellants here, to the effect that "fostering competition" justified ousting the Commission's order whenever an argument claimed to be more "pro-competitive" was advanced:

> [Appellants] narrow reading of legislative intent fails to see the forest for the trees. Although fostering telecommunications competition in the public interest is one purpose of Chapter 364, the Commission has a broader, overall duty to regulate. [e.s.]

Florida Cable Television Ass'n v. Deason, 635 So. 2d 14, 16 (Fla. 1994)

That does not mean that the nature of that duty to regulate has not evolved since that case[9]. As acknowledged in the Commission Order itself, p. 5,

> A comprehensive framework, as is operative with respect to [the Stipulation] [o]rder, is fundamentally inconsistent with the Commission regulatory mission pursuant to the revised statute. [e.s.]

That is why, in the Commission's view, a specific savings clause, Section 364.385(3), was inserted by the legislature so that, pursuant to the Stipulation Order, the Commission could carry out the rate refunds to Southern Bell's customers without having that regulatory task disrupted by the kinds of assertions forwarded

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[9] Florida Cable concerned Section 364.338, since repealed.

by appellants here.[10] Thus, the underlying principle of Florida Cable, i.e., that the goal of fostering competition does not justify discarding applicable regulatory law, is fully pertinent to this case.

Appellants are rhetorically at odds as to whether

> [t]his case is one of the final chapters in Southern Bell's transition from rate regulation... [e.s.]

MCI Initial Brief at 1, or whether

> [t]his issue arises in the context of the sweeping changes made to the telecommunications law... [e.s.]

FIXCA, Initial Brief at 2.

In any event, the fact remains that Docket No. 920260-TL was pending prior to July 1, 1995 and, therefore, by operation of Section 364.385(2), those proceedings are governed by prior law. Given the legislative scheme to foster competition in Sections 364.161 and 364.162, appellants "policy" arguments provide no basis for this Court to allow appellants to "jump the track" and obtain interconnection and access arrangements in this docket[11] without going through the statutorily mandated process. Florida Cable, supra.

In an effort to stampede the Court in that direction, however, FIXCA suggests that

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[10] Under Section 364.385(3), even though the stipulation order predates the most recent regulatory evolution, it "remains in effect".

[11] Such arrangements are not the subject of Docket No. 920260-TL. Tr. 332-3.

> the Commission is not so much concerned with interpreting the savings clause of the new statute as it is with retaining its prior regulatory control over Southern Bell. [e.s.]

FIXCA Initial Brief, at 19.

Though FIXCA cites the statements of Commissioner Johnson earlier quoted in this Brief as support, those words precisely mirror the concerns of Commissioner Deason as to FIXCA's analysis.

> Commissioner Johnson: How will [Southern Bell] actually have those rate reductions that we required of them?

A.C. 20-21.

> Commissioner Deason: I would have some doubt ... as to whether [FIXCA's analysis] is the appropriate way to dispose of overearnings in the public interest.

Tr. 338. Not nostalgia, as FIXCA suggests, but sufficient regulatory control to get these rate refunds back to Southern Bell's customers as required by the Stipulation Order is precisely what was permitted and intended by the savings clauses. Sections 364.385(2) and (3).

IV. EVEN IF THE COURT FINDS THE COMMISSION'S ORDER DEFICIENT, THE PROPER DISPOSITION WOULD BE TO REMAND THE CASE TO THE COMMISSION FOR FURTHER PROCEEDINGS.

At the July 31, 1995 hearing, Commissioner Kiesling noted that such issues as interconnection, switched access rates and resale were not part of the docket:

> Commissioner Kiesling: Do you [FIXCA's witness] agree that we cannot do these things in this docket, or do you disagree with that? I'm just trying to figure out procedurally.
>
> Let's say we agree with you that ECS can only be implemented if these five conditions precedent are also adopted. Do we do that in

> this docket? How do we have a record that is sufficient to do that in this docket? This is a simple rate proceeding involving Southern Bell's obligation to refund $25 million and our obligation to decide how that should be distributed. [e.s.]
>
> [FIXCA] Witness Gillen: ... you may not be able to answer these ... in this docket.

Tr. 332-333.

This problem is exacerbated on appeal where appellants ask the Court to remand with instructions to implement interconnection rates and switched access rate changes. The Court is not asked to do so based on a sufficient record, because those issues are not the subjects of this docket, but merely based on appellate Briefs embodying FIXCA's and MCI's arguments as to those matters.

This is plainly improper given the Court's holdings in Florida Retail Federation and International Minerals and Chemical Corp., supra. In such cases, this Court has consistently recognized that ratemaking is the Commission's prerogative, not the Court's. Appellants' attempt to bypass the Commission is also an attempt to bypass the provisions of revised Chapter 364 as well. Sections 364.161; 364.162. As such, it is inconsistent with the spirit and letter of the revised statute.

Moreover, appellants' position does not survive the scrutiny of reductio ad absurdum. Appellants' arguments, if accepted, would lead to the conclusion that, had Southern Bell only proposed its identical ECS plan on February 28, 1995 and gone to hearing on June

30, 1995 instead of May 15th and July 31st, respectively,[12] all of appellants' policy-based rhetoric and pleas for this Court to mandate rates directly would vanish. That hypertechnical position is incorrect, in any event. Because the ECS plan implicated Section 364.385(3) as well as Section 364.385(2), and the Docket No. 920260-TL proceedings were pending prior to July 1, 1995, the Commission's findings that prior law governed and that basic service not requiring imputation was involved were correct.

V. APPELLANTS HAVE BOTH WAIVED ANY AVAILABLE RELIEF PURSUANT TO THEIR APPEALS.

As the Commission has explained previously, appellants' arguments fail at the threshold because they have wrongly assumed the July 31, 1995 hearing in Docket No. 920260-TL to be "new proceedings" for the purpose of applying the savings clause language in Section 364.385(2), rather than the continuation of docketed proceedings which were pending prior to July 1, 1995. Under Section 364.385(2), such proceedings are governed by prior law.

The result of that confusion is an attempt to convert a docket concerned with the disposition of rate refunds pursuant to the 1994 stipulation into a docket concerned with legislative policy which did not even exist when that docket was opened. Among other

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[12] In the Commission Order, the Commission agreed that the March 1st and July 1st deadlines would apply if this ECS plan were not also a proposal to effect the $25 million rate refund required by the Stipulation order, Section 364.385(3), and if Docket No. 920260-TL had not been pending prior to July 1, 1995. Section 364.385(2). Order, p. 6.

things, this simply defeats the purpose of both savings clauses. Sections 364.385(2) and (3).

Moreover, this confusion extends to the relief sought. According to MCI, the Commission should be required on remand to

> set the price relationship between the retail rate for ECS service and the wholesale rate for switched access service in a way that permits the non-basic ECS service to pass the imputation requirements of Section 364.051(6)(c). This can be accomplished in only one of two ways - either by increasing the price for ECS service or, more appropriately, reducing the price of switched access for calls along ECS routes to a level that permits Southern Bell's ECS rates to pass the imputation test.

MCI Initial Brief, p. 27-28.

MCI waived any Commission-imposed price increase:

> It is impractical, if not impossible, to restore Southern Bell's long-distance pricing on these 288 routes.

MCI Initial Brief at 14.

The only relief MCI seeks, therefore, is the second of the two options: "... reducing the price of switched access..."

That option is unavailable by the terms of the 1994 stipulation:

> B. $55 million of the gross revenue reduction scheduled to be implemented on October 1, 1995 ... shall be used to further reduce Southern Bell's Intrastate switched Access Charge rates .... However, AT&T, MCI, Sprint, and FIXCA agree that they will make no recommendation to the Commission .... to further reduce Intrastate Switched Access Charge rates during 1995 nor support such recommendation by any other party. [e.s.]

Stipulation order, p. 32

Therefore, even if MCI's arguments were found to have merit, MCI has waived any available remedy.

FIXCA, too, envisions two possible remedies:

> ... this could be done by increasing the rates for ECS, [but] FIXCA does not advocate this. Rather, this Court should require the Commission to put interconnection and resale policies in place ... [e.s.]

FIXCA Initial Brief, p. 23

FIXCA, like MCI, waived any Commission imposed increase in the price for ECS. However, FIXCA's remedy of choice is, again, unavailable.

Interconnection and resale arrangements are governed by statute. Sections 364.161; 364.162. Those statutory procedures to obtain resale and interconnection arrangements are available to anyone, including FIXCA members, who invoke those procedures. While the availability of such arrangements is unrelated to the Commission's activities in Docket No. 920260-TL concerning rate refunds to Southern Bell's customers pursuant to the Stipulation order, there is nothing that prevents FIXCA's members from invoking those statutory procedures. However, to create the nexus between interconnection and resale arrangements and the rate refund activities in Docket No. 920260-TL which FIXCA seeks would require this Court to, in effect, amend the statutory procedures in Chapter 364. Again, appellant seeks a remedy which is apparently unavailable.

The Commission believes that appellants' arguments are without merit, but assuming arguendo they are meritorious, appellants have explicitly waived any remedy.

CONCLUSION

Revised Chapter 364 does not withdraw telecommunications from all regulatory activity by the Commission. Instead, the Legislature found that

> the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition... [e.s.]

Section 364.01(3).

The Commission's Order, together with the further processes provided in the statute itself, such as Section 364.162, more appropriately address these concerns than appellants' attempt to "foster competition" by having that Order and those processes negated. Since the Commission's Order has not been demonstrated to be erroneous, it should be affirmed by this Court.

Respectfully submitted,

ROBERT D. VANDIVER
General Counsel
Florida Bar No. 344052

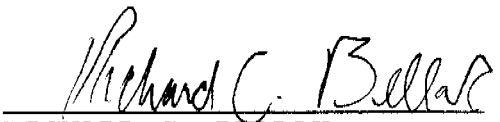
Richard C. Bellak

RICHARD C. BELLAK
Associate General Counsel
Florida Bar No. 341851

Dated: March 1, 1996

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by United States mail this 1st day of March 1996 to the following:



RICHARD C. BELLAK

Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas
117 S. Gadsden Street
Tallahassee, FL 32301

Doug Metcalf
Florida Ad Hoc Telecommunications
P. O. Box 1148
Winter Park, FL 32790-1148

Ben Dickens, Esquire
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N. W.
Washington, D.C. 20037

Michael J. Henry
MCI Telecommunications Corp.
780 Johnson Ferry Road
Suite 700
Atlanta, GA 30342

Floyd Self
Messer, Vickers, Caparello,
Madsen, Lewis, Goldman & Metz
215 S. Monroe Street
Barnett Bank Bldg.
P. O. Box 1876
Tallahassee, FL 32302

Laura L. Wilson
Florida Cable Telecommunications
Association
310 North Monroe Street
Tallahassee, FL 32302

Charles J. Beck
Office of Public Counsel
Claude Pepper Bldg., Rm. 812
111 W. Madison Street
Tallahassee, FL 32301

Nancy White
Southern Bell Telephone and
Telegraph Company
150 South Monroe Street
Sun Bank Building, Suite 400
Tallahassee, FL 32301

Michael W. Tye
AT&T Communications
106 East College Avenue
Suite 1410
Tallahassee, FL 32301

Everett Boyd
Ervin, Varn, Jacobs, Odom
& Ervin
305 S. Gadsden Street
P. O. Box 1170
Tallahassee, FL 32301-1876

Mark Richard
304 Palermo Avenue
Coral Gables, FL 33134

Rick Melson
Hopping, Green, Sams & Smith
123 South Calhoun
P. O. Box 6526
Tallahassee, FL 32301

Angela Green
Florida Public Telecommunications
Assoc.
125 S. Gadsden Street
Suite 200
Tallahassee, FL 32301

INDEX TO APPENDIX

Appendix A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Comprehensive review of the revenue requirements and rate stabilization plan of Southern Bell Telephone and Telegraph Company.	) DOCKET NO. 920260-TL) ORDER NO. PSC-95-1391-FOF-TL) ISSUED: November 8, 1995

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

Pursuant to Notice, a hearing was held in this docket on July 31, 1995, at Tallahassee, Florida.

APPEARANCES:

Robert G. Beatty, Esquire, J. Phillip Carver, Esquire, c/o Nancy H. Sims, Suite 400, 150 South Monroe Street, Tallahassee, Florida 32301 and R. Douglas Lackey, Esquire, Nancy B. White, Esquire, 4300 - 675 W. Peachtree, St., NE, Atlanta, Georgia 30375
On behalf of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (SBT or Southern Bell).

Michael W. Tye, Esquire, AT&T Communications of the Southern States, Inc., 106 East College Avenue, Suite 1410, Tallahassee, Florida 32301
On behalf of AT&T Communications of the Southern States, Inc. (ATT).

Mark Richard, Esquire, Cindy B. Hallock, Esquire, 304 Palmero Avenue, Coral Gables, Florida 33134
On behalf of Communication Workers of America, Locals 3121, 3122, 3107 (CWA).

Benjamin H. Dickens, Esquire, Blooston, Mordkofsky, Jackson & Dickens, 2120 L. Street, N.W., Suite 300, Washington, DC 20037-1527
On behalf of Florida Ad Hoc Telecommunications Users Committee (Ad Hoc).

Laura L. Wilson, Regulatory Counsel, Florida Cable Telecommunications Association, Inc., 310 N. Monroe Street, Tallahassee, Florida 32301
On behalf of Florida Cable Telecommunications Association, Inc. (FCTA).

Vicki Gordon Kaufman, Esquire, McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, 117 S. Gadsden Street, Tallahassee, Florida 32301
On behalf of Florida Interexchange Carriers Association (FIXCA).

C. Everett Boyd, Jr., Esquire, Ervin, Varn, Jacobs, Odom & Ervin, Post Office Drawer 1170, Tallahassee, Florida 32302
On behalf of Florida Mobile Communication Association, Inc. and Sprint Communications Company Limited Partnership (FMCA, Sprint).

Richard D. Melson, Esquire, Post Office Box 6526, 123 South Calhoun Street, Tallahassee, Florida 32314 and Michael J. Henry, Esquire, MCI Telecommunications Corporation, Suite 700, 780 Johnson Ferry Road, Atlanta, Georgia 30346
On behalf of MCI Telecommunications Corporation (MCI).

Floyd R. Self, Esquire, Norman H. Horton, Jr., Esquire, Messer, Vickers, Caparello, Madsen, Goldman & Metz, P.A., Post Office Box 1876, Tallahassee, Florida 32302-1876
On behalf of McCaw Communications of Florida, Inc. (McCaw).

Jack Shreve, Public Council, Charles J. Beck, Deputy Public Counsel, Office of the Public Counsel, c/o The Florida Legislature, 111 Est Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

Robert V. Elias, Esquire, Donna L. Canzano, Esquire, Tracy W. Hatch, Esquire, Florida Public Service Commission, Gerald L. Gunter Building, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

ORDER APPROVING EXTENDED CALLING SERVICE PLAN

BY THE COMMISSION:

I. BACKGROUND

This docket was initiated pursuant to Order No. 25552 to conduct a full revenue requirements analysis and to evaluate the Rate Stabilization Plan under which BellSouth Communications, Inc. d/b/a Southern Bell Telephone and Telegraph (Southern Bell or the Company) had been operating since 1988. Hearings were rescheduled several times in an effort to address all the concerns and issues that arose with the five consolidated proceedings over the ensuing two and a half years.

On January 5, 1994, a Stipulation and Agreement Between Office of Public Council (OPC) and Southern Bell was submitted. On January 12, 1994, Southern Bell filed an Implementation Agreement for Portions of the Unspecified Rate Reductions in Stipulation and Agreement Between OPC and Southern Bell. Other parties filed motions in support of the Stipulation and Implementation Agreement. The Commission voted to approve the terms of the settlement at the January 18, 1994 agenda conference (Order No. PSC-94-0172-FOF-TL). The terms require, among other things, that rate reductions be made to certain Southern Bell's services. Some of the reductions have already been implemented. Other reductions are scheduled to occur according to the following time table:

7/1/94 (completed)	• Switched access reductions - $50 million, • - $10 million (specified below) - Reduced mobile interconnection usage rates - Eliminated Billed Number Screening charge - Reduced DID trunk termination rates
10/1/95	• Switched access reductions - $55 million • Unspecified rate reductions - $25 million
10/1/96	• Switched access reductions - $35 million • Unspecified rate reductions - $48 million

According to the terms of the Stipulation and Implementation Agreement, approximately four months before the scheduled effective dates of the unspecified rate reductions, Southern Bell will file its proposals for the required revenue reductions. Interested parties may also file proposals at that time. Parties who have already received or are scheduled to receive rate reductions for

the services to which they subscribe, are generally precluded from taking positions that would benefit themselves.

On May 15, 1995, Southern Bell filed a tariff proposal to introduce Extended Calling Service (ECS) to satisfy the unspecified outstanding $25 million rate reduction in accordance with the Stipulation. CWA and McCaw also filed proposals.

A hearing was held on July 31, 1995 to consider how to implement the $25 million rate reduction. This order addresses the tariff filing and other proposals for the $25 million in unspecified rate reductions scheduled to be implemented October 1, 1995. During the hearing, several issues concerning the proper application of the revisions to Chapter 364, Florida Statutes, to this proceeding were identified. The parties filed briefs addressing these legal issues. Since the resolution of these issues is appropriate as a framework for consideration of the various proposals, the legal issues are addressed first.

II. SUMMARY OF DECISION

We approve Southern Bell's ECS tariff proposal to implement the $25 million rate reduction required by Order No. PSC-94-0172-FOF-TL. This plan is the best alternative of those offered for consideration. Interexchange carriers shall continue to be permitted to carry this traffic. By application of newly enacted Section 364.385(3), Florida Statutes, this proceeding is governed by the previous version of Chapter 364, Florida Statutes. When implemented, ECS on these routes shall be considered "basic local telecommunications service" pursuant to Section 364.02, Florida Statutes. Because ECS will be part of basic local telecommunications service, it does not violate the imputation requirement of Section 364.051(6)(c), Florida Statutes. Southern Bell shall file tariffs to be effective January 1, 1996 reflecting the decisions in this order. Southern Bell shall issue refunds in accord with the provisions of Order No. PSC-94-0172-FOF-TL for the period from October 1, 1995, through December 31, 1995.

III. STAFF'S MOTION TO SUPPLEMENT THE RECORD

On August 10, 1995, Commission staff filed a Motion to Supplement the Record of the Hearing held July 31, 1995, in this docket. The motion seeks to supplement the record with the late-filed deposition Exhibit of Joseph Stanley, which was attached to the motion.

This late-filed deposition exhibit was inadvertently omitted from staff's composite Exhibit number 7, which was admitted into evidence without objection. Several parties to this proceeding have proposed and/or endorsed reductions to the currently tariffed rates for private branch exchange (PBX) and direct inward dial (DID) trunk service offerings as the most appropriate method for implementing the $25 million rate reduction at issue in this proceeding.

This exhibit provides information necessary to analyze and calculate the impact of reductions to the rates charged for PBX and DID service offerings. No party filed a response to the motion. Therefore, it may be assumed that no party opposes the request. Thus, we find that the motion shall be granted.

IV. APPLICABLE LAW

Section 364.385(3), Florida Statutes, provides that:

> Florida Public Service Commission Order No. PSC-94-0172-FOF-TL shall remain in effect, and BellSouth Telecommunications, Inc., shall fully comply with that order unless modified by the Florida Public Service Commission pursuant to the terms of that order.

Order No. PSC-94-0172-FOF-TL requires extensive rate reductions by Southern Bell, some of which are specifically identified and some of which are "unspecified." This proposal was submitted to satisfy the unspecified $25 million rate reduction required for October 1, 1995. Order No. PSC-94-0172-FOF-TL details a comprehensive framework, imposing numerous requirements on Southern Bell including the following: the reduction of certain rates, the capping of local rates, the sharing of earnings, mandating the recording of expenses, the establishment of certain reserves, the elimination of additional charges for touchtone service, and a requirement that the company absorb "up to $11 million in revenue losses and costs that are expected to result from the implementation of a Dade/Broward County extended area service plan." These proposals are being considered to implement one of the requirements of Order No. PSC-94-0172-FOF-TL.

Assuming that Southern Bell opts to be a price regulated local exchange company pursuant to Section 364.051, Florida Statutes, the Commission's regulatory oversight will be limited. A comprehensive framework, as is operative with respect to this Order, is fundamentally inconsistent with the Commission regulatory mission pursuant to the revised statute. Order No. PSC-94-0172-FOF-TL is

the express and only subject of Section 364.385(3), Florida Statutes, a "savings" clause.

In pertinent part, Section 364.385(2), Florida Statutes, as amended by the 1995 Florida Legislature provides:

> Proceedings including judicial review pending on July 1, 1995, shall be governed by the law as it existed prior to the date on which this section becomes a law. No new proceedings governed by the law as it existed prior to January 1, 1995, shall be initiated after July 1, 1995. Any administrative adjudicatory proceeding which has not progressed to the stage of a hearing by July 1, 1995, may, with the consent of all parties and the commission, be conducted in accordance with the law as it existed prior to January 1, 1996.

This proceeding (Docket No. 920260-TL) "progressed to the stage of hearing" in January, 1994. A hearing was only avoided at that time because all parties agreed to, and the Commission approved, a stipulated resolution. Thus, the "consent of all parties and the commission," is not required to conduct this proceeding "in accordance with the law as it existed prior to January 1, 1996."

Section 364.385(2), Florida Statutes, as amended by the 1995 Florida Legislature also provides: "All applications for extended area service, routes, or extended calling service pending before the commission on March 1, 1995, shall be governed by the law as it existed prior to July 1, 1995."

Some parties suggest that because the ECS proposal was filed after March 1, 1995, it cannot be considered by the Commission. But for the savings clause specifically applicable to this docket and the Order by which this rate reduction is required, we would agree. It appears that the Commission has no prospective authority to require ECS offerings by local exchange companies electing to be price regulated pursuant to Section 364.051, Florida Statutes.

Therefore, we find that the unspecified $25 million rate reduction scheduled for October 1, 1995, shall be processed under the former version of Chapter 364, Florida Statutes.

V. ECS AS BASIC LOCAL TELECOMMUNICATIONS SERVICE AS DEFINED IN SECTION 364.02(2) FLORIDA STATUTES

As stated above, this ECS proposal is being considered in this docket pursuant to a negotiated resolution of Southern Bell's most recent comprehensive earnings, revenue and rate proceeding.

By Order No. PSC-94-0572-FOF-TL, issued May 16, 1994, in Docket No. 911034-FOF-TL, the Commission approved the same type ECS plan as is pending in this docket for the Fort Lauderdale/Miami, Hollywood/Miami, and Fort Lauderdale/North Dade routes. The Commission stated:

> The hybrid $.25 plan is identical to GTE Florida Incorporated's ECS plan approved by the Commission in Docket No. 910179-TL. The plan provides for a $0.25 message rate for residence and a measured rate of $0.10 for the first minute and $.06 for additional minutes for business. The measured rate for business customers was determined to be appropriate because the calling characteristics, in terms of call durations and calling patterns, differed for business customers. (Order No. PSC-94-0572-FOF-TL at page 3)

This plan was proposed in an agreement between the Florida Interexchange Carriers Association (FIXCA) and Southern Bell. The agreement provides that "after implementation of the hybrid $.25 plan, interexchange carriers may continue to carry the same types of traffic on the toll routes that they are now or hereafter authorized to carry."

Order No. PSC-94-0572-FOF-TL explicitly recognized that this plan was being implemented to satisfy the requirements of the Settlement and Implementation Agreement in this docket:

> the revenue effects of the implementation of the settlement in this case shall be treated in accordance with Paragraph 8 of the settlement between the Office of Public Counsel and Southern Bell in Docket No. 920260. (Order No. PSC-94-0572-FOF-TL at page 5)

Thus, we have approved a similar proposal with the revenue reduction being applied to satisfy the requirements of Order No. PSC-94-0172-FOF-TL. Further, by the terms of that Order and the revisions to Chapter 364, Florida Statutes, the rates for ECS on the Fort Lauderdale/Miami, Hollywood/Miami, and Fort Lauderdale/North Dade routes are capped at the current price and

considered part of basic local service. We believe the same treatment is appropriate for this proposal.

We believe that Section 364.385(3), Florida Statutes, preserving the Commission's authority with respect to Order No. PSC-94-0172-FOF-TL, is a more specific expression of legislative intent than the provisions regarding ECS found in Section 364.385(2), Florida Statutes. The authority granted by the legislature with respect to this docket permits the Commission to approve this proposal in a similar framework. Therefore, we find that Southern Bell's ECS plan shall be considered part of basic local telecommunications service, for the purposes of Sections 364.02 and 364.051, Florida Statutes.

VI. IMPUTATION REQUIREMENT OF SECTION 364.051(6)(C), FLORIDA STATUTES

Section 364.051(6)(c), Florida Statutes, provides that

> The price charged to a consumer for a non-basic service shall cover the direct costs of providing the service and shall, to the extent a cost is not included in the direct cost, include as an imputed cost the price charged by the company to competitors for any monopoly component used by a competitor in the provision of its same or functionally equivalent service. (emphasis added)

Since we have decided that the plan shall be considered basic local telecommunications service under the authority of Section 364.385(3), Florida Statutes, the imputation requirement of Section 364.051(6)(c), Florida Statutes, does not apply.

VII. CONSISTENCY WITH OTHER PROVISION OF THE REVISED CHAPTER 364, FLORIDA STATUTES

Southern Bell, CWA, FMCA, McCaw, OPC, and FCTA assert that Southern Bell's ECS proposal does not violate any other provision of the revised Chapter 364, Florida Statutes, excluding those identified in specific issues.

ATT, DOD, Ad Hoc, and Sprint assert that Southern Bell's ECS plan violates the spirit and intent of the revisions to Chapter 364, as provided in Section 364.01. ATT states that the revisions to Chapter 364 were premised upon a finding that the competitive provision of telecommunications service is in the public interest and will provide substantial benefits to consumers. ATT also

states that the Commission is directed to encourage competition through flexible regulatory treatment, and to promote competition by encouraging new entrants into telecommunications markets, while retaining the existing requirement that the Commission ensure that all providers of telecommunications services are treated fairly by preventing anticompetitive behavior.

Clearly, the intent of the legislation is to encourage and promote competition while preventing anticompetitive behavior; however, we do not think that if implemented, Southern Bell's ECS plan would violate the spirit and intent of Chapter 364. The implementation of the plan does not prevent others from carrying this type of traffic.

ATT also states that Southern Bell's proposal constitutes an anticompetitive act or practice in violation of Section 364.051(6)(a), Florida Statutes. There does not appear to be an anticompetitive act or practice, since competition will be permitted on these routes.

FIXCA argues that Section 364.051(6)(a)(2), Florida Statutes, would be violated if Southern Bell's ECS plan were implemented, because it violates the non-discrimination provision under Southern Bell's interpretation of "functionally equivalent" service. This section provides that the LECs shall not engage in any anticompetitive acts or practice, nor unreasonably discriminate among similarly situated customers. FIXCA asserts that if the Commission accepts Southern Bell's "functionally equivalent" argument then Southern Bell violates Section 364.051(6)(a)(2). FIXCA states that if ECS and intraLATA toll are the same for purposes of the imputation test, Southern Bell's pricing proposal discriminates against Southern Bell's intraLATA toll customers, because Southern Bell proposes to charge customers who are receiving essentially the same service different prices. As stated above, we have determined that the ECS plan shall be part of basic local telecommunications service. Thus, it is not "functionally equivalent" to intralata toll service. Therefore, the plan does not violate Section 364.051(6)(a)(2), Florida Statutes.

Accordingly, we find that Southern Bell's ECS proposal does not appear to violate any other provision of the revised Chapter 364, Florida Statutes.

VIII. SOUTHERN BELL'S PROPOSAL

A. Tariff filing T-95-304:

Southern Bell submitted this proposed tariff on May 15, 1995, to establish ECS as the standard offering for expanded local calling. With the exception of the Enhanced Optional Extended Area Service (EOEAS) residential flat-rate premium option, when ECS is implemented the Basic Optional Extended Area Service (BOEAS), EOEAS, Optional Calling Service (OCS/Toll-Pac), and Local Calling Plus (LCP) will all be discontinued. ECS is an enhancement to local service. Dialing is on a seven-digit basis, except when crossing area code boundaries. Residential customers are charged $.25 per message regardless of call duration. Business customers are charged on a per minute basis, $.10 for the first minute and $.06 for each additional minute.

This ECS proposal is being made to satisfy the outstanding revenue reductions commitment, in accordance with the Stipulation and Agreement between the Office of Public Counsel and Southern Bell, and with the Implementation Agreement between Southern Bell and all other parties to Dockets 900960-TL, 910163-TL, and 920260-TL. According to the Company, the estimated revenue effect without any stimulation would be a $43.5 million reduction. Southern Bell requested implementation of the Southeast LATA (local access and transport area) ECS routes 60 days after approval and the routes in the other LATAs 120 days after approval. These dates would have been July 14 and September 12, 1995, respectively, which would have been prior to the October 1, 1995 required rate reduction.

The proposed ECS tariff was considered at the June 15, 1995 agenda conference. The proposed tariff was suspended to consider the ECS proposal along with other parties' proposals at the hearing scheduled for July 31, 1995.

B. Exhibit 5 (Amendment to T-95-304):

Southern Bell amended its initial request on July 28, 1995 by including 34 additional routes in the Southeast LATA and 2 routes in the Pensacola LATA. Calling from Exchange A to Exchange B and from Exchange B to Exchange A constitutes two routes. According to Southern Bell, these additional routes were at the request and urging of the Public Counsel and customers. The unstimulated estimated revenue effect for the 36 routes would be $4.5 million. Therefore, the amended filing has 288 Bell-to-Bell routes throughout the state, with approximately a $48.0 million unstimulated revenue effect.

The Office of Public Counsel supports Southern Bell's ECS proposal as indicated in its basic position: "The Commission should use the upcoming rate reduction for expanded local calling." (Order PSC-95-0895-PHO-TL, p.11) All other intervenors would use the $25 million in other ways as discussed subsequently in this Order.

C. Proposed 288 One-Way Routes

An analysis of the routes shows 188 one-way routes in the Southeast LATA, with the remaining 100 one-way routes located in the Daytona Beach, Gainesville, Jacksonville, Orlando, Panama City, and Pensacola LATAs.

A county-by-county analysis of routes in the Southeast LATA indicates:

Monroe County - All Southern Bell exchanges in the Florida Keys, to the extent that local calling is not now available, will have ECS calling to Key West, the county seat, as well as calling between each other. ECS calling is also proposed between these exchanges and the Homestead, Perrine, and Miami exchanges.

Dade County - Dade County will have local or ECS calling between all exchanges in the county (countywide), with the addition of ECS between the Homestead and North Dade exchanges. The North Dade and Miami exchanges will have ECS calling to and from Boca Raton and intermediate exchanges.

Broward County - Broward County will have local or ECS calling between all exchanges (countywide) and ECS calling to and from the Boca Raton, Boynton Beach, and Delray Beach exchanges in Palm Beach County.

Palm Beach County - Palm Beach County will have local or ECS calling between all exchanges in the county (countywide).

Martin County - ECS is proposed between the Stuart exchange, the county seat, and the Jensen Beach, Jupiter and West Palm Beach exchanges.

St Lucie County - ECS is proposed between the Port St. Lucie exchange and the Vero Beach, Jupiter, and West Palm Beach exchanges.

Although this appears to be most of the Bell-to-Bell routes in the Southeast LATA, that is not the case. There are an additional 619 Bell routes, plus 21 routes from Bell exchanges to the Indiantown exchange.

The remaining 100 routes proposed for ECS are Bell-to-Bell routes in the Daytona Beach, Gainesville, Jacksonville, Orlando, Panama City, and Pensacola LATAs. Fifty-eight of the routes currently have some type of toll relief plan, such as LCP, BOEAS, OCS or EOEAS in effect. Implementing ECS on these routes will establish ECS as the standard offering for expanded local calling. Customers will have a better understanding of the one plan versus the several plans identified above. These routes account for approximately $5 million of the total reduction.

The 288 routes were selected for the October 1, 1995 $25 million reduction, because they provide customers with a seven-digit calling plan, except when crossing area code boundaries, beyond their current local calling area. ECS service has been well received since it provides a plan where only customers using the plan pay. Traditional flat-rate EAS requires an EAS additive, sometimes over $5, depending upon the routes involved. The proposed ECS routes were selected based upon subscribers' employment, where they worship, do their shopping, where children attend school, and where medical care is available. Southern Bell relied on these additional areas to support its request - 1) obvious community of interest, as was exhibited in the Dade/Broward metropolitan area, 2) traffic studies, 3) routes which have some type of toll relief plan currently in effect, 4) reciprocal routes, and 5) additional routes to eliminate any leap-frogging.

These are the same parameters used by GTE Florida Incorporated (GTEFL) in Docket 910179-TL, Order No. 25708 issued February 11, 1992. The Commission approved GTEFL's ECS local plan based on the existence of a sufficient community of interest when the following conditions were met: (1) usage studies partially or completely satisfy the requirements of Rule 25-4.060(3) F.A.C.; and (2) there is a demonstrated dependence between exchanges which may include educational, health, economic or governmental services, emergency (911) services, and social/recreational activities. Countywide calling is also a consideration. We believe all of these parameters should be considered, rather than relying only on the community of interest factor (CIF) which is the calling data. Further, the $.25 message plan was ordered in Holmes, Jackson, Okaloosa, and Walton Counties when the calling rates were lower than 1 call per access line, per month. (Docket No. 891246-TL, Order No. 24178) Also, we approved countywide calling in Escambia County by Order 21986 stating "...we believe there are mitigating

factors that justify implementation of countywide EAS... all are dependent upon Pensacola for employment, higher education, county offices, medical and emergency (911) services, and cultural and social events ... we do not believe nonqualifying intermediate routes to smaller communities should negate the request for countywide EAS...." (Docket No. 871268-TL)

Some of the intervenors express concerns that approval of the ECS plan will re-monopolize the provision of toll service throughout a significant portion of Southern Bell's operating territory. However, as discussed subsequently in this Order, interexchange companies (IXCs) may continue to carry the same types of traffic on these ECS routes that they are now authorized to carry. Additionally, under the revised telecommunications statutes, specifically Section 364.337, Florida Statutes, providing for alternative local exchange telecommunication companies (ALECs) on January 1, 1996, there could be additional competition for this traffic, as well as for other local services. In fact, the 17+ holders of Alternative Access Vendors' (AAVs) certificates as of July 1, 1995, upon notification to the Commission, are certificated as ALECs.

Intervenors also expressed concern that the ECS calls would be dialed on a seven-digit basis. Southern Bell's witness does not believe seven-digit dialing gives the Company an insurmountable competitive edge. While ECS offers a slightly more convenient dialing pattern, it does not offer customers the advantage of aggregating their usage for discount purposes. ECS calling between exchanges in the 407 area code would have ten-digit dialing to exchanges in the 305 area code. This will be true of calling to and from the new 954 area code, which will encompass all of Broward County. At that time, calling between exchanges in Broward County and exchanges in the 305 and 407 Area Codes will all be on a ten-digit basis.

D. Commission Precedent

Approval of Southern Bell's amended ECS plan is consistent with Commission precedent. The Commission approved a very similar plan for GTE Florida Incorporated, in February 1992. By Order No. 25708, issued February 11, 1992, in Docket No. 910179-TL, the Commission approved an ECS plan for the Tampa Bay area, including Tampa, St. Petersburg, Clearwater, Tarpon Springs and Plant City. The rates approved in that order for residential and business customers are identical to those proposed by Southern Bell. In that Order, the Commission found that:

> GTEFL has demonstrated that there is a sufficient community of interest to warrant some form of toll relief. The calling patterns on these routes partially satisfy the criteria for flat rate EAS and GTEFL has shown numerous examples of fundamental dependencies between the ECS exchanges. These fundamental dependencies involve the satisfaction of everyday needs such as jobs, health care, education, governmental services and recreation. For these reasons, we find that a modified version of the ECS plan shall be offered...

In the instant case, Southern Bell has alleged the same type of community of interest factors as found to be evident for Tampa Bay. Some of the routes do meet some of the requirements for EAS. No party challenged Southern Bell's filing on the basis that there was no "community of interest" involving these particular routes. Rather, the objections posited to the plan are based on concerns that the plan is an anti-competitive attempt to remonopolize the intraLATA toll market.

The Commission's Order approving a modified ECS plan for GTEFL also found that this action required that the approved routes be reclassified as "local" under the then applicable statutory scheme. This action precluded IXCs from carrying ECS traffic. The Commission's authority to do so was affirmed by the Florida Supreme Court in Florida Interexchange Carriers Association v. Beard, 624 So.2d 248 (Fla. 1993).

In contrast, all parties to this docket agree that IXCs should be permitted to continue to carry this traffic. Given our decision, discussed beginning on page 20 of this Order, that competition shall be allowed on these routes, there is no cognizable argument that this plan would, as a matter of law, remonopolize the intraLATA toll market.

E. Revisions to Chapter 364, Florida Statutes

The most significant provision of the revisions to Chapter 364, Florida Statutes, is found in Section 364.03, Florida Statutes:

> The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure. The

> Legislature further finds that the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition...

Encouraging the development of fair and effective competitive provision of telecommunications services, while exercising appropriate regulatory oversight to protect consumers, is the Commission's charge from the legislature. The right of others to compete with Southern Bell for this traffic is not in dispute.

We believe that Section 364.385(3), Florida Statutes, the savings clause, is a more specific expression of legislative intent than the provisions dealing with ECS found in Section 364.385(2), Florida Statutes. As discussed above, the Commission has previously approved an ECS proposal in this docket, giving credit to Southern Bell for rate reductions required by Order No. PSC-94-0172-FOF-TL. Those rates are now capped for five years. The authority granted by the legislature with respect to this docket permits the Commission to approve this proposal in a similar framework.

After January 1, 1996, the potential for the competitive provision of telecommunications services in Florida will be greatly expanded. ALECs, as well as IXCs, will be able to compete for this traffic. Section 364.161, Florida Statutes, requires Southern Bell to:

> unbundle all of its network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider requesting such features, functions or capabilities for resale to the extent technically and economically feasible.

Thus, the legislature provided telecommunications companies an opportunity to purchase, to the "extent technically and economically feasible" those services necessary to offer ECS to consumers. The legislature also provided telecommunications companies the opportunity to have the Commission establish the rates, terms and conditions for resale in the event that negotiations are not successful.

We believe it is in the public interest to approve Southern Bell's ECS plan. All residential and business customers making calls on the ECS routes will benefit by approximately $48 million annually (unstimulated) from the approval.

For these reasons, we find that Southern Bell's Extended Calling Service plan detailed in its May 15, 1995 filing, as supplemented by the additional 36 one-way routes, and modified below, shall be approved effective January 1, 1996, and considered basic service. Further, during the period beginning October 1, 1995 through December 31, 1995, Southern Bell shall be required to make the appropriate refund in compliance with the Stipulation approved in Order No. PSC-94-0172-FOF-TL. Pay telephone providers shall charge end users $.25 per message and pay the standard interconnection charge. IXCs may continue to carry the same types of traffic on these routes that they are now authorized to carry.

By Order No. PSC-95-1135-FOF-TL, issued September 12, 1995, in Docket No. 921193-TL, we approved a request for ECS on the following routes: Boca Raton/West Palm Beach; Delray Beach/West Palm Beach; Belle Glade/West Palm Beach; Pahokee/West Palm Beach; and Boynton Beach/Boca Raton.

Order No. PSC-95-1135-FOF-TL required that ECS be implemented as soon as possible, but not to exceed six months from the issuance of the order. These same routes are part of Southern Bell's ECS filing in this docket. To be consistent and avoid confusion, these five two-way routes shall be implemented January 1, 1996 and considered basic local service.

By Order No. PSC-95-1137-FOF-TL, issued September 12, 1995, in Docket No. 950221-TL, we approved a request for ECS on the DeBary/Orlando route.

Order No. PSC-95-1137-FOF-TL required that ECS be implemented as soon as possible, but not to exceed six months from the issuance of the order. These same routes are part of Southern Bell's ECS filing in this docket. To be consistent and avoid confusion, these two routes shall be implemented January 1, 1996 and considered basic local service.

By Order No. PSC-95-0646-FOF-TL, issued May 24, 1995, in Docket No. 930995-TL, we approved a request for flat rate EAS between Trenton and Newberry. By Order No. PSC-95-1219-FOF-TL, issued October 3, 1995, in Docket No. 941144-TL, we approved a request for flat rate EAS between Big Pine Key and Key West.

Accordingly, the Trenton/Newberry and Big Pine Key/Key West routes should not be included for ECS. Thus, we modify Southern Bell's ECS proposal to exclude these routes.

IX. CWA'S PROPOSAL

To satisfy the $25 million rate reduction required by Order No. PSC-94-0172-FOF-TL, CWA proposes to reduce each of the following by $5 million:

1. Basic "lifeline" senior citizens telephone service;
2. Basic residential telephone service;
3. Basic telephone service to any organization that is non-profit with 501(c) tax exempt status;
4. Basic telephone service of any public school, community college and state university; and
5. Basic telephone service of any qualified disabled ratepayer;

CWA has proposed that five customer classes or subsets of classes as identified above should receive decreases in their basic service rates. CWA's witness cited four "regulatory principles" that guided CWA in developing its proposal:

1. "Refunds" should be directed toward universal service.

They should be used to offset basic service only since it "underlies every other aspect of the system." According to CWA's witness, this "guarantees" that the greatest number receive the greatest breadth of a refund. It would also eliminate the possibility of discrimination against those who cannot afford extra features. CWA's witness states that long distance is a "budgeted luxury" for some, but that dial tone defines a way of life. Finally, according to the witness, the legislature and Governor have endorsed universal service, and universal service is a stated goal of the CWA International president.

2. The refund formulae should seek to assist those who need it the most.

According to CWA's witness, cross subsidies have always been accepted in the regulatory arena. CWA therefore identified four groups of ratepayers as having special needs: senior citizens, public educational institutions, disabled citizens, and 501(c) exempt non-profit institutions. These groups would benefit from and greatly appreciate the assistance.

3. Those who suffered from the alleged improprieties leading to the settlement should be directly compensated.

CWA's witness states that the settlement was reached in part because it ended allegations of improper sales tactics leveled against SBT. He asserts that the basic residential customer would have been the most frequent target of alleged sales actions. CWA asserts that since it is impossible to identify the victims, the basic rates of all residential customers should be reduced.

4. The refund should be singularly directed to assist consumers and not utilized to directly benefit the company.

CWA's witness states that its members are loyal employees who would like nothing better than to use the money to help provide SBT a competitive edge. But, he states, this would be disingenuous. Since SBT entered into the settlement to redress consumer issues, he believes that a refund plan should mirror that intent. He argues that the SBT plan benefits the company, which is unacceptable "given the need to compensate the public for the alleged wrongdoing," and does not meet the four regulatory principles which have been "long embraced by regulators."

No party endorsed CWA's proposal. SBT opposes it on the basis that it is "redundant." McCaw cites the availability of Lifeline Service as a reason to reject the proposal. SBT, Ad Hoc and DOD oppose it on the basis that it is of small benefit to only limited classes of customers. ATT, McCaw, Sprint and DOD argue that it reduces prices that are already at or below cost. Ad Hoc and MCI state that it does not enhance competition.

FCTA and FMCA oppose it but do not specify a reason. FIXCA and OPC did not address the CWA proposal or articulate a specific position. OPC did, however, endorse SBT's proposal as the "best use of the rate reduction." OPC, by statute, represents consumers whose interest CWA states it is representing in this case.

We decline to adopt CWA's proposal for several reasons. First, a $5 million annual reduction reduces an R-1 line by approximately $.10 monthly. There has been no evidence submitted in this case that customers believe that their basic rates are too high. SBT already has a Lifeline Service which reduces the basic rate by $3.50. (There is an additional reduction because of interstate matching of the $3.50 Subscriber Line charge.) The basic rate in the highest rate group in SBT's territory is $10.65. Thus, the lifeline rate in Miami is currently $7.15 per month. Moreover, Bell has just received approval to eliminate the

Secondary Service order charge associated with initiating Lifeline service. (See Order No. PSC-95-1139-FOF-TL, issued September 12, 1995, in Docket No. 950882-TL)

Second, the CWA proposal would be costly to implement and administer. It would require extensive resources that are not available internally to the Commission or to Southern Bell. For example, to identify and continue to monitor the eligible customers with disabilities, or those who are tax exempt, would, we believe, result in administrative costs out of proportion to the benefits of a $5 million reduction to that group. CWA appears to believe that this should not be a concern, but that any such costs should be borne by either Bell or its stockholders. We believe that the ECS proposal is a more efficient way to bring the benefits of rate reductions to the general body of ratepayers.

Third, CWA's proposal seems to be based on the redress of alleged SBT wrongdoing. Contrary to CWA's contention, it is not stated or in any way indicated in the Stipulation that the unspecified rate reductions should be used by SBT to compensate customers. (See Order No. PSC-94-0172-FOF-TL) Rather, the parties agreed in the stipulation to close the investigation dockets.

Therefore, we find that CWA's proposal shall not be approved. The costs of setting up and administering the rate categories that CWA proposes would, in our opinion, outweigh the social benefits. To apply small reductions to the basic rates of selected residential and business customers in this way would be an inefficient use of the funds available.

X. MCCAW'S PROPOSAL

McCaw Communications proposed, and the Florida Mobile Communications Association adopted, that a portion of the $25 million be used to offset, if necessary, rate reductions that the Commission might order in Docket No. 940235-TP, the Commission's most recent investigation into the interconnection rates of mobile service providers (MSPs). The Commission's actions in that docket are reflected in Order No. PSC-95-1247-FOF-TL, issued October 12, 1995. Docket No. 940235-TL was decided after the briefs were filed in this proceeding.

In that Order, we have decided that the link between mobile interconnection usage rates and access charges should be broken. Previously, whenever switched access charges were reduced, the mobile interconnection rates were reduced according to a formula.

We have decided to freeze or reduce certain usage rates unless the parties negotiate a different arrangement.

The main point at issue in this case, according to McCaw, is that under the new statute, mobile interconnection rates come under the definition of "network access" service. The statute requires that network access rates be capped at July 1, 1995 levels. McCaw is concerned that even if the Commission requires that the flow through of switched access reductions be continued in Docket No. 940235-TP, that given the "lack of clarity" in the new law, the LECs will not do so. McCaw is particularly concerned with SBT because of the scheduled October 1, 1995 $55 million switched access reduction.

Our decision in Docket No. 940235-TL to break the link between access charges and mobile interconnection usage rates obviates the need to use a portion of the $25 million at issue in this proceeding to implement the decision in Docket No. 940235-TL. The question of the appropriate mobile interconnection usage rates after Southern Bell's scheduled October 1, 1995 $55 million switched access reduction has been addressed in Order No. PSC-95-1295-FOF-TL, issued October 19, 1995 in this docket. In that Order, we decided that Southern Bell's scheduled October 1, 1995 $55 million switched access reduction should not be "flowed through" to mobile interconnection rates.

Therefore, we decline to adopt McCaw's proposal to apply a portion of the $25 million rate reduction to implement the decision in Docket No. 940235-TL.

XII. REDUCTIONS TO PBX AND DID TRUNK RATES

No party filed a proposal to reduce the rates for PBX trunks and DID service offerings. However, several parties suggested in testimony that reductions in the rates for these service offerings was more appropriate than any of the filed proposals. Given our decision to approve the ECS plan, we decline to reduce the rates for these services to implement the $25 million unspecified rate reduction.

XI. COMPETITION ON EXTENDED CALLING SERVICE ROUTES

In all prior cases involving ECS where the Commission has made a determination, ECS has been determined to be a local service. Under the previous version of Chapter 364, the provision of local service within a given geographic area was the exclusive

right and responsibility of the local exchange company. Such a finding would prohibit IXC's from carrying ECS traffic. The Commission's authority to do so was affirmed by the Florida Supreme Court in Florida Interexchange Carriers Association v. Beard, 624 So.2d 248 (Fla. 1993).

By Order No. PSC-94-0572-FOF-TL, issued May 16, 1994, in Docket No. 911034-FOF-TL, the Commission approved the same type ECS plan as is pending in this docket for the Fort Lauderdale/Miami, Hollywood/Miami, and Fort Lauderdale/North Dade routes. The plan was proposed in an agreement between the Florida Interexchange Carriers Association (FIXCA) and Southern Bell. The agreement provides that "after implementation... interexchange carriers may continue to carry the same types of traffic on the toll routes that they are now or hereafter authorized to carry."

The Commission recognized that this was a departure from previous policy.

> A significant affect of this agreement is that interexchange companies (IXCs) may continue to carry the same types of traffic on these routes that they are now or hereafter authorized to carry. We note that this is a change in our current policy. We currently have a proceeding to address revisions to our EAS rules. One issue to be considered is whether IXCs should be allowed to carry traffic on $.25 routes. Allowing IXCs to continue to carry this traffic will avoid the possible harm done by precluding IXCs from operating on a route on which they may have significant traffic volumes now, only to reopen that route to competition later. Whatever decision results from the EAS rule investigation can be applied prospectively to these routes.

The revisions to Chapter 364, Florida Statutes, enacted by the 1995 Florida Legislature, allow and encourage the provision of local exchange telecommunications service by competitive providers. Based on these revisions, the EAS rulemaking docket (Docket No. 930220-TL) has been closed. Thus, a finding that competition is not permitted on these ECS routes is not consistent with the revisions to Chapter 364, Florida Statutes. Therefore, we find that competition shall continue to be permitted on any and all ECS routes approved in this docket. No additional action is necessary.

XIII. EFFECTIVE DATE OF TARIFFS IMPLEMENTING DECISION

Given the lead time necessary for Southern Bell to implement its proposal, the possibility of greater competition after January 1, 1996, and future ability of telecommunications companies to purchase network features, functions, and capabilities where technically and economically feasible after January 1, 1996, we find that tariffs shall be filed on or before December 1, 1995, to be effective January 1, 1996. This is consistent with the legislative mandate to promote fair and effective competition.

The terms of the Stipulation provide that if any of the required unspecified rate reductions are not implemented on the effective date, pro rata refunds shall be made in accordance with the provisions of the Stipulation. Given the approved implementation date, refunds shall be made for the period from October 1, 1995, through December 31, 1995.

Paragraph 10 of the January 5, 1994 Stipulation between the parties to this docket provides for a refund or customer credit to be given to customers in the event there is a delay in the implementation date of the scheduled rate reductions. The Commission, in Order No. PSC-94-0172-FOF-TL, approved the Stipulation in general and did not have an objection to that provision. The purpose of the monthly credit is to prevent accumulation of non-recurring amounts that would then need to be refunded at a later time. Essentially, the monthly credit is a "refund" on a current basis. On that basis, we find that a customer credit shall be implemented as follows:

1) The credit should begin with the first billing cycle of the month following the month in which the order is issued, and continue until tariffs implementing the 1995 rate reductions at issue in this phase of the case become effective.

2) The credit shall be applied to customers' bills on a pro-rata basis according to rate level in the same fashion as has been done previously in Docket No. 880069-TL.

3) Subscribers who pay usage rates plus some percentage of the equivalent flat rate, shall receive refunds based on either the flat rate surrogate, if applicable, or, if no tariffed flat rate surrogate exists, the full equivalent flat rate.

4) Per the Stipulation, customers of record as of the last day of the month of the order requiring such a refund will be eligible to receive the customer credit.

5) Reports on the status of the implementation of the refund should be filed in accordance with Rule 25-4.114(7) F.A.C.

6) SBT shall provide staff with documentation supporting it's calculation of the specific refund amounts.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Commission staff's Motion to Supplement the Record is granted. It is further

ORDERED that the unspecified $25 million rate reduction scheduled for October 1, 1995, shall be processed under the former version of Chapter 364, Florida Statutes. It is further

ORDERED that Southern Bell's ECS plan shall be considered part of basic local telecommunications service, for the purposes of Sections 364.02 and 364.051, Florida Statutes. It is further

ORDERED that since Southern Bell's ECS plan shall be considered part of basic local telecommunications service, the imputation requirement of Section 364.051(6)(c) does not apply. It is further

ORDERED that Southern Bell's ECS proposal does not appear to violate any other provision of the revised Chapter 364, Florida Statutes. It is further

ORDERED that Southern Bell's Extended Calling Service plan detailed in its May 15, 1995 filing, as supplemented by the additional 36 one-way routes and modified herein, is approved, to be effective January 1, 1996. It is further

ORDERED that Order No. PSC-95-1135-FOF-TL is modified to require implementation on the routes approved for ECS in that Order to be effective January 1, 1996. It is further

ORDERED that Order No. PSC-95-1137-FOF-TL is modified to require implementation on the routes approved for ECS in that Order to be effective January 1, 1996. It is further

ORDERED that we decline to adopt CWA's proposal to implement the $25 million unspecified rate reduction. It is further

ORDERED that we decline to adopt McCaw's proposal to implement the $25 million unspecified rate reduction. It is further

ORDERED that we decline to reduce the rates for PBX trunks and DID service offerings to implement the $25 million unspecified rate reduction. It is further

ORDERED that competition shall continue to be permitted on all ECS routes approved in this docket. It is further

ORDERED that tariffs implementing the ECS plan approved in this Order shall be filed on or before December 1, 1995, to be effective January 1, 1996. It is further

ORDERED that Southern Bell shall issue refunds as detailed in this Order for the period from October 1, 1995, through December 31, 1995. It is further

ORDERED that this docket shall remain open to continue to implement the agreement approved in Order No. PSC-94-0172-FOF-TL.

By ORDER of the Florida Public Service Commission, this 8th day of November, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

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Chairman Clark dissents as follows:

I disagree with the Commission's decision to implement Extended Calling Service (ECS) on all 288 routes proposed by Southern Bell. The guidelines used by Southern Bell and the majority in determining whether ECS was warranted are inappropriate in that they do not outline specific criteria which establish a clear community of interest. They are, rather, a subjective belief that a "community of interest" exists. Based on the criteria this Commission used in two previous rate cases (United and GTE), only

70 of the 288 routes demonstrated sufficient community of interest to warrant toll relief. The majority's decision in this case is contrary to those two previous cases and to the Commission's prior decisions on extended area service requests, is inconsistent with our decision in the IntraLATA Presubscription Docket, and is anticompetitive. While the decision grants short-term toll relief to those customers served on the routes for which no community of interest was demonstrated, it will stifle vigorous competition which, in the long-term, is the best means of ensuring low rates and high quality service.

Of the 252 originally proposed routes, only 36 had calling rates of 3 Messages per Access Line per Month (M/A/Ms) or greater. The remainder of the routes were selected due to Southern Bell's "obvious community of interest" criterion (Broward and Dade Counties), elimination of leapfrogged routes, or a desire for reciprocal calling. Of the 36 which were added after the original petition, none had calling rates of 3 M/A/Ms or greater. All of these routes were added to the proposal to accomplish countywide calling within Palm Beach County, and calling from certain Palm Beach County exchanges into Broward County.

Requiring specific qualifying criteria is consistent with our previous decisions on extended area calling plans and the decision of Judge Greene of the U.S. District Court regarding the denial of Southern Bell's request for waiver of its Modified Final Judgement (MFJ) for an alternative toll plan on specific interLATA routes. Judge Greene denied Southern Bell's waiver request because it did not meet specific qualifying criteria. He considered the request nothing more than discounted toll and, therefore, anticompetitive.

Since Judge Greene's decision, this Commission has consistently required qualifying criteria before ordering ECS. In fact, many countywide EAS requests have been denied in whole or in part because the route(s) did not meet a minimum qualifying criteria (Alachua, Marion, Highlands, Nassau, Levy, Pasco, Lake, Sarasota, Santa Rosa, Palm Beach, Broward, Dade, Polk and Walton Counties). By granting ECS on routes that do not meet specific qualifying criteria, the Commission is setting a precedent for blanket approval of future ECS requests with similar calling patterns.

There is an immediate benefit to consumers in reduced rates by granting ECS on all the proposed routes; however, only time will tell if the local market will become sufficiently competitive to keep prices in check. Even though interexchange carriers are allowed to compete on ECS routes, they cannot effectively compete because they must pay access charges. It is difficult for IXCs to

compete against Southern Bell's ECS prices which are below the prices that IXCs must pay Southern Bell for access charges, except for short haul (0-10 miles) calls of one minute. If it is assumed that customers will make the rational choice of using the lowest cost provider, in order to determine whether it is cheaper to use Southern Bell's $.25 rate or toll service from an interexchange carrier, the customer must make a decision to dial the additional digits, must know in advance how long the call will last, the distance, and the time of day (discount period) the call will be made. It is unreasonable to assume that a customer will go through this kind of exercise and that competition will continue to exist on these routes, especially when ECS is bundled with local service. ECS will initially give Southern Bell the advantage of competing only against alternative local phone companies for these calls and may enable Southern Bell to further solidify their strong market position.

Furthermore, Southern Bell's proposal is contrary to the Commission's decision in the IntraLATA Presubscription Docket (Order No. PSC-95-0203-FOF-TP, Docket No. 930330-TL). The majority's decision essentially removes the Southeast LATA from the toll market and gives Southern Bell customers 7-digit dialing. By converting ECS calling to 7-digits only for Southern Bell, this will effectively nullify the Commission's 1+ decision. Customers seeking to use a competitive long distance carrier will be required to use 10-digit dialing, which will impose a barrier to the IXCs. The Commission's intent with granting intraLATA presubscription was to provide consumers the option of choosing a carrier other than the LEC, using the same dialing pattern for 1+ intraLATA calls.

The majority's decision is also contrary to the legislative mandate to this Commission to act as a catalyst for competition. If these routes had remained toll, active and significant competition already in place would continue. As the prices which the local telephone companies charge the long distance companies for connections continue to drop, as prescribed by statute, the prices for toll calls would continue to decrease. The majority's decision removes these routes from a very competitive toll market and places them in a less competitive local market. In addition, Southern Bell is gaining this competitive advantage without any financial penalty since this proposal is being funded through $25 million in required revenue reductions.

For these reasons, I dissent from the majority's decision.

Commissioner Kiesling joins in the dissent.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance 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.