IN THE SUPREME COURT OF FLORIDA

FLORIDA INTEREXCHANGE
CARRIERS ASSOCIATION,

Appellant,

v.

Case No. 86,957
PSC Docket No. 920260-TL

SUSAN F. CLARK, etc., et al.

Appellees.
_____/

ON APPEAL FROM THE FLORIDA PUBLIC SERVICE COMMISSION

INITIAL BRIEF OF APPELLANT

THE FLORIDA INTEREXCHANGE CARRIERS ASSOCIATION

Vicki Gordon Kaufman
Florida Bar No. 286672

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

(904) 222-2525

Attorney for the Florida Interexchange
Carriers Association

TABLE OF CONTENTS

TABLE OF CITATIONS

Commission Orders

PRELIMINARY STATEMENT

The following abbreviations are used in this brief. Appellant, Florida Interexchange Carriers Association, is referred to as FIXCA. Appellee, Florida Public Service Commission, is referred to as the Commission. BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company, is referred to as Southern Bell. Citations to the Record on Appeal are designated (R.), citations to the hearing transcript are designated (Tr.), and hearing exhibits are referred to as (Exh.). Citations to the Commission Agenda Conference, at which the Commission made its decision in this case, are designated (AC.). The Appendix to the brief is designated (A.).

STATEMENT OF THE CASE AND OF THE FACTS

Background

The issue raised on appeal in this case is whether the Commission's classification of Southern Bell's extended calling service (ECS) as basic service complies with the newly-enacted telecommunications law, including its specific direction that competition in the telecommunications industry be fostered. This issue arises in the context of the sweeping changes made to the telecommunications law during the 1994 legislative session.

Prior to the revision of Chapter 364, the local exchange companies (LECs), like Southern Bell, Sprint United/Centel and GTE Florida, were granted a monopoly franchise in the local exchange service market. No other carrier was permitted to provide local service in a given LEC's territory. The Commission acted as a surrogate for competition and closely regulated the LECs' prices and services. The LECs were subject to so-called rate of return regulation.

The new telecommunications statute dramatically changed the prior regulatory framework by permitting competition[1] in the monopoly local telecommunications market by new entities called alternative local exchange companies (ALECs). Further, the new law greatly reduces the Commission's ability to regulate the traditional monopoly LECs.

One of the most significant legislative changes allows the

---

[1] While the new statute permits such competition, there is no guaranty that such competition will actually occur any time in the foreseeable future.

LECs to opt out of rate of return regulation and to elect "price regulation." Under price regulation, all LEC-provided telecommunications services are divided into two categories: basic and non-basic. The correct classification of LEC services is extremely important because that classification governs whether the LEC must comply with the statute's imputation,[2] resale and interconnection requirements as well as how much LEC prices may be increased.

The Southern Bell ECS plan[3] at issue in this appeal affects 288 telephone routes in southeast Florida. Order No. PSC-95-1391-FOF-TL at 11. (R. 468). Prior to the Commission's adoption of Southern Bell's ECS plan, these 288 toll routes were subject to vigorous competition among numerous interexchange carriers (IXCs) and Southern Bell. That is, consumers were able to choose whether they preferred Southern Bell or an interexchange carrier[4] to carry their calls on these routes. All consumers were the beneficiaries of this intense competition. ECS remonopilizes these routes. Therefore, ECS does not comply with the letter or the spirit of the new law.

---

[2] Imputation requires a LEC to "impute" (or include) in the price it charges consumers for a service the direct cost of providing the service, and to the extent not included in the direct cost, the price it charges to competitors for any monopoly component a competitor uses to provide a similar service. This prevents a LEC from giving itself an advantage in the market place.

[3] ECS converts competitive toll calling routes to flat rate calls ($.25) for residential customers. For business customers, callers pay $.10 for the first minute and $.06 for each additional minute.

[4] There are many certificated interexchange carriers in Florida. Thus, consumers could choose from among many providers.

FIXCA does not ask this Court, nor did it ask the Commission, to ban ECS; rather, ECS must be classified as a non-basic service pursuant to the new law. Therefore, ECS must comply with the new statute's imputation requirement, and appropriate resale and interconnection policies must be in place so that IXCs can continue to compete on these routes and so that consumers will continue to have a choice among carriers. In its current form, ECS is unlawful. The Commission must implement resale and interconnection policies in order for ECS to comply with the new law or ECS must be rejected.

Southern Bell Litigation

In January 1994, four dockets involving Southern Bell[5] were settled.[6] The order approving this settlement required specific rate reductions to be made at specified times (for example, a reduction in pay telephone rates in 1994). (R. 35). In addition, the settlement also provided for certain amounts not specifically allocated in the settlement agreement to be disposed of after the Commission conducted hearings. (R. 38-39). Paragraph 4 of the

---

[5] Docket No. 910163-TL (investigating the integrity of Southern Bell's repair service activities and reports); Docket No. 900960-TL (investigating Southern Bell's non-contact sales practices); Docket No. 910727-TL (investigating Southern Bell's compliance with the Commission's rebate rules); Docket No. 920260-TL (a review of Southern Bell's revenue requirements and rate stabilization plan).

[6] Southern Bell and the Office of Public Counsel filed a Stipulation and Agreement on January 5, 1994 (R. 11-27) and the other parties to the docket filed an Implementation Agreement on January 12, 1994. (R. 31-46). The settlements were approved by the Commission on February 11, 1994 in Order No. PSC-94-0172-FOF-TL. (R. 1-10).

Implementation Agreement provides:

> The PARTIES agree that the Commission shall conduct hearings to determine the rate design by which the amounts not specifically allocated by the Stipulation and this Implementation Agreement shall be disposed of in 1994 ($10 million), 1995 ($25 million), and 1996 (approximately $48 million).

(R. 38). Thus, pursuant to the above provision in the settlement agreement, the Commission's only obligation regarding the settlement monies is to hold a hearing to dispose of the settlement proceeds not specifically allocated by the agreement. This case arose out of the requirement that the Commission conduct a hearing to determine the disposition of $25 million in 1995.

Case History

On May 15, 1995, Southern Bell filed its proposed ECS tariff which was to apply to 252 routes. (R. 57). The tariff was Southern Bell's attempt to satisfy its obligation to return $25 million to the ratepayers in 1995 pursuant to its settlement obligations. Order No. PSC-95-1391-FOF-TL at 4. (R. 461). Under the ECS plan, a customer calling another customer on an ECS route need only dial seven digits as opposed to eleven or more digits as is the case if the customer uses a carrier other than Southern Bell. Residential customers are charged $.25 per call regardless of call duration for ECS calls; business customers are charged $.10 for the first minute of a call and $.06 for each additional minute for ECS calls. Order No. PSC-95-1391-FOF-TL at 10. (R. 467).

Two other parties filed proposals to dispose of the $25 million. Order No. PSC-95-1391-FOF-TL at 4. (R. 461). The

Commission suspended Southern Bell's ECS tariff in Order No. PSC-95-0852-FOF-TL. (R. 87). Prehearing Order No. PSC-95-0895-PHO-TL was issued on July 24, 1995. (R. 91). On July 28, 1995 (the Friday before the beginning of the Monday hearing), Southern Bell amended its ECS proposal to add an additional 36 routes, for a total of 288 routes. (Exh. 5).

A hearing was held before the full Commission on July 31, 1995. (Tr. 1-439). Participants in the hearing were: FIXCA, Southern Bell, the Office of Public Counsel, AT&T Communications of the Southern States, Inc., the Communications Workers of America, Florida Ad Hoc Telecommunications Users Committee, the Florida Cable Telecommunications Association, the Florida Mobile Communication Association, Sprint Communications Company Limited Partnership, MCI Telecommunications Corporation and McCaw Communications of Florida, Inc.

It was not FIXCA's position at hearing that ECS should be rejected by the Commission; rather, FIXCA testified that ECS is a non-basic service, and that therefore ECS could go into effect only with appropriate interconnection and resale policies in place in order to pass the new law's imputation standard and to allow IXCs to continue to compete on the ECS routes. At the conclusion of the hearing, the parties filed post-hearing briefs. (R. 122-258).

On September 26, 1995, the Commission, by a vote of 3 to 2, approved all 288 ECS routes with implementation to occur on January 1, 1996. The Commission's decision is set out in Order No. PSC-95-1391-FOF-TL, issued on November 8, 1995 (Order). (R. 458).

The Order finds 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. In their dissent, Chairman Clark and Commissioner Kiesling found that ECS should not be approved because it would stifle vigorous competition and because approval was contrary to the legislative mandate to foster competition. (R. 482-483).

On November 15, 1995, Southern Bell filed a motion for modification of the Order seeking to change the implementation date for ECS from January 1, 1996 to December 18, 1995. (R. 485). FIXCA filed a response to this motion requesting that the Commission not address Southern Bell's motion until it ruled on FIXCA's motion for stay, which was filed on November 28, 1995. (R. 494). FIXCA filed a Notice of Appeal on November 28, 1995. (R. 498).

The Commission considered Southern Bell's motion for modification and FIXCA's motion for stay at its December 19, 1995 Agenda Conference. The Commission denied FIXCA's request for a stay of Order No. PSC-95-1391-FOF-TL and permitted Southern Bell to implement ECS on January 15, 1996. Order No. PSC-96-0020-FOF-TL.

SUMMARY OF ARGUMENT

The Commission's classification of ECS as a basic service is contrary to the explicit language and the spirit of the newly-enacted telecommunications law. The Commission's Order classifying this service as basic must be reversed and the Court should direct the Commission to ensure that ECS complies with the new statute's requirements concerning imputation, resale and interconnection.

As noted above, the new telecommunications law enacted last legislative session divides all services into two categories--basic and non-basic. The Commission clearly erred in this case by finding that ECS is a basic service. This determination violates the plain language of the new statute and must be reversed. The Commission's reliance on that portion of the statute that provides that the Southern Bell settlement shall remain in effect does not support the Commission's finding that ECS is a basic service.

The Commission also erred in finding that the new law does not apply in this case and that somehow the new statute's saving clause exempts ECS forever from the new law's requirements. The savings clause of the new statute plainly provides that services such as ECS which are not approved by March 1, 1995 are to be governed by the new law. Southern Bell's ECS service was not even proposed by Southern Bell until May 15, 1995 and it was not approved by the Commission until September 26, 1995. Thus, the new law clearly applies to it.

Having determined that the new law applies to ECS, it is clear that ECS must comply with the new law's imputation standard. The

imputation standard is extremely important because it ensures that monopoly providers will not have an unfair advantage in the market place and because it helps foster choice for all consumers. Because of the Commission's erroneous interpretation of the law, it did not reach the imputation issue.

Finally, there can be no doubt that the primary purpose of the new statute is to encourage competition in all aspects of the telecommunications market. ECS is the antithesis of the new law because it has the practical effect of locking IXCs out of the market and converting a thriving competitive market into a monopoly. This frustrates the entire purpose of the new law.

The Court should classify ECS as a basic service and require the Commission to ensure that ECS passes the imputation test by implementing appropriate interconnection and resale policies. Only in this way will competition flourish as the Legislature intended and will consumers be protected.

ARGUMENT

I. SECTION 120.68(9), FLORIDA STATUTES, CONTAINS THE APPLICABLE STANDARD OF REVIEW.

In this case, the Commission erroneously interpreted the new telecommunications law, Chapter 95-403. The Commission incorrectly found that ECS is basic service and that the requirements of the new law do not apply to Southern Bell's ECS proposal. These are clear mistakes of law. Therefore, in reviewing the Commission's decision, the applicable standard of review is found in section 120.68(9), Florida Statutes (1995). This section states:

> If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:
>
> (a) Set aside or modify the agency action, or
>
> (b) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(Emphasis supplied).

This standard of judicial review requires the Court to reverse or remand an agency order which incorrectly interprets a provision of law. See, i.e., Johnson & Johnson, Inc. v. Florida Department of Transportation, 371 So.2d 495 (Fla. 1st DCA 1979) (order of Department of Transportation requiring appellant to remove four outdoor advertising signs if it did not remove certain lighting from the signs reversed and remanded due to lack of statutory authority); Cundy v. Division of Retirement, 353 So.2d 967 (Fla. 1st DCA 1978) (agency order quashed and case remanded for agency to give effect to statutory presumption); Leonard v. Department of

Administration, 352 So.2d 1273 (Fla. 1st DCA 1977) (order terminating disability benefits remanded due to erroneous interpretation of statute).

In this case, the Commission has erroneously interpreted explicit provisions of the new telecommunications law so as to classify ECS as a basic service and to find the new law inapplicable to Southern Bell's ECS proposal. However, ECS clearly falls within the definition of non-basic service and the new telecommunications law applies to Southern Bell's proposal. Therefore, the Commission's interpretation of the new law is erroneous and must be reversed.

II. ECS MUST BE CLASSIFIED AS A NON-BASIC SERVICE.

Despite the clear mandates of the law, the Commission erroneously classified ECS as a basic service.[7] Order No. PSC-95-1391-FOF-TL at 7. Under the requirements of the new law, this is clear error. (R. 464).

Pursuant to the new law, section 364.051 governs a LEC's election of price regulation. Subsection (1)(a) applies to Southern Bell because it is a LEC with more than 100,000 access lines in service as of July 1, 1995. This subsection provides that such a LEC may choose to elect price regulation on January 1, 1996 by filing a notice with the Commission. Southern Bell filed this notice on November 1, 1995. (A. 1).

---

[7] Southern Bell testified at hearing that ECS is a non-basic service. (Tr. 431).

Section 364.051 then goes on to divide all services provided by a LEC who elects price regulation into two categories--basic (§364.051(2)) and non-basic (§364.051(6)). Every service offered by a LEC, upon election of price regulation, must fall into one of these two categories.

The division of all LEC services into these two categories is significant because the category into which a service falls governs its pricing. Basic services are capped at the rates in effect on July 1, 1995 and cannot be increased before January 1, 1999. For Southern Bell, the rates for basic services cannot be increased before January 1, 2001. §364.051(2)(a). In contrast, rates for non-basic services can be raised 6% per year until there is competitive provider in an exchange area at which time prices can be raised up to 20% in a single year. §364.051(6)(a).

Even more significant than the pricing levels applicable to the two different service categories, is the fact that all non-basic services must pass the imputation standard found in section 364.051(6)(c).[8] This requirement prevents monopoly providers from having a market advantage by requiring them to impute the costs charged to a competitor for any monopoly component of a service which the competitor must buy from the LEC. Imputation protects consumers by ensuring choice among providers and by preventing a company with a monopoly advantage from squeezing others out of the market.

Thus, the terms "basic" and "non-basic" become very important

[8] See discussion at Point IV.

once a company elects price regulation, as Southern Bell did on November 1. Fortunately, the meaning of these terms is explicitly set out in the definition section of the new statute at section 364.02. The statute's definition of "basic" service[9] is quite precise. Section 364.02(2) provides:

> "Basic local telecommunications service" means voice-grade, flat-rate residential and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multi-frequency dialing. . . . For a local exchange telecommunications company, such term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

(Emphasis supplied). It is undisputed that the hearing in this case was not held until July 31, 1995. Order No. PSC-95-1391-FOF-TL at 4. (R. 461). It is further undisputed that the Commission did not vote to approve ECS until September 26, 1995. (AC. 1-80). Thus, the Commission's approval of ECS occurred almost three months after the statutory deadline for ECS to be included in the basic category. ECS must be classified as a non-basic service based on the definition quoted above.

In addition to relying on a portion of the savings clause in the new law that does not support its position (see Point III, infra), the Commission attempts to rely on a settlement agreement entered into between FIXCA and Southern Bell on six specific toll routes, long before the new law was enacted, to justify its

---

[9] "Non-basic" service is any service that does not fall in the "basic" service category. §364.02(8).

position that ECS is a basic service.[10] The Order states that because the Commission approved a settlement on those six routes (long before the enactment of the new law) somehow the 288 ECS routes in this docket should be considered basic service. Order No. PSC-95-1391-FOF-TL at 7. (R. 464). The attempt to connect these two proceedings and to rely on a settlement to classify the newly-proposed ECS as basic service must be rejected outright.

FIXCA and Southern Bell's settlement has no precedential value in this case because the purpose of the settlement was simply to postpone the litigation between the parties. Neither party acquiesced to the position of the other. Southern Bell and FIXCA explicitly stated:

> The Parties agree that they may present their respective positions regarding the form in which future toll relief should be granted in Florida in the Commission's planned generic investigation into extended area service ("EAS") issues. By entering into this Stipulation and Agreement, the parties do not waive their rights to seek reconsideration of or appeal any order that the Commission may enter in such generic investigation into EAS issues.

Order No. PSC-94-0572-FOF-TL, Attachment I at 4. (A. 12). Clearly, this agreement does not address the basic/non-basic classification since it was entered into long before the new statute was enacted and defined such terms.

The Commission's reference to the fact that Order No. PSC-94-0572-FOF-TL (the Southern Bell settlement order) provides that the

---

[10] The settlement agreement was executed on March 31, 1994. See Attachment I to Order No. PSC-94-0572-FOF-TL. (A. 9).

revenue effects from the routes covered by the FIXCA/Southern Bell settlement will be treated as provided in the settlement of the four Southern Bell cases provides no support for classifying ECS as basic service. A review of paragraph 8 of this settlement (Order No. PSC-94-0172-FOF-TL, Attachment A at pp. 6-7 (R. 16-17)) reveals that this paragraph has absolutely nothing to do with a classification of services.[11]

According to the plain language of the statute, Southern Bell's election of price regulation on November 1 triggered the applicability of the new statute. Thus, ECS must be classified as a non-basic service because it was not ordered or in existence before July 1, 1995.

III. THE SAVINGS CLAUSE IN THE NEW TELECOMMUNICATIONS LAW DOES NOT EXEMPT ECS FROM THE NEW LAW'S REQUIREMENTS.

In its Order, the majority held that:

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

Order No. PSC-95-1391-FOF-TL at 6, emphasis supplied. (R. 463). With this statement, the Commission has attempted to permanently exempt ECS from the new law's requirements. However, no such

[11] Paragraph 8 provides that: Southern Bell will absorb up to $11 million in revenue losses; if the Commission approves the plan originally proposed on the six routes, Southern Bell will absorb all losses; if an alternative plan is approved, and losses are less than $11 million, Southern Bell will file a rate reduction for the difference; if an alternative plan is approved and Southern Bell's losses are greater than $11 million it will reduce its next scheduled rate reduction under the comprehensive settlement. (R. 16-17).

perpetual exemption appears in the law.[12]

The Commission's interpretation of the new statute is a clear error of law which must be reversed. It is a well-settled principle of statutory construction that the plain meaning of a statute must govern. Citizens of the State v. Public Service Commission, 425 So.2d 534, 541-2 (Fla. 1982); Lee v. Gulf Oil, 4 So.2d 868, 870 (Fla. 1941). As this Court has said:

> A general rule of statutory construction in Florida is that courts should not depart from the plain and unambiguous language of the statue.

Florida Interexchange Carriers Association v. Beard, 624 So.2d 248, 250 (Fla. 1993). However, in reaching its decision, the Commission ignored the plain language of the new law and attempted to support its interpretation by reliance on a statutory provision which does not sustain its determination.

FIXCA is not unaware that an agency's construction of a statute it enforces is of great weight. But when the meaning of a statute is clear, this rule of statutory construction has no application:

> . . . [W]hen the language of a statute is plain and its meaning clear, resort to this [according an agency's construction great weight] or any other rule of statutory construction is unnecessary. See Starr v. Karst, Inc., 92 So.2d 519 (Fla. 1957).

Kimbell v. Great American Insurance Co., 420 So.2d 1086, 1088 (Fla.

---

[12] This is not surprising since it is highly unlikely that the Legislature intended to exempt ECS services from the new law's requirements, especially the important imputation requirement, in perpetuity. However, this is exactly the illogical effect of the Commission's decision.

1957). Like the uninsured motorist statute in Kimbell, the meaning of the statute in this case is plain; thus, no deference to the Commission's interpretation of the new statute is required.

The new telecommunications statute contains an explicit savings clause to govern the appropriate applicability of the new statute to extended calling service plans. The new statute could not be clearer regarding its applicability to extended calling plans, such as Southern Bell's ECS plan. Section 364.385(2) states:

> 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.

(Emphasis supplied). It is undisputed that Southern Bell's ECS proposal was filed with the Commission on May 15, 1995, well after the March 1 date referenced in the savings clause. Therefore, the ECS plan could not possibly have been pending on March 1, 1995 and must be governed by the new law.

Despite the plain language of the statute quoted above, the Commission blithely ignores the explicit legislative direction found in the savings clause specifically governing ECS services. Instead, the Order attempts to rely on section 364.385(3) to support the Commission's application of the prior law to Southern Bell's ECS proposal. This section states, in pertinent part:

> 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.

The order referred to in this portion of the statute is the Commission order which approved the settlement of the four pending Southern Bell dockets (see page 4, supra) and which requires the Commission to hold hearings to determine the disposition of various refunds which are unspecified in the settlement agreement.[13] (R. 38-39). However, the Commission says that this subsection is a "more specific expression of legislative intent than the provisions regarding ECS. . . ." Order No. PSC-95-1391-FOF-TL at 8. (R. 465). The Commission completely misreads the section upon which it attempts to rely.

Section 364.385(3) simply provides that the Southern Bell settlement will remain in effect--that the required refunds or rate reductions will be made. The settlement agreement clearly provides:

> The PARTIES agree that the Commission shall conduct hearings to determine the rate design by which the amounts not specifically allocated by the Stipulation and this implementation Agreement shall be disposed of in 1994 ($10 million), 1995 ($25 million), and 1996 (approximately $48 million).

(R. 38). That is, the Commission will hold hearings to determine how Southern Bell will make the refunds or rate reductions required by the settlement.[14] The new statute does not say that the

---

[13] It is more than a little ironic that Southern Bell is using the money it agreed to return to ratepayers (so as to settle the various pending investigations) to its own competitive advantage in order to discriminate against its competitors.

[14] Chairman Clark recognized that the Southern Bell settlement order simply requires that refunds or rate reductions occur. (AC. 22).

Commission may ignore the requirements of the new law and apply the prior law. Nothing in the language quoted above even discusses ECS, let alone says that a Southern Bell ECS proposal is to be governed by the prior law. In contrast, specific savings clause language governs ECS plans in section 364.385(2).

In an attempt to justify its reading of the statute, the Commission goes to great lengths to catalogue the requirements of the settlement agreement.[15] While this information may be interesting, it is totally irrelevant to an interpretation of the new statute. Conspicuous in its absence from the Commission's discussion is any mention that the agreement will be governed by prior law.

The Commission's supervision of Southern Bell under the new law's price regulation paradigm is greatly limited[16]; therefore, the Commission prefers to regulate Southern Bell under the prior regulatory regime. That is, 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. For instance, Commissioner Johnson said:

> . . . If we called it non-basic and then in a

---

[15] The Order says that the settlement requires: ". . . 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.'" Order No. PSC-95-1391-FOF-TL at 5. (R. 462).

[16] The Commission ignores the fact that its limited regulatory role is explicitly contemplated by the new legislation.

> year they would have the ability under the undiscretional [part of the statute] to raise those rates, and then how would we ever really recover what we had stated -- or how will they actually have those rate reductions that we required of them? So, I had that initial problem with calling it non-basic. And as I looked at the analysis, I felt more comfortable, therefore, with the basic telecommunications services definition and getting there by applying the old law to the ECS provisions.

(AC. 21-22, emphasis supplied).

The way in which Southern Bell is to be regulated is a decision that the Legislature made in enacting the new telecommunication statute and with which the Commission must comply. Though the Commission may prefer otherwise, it must carry out the directions of the Legislature. The new statute's preservation of the Southern Bell settlement (that is, the refund of settlement money) does not give the Commission the ability (or the discretion) to apply the prior law to ECS.

In addition, rather than focusing on that portion of section 364.385(2) quoted above, which specifically relates to extended calling plans, the Commission also attempts to rely on the following language in section 364.385(2):

> 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. . . . 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.

Even though the hearing in this case, as required by the settlement

agreement, was held on July 31, 1995, the Commission states that this proceeding "progressed to the stage of a hearing" before July 1 and thus no consent is required to process Southern Bell's ECS proposal under the old law. This "conclusion" stems from the illogical premise that this case "progressed to the stage of a hearing" in January 1994 when the parties entered into the settlement agreement---the very agreement that requires the Commission to hold hearings to dispose of the money unallocated by the settlement agreement!

The Commission ignores the very language of the settlement document upon which it attempts to rely. The Implementation Agreement for Portions of the Unspecified Rate Reductions in Stipulation and Agreement Between the Office of Public Counsel and Southern Bell Telephone and Telegraph Company (Attachment B to Order No. PSC-94-0172-FOF-TL, R. 28-46) specifically contemplates and requires hearings on the disposition of the unspecified refunds Southern Bell must make. (R. 38-39). The order approving and incorporating the settlement requires that hearings be conducted. It is undisputed that no hearing on the $25 million refund occurred before the July 1, 1995 deadline as is required if the prior telecommunications law is to govern. Therefore, the new law must apply.

IV. THE COMMISSION MUST APPLY THE IMPUTATION REQUIREMENTS OF THE NEW STATUTE TO ECS.

Because ECS is a non-basic service, it must meet the new statute's imputation requirements. The imputation requirement is

found at section 364.051(6)(c) and provides:

> The price charged to a consumer for a non-basic service shall cover the direct cost 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.

This requirement is one of the most important safeguards in the new statute--it is the only protection consumers have under price regulation which allows Southern Bell to increase prices up to 20% without Commission supervision. The imputation requirement prevents monopoly providers from leveraging their monopoly services to give themselves an advantage in the marketplace and helps ensure that consumers will have a choice among providers.

However, the Commission paid little attention to this important requirement, glossing over it due to its erroneous finding that ECS is a basic service. The Commission stated:

> 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.[17]

Order No. PSC-95-1391-FOF-TL at 8. (R. 465). Again, the Commission has erred.

ECS is a non-basic service under the new statute. Therefore, the Commission is obligated to apply the imputation test and to

---

[17] This constitutes the Commission's entire "rationale" on this matter, despite the fact that a large portion of the hearing was devoted to the imputation issue.

ensure that ECS satisfies it. While this could be done by increasing the rates for ECS, FIXCA does not advocate this. Rather, the Court should require the Commission to put interconnection and resale policies in place to ensure that the imputation standard is met and that competition can occur.[18]

V. THE COMMISSION'S DECISION IS CONTRARY TO THE INTENT OF THE NEW TELECOMMUNICATIONS STATUTE.

In enacting the new telecommunications statute, the legislature made its intent clear--it sought to promote competition in the telecommunications market for the benefit of consumers.[19] Section 364.01(3) provides:

> 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 intent of the Legislature to foster competition is clear. However, despite this, the Commission has approved a plan which will eliminate competition in what is a highly competitive market. Instead of moving toward competition, the majority is moving

---

[18] The record is replete with evidence on how to do this. See, i.e., Tr. 314, 327-28; Exhibit 19.

[19] Even prior to the enactment of the new law, this Court recognized "that the legislature has made the fundamental and primary decision that there will be competition in intrastate long distance telephone service. . . ." Microtel, Inc. v. Florida Public Service Commission, 483 So.2d 415, 418 (Fla. 1986).

backwards. Chairman Clark wrote in her dissent, in which Commissioner Kiesling joined, that the approval of ECS:

> . . . will stifle vigorous competition which, in the long-term, is the best means of ensuring low rates and high quality service.

Order No. PSC-95-1391-FOF-TL at 25. (R. 482).

The Order notes that competition on the ECS routes will be "permitted." Order No. PSC-95-1391-FOF-TL at 21. (R. 478). However, as pointed out to the Commissioners by their staff at the Agenda Conference at which ECS was approved, other carriers cannot compete with Southern Bell when the rates those carriers must pay to Southern Bell are higher than what Southern Bell charges its customers.[20] As a staff member explained to the Commissioners:

> . . . [T]he current rates that the competitors pay [to Southern Bell] are higher than the ECS rates that you have just approved. . . .
>
> . . .
>
> . . . And right now the wholesale rate is higher than the ECS rate.[21]

---

[20] That is why it is so important that reasonable interconnection and resale rates be in place.

[21] FIXCA's witness, Mr. Gillan, put it another way:

> It just [doesn't] make any sense at all for any interexchange carrier or any competitive firm to go in and try and attract customers and provide them a better service or a high quality service, whatever, charge those customers 6 cents a minute and turn around and pay Southern Bell 7.5 cents a minute. It just doesn't work. You can't take in 6 cents and send out 7.5 cents and do it very long.

(Tr. 316).

(AC. 56, 68).[22]

Chairman Clark and Commissioner Kiesling said in their dissent that:

> 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. . . .
>
> 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. . . . The majority's decision removes these routes from a very competitive toll market. . . .

Order No. PSC-95-1391-FOF-TL at 25-26. (R. 482-483).

The majority's decision in this case is especially ironic in light of the fact that many of the ECS routes are in the Southeast LATA. LATAs[23] were created by the federal court at the time of the divestiture of AT&T to foster competition in the long distance market. The large Southeast LATA combines a number of major metropolitan areas, including Miami, Ft. Lauderdale and West Palm Beach. The Southeast LATA owes its very existence to the Commission's stated commitment to competition. Though the Southeast LATA contains a number of large metropolitan cities, the

---

[22] Another staff member said: "With access rates being set at about approximately 7 cents a minute, it's very difficult for them [IXCs] to compete effectively on ECS routes." (AC. 38-39). IXCs would have to pay more to Southern Bell to complete the calls then they charge their customers.

[23] LATA stands for local access and transport area.

federal court permitted these areas to be combined at the divestiture of AT&T based on the Commission's guarantee that competition would occur in the LATA. The court held:

> The Court allowed the consolidation of three SMSAs to form the Southeast LATA (Miami, West Palm Beach, and Ft. Pierce) with the understanding that there would be intraLATA competition for calls between these cities.

United States v. Western Electric Co., Inc., 569 F. Supp. 1109 (D.D.C. 1983) (footnotes omitted).

The current toll revenue on the ECS routes is approximately $120 million per year. ECS will divert about $100 million per year out of the competitive market to ECS. (Tr. 317-318). The elimination of competition on these routes via the approval of ECS runs directly counter to the federal court's understanding of the competitive situation in the Southeast LATA.

In addition, approval of ECS converts the dialing pattern on the ECS routes from their current 1+ dialing pattern to a 7-digit dialing pattern only for the calls Southern Bell carries. Order No. PSC-95-1391-FOF-TL at 10. (R. 467). In contrast, competitors of Southern Bell can carry these calls only on a 1+ (1 plus 10 digit) basis. (Tr. 97-98). This dialing pattern conversion[24] will

---

[24] The Court should also be aware that in Order No. PSC-95-0203-FOF-TP, issued on February 13, 1995, the Commission ordered the implementation of intraLATA presubscription--which would allow customers to choose their intraLATA long distance carrier--to further open the toll market to competition. GTE Florida Incorporated appealed the Commission's decision to this Court and also asked the Court to stay implementation of the Commission's order. Case No. 86,387. The Court granted the motion for stay on November 28, 1995. Thus, the competitive benefit of intraLATA presubscription is not in place at this time.

allow Southern Bell to remove all this traffic from competitive pressures and retain it entirely for itself.

Further, Southern Bell's ECS is a mandatory service--it is the only way in which Southern Bell will carry calls on the ECS routes. (Tr. 112). Thus, Southern Bell has effectively bundled competitive interexchange service with local exchange service. At least at the current time, no competitor can do this because local competition is essentially non-existent and will not exist for quite some time.

All these characteristics of ECS foreclose competition--in direct contravention of the Legislature's intent.

CONCLUSION

The Commission's classification of ECS as a basic service is error and is directly contrary to the new telecommunications statute. The Court should classify ECS as a non-basic service and require the Commission to ensure that ECS passes the new statute's imputation requirement.

Respectfully submitted,

Vicki Gordon Kaufman
Fla. Bar No. 286672

McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas
117 S. Gadsden Street
Tallahassee, Florida 32301

904/222-2525

Attorney for the Florida Interexchange Carriers Association

TABLE OF CONTENTS

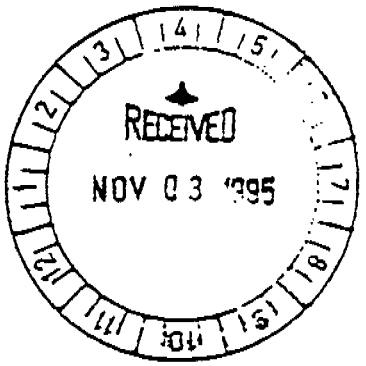
ORIGINAL
FILE COPY

BellSouth Telecommunications, Inc.
Suite 400
150 South Monroe Street
Tallahassee, Florida 32301-1556

Fax 904 224-5073
904 224-7798

A. M. Lombardo
Regulatory Vice President

November 1, 1995



Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

950000

RE: Notice of Election of Price Regulation

Dear Ms. Bayo:

Pursuant to Section 364.051(a), Florida Statutes, this letter constitutes notice by BellSouth Telecommunications, Inc. of its election to be under price regulation effective January 1, 1996.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me.

Sincerely,

Anthony M. Lombardo

Enclosures

cc: R. G. Beatty
R. D. Lackey

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

-8-

DOCUMENT NUMBER-DATE
10777 NOV-1 95
FPSC-RECORDS/REPORTING

State of Florida

REC'D OCT 13 1995

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: October 12, 1995

TO: Recipients of Order No. PSC-94-0572-FOF-TL

FROM: Kay Flynn, Division of Records and Reporting

RE: Docket No. 911034-TL - Request by Broward Board of County Commissioners for extended area service between Fort Lauderdale, Hollywood, North Dade and Miami.

Order No. PSC-94-0572-FOF-TL was issued in the above-referenced docket on May 16, 1994. The seventh paragraph of the order mentioned a Stipulation and Agreement Between BellSouth Telecommunications, Inc. and The Florida Interexchange Carriers Association, and indicated that it was attached to the order as Attachment I. The Stipulation was not attached, however. I am forwarding a copy of the Stipulation for placement with your copy of the order in your records.

Please do not hesitate to call if you have any questions regarding this matter.

Attachment
cc: Tracy Hatch

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request by Broward Board of County Commissioners for extended area service between Fort Lauderdale, Hollywood, North Dade and Miami.	DOCKET NO. 911034-TL ORDER NO. PSC-94-0572-FOF-TL ISSUED: May 16, 1994

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE COMMISSION:

I. BACKGROUND

This docket was initiated pursuant to a resolution filed by the Broward County Commission requesting implementation of extended area service (EAS) between the Ft. Lauderdale, Hollywood, North Dade and Miami exchanges. The Commission also received a number of letters from residents of the Weston and Davie areas of the Ft. Lauderdale exchange, requesting EAS between Ft. Lauderdale, North Dade and Miami. These exchanges are all located in the Southeast LATA. BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell) provides the local service to the affected exchanges. The Ft. Lauderdale and Hollywood exchanges are located in Broward County while the North Dade and Miami exchanges are located in Dade County.

By Order No. 25208 this Commission required Southern Bell to conduct traffic studies on these routes. By Order 25517 we granted Southern Bell's Motion for Extension of Time to file the traffic studies. The traffic studies were conducted for a thirty (30) day period beginning October 15, 1991 through November 13, 1991. On January 16, 1992, the Company filed traffic studies with the Commission.

By Order No. PSC-92-420-FOF-TL the Commission denied flat rate EAS on these routes since the calling rates did not meet EAS rule requirements. In addition, because of the complexity of the issues

surrounding this docket and the potential revenue impact of any alternative toll relief plan, the Commission found it appropriate to consolidate this docket with the Southern Bell Rate Case (920260-TL) and consider alternative toll relief for these routes within the context of the rate case. See Order No. PSC-92-0842-FOF-TL. When the Southern Bell Rate Case was delayed, the Commission removed this docket from the Southern Bell Rate Case. In addition, the Commission ordered the Company to conduct new traffic studies and proposed to implement the $.25 hybrid plan on the Ft. Lauderdale/North Dade, Ft. Lauderdale/Miami and Hollywood/Miami except for the Pembroke Pines. See Order No. PSC-93-0842-FOF-TL.

On June 25, 1993, FIXCA filed a protest to Order No. PSC-93-0842-FOF-TL. The protest requested an evidentiary hearing. On June 28, 1993, Southern Bell filed a Motion for Clarification of Order No. PSC-93-0842-FOF-TL or alternatively, a Petition for Formal Proceeding.

By Order No. PSC-93-1301-FOF-TL the Commission again consolidated Docket No. 911034-TL into Docket No. 920260-TL. In addition Southern Bell was directed to conduct new traffic studies on the involved routes. Southern Bell filed the new traffic studies December 7, 1993.

By Order No. PSC-94-0172-FOF-TL the Commission approved a settlement of the rate case. Paragraph 8 of the Stipulation set aside $11 million, beginning in 1995 to resolve the issues in this docket.

On March 31, 1994, Southern Bell and the Florida Interexchange Carriers Association (FIXCA) filed a Joint Motion seeking approval of the Stipulation and Agreement between Southern Bell and FIXCA resolving the issues in this docket. A copy of the agreement is attached to this Order as Attachment I.

II. SETTLEMENT AGREEMENT

Under the terms of the stipulation, Southern Bell will implement the hybrid $.25 plan on the Ft. Lauderdale/Miami, Hollywood/Miami, and Ft. Lauderdale/North Dade routes on January 23, 1995. Except for the residential premium flat rate option, the EOEAS plan presently in place on the North Dade to Ft. Lauderdale and the Hollywood to Miami routes will be cancelled. The point-to-point plan on the Miami to Hollywood route will also be cancelled. Except for the current residential customers who subscribe to the

unlimited unmeasured option on the Pembroke Pines Pilot local measured service plan (Pilot Plan), the Pilot Plan will be cancelled with implementation of the hybrid $.25 plan.

Calls on these routes by Southern Bell will be furnished on a seven digit basis. LEC and Non-LEC pay telephone providers will charge end users the local $.25 charge, and the providers will pay the standard non-LEC pay phone local usage rate to the LEC.

The agreement is intended by the parties to resolve the issues in this docket. We also note that the parties retain their respective positions regarding the form in which future toll relief should be granted in the Commission's planned generic investigation into extended area service (EAS) issues. If the final Commission order in the generic investigation differs from the hybrid $.25 plan, Southern Bell may seek authority to recover its additional lost revenues and costs, if any, resulting from implementation of such alternative toll relief plan.

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.

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.

We also note that implementation of the hybrid plan in this case is not consistent with our current policy of deferring alternative toll plans pending conclusion of our review of EAS rules. However, this EAS request has been pending for three years. Moreover, $11 million was set aside specifically for EAS on these routes as part of the settlement in the Southern Bell rate case.

We believe it is appropriate to take action at this time, recognizing that some other changes may occur later, pending the outcome of the EAS rules.

The Parties, in the spirit of negotiation and compromise, believe this settlement will avoid expenditure of further time, money and other resources in litigating these issues which will be considered in the context of the generic investigation. The Broward/Dade County ratepayers will receive the benefits of the hybrid $.25 plan on the Ft. Lauderdale/Miami, Hollywood/Miami, and Ft. Lauderdale/North Dade routes beginning January 23, 1995. In addition, subscribers who choose to use an IXC on these routes may continue to do so.

Upon consideration of the foregoing, we find it appropriate to approve the proposed settlement between FIXCA and Southern Bell. In order to provide adequate information to customers, Southern Bell shall notify all affected subscribers of the changes being made pursuant to the settlement agreement within sixty (60) days of the issuance of this Order and again ninety (90) days prior to January 23, 1995.

The revenue impact under the settlement considering the requested routes and using the GTEFL stimulation, is estimated at approximately $10,891,000. This only includes toll revenue losses, and not facilities upgrades or other expense charges. Under paragraph 8 of the Settlement between the Office of Public Counsel and Southern Bell up to $11 million was set aside for implementation of toll relief on the routes involved in this case. The difference in the $11.8 million figure mentioned in Southern Bell's protest of Order No. PSC-93-0842-FOF-TL and the $10,891,000 is because Southern Bell will continue to receive switched access charge revenues from IXCs on these routes in addition to the hybrid $.25 revenues while losing toll revenues. Southern Bell will be allowed to offset the $800,000 difference between its original projections and the new estimate from the balance available on October 1, 1995.

Following implementation of the $.25 hybrid calling plan, Southern Bell shall file quarterly reports with the Commission's Division of Records and Reporting, broken down on a monthly basis for a two year period. These reports shall include a detailed analysis of the distribution of usage among subscribers, over each route, segregated between business and residential users, showing the number of customers making zero (0) calls, one (1) call, et cetera, through twenty-five (25) calls, and in ten (10) call increments thereafter, to ninety-five (95) calls, and ninety-six (96) or more calls. For each calling category, separately for

residence and business, also include the associated total messages, minutes, revenue, lines, and customers. These reports on usage shall be filed for a two year period following implementation. These usage reports shall also include a record of any customer contact regarding the $.25 hybrid plan, along with the reason for such contact.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Motion seeking approval of the Stipulation and Agreement between BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company and the Florida Interexchange Carriers Association resolving the issues in this docket is approved as set forth in the body of this Order. It is further

ORDERED Southern Bell shall file quarterly reports with the Division of Records and Reporting detailing customer usage under the $0.25 hybrid plan as set forth in the body of this Order. It is further

ORDERED that Southern Bell shall notify all affected subscribers of the changes being made pursuant to the implementation of the settlement agreement within sixty (60) days of the issuance of this Order and again ninety (90) days prior to January 23, 1995. It is further

ORDERED that 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. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this 16th day of May, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

TWH

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 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 or sewer 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

EXHIBIT "1"

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by Broward Board of County Commissioners for extended area service between Fort Lauderdale, Hollywood, North Dade and Miami	)	Docket No. 911034-TL
	)	Filed: March 31, 1994

STIPULATION AND AGREEMENT BETWEEN BELLSOUTH TELECOMMUNICATIONS, INC. AND THE FLORIDA INTEREXCHANGE CARRIERS ASSOCIATION

COME NOW BellSouth Telecommunications, Inc. d/b/a/ Southern Bell Telephone and Telegraph Company ("Southern Bell") and the Florida Interexchange Carriers Association ("FIXCA") (Southern Bell and FIXCA hereinafter sometimes collectively referred to as the "Parties") and agree and covenant as follows:

WHEREAS, there has been considerable demand for some form of toll relief between the following exchanges: Fort Lauderdale and Miami, Hollywood and Miami, and Ft. Lauderdale and North Dade (the "Toll Routes"); and

WHEREAS, on June 7, 1993, the Florida Public Service Commission (the "Commission") issued its Order No. PSC-93-0842-FOF-TL (the "Order") in the above captioned docket, wherein the Commission ordered toll relief in both directions of the Toll Routes in the form of a hybrid $.25 plan; and

WHEREAS, on June 25, 1993, FIXCA filed its Petition on Proposed Agency Action Order No. PSC-93-0842-FOF-TL and Request for Evidentiary Hearing, wherein FIXCA protested the Commission's decision to implement the hybrid $.25 plan on the Toll Routes and requested a hearing so that the "Commission can comprehensively

evaluate the ramifications of the proposed $.25 plan." Id. at p. 4; and

WHEREAS, the Commission has scheduled hearings in the above captioned docket on May 11 and 12, 1994; and

WHEREAS, the Commission has indicated its intent to review in a generic docket the various issues inherent in toll relief being provided in the form of extended area service; and

WHEREAS, the Parties believe that settlement of the issues in dispute in the above-captioned docket without the expenditure of any further time, money and other resources in litigating these issues before the Commission in this docket is desirable;

NOW, THEREFORE, the Parties do hereby agree and covenant as follows:

1. The Parties agree that a hybrid $.25 plan shall be implemented on the Toll Routes in the same fashion as ordered by the Commission in Order No. PSC-93-0842-FOF-TL. Under such hybrid $.25 plan, residential calls shall be rated at $.25 per call in both directions regardless of the call duration, while calls made by business customers in either direction shall be rated at a per minute rate of $.10 for the initial minute and $.06 for each additional minute. Calls made over the Toll Routes and carried by Southern Bell shall be made on a seven digit basis and revenues received by Southern Bell for such calls shall be booked by Southern Bell as local revenues. Pay telephone providers shall charge end users who make calls on the Toll Routes on a local call basis and shall pay the standard measured

usage rate to Southern Bell. Calls on the Toll Routes made on a 1+ basis reaching Southern Bell's switch shall be blocked by Southern Bell and the caller shall receive a message stating that the call should be made on a seven digit basis. Except for the premium flat rate option, the EOEAS plan presently in place in the North Dade to Ft. Lauderdale and the Hollywood to Miami routes shall be cancelled. The point to point plan presently offered on the Miami to Hollywood route shall also be cancelled. Except for current customers who subscribe to the unlimited unmeasured option of the Pembroke Pines Pilot local measured service plan (the "Pilot Plan") as of January 23, 1995, the Pilot Plan shall also be cancelled.

2. The Parties agree that because of the time that it will take Southern Bell to prepare for the initiation of the hybrid $.25 plan on the Toll Routes, which preparation includes identification and resolution of programming, trunking and billing issues, among others, the hybrid $.25 plan shall be implemented beginning on January 23, 1995.

3. The Parties agree that, after implementation of the hybrid $.25 plan, interexchange carriers ("IXCs") may continue to carry the same types of traffic on the Toll Routes that they are now or hereafter authorized to carry.

4. The Parties agree that Southern Bell shall recover the revenue losses and costs resulting from implementation of the hybrid $.25 plan on the Toll Routes as outlined in Paragraphs 1 and 3 of this Stipulation and Agreement, in the manner set forth

in Paragraph 8 of the Stipulation and Agreement between the Office of Public Counsel and Southern Bell Telephone and Telegraph Company, dated January 5, 1994 (attached hereto as Exhibit "A") as approved by the Commission in its Order No. PSC-94-0172-FOF-TL, dated February 11, 1994 in Docket Nos. 920260-TL, 910727-TL, 910163-TL, 900960-TL and 911034-TL. It is anticipated by Southern Bell that the revenue losses and costs will be approximately $11,800,00.

5. The Parties agree that they may each present their respective positions regarding the form in which future toll relief should be granted in Florida in the Commission's planned generic investigation into extended area service ("EAS") issues. By entering into this Stipulation and Agreement, the parties do not waive their rights to seek reconsideration of or appeal any order that the Commission may enter in such generic investigation into EAS issues.

6. The Parties agree that the final order of the Commission in its generic investigation into EAS issues, following any requests for reconsideration or appeals, shall be applied on a prospective basis to the Toll Routes. If such final order is different from the hybrid $.25 plan as set forth in Paragraph 1 of this Stipulation and Agreement, Southern Bell may seek authority from the Commission to recover its additional lost revenues and costs, if any, resulting from implementation of such alternative toll relief plan.

7. FIXCA and Southern Bell further agree that any dispute as to the meaning of any portion of this Stipulation and Agreement shall be addressed to the Commission in the first instance, but that each party reserves any rights it may have to seek judicial review of any ruling concerning this Stipulation and Agreement made by the Commission.

8. Any failure by FIXCA or Southern Bell to insist upon the strict performance by the other of any of the provisions of this Stipulation and Agreement shall not be deemed a waiver of any of the provisions of this Stipulation and Agreement, and FIXCA or Southern Bell, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Stipulation and Agreement.

9. The Parties agree that in the event the Commission does not adopt this Stipulation and Agreement in its entirety, the Stipulation and Agreement shall become null and void and be of no effect.

10. This Stipulation and Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Florida, without regard to its conflict of laws principles.

11. This Stipulation and Agreement was executed after arm's length negotiations between the Parties and reflects the conclusion of the Parties that this Stipulation and Agreement is preferable to litigating the disputed issues in this docket.

12. The Parties participated jointly in the drafting of this Stipulation and Agreement, and therefore the terms of this Stipulation and Agreement are not intended to be construed against either Party by virtue of draftsmanship.

13. This Stipulation and Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Stipulation and Agreement has been executed as of the 31 day of March, 1994, by the undersigned counsel of record for the Parties hereto and/or by the Parties themselves.

FLORIDA INTEREXCHANGE CARRIERS ASSOCIATION

By Vicki Gordon Kaufman
Vicki Gordon Kaufman, Esq.

BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

By
Harris R. Anthony, Esq.

CERTIFICATE OF SERVICE
Docket No. 911034-TL

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States Mail this 31 day of MARCH, 1994 to:

Tracy Hatch
Division of Legal Services
Florida Public Svc. Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Grandoff and Reeves
315 South Calhoun Street, Ste. 716
Tallahassee, FL 32301

Joseph P. Gillan
J.P. Gillan and Associates
Post Office Box 541038
Orlando, FL 32854-1038

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Initial Brief of Appellant, the Florida Interexchange Carriers Association, has been furnished by U.S. Mail to the following parties of record, this 5th day of February, 1996:

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

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

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

Nancy White
c/o Nancy Sims
Southern Bell Telephone and
Telegraph Company
150 South Monroe Street
Sun Bank Building, Suite 400
Tallahassee, Florida 32301

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

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

Floyd Self
Messer, Vickers, Caparello
Madsen, Lewis, Goldman & Metz
215 S. Monroe Street
Barnett Bank Bldg., Suite 701
Post Office Box 1876
Tallahassee, FL 32302

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

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

Mark Richard
304 Palermo Avenue
Coral Gables, FL 33134

Rick Melson
Hopping, Green, Sams & Smith
123 South Calhoun
Post Office Box 6526
Tallahassee, FL 32301

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

Richard Bellak
Florida Public Service Commission
Division of Appeals
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Vicki Gordon Kaufman