

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation to deter- ) DOCKET NO. 920255-TL  
mine whether local exchange ) ORDER NO. PSC-92-0829-PHO-TL  
company pay telephone service ) ISSUED: 08/18/92  
(LEC PATS) is competitive and )  
whether local exchange company )  
pay telephone service (LEC )  
PATS) should be regulated )  
differently than it is )  
currently regulated. )  
\_\_\_\_\_)

Pursuant to Notice, a Prehearing Conference was held on August 11, 1992, in Tallahassee, Florida, before Commissioner Betty Easley, as Prehearing Officer.

APPEARANCES:

J. JEFFRY WAHLEN, Esquire, Ausley, McMullen, McGehee, Carothers & Proctor, Post Office Box 391, Tallahassee, Florida 32302  
On behalf of ALLTEL Florida, Inc. and Central Telephone Company of Florida.

J. LLOYD NAULT, III, Esquire, and MARY JO PEED, Esquire, 4300 Southern Bell Center, 675 W. Peachtree Street, NE, Atlanta, Georgia 30375  
On behalf of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company.

KENNETH A. HOFFMAN, Esquire, FLOYD R. SELF, Esquire, and LAURA L. WILSON, Esquire, Messer, Vickers, Caparello, Madsen, Lewis, Goldman & Metz, P.A., 215 S. Monroe Street, Suite 701, Post Office Box 1876, Tallahassee, Florida 32302-1876  
On behalf of Florida Pay Telephone Association, Inc.

M. ERIC EDGINGTON, Esquire, Post Office Box 110, MC 7, Tampa, FL 33601  
On behalf of GTE Florida Incorporated.

DAVID B. ERWIN, Esquire, Young, van Assenderp, Varnadoe & Benton, P.A., 225 S. Adams Street, Suite 200, P. O. Box 1833, Tallahassee, FL 32302-1833  
On behalf of Indiantown Telephone System, Inc.

DOCUMENT NUMBER-DATE

08241 AUG 18 1992

ALAN N. BERG, Esquire, Post Office Box 5000, Altamonte Springs, FL 32716-5000  
On behalf of United Telephone Company of Florida.

OFFICE OF PUBLIC COUNSEL, c/o The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, FL 32399-1400  
On behalf of the Citizens of the State of Florida.

ANGELA B. GREEN, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, FL 32399-0863  
On behalf of the Commission Staff.

PRENTICE P. PRUITT, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, FL 32399-0862  
On behalf of the Commissioners.

#### PREHEARING ORDER

##### I. CASE BACKGROUND

By Chapter 90-244, effective October 1, 1990, the Florida Legislature created Section 364.338, Florida Statutes. Section 364.338(1) provides in pertinent part that:

[C]ompetitive offerings of certain types of telecommunications services may under certain circumstances be in the best interest of the people of the state. It is the legislative intent that, where the commission finds that a telecommunications service is effectively competitive, market conditions be allowed to set prices so long as predatory pricing is precluded, monopoly ratepayers be protected from paying excessive rates and charges, and both ratepayers and competitors be protected from regulated telecommunications services subsidizing competitive telecommunications services. (Emphasis added)

In addition, Section 364.338(2) states:

A determination as to whether specific service provided by a local exchange telecommunications company is subject to effective competition may be made on motion by the commission or on petition of the telecommunications company or any interested party.

Accordingly, we initiated this docket on our own motion to make a determination as to whether local exchange company (LEC) pay telephone services (PATS) is effectively competitive.

At the Prehearing Conference on August 11, 1992, the procedures to govern the Hearing were established. The Hearing in this matter is scheduled for Tuesday, August 25, 1992, through Thursday, August 27, 1992. On Friday, August 28, 1992, the Hearing in Docket No. 920399-TP is scheduled to be held.

## II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>ISSUES NOS.</u>
Lance C. Norris (Direct)	FPTA	3, 4, 6
Lyn McLellan (Direct)	FPTA	4
Jim Beary (Direct)	FPTA	4
Peter Fedor (Direct)	FPTA	4
Gary Pace (Direct)	FPTA	4
Dr. Scott J. Rafferty (Direct)	FPTA	1 - 4
Joseph P. Cresse (Direct)	FPTA	1 - 7

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>ISSUES NOS.</u>
Nancy H. Sims (Direct)	BellSouth	1 - 7
Robert M. Caffee (Direct)	GTEFL	1-4, 5a, 5c, 6a, 6c, 7a, 7c
Edward C. Beauvais (Direct)	GTEFL	1, 2, 4
B. H. Reynolds (Direct)	United	1 - 7
Dr. Scott J. Rafferty (Rebuttal)	FPTA	1 - 4
Joseph P. Cresse (Rebuttal)	FPTA	1 - 7
Richard D. Emmerson (Rebuttal)	BellSouth	1, 2, 4 - 7
Robert M. Caffee (Rebuttal)	GTEFL	1-4, 5a, 5c, 6a, 6c, 7a, 7c

V. BASIC POSITIONS

ALLTEL'S BASIC POSITION: No position at this time.

BELLSOUTH'S BASIC POSITION: Local exchange company ("LEC") pay telephone service is not effectively competitive or subject to effective competition when considered under the provisions of Section 364.338(2), Florida Statutes. This section of Florida law requires that a Commission determination of effective competition for LEC services be focused on the end user. The Commission has recently decided and specifically stated in Order No. 24101 issued February 14, 1991 in Docket No. 860723-TP that competition in the pay telephone market in Florida is focused on the location provider and not the end user. The end user has received no real benefits from competition for location providers among the various pay telephone providers; very few new locations are being served; there has been no explosion of new services available to the end user; and end user rates have not been reduced in the aggregate.

In this case, no additional or alternative regulatory treatment is necessary by this Commission. Pay telephone service is currently readily available to the end users at charges no greater than those caps set by the Commission. Any alternative regulatory treatment would cause the Commission interests of "the widest possible provision of pay telephone service at a fair price and with a consistently high level of service" to go unfulfilled. Finally, NonLEC PATS Providers are benefiting financially from their existence in the market.

GENTEL'S BASIC POSITION: Agree with GTEFL.

FPTA'S BASIC POSITION: FPTA's primary purpose in this proceeding is to establish a level and fair playing field in which all pay telephone providers can effectively compete. Such a playing field does not exist in Florida today, i.e., pay telephone service is not effectively competitive. However, pay telephone service is subject to becoming effectively competitive because changes in regulatory policies which are subject to the Commission's control would enable effective competition to be brought about. FPTA's specific proposal for the regulatory changes necessary to accomplish effective competition in the pay telephone service market is as follows:

- (1) require the LECs to place their pay telephones into a fully separate subsidiary;
- (2) require the LECs to provide monopoly services to all pay telephone providers under the same tariffed rates, terms, and conditions;
- (3) establish rates for monopoly services at cost for the access line with contribution to common overhead derived from usage charges rather than the flat monthly rate;
- (4) remove the restrictions in the provisioning of O-, 1+ intraLATA, O+ local, and O+ intraLATA calls;
- (5) to the extent the O+ and O- local and intraLATA toll monopoly is retained, prohibit the LECs and their pay telephone subsidiaries from paying commissions from monopoly revenues.

FPTA submits that once these regulatory policies are met, a fair and level playing field will be established enabling NPATS and LPATS to effectively compete in the provision of pay telephone

service and permitting the resulting benefits of such effective competition to flow through to ratepayers and end users.

**GTEFL'S BASIC POSITION:** GTEFL takes the position that the pay telephone market is not effectively competitive, that the current regulatory environment best serves the consumer, and that any change will bring no benefit to the consumer, or worse, will lead to higher prices and reduced pay telephone availability. The criterion by which the Commission should determine whether LEC pay telephone service is effectively competitive is set out in Section 364.338 Fla. Stat. (1991).

It is GTEFL's position that LEC pay telephones are not effectively competitive as defined by Section 364.338. Consumers of pay telephones have little choice as to which pay telephone to use when they walk up to a pay telephone. At that point, the consumer is only interested in making a phone call; he or she is not concerned about who owns the telephone. Consumers might "shop" for pay telephones if the prices between pay telephones became so disparate that it would be economically worthwhile to go through the inconvenience of locating another pay telephone -- assuming that the situation was not an emergency. There is nothing to indicate that consumers are dissatisfied with current pay telephone availability or service.

GTEFL also maintains that changes in the regulatory framework would result in losses of economies of scope and scale to LEC pay telephone operations which, in turn, would result in a loss of pay telephone service or higher prices to the consumer and are therefore inappropriate. Due to the nature of pay telephone service and its public policy role in providing universal service, no identifiable benefit would accrue to the consumer from a regulatory attempt to offer the service on an effectively competitive basis. Indeed, past efforts to that effect have only benefitted NPATS and location owners.

**INDIANTOWN'S BASIC POSITION:** The basic position of Indiantown is that it would be contrary to the public interest to require Indiantown to establish a separate subsidiary for the few pay telephones provided by Indiantown, that such a requirement would make it impossible for Indiantown to provide any pay telephone service anywhere.

**UNITED'S BASIC POSITION:** United's basic position is that United's pay telephone service is not effectively competitive, and it is



inappropriate to make any changes in the regulatory treatment of United's pay telephone service.

**OPC'S BASIC POSITION:** The Citizens are unable to take a position based on the prefiled testimony in this case; we will endeavor to take a position after hearing the testimony of witnesses on the stand, evaluating cross examination, and considering documentary evidence introduced at hearing.

**STAFF'S BASIC POSITION:** It is staff's position that the LEC pay telephone market does not experience effective competition nor is it necessarily subject to effective competition from the end user's perspective. It is staff's belief that rates from pay telephones will always need to be capped in order to protect end users from the potential of being charged excessive rates. However, staff does believe that competition in the pay telephone market exists for location providers. We further believe that the Commission can take appropriate action to foster greater levels of competition which may ultimately bring greater benefits to end users.

#### VI. ISSUES AND POSITIONS

**ISSUE 1:** What is the definition of effective competition in the context of LEC pay telephone service?

**ALLTEL'S POSITION:** Agree with Southern Bell and Indiantown.

**BELLSOUTH'S POSITION:** Effective competition is demonstrated by an environment where prices of the service in question are driven towards (but not to) total service incremental costs; where through free entry and exit capability the profits accruing to service providers are constrained near levels of return for similar risk investments; where, when there is nonprice competition, customers are given a wider choice of services as providers attempt to differentiate their products or services; and where providers with low costs will reduce their prices for the services provided to take away business from providers with higher costs of operation therefore eliminating inefficient providers of the service. If LEC pay telephone service is effectively competitive, the above factors are present.

**CENDEL'S POSITION:** Agree with United.

**FPTA'S POSITION:** In the context of pay telephone service, effective competition means that Commission's regulatory policies enable: (1) end users to have the opportunity to receive functionally equivalent pay telephone services at rates that are fair, just, reasonable, and compensatory; and (2) NPATS and LPATS are able to provide functionally equivalent pay telephone service at rates that are fair, just, reasonable, and compensatory. There are two essential preconditions to effective competition: (1) NPATS and LPATS providers must receive LEC monopoly services on an unbundled basis pursuant to tariff under the same or equivalent rates, terms, and conditions that are fair, just, reasonable, and compensatory; and (2) all LEC pay telephones must be removed from the regulated accounts of the LEC monopoly.

**GTEFL'S POSITION:** Effective competition is defined by the factors set out in Section 364.338 Fla. Stat. (1991). In its determination of whether effective competition exists for LEC pay telephones, the Commission should consider whether the consumer has a meaningful choice between pay telephone providers at comparable rates and terms. Any regulatory changes considered in determining the existence of effective competition should not affect the availability of existing pay telephone service at comparable rates, particularly in light of its role in contributing to universal service. Finally, any definition of effective competition under Section 364.338 must include a showing that consumers would benefit from provisioning the service on an effectively competitive basis. Section 364.338 (2)(e), Fla. Stat. (1991).

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** For the purposes of this Commission investigation, the core for the definition of effective competition must be the concept of control by market forces to set prices and other terms and conditions of service (quality, quantity, locations, etc.) as described in Section 364.338(1), Florida Statutes. Where market forces determine these factors, effective competition exists but not otherwise.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** Staff has no position at this time regarding the specific elements that define effective competition in the LEC pay telephone market. We believe, however, that the definition should be consistent with the economic theory of competition.

**ISSUE 2:** What is the definition of "subject to effective competition" in the context of LEC pay telephone service?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** Effective competition is demonstrated by an environment where prices of the service in question are driven towards (but not to) total service incremental costs; where through free entry and exit capability, the profits accruing to service providers are constrained near levels of return for similar risk investments; where, when there is nonprice competition, customers are given a wider choice of services as providers attempt to differentiate their products or services; and where providers with low costs will reduce their prices for the services provided to take away business from providers with higher costs of operation therefore eliminating inefficient providers of the service. Obviously, if a LEC pay telephone service is "subject to effective competition," the above factors are present.

**CENDEL'S POSITION:** Agree with United.

**FPTA'S POSITION:** Pay telephone service is subject to effective competition if changes in Commission regulatory policies would: (1) enable end users to have the opportunity to receive functionally equivalent pay telephone services at rates that are fair, just, reasonable, and compensatory; (2) permit NPATS and LPATS providers to provide functionally equivalent pay telephone service at rates that are fair, just, reasonable, and compensatory; (3) permit NPATS and LPATS providers to receive LEC monopoly services on an unbundled basis pursuant to tariff under the same or equivalent rates, terms and conditions that are fair, just, reasonable, and compensatory; and (4) require LEC pay telephones to be removed from the regulated accounts of the LEC monopoly.

**GTEFL'S POSITION:** The phrases "effective competition" and "subject to effective competition" are used interchangeably in Section 364.338 Fla. Stat. with no intention that these phrases should refer to anything other than the status of a given service market as it exists at a point in time. Paragraph (1) of Section 364.338 states the purpose for which the Legislature enacted the statute and clearly indicates an intent to observe markets as they currently exist. That paragraph states: "It is the legislative intent that, where the commission finds that a telecommunications service is effectively competitive, market conditions be allowed to set prices so long as predatory pricing is precluded, monopoly

ratepayers be protected from paying excessive rates and charges, and both ratepayers and competitors be protected from regulated telecommunications services subsidizing competitive telecommunications services." (emphasis added) The statute then goes on to elaborate on the factors to consider for finding effective competition, and then what powers the commission has should there be effective competition.

Section 364.388 makes no distinction between "effective competition" and "subject to effective competition", nor can such a distinction reasonably be inferred. The intent of the Legislature is expressly stated in paragraph one of Section 364.388 Fla. Stat. (1991); the rest of Section 364.388 merely provides the analytical and jurisdictional tools for the Commission to realize the Legislature's intent. A telecommunications service is to be analyzed as it "is" at the time of the Commission's investigation. To construe Section 364.388 any other way would be to suggest that the Legislature wanted to analyze a situation as it might be at some undetermined time in the future and under some unstated set of possible future circumstances. This interpretation of Section 364.388 is unnecessary and contrary to the plain meaning and intent of the statute. Indeed, Section 364.02(3), Fla. Stat. (1991), demonstrates conclusively that the foregoing interpretation is correct.

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** The definition of "subject to effective competition" is exactly the same as the definition of effective competition provided in response to Issue No. 1. United sees no difference in meaning between the two terms.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** Staff believes that the terms "effective competition," "subject to effective competition," and "competitive services" are used interchangeably within Chapter 364, Florida Statutes, and are not directly defined. Therefore, staff believes that "subject to effective competition" should have the same definition as the one determined in Issue 1.

**ISSUE 3:** What is the definition of monopoly services and monopoly revenues in the context of pay telephone service?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** Monopoly services are defined as those services which can only be obtained from one provider, such as the basic interconnection service provided to nonLEC PATS providers from LECs. Monopoly revenues are defined as those revenues received by the provider of the monopoly services, such as the revenues received by LECs from nonPATS providers for the basic interconnection services provided.

**CENDEL'S POSITION:** Agree with United.

**FPTA'S POSITION:** Generally, monopoly services are LEC services that have not been found by the Commission to be effectively competitive or subject to effective competition pursuant to Section 364.338, Florida Statutes. In the context of pay telephone service, monopoly services should be defined as those LEC monopoly services necessary to the provisioning of pay telephone service by any pay telephone service provider (NPATS or LPATS) that are not functionally or reasonably available in the marketplace. Examples of LEC monopoly services in the pay telephone service context would include the switched public network access facilities (the access line), local network usage, screening and blocking, certain operator services (e.g., 0-, local directory assistance, 0-transfer), certain billing and collection services, fraud detection and prevention services, and network installation and repair services. These services would continue to be monopoly services provided by the regulated LEC monopoly even if the Commission were to require the LECs to provide their pay telephone service through a separate entity. Under current Commission regulations, monopoly services must also include the provisioning of 0- calls, 0+ local and intraLATA calls, as well as IXC access for calls originating at LEC pay telephones.

Monopoly revenues generally are all revenues received for all LEC services that have not been found by the Commission to be effectively competitive or subject to effective competition. In the context of pay telephone service, monopoly revenues would include revenues from those LEC monopoly services necessary to the provisioning of pay telephone service by any pay telephone service provider (NPATS or LPATS) that are not functionally or reasonably available in the marketplace. Examples of LEC monopoly revenues in the pay telephone service context would include revenues from the switched public network access facilities (the access line), local network usage, screening and blocking, certain operator services

(e.g., O-, local directory assistance, O- transfer), certain billing and collection services, and network installation and repair services. These revenues would continue to be LEC revenues to the regulated LEC monopoly even if the Commission were to require the LECs to remove their pay telephone operation from the regulated account by placement into a separate entity. Under current Commission regulations, monopoly revenues must also include revenue generating O- calls, O+ local and intraLATA calls, and IXC access charges for calls originating at LEC pay telephones.

**GTEFL'S POSITION:** Monopoly service is statutorily defined by Section 364.02(3) (1991), as those services for which there is no effective competition. For the consumer, GTEFL maintains that the provisioning of pay telephones is not subject to effective competition and, therefore, is a monopoly service. Monopoly revenues are revenues that flow to LECs or NPATs from IXCs, OSPs or consumers, for which there is no effective competition. For example, monopoly revenues include those revenues received by NPATs from IXCs and AOS providers but which GTEFL is precluded from earning by federal law.

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** Section 364.02(3), Florida Statutes provides the definition for monopoly service. "Monopoly service" means a telecommunications service for which there is no effective competition, either in fact or by operation of law." Monopoly revenues should therefore be revenues derived from telecommunications services for which there is no effective competition.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** Monopoly services are those services provided by a single provider, without reasonable alternatives, and required for the provisioning of pay telephone service. Monopoly revenues are revenues directly derived from the provisioning of monopoly services.

**ISSUE 4:** Is LEC pay telephone service in Florida effectively competitive or subject to effective competition?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** LEC pay telephone service in Florida is neither effectively competitive nor subject to effective competition from end user perspective. The terms "effective competition and subject to effective competition" are synonymous.

**CENDEL'S POSITION:** Agree with GTEFL.

**FPTA'S POSITION:** Today, LEC pay telephone service is not effectively competitive because current Commission regulatory policies do not: (1) enable end users to have the opportunity to receive functionally equivalent pay telephone services at rates that are fair, just, reasonable, and compensatory; (2) permit NPATS and LPATS providers to receive LEC monopoly services on an unbundled basis pursuant to tariff under the same or equivalent rates, terms, and conditions that are fair, just, reasonable and compensatory; (3) permit NPATS and LPATS providers to provide functionally equivalent pay telephone service at rates that are fair, just, reasonable, and compensatory; and (4) require LEC pay telephones to be removed from the regulated accounts of the LEC monopoly.

The LECs have received and taken advantage of numerous regulatory benefits and opportunities that have delayed or prevented the consumers of Florida from receiving the full benefits of effective pay telephone service competition. These regulatory benefits and opportunities, accruing only to the LECs, have permitted the following unfair, discriminatory and anti-competitive LEC practices to take place:

First, the LECs deny services to NPATS providers that are made available to LPATS operations, such as certain fraud prevention technologies and services.

Second, the LECs have not been restricted in utilizing automated operator services whereas NPATS providers have been denied the opportunity to fully deploy the technically equivalent store and forward technology.

Third, the LECs are able to manipulate the monopoly services made available to NPATS providers in order to delay and harass NPATS providers to the benefit of their own LPATS operations.

Fourth, the LECs provide their LPATS operations with preferential treatment through the integration of their monopoly and competitive services.

Fifth, the LECs charge NPATS providers rates in excess of the costs they attribute to their own LPATS operations for the same or equivalent services.

Sixth, the LECs have been able to declare their pay telephone operations as profitable only by inclusion of operator services, intraLATA toll, and IXC access charge revenues when such revenues are derived from monopoly services and should be attributed to the respective operator, toll, and access functions.

Seventh, the LECs are permitted to trade on the name of the monopoly operation.

LEC pay telephone service is subject to effective competition because by changing current regulatory policies, effective competition and its benefits to consumers will be able to develop on a fair and equal basis.

**GTEFL'S POSITION:** It is GTEFL's position that LEC pay telephones are not effectively competitive. Today's LEC pay telephone service provides general availability at a reasonable price, thus resulting in consumers not choosing among PATS providers but rather looking for the most convenient pay telephone. In an effectively competitive market, as defined by the statute, prices would be market driven but there would still be the same level of service at comparable rates. GTEFL maintains that, in a market-priced environment, prices would increase and pay telephone availability would decrease. In that respect, consumers would not receive equivalent services at comparable rates and terms, and the public policy concerns of the Section 364.338 definition would not be served. If prices were not deaveraged, any alternative regulatory framework would likely force LECs to reduce the number of public interest and low revenue locations served, to the detriment of maintaining universal local telecommunications service.

Regulatory changes suggested by Section 364.338 for an effectively competitive market, such as separate subsidiaries for LEC pay telephones or artificially imputing prices for services provided to non-LEC pay telephone providers, will not benefit the consumer. Separate subsidiaries would reduce the availability of pay telephones as LPATS react to the market.

Similarly, imputation of the price of services offered to NPATS would serve no benefit to the consumer. GTEFL does not use the same services as NPATS in provisioning pay telephones and,



therefore, imputation of such charges would not reflect the costs of providing LPATS service. GTEFL's pay telephone service currently makes a contribution to common costs and any artificial increase in costs would likely force GTEFL to reduce its pay telephone offerings to public interest and low revenue locations.

GTEFL's pay telephone operations currently benefit from economies of scope and scale by sharing common costs with other facets of the business. GTEFL pay telephones make a positive contribution to common costs while at the same time benefitting from sharing common costs. Placing pay telephone operations in a separate subsidiary would only create unnecessary duplication of manpower and equipment which would harm the consumer by unnecessarily increasing the costs of LPATS pay telephone service. Current regulatory controls prevent discrimination in provisioning pay telephone service to the consumer and in providing NPATS access to local exchange networks. Indeed, this Commission recently performed an exhaustive review of rates and charges paid by NPATS.

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** No. LEC Pay Telephone Service in Florida is not effectively competitive or subject to effective competition as those terms are defined in Chapter 364, Florida Statutes. United does not believe that the Legislature or the Commission would permit market conditions to set the prices for local pay telephone calls as provided in Section 364.338(1) F.S. In fact, Section 364.3375(4) F.S. limits the rate for non-LEC local coin calls to be no more than the local exchange telecommunications company. This provision was established with the belief that the local call rate would be set in a regulatory environment - not in a free market place.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** No. Pay telephone service is not effectively competitive nor subject to effective competition as to end users. If pay telephone service was effectively competitive or subject to effective competition, market forces would set price. The potential for end users to be charged excessive rates makes it necessary for the Commission to impose rate caps from pay telephones. However, it is staff's position that competition does and can exist for locations.

**ISSUE 4A:** What is the effect, if any, on the maintenance of basic local exchange telecommunications service if found effectively competitive?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** The Commission has properly determined that pay telephone service is an extension of basic local exchange service and an adjunct of universal service. The Commission further determined that the pay telephone market is subject to a market failure. The intent of Section 364.338, Florida Statutes, is that upon a Commission finding of effective competition, the market will set the prices for services provided. The pay telephone market will not allow such market prices. Different regulatory requirements would negatively affect pay telephone service as an extension of basic local exchange service and its operation as an adjunct of universal service.

**CENTEL'S POSITION:** Agree with GTEFL.

**FPTA'S POSITION:** If effectively competitive pay telephone service is permitted to develop, such an environment will have a positive effect on basic exchange telecommunications service. The LECs' monopoly revenue would be enhanced if LPATS paid the same rates as NPATS for monopoly services. Eliminating the current subsidy LPATS receive will help to level the pay telephone playing field. Further, the impact of removing the current subsidy will be to reduce rates for remaining monopoly services or reduce future rate increases for monopoly ratepayers.

**GTEFL'S POSITION:** See position on Issue 4.

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** Basic local exchange telecommunications service is inclusive of the broad scope of services supporting the availability of universal dial tone. To that extent, any changes in the regulation of LEC pay telephone service which may inhibit the provision of the service or cause the service to contribute less to the general economic support of other basic dial tone services; will be detrimental to basic local exchange telecommunications service available to the general public.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** No position pending discovery.

**ISSUE 4B:** Are consumers able to obtain functionally equivalent services at comparable rates, terms and conditions?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** End users appear to have the ability to obtain functionally equivalent services from LEC pay telephone providers and nonLEC pay telephone providers. However, those services are not available at comparable rates, terms and conditions. The nonLEC PATS providers have "competed" for locations not by under cutting prices for the services provided as effective competition would require, but perversely have gained these locations while maintaining higher prices for the services provided. Competition among the pay telephone providers has resulted in location providers receiving higher and higher commissions without any reduction in rates for the end user.

**CENDEL'S POSITION:** Agree with GTEFL.

**FPTA'S POSITION:** Consumers are able to make the same types of calls from a competitive pay telephone as they are from LEC pay telephones at comparable rates, terms, and conditions, but the ability of NPATS providers to always offer equivalent services and rates is limited by current Commission regulatory policies. In an effectively competitive environment, equal regulatory treatment, reasonable rate caps, equal service standards, and direct IXC access will enable all pay telephone providers to further expand the services, service locations, and rate options available to consumers.

**GTEFL'S POSITION:** See position on Issue 4.

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** Due to the limits imposed by both the legislature and the Commission, rates and terms have been controlled such that the end user will find the service somewhat equivalent for intrastate calls. On the other hand, the Florida Public Service Commission Biennium Report on the Status of Competition in the Telecommunications Industry report of the number of complaints filed with the Commission strongly suggests that the

conditions are very different. Through December 1, 1991, there were 227 complaints filed against non-LEC PATS providers and only 4 concerning the pay telephone service provided by the LECs. The FPSC 1991 Consumer Complaint Activity Report reveals 249 complaints were filed against privately owned pay phone providers in 1991 while only 8 complaints were filed against local exchange companies regarding their pay phones. It should be noted that the LEC's have about 60 to 70 percent of the pay telephones in service in Florida.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** No, the current rates charged to end users from NPATS pay telephones are greater than the rates charged from LEC pay telephones.

**ISSUE 4C:** Are competitive providers in the relevant geographic or service market able to make functionally equivalent or substitute services available at competitive rates, terms and conditions?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** To the end user the nonLEC PATS providers appear to be making functionally equivalent or substitute services available in the most lucrative service areas or markets. Functionally equivalent or substitute services are not available in lower revenue or public interest segments of the markets, nor are the services available at competitive rates, terms, and conditions.

**CENDEL'S POSITION:** Agree with GTEFL.

**FPTA'S POSITION:** Competitive providers are limited in their ability to make functionally equivalent or substitute services available due to current regulatory restrictions. These limitations have occurred because current regulatory policies: (1) permit the LECs to integrate their competitive pay telephone service operations with their monopoly operations; (2) grant the LECs a monopoly for 1+ intraLATA calls, 0- calls, 0+ local calls, and 0+ intraLATA calls; and (3) require NPATS providers to pay rates for LEC monopoly services that greatly exceed the cost of the same services utilized by LPATS operations. The result of these policies has been to generally limit the ability of NPATS providers to fully make functionally equivalent or substitute services available at competitive rates, terms, and conditions at all locations, but especially at low volume locations.

**GTEFL'S POSITION:** See position on Issue 4.

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** No, their rates for interstate services and some intrastate services, where surcharges are allowed, are higher than LEC pay phone rates.

United has filed tariffs which make the facilities available to the other providers at rates established by this Commission. The growth in non-United pay telephones in United territory from 186 lines in 1986 to nearly 3600 by the end of 1991 demonstrates that few, if any, factors inhibit entry to or operation of a pay telephone business.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** No.

**ISSUE 4D:** What is the overall impact of the proposed regulatory change on the continued availability of existing services?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** Currently, there is no specific alternative regulatory treatment of LEC pay telephone service proposed, however LEC pay telephone service as it exists today would be negatively affected by alternative regulatory treatment.

**CENTEL'S POSITION:** Agree with GTEFL.

**FPTA'S POSITION:** The proposed fair and equal regulatory changes required to make LEC pay telephone service effectively competitive will have a positive impact on the availability of services to consumers by providing expanded services at reasonable rates. In addition, local monopoly ratepayers will benefit because the revenue requirements of LEC provided monopoly services will be reduced once the subsidization of LEC pay telephones is discontinued.

**GTEFL'S POSITION:** See position on Issue 4.

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** United does not anticipate that any decisions reached in this docket will significantly impact the continued availability of existing services other than pay telephone service. However, without knowing the exact proposed regulatory change and related terms and conditions, United cannot identify and/or quantify impacts on other service.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** No position pending discovery.

**ISSUE 4E:** Would consumers of such services receive an identifiable benefit from the provision of the service on a competitive basis?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** Few consumers in Florida today are benefiting from the competition for location providers among the various pay telephone providers. This would not change under alternative regulatory treatment. Fewer pay telephones would be available for use by the general public.

**CENDEL'S POSITION:** Agree with GTEFL.

**FPTA'S POSITION:** The existence of an effectively competitive pay telephone service market would provide numerous benefits to consumers. Consumers have already benefited by innovation in such areas as discount toll plans, \$.20 local calls, automated operator services, and multilingual operator services. Under a regulatory environment in which effective competition can occur, such innovations will continue and can be expanded further. For instance, when competitive options such as alternative long distance carriers or optional toll plans are made available to pay telephone providers, these options can in turn be offered to consumers.

**GTEFL'S POSITION:** See position on Issue 4.

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** Today there are multiple providers of pay telephone service. Other than increased availability of pay telephones, United does not believe the consumer is receiving any identifiable benefits today. The Florida Public Service Commission Biennium Report on the Status of Competition in the Telecommunications Industry, December 1991, notes the following: "However, the increasing competitive nature of this industry does not necessarily indicate any significant benefits to the end user." The multiplicity of different pay telephone instruments, dialing instructions, call completion methods, and operator situations are all sources for end user misunderstandings and frustrations. United Telephone local exchange operators have received as many as 523 calls in one day from end users of non-LEC pay telephones seeking help. The end users often do not understand the pay telephones are not all operated by United and some become very irritated.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** No position pending discovery.

**ISSUE 4F:** What degree of regulation is necessary to prevent abuses or discrimination in the provision of such services?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** The present regulatory environment is all that is needed to prevent abuses or discrimination in the provision of pay telephone service. The Commission determined that under the current regulatory environment nonLEC PATS providers are profitable and are able to aggressively compete for pay telephone locations.

**CENTEL'S POSITION:** Agree with GTEFL.

**FPTA'S POSITION:** A regulatory environment in which pay telephone service is permitted to become effectively competitive does not equate to the deregulation of pay telephone service. To prevent abuses or discrimination, only four regulatory requirements are necessary: (1) the separation of LPATS operations from the LEC monopoly and the requirement that LPATS and NPATS receive LEC monopoly services on the same tariffed basis; (2) reasonable end user rate caps; (3) direct IXC access (dial-around capability and compensation); and (4) equal service standards.

**GTEFL'S POSITION:** See position on Issue 4.

**INDIANTOWN'S POSITION:** See the Indiantown basic position for the Indiantown response to this issue.

**UNITED'S POSITION:** No additional regulation is required. Additional regulation at this point will only put the Commission in the position of managing the market place without improvement in the benefits to the end-user/consumers. Any additional regulation will result in economic gain for one party and economic penalty for the other.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** Staff believes that competitive providers of pay telephone service should be able to receive the same unbundled, non-discriminatory access to the LEC network that the LEC pay telephone operation receives.

**ISSUE 4G:** What other relevant factors are in the public interest and should be considered in making this determination?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** The Commission should consider the level of rates charged to the end user of pay telephone service; service in low revenue and public interest areas; and service quality in its determination of whether market conditions should determine pricing in an "effectively competitive" market.

**CENDEL'S POSITION:** Agree with GTEFL.

**FPTA'S POSITION:** In evaluating the regulatory changes necessary for an effective competitive pay telephone service market, the Commission should also consider: (1) the effect of current regulations on small and minority businesses; (2) the cost of current regulation versus the cost of alternative approaches; (3) the elimination of cross-subsidization; and (4) the ability of the proposed approach versus the current approach to fulfill the requirements of Section 364.01(3), Florida Statutes, which provides in pertinent part:



The commission shall exercise its exclusive jurisdiction in order to:

(3)(c) Encourage cost-effective technological innovation and competition in the telecommunications industry if doing so will benefit the public by making modern and adequate telecommunications services available at reasonable prices.

(d) Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.

• • •

(f) Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.

**GTEFL'S POSITION:** See position on Issue 4.

**INDIANTOWN'S POSITION:** See the Indiantown basic position for the Indiantown response to this issue.

**UNITED'S POSITION:** United's pay telephone service--both public and semi-public is an integral part of its basic local telecommunication service. United has recognized the significant social role of the pay telephone and has supported universal telephone service through the offering of the two types of pay telephone service throughout its service territory. Also in meeting the total telecommunications service need of our area, United has and will continue to provide coin telephones in certain locations in order to meet public interest, governmental and other special requirements for pay telephone service.

United does not believe it is appropriate for the Commission to develop any further restrictions or requirements regarding the installation of these telephones. The decisions regarding installation of "public interest" locations should be made by United personnel who are the most familiar with the requirements for their area.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** No position pending discovery.

**ISSUE 5:** If LEC PATS is found to be effectively competitive, what, if any, action is appropriate and why?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** If the Commission finds that LEC pay telephone service effectively competitive, it need not do anything. Section 364.338(2) Florida Statutes, does not mandate any regulatory action, even if the Commission finds that pay telephone service is subject to effective competition.

If the Commission decides to implement changes to the regulation of pay telephone service, the LECs should be permitted to provide interLATA and interstate toll traffic. LECs should not have to impute or attribute to their pay telephone operations costs which do not actually exist for their pay telephone operation. Further, the Commission would have to develop a means by which expenses for the operation of low revenue and public interest stations would be subsidized. As to commissions to the location providers, commissions are paid in consideration of the use of space on the premises owned by the location provider and are driven by market conditions. Pay telephone commissions would be unaffected by any Commission action.

**CENDEL'S POSITION:** Agree with United.

**FPTA'S POSITION:** FPTA does not believe that the market currently is effectively competitive. However, if found to be effectively competitive, the actions outlined in FPTA's position on Issue 6 are necessary.

**GTEFL'S POSITION:** If LEC PATS is found to be effectively competitive, no restrictions should be placed on commission arrangements made by LECs with location owners. Due to the existing competitive environment for high revenue locations, market forces already make efficient determinations as to commissions. The Commission need not attempt to determine what constitutes a "monopoly revenue" in determining what course of action to take with respect to commission payments. Any regulatory change which ties the hands of LPATS would provide an unfair competitive

advantage to NPATS who already have access to interstate revenue streams (e.g., IXC and AOS payments) to use in the payment of commissions; these revenues are not available to GTEFL. Many of these revenue streams are beyond the Commission's regulatory control. Further, due to possible interstate commission arrangements between NPATS and multistate location agents (e.g., convenience stores, fast food chains, etc.), enforcement of a prohibition against commission payments would be difficult to clearly and fairly enforce.

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** If the Commission were to find LEC PATS to be effectively competitive, the only appropriate additional action prescribed by Section 364.338(1) F.S. would be to completely deregulate the prices, terms, and conditions for pay telephone service such that market conditions be allowed to set the prices and conditions of the service. The Commission may continue to establish the rates for a common use local access to the network. However, any regulation of prices, service requirements, or operating parameters for either the LEC, or non-LEC providers would be a direct contradiction of the effectively competitive ruling.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** No position pending discovery.

**ISSUE 5A:** What, if any, action is appropriate regarding the payment of commissions (including the use of monopoly revenues, if any) in the Florida pay telephone market, and why?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** See position on Issue 5.

**CENDEL'S POSITION:** Agree with United.

**FPTA'S POSITION:** If the Commission adopts FPTA's proposal outlined in the Issue 6 position, no further action would be necessary regarding the payment of commissions to location owners.

**GTEFL'S POSITION:** If LEC PATS is found to be effectively competitive, no restrictions should be placed on commission

arrangements made by LECs with location owners. Due to the existing competitive environment for high revenue locations, market forces already make efficient determinations as to commissions. The Commission need not attempt to determine what constitutes a "monopoly revenue" in determining what course of action to take with respect to commission payments. Any regulatory change which ties the hands of LPATS would provide an unfair competitive advantage to NPATS who already have access to interstate revenue streams (e.g., IXC and AOS payments) to use in the payment of commissions; these revenues are not available to GTEFL. Many of these revenue streams are beyond the Commission's regulatory control. Further, due to possible interstate commission arrangements between NPATS and multistate location agents (e.g., convenience stores, fast food chains, etc.), enforcement of a prohibition against commission payments would be difficult to clearly and fairly enforce.

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** As United stated in response to Issue No. 5, if LEC pay telephone service is found to be effectively competitive, all regulation of the service should be removed. Payment of fee/commissions for the use of locations should be set by the market place. This location can be used by the location provider for several other non-regulated purposes (such as vending machines), therefore United's ability to pay should not be artificially limited by regulation.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** No position pending discovery.

**ISSUE 5B:** What, if any, action is appropriate regarding the policy and procedures for placement of public interest pay telephones in the Florida pay telephone market, and why?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** See position on Issue 5.

**CENDEL'S POSITION:** Agree with United.

**FPTA'S POSITION:** The action outlined in response to Issue 6B is appropriate.

**GTEFL'S POSITION:** What action should be taken would depend on the regulatory changes, if any, initiated by the Commission. If LPATS were ordered into a separate subsidiary or accounting changes were ordered by the Commission, it might no longer be appropriate or economically viable for GTEFL to maintain its service to public interest and low pay locations. Under such conditions, market forces should be allowed to determine the placement of all pay telephones. It is the position of GTEFL that any pooling or sharing of these pay telephones among LPATS and NPATS would be procedurally and economically wasteful in comparison to the current provisioning of these pay telephones. Similarly, any requirement that LECs continue to provide public interest pay telephones as part of their regulated services, while placing competitive locations in a separate subsidiary, would only lead to the unnecessary duplication of costs and services.

**INDIANTOWN'S POSITION:** N/A

**UNITED'S POSITION:** In an effectively competitive market, no regulation regarding minimum standards of service should be established. If the companies believe additional service would be warranted in the public interest, the companies should react on their own initiative. If the Commission believes regulations are required to satisfy the public interest, its effective competition finding is in error.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** Public interest pay telephones must continue to be placed and maintained by the providers in the market. If the LEC pay telephone operation is placed in a separate subsidiary, or if some other similar form of regulation is imposed, then some form of pooling to cover public interest pay telephones might be appropriate.

**ISSUE 6:** If LEC PATS is found to be "subject to effective competition", what, if any, action is appropriate and why?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** If the Commission finds that pay telephone services are subject to effective competition, it need not do anything. Section 364.338(2) Florida Statutes does not mandate any regulatory action, even if the Commission finds that pay telephone service is subject to effective competition.

If the Commission decides to implement changes to the regulation of pay telephone service, the LECs should be permitted to provide interLATA and interstate toll traffic. The LECs should not have to impute or attribute to their pay telephone operations costs which do not actually exist for their pay telephone operation. Further, the Commission would have to develop a means by which expenses for the operations of low revenue and public interest pay telephone stations would be subsidized. As to commissions to the location providers, commissions are paid in consideration the use of space on the premises owned by the location provider and are driven by market conditions. Pay telephone commissions would be unaffected by any Commission action.

**CENTEL'S POSITION:** Agree with United.

**FPTA'S POSITION:** The Commission should order the following actions:

(i) Require the LECs to place their pay telephones into a fully separate subsidiary;

(ii) Require the LECs to provide monopoly services to all pay telephone providers (LPATS and NPATS) under the same tariffed rates, terms, and conditions. This includes billing, validation and collection services;

(iii) Establish rates for monopoly services at cost for the access line with contribution to common overhead derived from usage charges rather than through the flat monthly rate charge. This would permit placement of pay telephones in low volume locations;

(iv) Remove the restrictions in the provisioning of O+ and O- local and intraLATA toll calls; and

(v) To the extent the O+ and O- local and intraLATA toll monopoly is retained, prohibit the LECs and their pay telephone subsidiaries from paying commissions from monopoly revenues. This just increases the revenue the LEC must obtain from monopoly

services. It further permits cross-subsidy and unfair competition and must be ceased.

**GTEFL'S POSITION:** See Response to Issue 5 (A). It is GTEFL's position that market forces currently control the payment of commissions in the most efficient manner. For this reason, provided that no other changes are made in the regulation of pay telephone service, the Commission should take no action regarding commission payments.

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** United does not see any difference between effective competition and subject to effective competition. See response to Issue No. 5.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** Staff believes that if pay telephone service is found not to be effectively competitive, there still exists the potential to further promote competition. This may include requiring the LECs to make available coin-lines, as well as requiring the LECs to impute tariffed rates on their pay telephone operations. Staff does not believe that placing the LEC pay telephone operations in a separate subsidiary will bring about fair competition.

**ISSUE 6A:** What, if any, action is appropriate regarding the payment of commissions (including the use of monopoly revenues, if any) in the Florida pay telephone market, and why?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** See position on Issue 6.

**CENDEL'S POSITION:** Agree with United.

**FPTA'S POSITION:** If the Commission adopts FPTA's proposal, no further action would be necessary regarding the payment of commissions to location owners. However, if a request is made to raise the local sent paid rate, some overall limit could be established for ratemaking purposes.

**GTEFL'S POSITION:** See Response to Issue 5 (A). It is GTEFL's position that market forces currently control the payment of commissions in the most efficient manner. For this reason, provided that no other changes are made in the regulation of pay telephone service, the Commission should take no action regarding commission payments.

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** See response to Issue No. 5. A.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** No position pending discovery.

**ISSUE 6B:** What, if any, action is appropriate regarding the policy and procedures for placement of public interest pay telephones in the Florida pay telephone market, and why?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** See position on Issue 6.

**CENDEL'S POSITION:** Agree with United.

**FPTA'S POSITION:** A public interest pay telephone is a telephone used so infrequently that it must be subsidized for the common good. Such pay telephones are usually located at the following:

1. Governmental buildings;
2. Multi-family and special use housing communities;
3. City sidewalks;
4. Leisure/Recreation/Entertainment facilities;
5. Highways;
6. Educational facilities; and
7. Health care facilities.

The definition of public interest pay telephones should not include: (1) pay telephones installed as a result of a franchise agreement; (2) pay telephones for which commission payments are made or where the location owner receives a commission for a pay telephone placed on the owner's premises pursuant to the same or a



separate contract; and (3) pay telephones that are part of a bank of two or more pay telephones or within reasonably close proximity.

Once pay telephone service becomes effectively competitive, the Commission's concern over the above-described public interest stations will lessen. This is because either competition will permit these locations to be served, or such locations will be included as part of larger bid proposals. In the limited instances that may remain, public interest pay telephones should be provided by the entity requesting such service. If, however, the Commission decides that the costs of providing public interest pay telephones should be borne by all Florida pay telephones providers, such costs should be funded by imposing a surcharge upon both NPATS and LPATS providers. This surcharge would be collected by the LECs and remitted to one trust fund account. The trust fund account would be administered by the Commission and provide funds to cover the costs of providing pay telephone service to locations which meet the Commission's own "public interest" definition. However the responsibility for public interest stations is ultimately apportioned by the Commission, FPTA members are willing to shoulder their fair share of providing public interest stations although FPTA recognizes there may be other reasonable options.

GTEFL'S POSITION: See Response to Issue 5(B).

INDIANTOWN'S POSITION: N/A

UNITED'S POSITION: See response to Issue No. 5. B.

OPC'S POSITION: No position at this time.

STAFF'S POSITION: Public interest pay telephones must continue to be placed and maintained by the providers in the market. If the LEC pay telephone operation is placed in a separate subsidiary, or if some other similar form of regulation is imposed, then some form of pooling to cover public interest pay telephones might be appropriate.

ISSUE 7: If LEC PATS is neither effectively competitive nor "subject to effective competition", what, if any, action is appropriate and why?

ALLTEL'S POSITION: Agree with GTEFL.

**BELLSOUTH'S POSITION:** The Commission determined in Order No. 24101 that the structure of the pay telephone market as it exists today is adequate to meet the goals of the Commission concerning pay telephone service. Therefore, the Commission need not take any action regarding any aspect of pay telephone service in Florida.

**CENDEL'S POSITION:** Agree with BellSouth.

**FPTA'S POSITION:** If the Commission determines LEC pay telephone competition is not subject to effective competition, the Commission must continue to ensure against anticompetitive abuse as directed under section 364.01(3)(d), Florida Statutes. The LECs must continue to be required to comply with section 364.3381, Florida Statutes, which prohibits LEC pay telephone service from being subsidized from rates paid for monopoly services. Further, the LECs must be prohibited from giving any undue preference or advantage to their own pay telephone operations pursuant to section 364.338(6), Florida Statutes.

**GTEFL'S POSITION:** See Response to Issue 5(A).

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** None. No additional regulation is required. Additional regulation at this point will only put the Commission in the position of managing the market place without improving the benefits to the end user/consumers. Any additional regulation will result in economic gain for one party and economic penalty for the other.

Improvement for the end user can now only be gained with the absolute and complete deregulation of pay telephone service for all parties. A free market governed by the choice of the consumer is the only alternate which can provide improvement. (Common central office lines should continue to be a LEC service.)

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** Staff believes that if pay telephone service is found not to be effectively competitive, there still exists the potential to further promote competition. This may include requiring the LECs to make available coin-lines, as well as requiring the LECs to impute tariffed rates on their pay telephone operations. Staff does not believe that placing the LEC pay

telephone operations in a separate subsidiary will bring about fair competition.

**ISSUE 7A:** What, if any, action is appropriate regarding the payment of commissions (including the use of monopoly revenues, if any) in the Florida pay telephone market, and why?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** See position on Issue 7.

**CENDEL'S POSITION:** Agree with BellSouth.

**FPTA'S POSITION:** The payment of commissions from LEC monopoly revenue should be disallowed, and to the extent the LEC pay telephones are being cross-subsidized the subsidy should be absorbed by stockholders not ratepayers.

**GTEFL'S POSITION:** See Response to Issue 5(A).

**INDIANTOWN'S POSITION:** Indiantown does not yet have a position with respect to this issue.

**UNITED'S POSITION:** None. The market place is an appropriate method to use to determine the value of the premises owners' wall space. It should not be artificially limited by regulation. Since the wall space can also be used for other purposes (such as vending machines), it would be inappropriate to limit what United can pay for these locations.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** No position pending discovery.

**ISSUE 7B:** What, if any, action is appropriate regarding the policy and procedures for placement of public interest pay telephones in the Florida pay telephone market, and why?

**ALLTEL'S POSITION:** Agree with GTEFL.

**BELLSOUTH'S POSITION:** See position on Issue 7.

**CENDEL'S POSITION:** Agree with BellSouth.

**FPTA'S POSITION:** The same action as outlined in response to Issue 6B.

**GTEFL'S POSITION:** See Response to Issue 5 (B). GTEFL's current pay telephone operations effectively serve public interest and low revenue pay telephone locations, thus meeting the universal service needs of the community while making an overall contribution to common costs. Regulatory change in serving public interest locations would likely create unnecessary administrative costs and would neither increase the availability of such services nor adequately compensate the LEC for the loss of numerous low revenue locations.

**INDIANTOWN'S POSITION:** N/A

**UNITED'S POSITION:** None. The decision regarding the installation of "public interest" pay telephones should be made by United's operating personnel who are familiar with the revenue for their area. If non-LEC PATS providers feel some civic need to provide public interest pay telephones, then they should be free to do so.

**OPC'S POSITION:** No position at this time.

**STAFF'S POSITION:** Public interest pay telephones must continue to be placed and maintained by the providers in the market. If the LEC pay telephone operation is placed in a separate subsidiary, or if some other similar form of regulation is imposed, then some form of pooling to cover public interest pay telephones might be appropriate.

VII. EXHIBIT LIST

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NO.</u>	<u>DESCRIPTION</u>
Lance C. Norris	FPTA	LCN-1	Incident Reports of Fraud and Discriminatory Treatment, and Anticompetitive LEC advertisements (2 Volumes)

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D.</u> <u>NO.</u>	<u>DESCRIPTION</u>
Peter C. Fedor	FPTA	PCF-1	<u>Telephone Engineering &amp; Management</u> magazine article
		PCF-2	Summary of Palm Beach County RFP
Gary L. Pace	FPTA	GLP-1	Examples of Marketplace Problems
		GLP-2	Examples of Organized Confusion
Joseph P. Cresse	FPTA	JPC-1	Educational and Professional Background
		JPC-2	Analysis of FPTA's Proposal
Edward C. Beauvais	GTE	ECB-1	Qualifications
		ECB-2	NPATS List
		ECB-3	Concentration Ratios
Cross Examination exhibits identified by OPC	OPC	OPC-1	"Maximizing Value in Public Telephone," BellSouth Telecommunications, BTOC Review, April 16, 1992, consisting of 44 pages

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NO.</u>	<u>DESCRIPTION</u>
Cross Examination exhibits identified by OPC	OPC	OPC-2	"Public Telephone Business Strategic Recommendations," Executive Policy Council (EPC) approval, 3 pages, dated June 2, 1992
	OPC	OPC-3	Interoffice memo dated May 8, 1992 from David Conley to "25 "to" addressees," consisting of 2 pages
	OPC	OPC-4	Draft BellSouth Pay Telephone Position Paper for Florida, attached to March 28, 1992 memo from David Conley to Twyla Martin

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

No stipulations were entered into during the Prehearing Conference.

IX. PENDING MOTIONS

1. Request for Confidential Treatment filed August 4, 1992, by BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company.

2. Request for Confidential Treatment filed August 6, 1992, by BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Staff's Interrogatories).
3. Request for Confidential Treatment filed August 6, 1992, by BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (OPC's Production of Documents).

In addition, FPTA indicated during the Prehearing Conference that it intended to make a certain motion at the close of the Hearing. The motion contemplated by FPTA would request this Commission to enter a restraining order prohibiting Southern Bell from making commission payments to premises owners on 0+ local calls, 0+ intraLATA toll calls, and access charges. The Prehearing Officer took no position on the merits of such a motion but noted that all parties would be on notice of FPTA's intentions in this regard.

It is therefore,

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 18th day of August, 1992.

  
\_\_\_\_\_  
BETTY EASLEY, Commissioner  
and Prehearing Officer

( S E A L )

ABG

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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.