

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into which) DOCKET NO. 930046-TP
local exchange company (LEC)) ORDER NO. PSC-94-1286-FOF-TP
services are effectively) ISSUED: October 17, 1994
competitive in 1993.)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING CERTAIN MOTIONS

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER REGARDING COMPETITIVE STATUS
OF CERTAIN LEC PROVIDED SERVICES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed in Sections III, IV, V and VI of this Order are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

Chapter 364, Florida Statutes was substantially revised during 1990, resulting in an increased statutory emphasis on allowing competitive forces to guide markets where possible. In particular the Legislature created Section 364.338, Florida Statutes, establishing the methodology by which the determination as to whether and under what conditions services would be subjected to competition.

Pursuant to 364.338(2), a determination of whether a LEC service is subject to effective competition may be made "on motion by the commission or on petition of the telecommunications company or any interested party." In addition, Section 364.338(2)

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describes the relevant factors to be considered in making a determination of whether or not a LEC service is "effectively competitive." The factors include both economic criteria and public interest considerations.

In conjunction with a determination that a service is effectively competitive, several other matters must also be considered including anticompetitive safeguards, the level and nature of regulatory oversight, as well as the initial pricing and costing parameters for the services to avoid cross subsidies.

The first to be examined, pursuant to Section 364.338, was pay telephone service. By Order No. PSC-93-0289-FOF-TL we found that this service was not effectively competitive.

By Order No. PSC-93-1768-FOF-TP (93-1768), we began the systematic examination of all LEC services to determine the level of competition for each service. Certain services, as set forth in that Order, were found to be not effectively competitive. Certain other services were determined to warrant further investigation and analysis before a final decision could be made.

The investigation included review of information from four major LECs consisting of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell), GTE Florida Incorporated (GTEFL), United Telephone Company of Florida (United), and Central Telephone Company of Florida (Centel); three major interexchange carriers, AT&T Communications of the Southern States Inc. (ATT-C), Sprint Communications Company (Sprint), and LDDS; two alternative access vendors, Intermedia Communications, Inc. (Intermedia) and Time-Warner AxS of Florida, L.P. (Time Warner); the Florida Cable Television Association; and 78 telecommunications equipment vendors. All information was collected via formal discovery or data requests, with the exception of the equipment vendors who were contacted through a written survey.

II. PROCEDURAL MATTERS

A. Motion to Strike Pleading

On May 6, 1994 United and Centel filed a Motion to defer further action in Docket No. 930046-TL. On May 23, 1994, Southern Bell filed "Southern Bell Telephone and Telegraph Company's Response to and Concurrence with Motion to Defer of United and Centel." In its Motion, Southern Bell adopts the arguments of

United and Centel. Southern Bell further argues that the lack of immediacy driving this docket coupled with the potential that legislative changes will render this docket moot warrant deferring the docket.

On June 3, 1994, Time Warner and FCTA filed a Joint Response to and Motion to Strike Southern Bell's Concurrence with United and Centel. In support of its motion to strike, Time Warner and FCTA argue that Southern Bell's response is untimely pursuant to Rule 25-22.037(2), Florida Administrative Code. They further argue that Rule 25-22.037(2) permits only responses in opposition to a motion, not "concurrences." Since Southern Bell's motion is a concurrence and not in opposition, it is precluded by Rule 25-22.037(2) and should be stricken.

Rule 25-22.037(2)(b) states, in pertinent part:

Other parties to a proceeding may, within seven (7) days after service of a written motion, file written memoranda in opposition.

FCTA is correct when it states that Southern Bell's Motion is not in opposition to a motion. However, it is incorrect in its conclusion that a "concurrence" is precluded by this rule. Substantively, Southern Bell's concurrence is simply another motion seeking to defer the docket. There is no time limit set by Rule 25-22.037 for filing such motions; the rule is silent on such motions. Accordingly, we find it appropriate to deny the motion to strike.

B. Motions to Defer Proceeding

On May 6, 1994, United and Centel filed a motion to defer further action in Docket No. 930046-TP. In support of its Motion, United and Centel argue essentially that in light of the potential for legislative change and the lack of urgency in this proceeding, the parties' resources and efforts will be better spent focusing on legislation.

GTEFL and Southern Bell filed motions joining and concurring in United's and Centel's Motion on May 16, and May 23, 1994, respectively. Both of these companies echoed the arguments raised by United and Centel.

FCTA and Time Warner jointly responded timely in opposition to the Motion to defer on May 16, 1994. Intermedia also responded timely in opposition on May 16, 1994. In opposition to the Motion to defer, FCTA and Time Warner argue the following: any legislative changes are too speculative to justify deferral; the Commission

should not ignore the legislative mandate to encourage technological innovation and competition; the LEC's arguments are self-serving; and the determination of which services are effectively competitive is critical to promotion of a full and fair telecommunications environment. Intermedia echoes the arguments of Time Warner and FCTA. Specifically, Intermedia argues that the notion that deferral in this case on the basis of speculative legislative change would apply in every case now pending before the Commission, as well as every docket opened in the next nine months.

There is clearly the potential for legislative change in 1995. However, any argument that the our actions in this case would be rendered useless is too speculative to justify stopping our actions to foster a competitive environment. To cease the actions specifically directed to encourage competition based on such speculation would be inappropriate. Accordingly, we find it appropriate to deny the motions to defer this docket.

III. ANALYTICAL METHODOLOGY

Section 364.338(2)(a)-(g), sets forth the framework for the analytical methodology utilized to determine whether a service is effectively competitive. The statutory criteria are:

- (a) The effect, if any, on the maintenance of basic local exchange telecommunications service.
- (b) The ability of consumers to obtain functionally equivalent services at comparable rates, terms, and conditions.
- (c) The ability of competitive providers in the relevant geographic or service market to make functionally equivalent or substitute services available at competitive rates, terms, and conditions.
- (d) The overall impact of the proposed regulatory change on the continued availability of existing services.
- (e) Whether the consumers of such service would receive an identifiable benefit from the provision of the service on a competitive basis.
- (f) The degree of regulation necessary to prevent abuses or discrimination in the provision of such service.

(g) Such other relevant factors as are in the public interest.

Paragraphs (b) and (c) deal with economic criteria, while the remaining paragraphs deal with public interest factors.

The nature of the information relevant to the economic criteria can be classified into the following five categories, along with many of the questions staff analyzed in making a determination in each category:

1. Comparability of Substitutes - are the products being sold true functional equivalents, i.e. do they actually perform the same or nearly the same function? Could one really be substituted for another and provide the same service for the consumer?
2. Market Coverage of Competitors - (based on size and types of customers) - how much of the total market do competitors compete for?
3. Size and Product Line Scope of Competitors - are the competitors sizable enough to impact the market? Do their competitive product lines compare with the others they are competing against?
4. Performance of Competitors (level and barriers) - are the competitors profiting from their efforts in the market? Are competitors staying in the market for substantial lengths of time? Are their market shares increasing over time, or decreasing?
5. Level of LEC Performance - is the LEC profiting from its efforts in the market? Is its market share increasing over time, or decreasing? Have its prices risen or fallen for its competitive services?

Our examination of each service focuses first on the five categories set forth above. Significant adverse findings regarding categories 1, 2, 4 or 5 indicates that the service in question clearly fails the economic criteria. This failure necessitates a finding that the service is not effectively competitive.

Adverse findings regarding category 3 may not, alone, indicate that a service is not effectively competitive. Even with a limited size or scope of competitors, a service could possibly be effectively competitive. For example, competitors with the LECs' Centrex products may not be large in size, or may not offer all of

the features of Centrex systems. However, if in aggregate the LEC's competitors are large enough or their products sufficiently substitutable to drive the LEC to reduce its price near incremental cost over time to maintain its market share, or if the LEC's market share dwindles over time, the service may be effectively competitive. This may be true even if the size of the competitors or the scope of their products "fails" our category 3 analysis.

Those LEC services which have no significant adverse findings in any category must be further analyzed according to the other "public interest" factors set forth in Section 364.338(2). If no adverse factors are discovered in those areas, the services can be deemed "effectively competitive."

IV. REGULATORY TREATMENT FOR EFFECTIVELY COMPETITIVE SERVICES

Once the determination is made that a service is effectively competitive, the decision must be made as to the appropriate level of regulatory oversight for such service. Section 364.338(3)(a) provides that we may:

1. Exempt the service from some of the requirements of this chapter and prescribe different regulatory requirements than are otherwise prescribed for a monopoly service, or
2. Require that the competitive service be provided pursuant to a fully separated subsidiary or affiliate.

In our review, there are three basic levels of regulatory treatment for effectively competitive services: minimum price tariffs, detariff, or deregulation.

A. Minimum Price Tariffs

Under minimum price tariffs, tariffs would continue to be filed for the service and we would continue to regulate the service. The revenues, expenses and investments attributable to the service will be included in the calculation of the company's revenue requirement or "above the line". However, the tariff requirements would be relaxed for more price flexibility. A price floor would be set, but the floor would then be reflected in the LEC's tariff. The LEC would then be free to change the price or terms for the service to any price above the floor to be effective seven days from the date the change is filed. Any such changes would not be subject to direct Commission approval prior to becoming effective.

Minimum price tariffs are appropriate if the service is not severable from regulated services and continues to be sold as part of a regulated service package. Minimum price tariffs help ensure that competitive services are not priced below their relevant costs in either stand-alone versions or as part of regulated packages.

B. Detariff

Detariffing means that the service would still be regulated but the LEC's rates and terms for the service would no longer be filed and published in the LEC's tariffs. Revenues, expenses and investments attributable to the service could go either above or below the line. An initial minimum price floor would be set by the Commission. The LEC would then be free to price the service at any point at or above the approved price floor. LECs could also negotiate unlimited individual contracts for these services, as long as the contracted rates were above the floor price.

C. Deregulation

Under deregulation, all revenues, expenses and investments attributable to the service are removed from calculation of the LEC's revenue requirement and placed below the line either through a separate subsidiary or accounting separations. The Commission would then no longer oversee any aspect of the provisioning of the service, other than to make sure any accounting separations effectively negated the possibility of anticompetitive cross-subsidies benefitting the deregulated service. All facets of providing the service such as prices, quality of service, customer relations, and conditions of service, would be regulated by the competitive market.

Generally, a service should be deregulated if it is severable from regulated services and the public as a whole would benefit the most if it is no longer regulated. Ideally, the operations associated with the service are totally severable and can be placed in a separate subsidiary. Totally severable means two things: severable both operationally - the service can be efficiently provided autonomously with separate personnel and facilities; and functionally - the service, or parts of it, are not monopoly inputs to either LEC or competitors' services, and they are not bundled with monopoly services. If a service is severable functionally but not operationally, it may still be deregulated, but with accounting separations instead of a separate subsidiary.

We note that any decision to set minimum prices, detariff, or deregulate a service deemed to be effectively competitive may be reviewed and, if necessary, subjected to added regulation pursuant to Section 364.338(4), Florida Statutes. Any decision to deregulate a service does not send such service beyond our authority to determine whether and under what circumstances a company may provide the deregulated service. We retain jurisdiction to examine the provision of any service at a future date and subject the service to more or less regulation as deemed in the public interest.

V. COMPETITIVE STATUS OF CERTAIN LEC SERVICES

By Order No. 93-1768, we determined to systematically review each LEC service to determine which, if any, were effectively competitive. The initial group of services to be examined in the first phase was: Call Forwarding/Call Waiting, Private Line Service, Foreign Exchange Service, Centrex/ESSX, and Custom Calling Services - Business.

As will be seen below, we have expanded the number of services under consideration from those specifically set forth in Order No. 93-1768. The expansion is appropriate to maximize our efficiency in the review process. The full list of services examined herein are:

- Call Waiting (Residence, Business)
- Call Forwarding (Residence, Business)
- Three-Way Calling (Residence, Business)
- Speed Calling (Residence, Business)
- Centrex/ESSX
- Foreign Exchange Service
- Dedicated Services (Private Line, Special Access)

A. Call waiting

1. Comparability of Substitutes

Call Waiting functions by sending a tone to a customer's premises while the customer is on a call, alerting her/him that another caller is trying to reach them. This necessitates more "calls" than lines, something that currently only the local exchange company can provide.

Several vendors in the survey indicated that they sold Call Waiting as part of a PBX function package, but realized on examination that the function of their Call Waiting was not the same as the LEC's. For instance, if a PBX station is busy, the PBX can send a tone to the station that another call is waiting for that station, but only if an additional trunk line (path to the outside world) is open. If all trunks are busy, the next caller simply gets a busy signal. This is fundamentally different from allowing more calls to go through to the customer than the customer has lines/trunks/paths, as the LEC's Call Waiting does. From this we conclude that the features sold by the competitive vendors are not functional equivalents to the LECs' offerings for Call Waiting.

2. Market Coverage of Competitors

The vendors surveyed marketed almost entirely to business customers, and even then mostly to businesses of some size such as those with 15 or more stations. This coverage, or lack of coverage, suggests that even if the products were functionally equivalent the competition for customers would not include small businesses or residences. This is inconsistent with Southern Bell's current residential penetration rates for Call Waiting of 51%, which suggest the residential market is much larger than the business market penetration rate for this service of 14%. It does not appear that the competitors' market coverage is sufficient for an effectively competitive service.

3. Size and Product Line Scope of Competitors

The vendors surveyed varied in size from fewer than 4 employees to 20 or more employees. Although none of the vendors appeared substantial enough in size to compete with a local exchange company's resources, the combination of vendors appears to be substantial enough to influence the LECs' behavior in sales and pricing for some services.

The vendors' product line scope for medium to large businesses appears to be sufficient. Their PBX systems perform most of the functions that the LECs' Centrex systems do, as well as some additional functions. However, none of the vendors surveyed offered a stand-alone Call Waiting feature; they only offered it in conjunction with a PBX system.

Although the competitors' size does not appear to be a hindrance to competition, their lack of a directly-competing product indicates that they have an insufficient product line scope to be effective competitors to the LECs for Call Waiting service.

4. Performance of Competitors

The vendors' responses to survey questions were slightly misleading on this subject. Even though most vendors indicated they had been in business for over two years and sales for Call Waiting were generally increasing over time (two positive indicators of competition), their responses were actually citing PBX sales and their competition against Centrex/ESSX services. This indicates any competition for Call Waiting (as the PBX version is not functionally equivalent to the LECs', it is inaccurate to state that any true competition can exist between the services) is between a PBX feature and a Centrex/ESSX feature. Since no competitors actually sold the Call Waiting feature separately, it appears that the competitors' performance is insufficient for an effectively competitive service.

5. Level of LEC Performance

The LECs' responses indicated that their residence and business penetration rates for Call Waiting were generally the highest of any Custom Calling Feature and increasing over time, while prices have remained stable or increased. This indicates a lack of competition. Additionally, we are perplexed at how Southern Bell's residential penetration rate of 51% in 1993 can be so far above Centel's rate of 14% and GTE's rate of 27%. It appears that the LECs' performance in the Call Waiting market appears to be more that of a monopolist than a competitive provider.

6. Conclusion

As discussed above, Call Waiting failed all five of the economic dimensions for effective competition. We, therefore, find that it is not effectively competitive pursuant to Section 364.338. Further, it appears that its potential for competitiveness is minimal. Since no non-LEC vendor markets the feature by itself, and its function necessitates local switching, there are no potential competitors in the near term.

B. Call Forwarding

1. Comparability of Substitutes

Call Forwarding simply forwards a customer's calls to a predetermined number when the customer is not home or the customer's phone is busy, not answered, or both. Remote Call Forwarding and Call Forward Busy/No Answer are all derivations on the same idea.

Telephone instruments can simulate this feature today. Most PBXs and key systems offer this as part of their feature packages; even relatively non-sophisticated devices available to consumers such as multiline telephones in the \$200-300 range, or PC-based voice mail systems in the \$100-300 range, can provide a similar function. However, there is one main component that is critically different. When calls are forwarded through LEC-provided Call Forwarding, only one telephone line is required. The function is performed in the LEC's central office. For Call Forwarding to work through a customer's telephone, two or more lines are needed. An incoming call is placed on hold while the forward-to number is dialed through another line, then the two calls are "bridged" together. This eliminates all single-line residences and single-line businesses, a substantial segment of the market.

2. Market Coverage of Competitors

As discussed above, the LECs' competitors concentrate on medium to large size businesses, ignoring a substantial segment of the Call Forwarding market. Market coverage for this service appears insufficient for effective competition.

3. Size and Product Line Scope of Competitors

The competitor's sizes and numbers appear sufficient for a competitive market; however they do not offer stand-alone Call Forwarding features. Therefore, it appears that the product scope is insufficient for effective competition.

4. Performance of Competitors

Again, since the products marketed are not directly substitutable, particularly for single-line businesses and residences, the performance of the competitors is not indicative of a competitive market.

5. Level of LEC Performance

The LECs also enjoy healthy penetration rates that have generally increased over time for Call Forwarding, as they do for Call Waiting. These factors indicate a lack of real competition.

6. Conclusion

Call Forwarding suffers much the same fate as Call Waiting. In our analysis, the service fails in each of the five economic categories for competitiveness. Therefore we find the service is not effectively competitive.

We note that separating business and residential markets in a competitive analysis may lead to conclusions that a service is not effectively competitive for residences, but is for businesses or certain size businesses, or vice versa. We recognize this and anticipate such a conclusion at some point for certain services. However, we do not believe it applies here.

Call Forwarding for medium to large businesses with PBXs or Centrex systems provided by either the LEC or PBX vendor more closely resemble functional equivalents. However, there is still the problem that if all the outside trunks are busy on a PBX, a busy/no answer station cannot forward any additional calls because the calls are given a busy at the LEC central office. But if some trunks are free, the services perform similarly.

However, we do not believe that this equivalency warrants a finding of effective competition or further investigation. Call Forwarding is not sold by PBX vendors as a stand-alone feature; it is merely packaged in with several other features that any PBX can perform. Call Forwarding for medium to large business appears to simply be a minor element in the analysis of PBX versus Centrex competition.

C. Three-Way Calling

1. Comparability of Substitutes

LEC-provided Three-Way Calling allows a customer to put one call on hold, call another number, and bridge all three locations together, all with one telephone line. Many of the same telephone instruments and devices discussed in the previous two issues will perform this function, but again need at least two lines to operate. A customer must put caller one on hold, then make a separate call over another line, then bridge them all together. This again negates the functional equivalency for the residential and small business market in the same fashion as Call Forwarding discussed above.

2. Market Coverage of Competitors

As discussed above, the LECs' competitors concentrate on medium to large size businesses. This is only partial market coverage, and even this coverage would not warrant attempting to segment the businesses into separate markets, as Three-Way Calling is not offered as a stand-alone feature. Accordingly, it appears that market coverage for this service is insufficient for effective competition.

3. Size and Product Line Scope of Competitors

Although the competitors' sizes and numbers appear sufficient for a competitive market, they do not offer stand-alone Three-Way Calling features. Therefore, it appears that the product scope is insufficient for effective competition.

4. Performance of Competitors

Again, since the products marketed are not directly substitutable, particularly for single-line businesses and residences, the performance of the competitors is not sufficient for a competitive market.

5. Level of LEC Performance

The LECs also enjoy healthy penetration rates that have generally increased over time for Three-Way Calling, as they do for Call Waiting and Call Forwarding. These rates indicate a lack of real competition.

6. Conclusion

Again, this service suffers from the same limitations as the other features discussed previously. For the same reasons, we find that Three-Way Calling is not effectively competitive. Also, because Three-Way Calling is sold by PBX vendors the same way as Call Forwarding and other features for medium-large businesses, this feature also appears to be a minor element in the PBX versus. Centrex analysis.

We note that Three-Way Calling should not be confused with larger conference calling products that allow several customers to reserve space and "dial in" to a central conference bridge. These services go by various trade names such as Conference Service, Meet-Me, and Conference Line, and are offered by most major LECs and IXCs. Many of these services appear to be functionally equivalent and may have a significant amount of competition for customers. These conferencing services should be examined at a later date with other services.

D. Speed Calling

1. Comparability of Substitutes

LECs provide Speed Calling in either eight number or 30 number variations. These features allow customers to program telephone numbers to memory so that they can be recalled by

dialing two or three digits. The vendors surveyed also sold telephone sets that performed the same functions, as well as PBX Speed Calling features.

Additionally, virtually all telephone sets that sell for more than \$15.00 at any retail outlet also feature Speed Calling memories. Although the LECs' Speed Calling features rely on central office processors, while most of its competition use small memory chips inside telephone instruments, the service is the same to the end user. Therefore, it appears that the products are functionally equivalent.

2. Market Coverage of Competitors

51 out of 60 respondents to the vendor survey indicated Speed Calling as the most often sold feature. Coupled with the sale of one and two-line telephone sets with number memory from many retail outlets, it appears that all the market segments - residences and small, medium, and large businesses - are adequately covered by the competitive firms.

3. Size and Product Line Scope of Competitors

The size and number of PBX vendors does not appear to be a hindrance to effective competition for medium to large size businesses. Adding the telephones manufactured by AT&T, other Bell companies, Sony, Mitsubishi, and others sold through large retail outlets, it appears that the size and number of Speed Calling competitors is more than sufficient for each segment of the market.

The product line scope of competitors is also adequate. Telephone sets and speed dialers sold at outlets such as Radio Shack have up to 100 number memories, and PBX vendors claimed that PBXs can have number memories in the thousands. It appears the breadth of products sold by the LECs' competitors is also more than a sufficient scope when compared to the LECs' offerings.

4. Performance of Competitors

The vendor survey indicated that, in general, the vendors had high confidence that their Speed Calling sales were above average and that they could compete effectively with the LECs. Also, the continued availability and increasing pervasiveness of speed dialing telephones to the average consumer indicates that other competitors are also performing well. The vendor survey also indicated that many vendors actually predicted that their

Speed Calling sales would decrease over the next two years; their responses to other services were generally that their performance would increase over time. This also indicates increasing competition.

5. Level of LEC Performance

LEC performance also indicated significant competition. LEC penetration rates for Speed Calling have steadily declined from 1990-1993. For example, Southern Bell's residential penetration for Speed Calling fell from 18.25% in 1990 to 8.02% in 1993, a decrease of 56%. This decline occurred notwithstanding a rate decrease in 1989 to the bottom of Southern Bell's approved rate band in an attempt to answer the competition from telephones and autodialers. This performance, coupled with the vendors' prediction of declining sales, indicates that there are numerous competitive pressures in addition to the LECs' and telephone system vendors' competition with each other.

6. Other Statutory Factors

Since speed calling has passed the economic analysis, we must also examine the remaining statutory factors necessary to determine the competitive status.

a) Effect on maintenance of basic local service

There does not appear to be any detrimental effect on basic service should Speed Calling be declared effectively competitive. Southern Bell still has a high contribution from this service, in spite of the rigorous competition it faces. As long as a reasonable price floor is set for this service, it does not appear there will be any adverse impact on local service.

b) Availability of Existing Services

It also appears that Speed Calling has little or no effect on the availability of existing services. One possible exception could be the packaging of Speed Calling with other Custom Calling features. Relaxing price regulation for Speed Calling may result in reducing the price of regulated Custom Calling packages. This should benefit consumers, as long as Speed Calling is not sold below its cost.

c) Consumer benefits from competition

The consumer benefits from competition are already evident in this market. The relaxation of price regulation, as mentioned in the previous paragraph, will only add to those benefits so long as cross-subsidies are avoided.

7. Conclusion

Speed Calling has passed the competitive analysis in all five of the critical economic areas, as well as the other statutory areas examined. Accordingly, we find that Speed Calling is an effectively competitive service. We also believe that we should relax regulation over the price of Speed Calling. At this point, the most appropriate regulatory treatment is a minimum price tariff. The next step is to set a minimum price for each LEC for Speed Calling. This will avoid any potential for cross-subsidy.

Ideally, the price floors should be equal to or greater than each company's incremental cost for the service. Unfortunately, we currently have no reliable cost data upon which to make the determination. Therefore, we find it appropriate that a temporary price floor be set until cost data is submitted and approved.

The existing tariffed rate for Speed Calling shall be the temporary floor for each LEC that does not have approved banded rates. For each LEC that has approved banded rates for Speed Calling, the temporary floor shall be set at the bottom of the approved band. This will assure that each company's rate is above its incremental costs until such costs can be determined. We note that banded rates were initially set with the bottom of the band adequately covering incremental costs. Each LEC shall file a current incremental cost study for all Speed Calling features within 90 days of the date this portion of this Order becomes final. This will assure that the proper permanent price floor can be established. Our directive herein is consistent with recently adopted Rule 25-4.045(3), Florida Administrative Code, which states in part:

When a LEC service has been deemed to be subject to effective competition and an order issued, the local exchange company shall file incremental cost data . . . within 90 days after the date of the order.

The cost study shall include sufficient backup documentation for a complete analysis.

LECs shall continue to file tariffs for Speed Calling features, and the revenues, expenses, and related investments for Speed Calling shall remain above the line. Detariffing Speed Calling is not appropriate because Speed Calling is frequently packaged with other Custom Calling features that are not competitive and that will be fully regulated for the foreseeable future. However, we also find that any tariffs dealing solely with Speed Calling features may become effective without direct Commission action seven days from the date of filing. This will allow the LECs the flexibility to change prices as the market dictates while allowing the Commission to continue to monitor the competitive service's relationship to LEC monopoly services.

E. Centrex/ESSX

1. Comparability of Substitutes

Centrex systems¹ are in direct competition with Private Branch Exchange (PBX) systems for medium to large size business customers and key telephone systems for smaller businesses. The size threshold for these customers is generally 25 or more station lines. Either system can provide a number of features including attendant-less answering, automatic call distribution, queuing, voice mail access and direct numbers to stations.

Although the exact lists of services are not identical, the LECs and vendors agreed that the features of each are sufficiently comparable to make them direct substitutes for one another. From this it appears that Centrex/ESSX systems and PBXs are functionally equivalent.

2. Market Coverage of Competitors

The responses to the vendor survey indicated that the level of competition for businesses with 25 or more station lines was quite vigorous. This market segment is also where the majority of Centrex/ESSX systems are sold by LECs. Of the 60 vendors surveyed, 46 stated that they sold PBX systems in competition with the LEC. This was second only to Speed Calling, discussed above. The vendors generally stated that their principal competitive efforts were directed squarely at the PBX versus Centrex markets and that these efforts were significantly more strenuous than in any other area.

¹ The terms "Centrex" and "ESSX" describe the same service. ESSX is a Southern Bell trade name for the service. Other LECs sometimes provide the service under different trade names.

Although some LECs sell Centrex/ESSX systems to customers with as few as two access lines, it does not appear that these customers are vigorously courted by the LECs. Also, many vendors also sell key systems to small businesses as an alternative to a small Centrex/ESSX system. Although the concentration of efforts is for larger customers, sufficient market coverage is present for the entire range of Centrex/ESSX products.

3. Size and Product Line Scope of Competitors

It appears from our review that the size and product scope is sufficient for an effectively competitive market. Although the size of even the largest PBX vendor is minuscule compared to Southern Bell, the number of competitors in any market area is substantial. Further, the vendors' products have comparable features to Centrex/ESSX, but also come in several size variations to more directly compete with the scope of products the LECs sell.

4. Performance of Competitors

The vendors indicate that, for the most part, their performance in the market was at or above average (85%). Our review of this information, although inconclusive, indicates that there is some kind of competitive equilibrium in the PBX-Centrex market. We do not know, however, whether this equilibrium is market driven or controlled by the LECs.

5. Level of LEC Performance

Our review of LEC performance is also inconclusive, but it suggests significant competition. Southern Bell was the only company that provided aggregate contribution figures for Centrex services. Southern Bell stated that its average contribution from ESSX service was 16%. This margin was the lowest contribution level of any service polled. This is a strong sign that there are competitive forces at work in this market.

6. Other Statutory Factors

Since Centrex/ESSX has passed the economic tests, we must now evaluate the service according to the other statutory factors.

a) Effect on maintenance of basic local service

We are unaware of any detrimental effect on the maintenance of basic local service from policy decisions in this recommendation. However, it is not certain that such possibilities do not exist. We note that we have some concerns regarding the rate relationships among rates for PBX trunks and Centrex station lines, DID numbers and Centrex features, as well as marketing practices, cost allocations and loop costs. However, any impact on local service would necessitate that we change existing access line or feature rates for PBX or Centrex systems. No such decisions are being made here to change those rates. Therefore, we do not believe that there will be any adverse affect on basic service as a result of any decisions made in this Order.

b) Impact on availability of existing services

We are unaware of any adverse impact on the availability of existing services.

c) Consumer benefit from competition

As with Speed Calling, the consumer benefits from the competition between PBX and Centrex/ESSX marketers are: more features, lower price, better service and more choices. We believe these benefits exist today; we do not believe they will be adversely affected if we declare the service effectively competitive.

7. Conclusion

Upon consideration of our analysis above, we find that Centrex/ESSX Service is effectively competitive. We further find that the appropriate regulatory treatment is to detariff this service. Pursuant to Section 364.338, we have broad discretion in the regulatory treatment of effectively competitive services. We can use that discretion to relax our regulatory oversight to any degree necessary to extract the maximum benefit to ratepayers. We believe it questionable that the public at large will benefit most from deregulation. Keeping all of the revenues, expenses and investment attributable to this service in the regulated operations will continue to help keep local rates affordable and promote new service development. We believe that detariffing Centrex/ESSX will both maximize that benefit, while allowing the LECs to vigorously pursue new customers under similar parameters as their competitors.

Consistent with our decision to detariff this service, we find that price floors should be set for each LEC's Centrex/ESSX services. Each LEC's existing rates shall be the temporary floors until each LEC's actual costs can be determined. This will ensure that rates do not fall below costs until an accurate floor is determined. Each LEC shall file a current incremental cost study for all Centrex/ESSX features within 90 days of the date this portion of this Order becomes final. The cost study should include sufficient backup documentation for a complete analysis. Once the review is complete, we will establish appropriate price floors. Finally, each LEC shall also file tariff revisions removing Centrex/ESSX services from their respective tariffs within 90 days of the date this portion of this Order becomes final.

F. Private Line and Special Access Services

Private Line service is the provision of a point-to-point or multipoint telephone line for the private use of one party. Local exchange companies offer private line service on an analog and digital basis. Private Line is offered via various transmission speeds. Speeds range from as low as 2.4 Kbps to as high as 45 Mbps. This all depends on the configuration and applications needed by the customer. Private line service can be used to transmit voice, data, or video on either an intraexchange basis or an interexchange basis.

Special Access service provides a transmission path to directly connect an IXC's terminal location in a LATA to either an end-user's premises; two IXC terminal locations; or a HUB. A HUB is a facility where bridging and multiplexing functions are performed. Special Access is used to connect a HUB and an end-user's premises. Special Access service is also used to provide a link for private line service. Special access service is offered at various speeds, grades of service, and bandwidth specifications. Speeds range from 75 baud to 274.176 Mbps depending on grade of service. Special Access service can also be offered on an analog or digital basis. Special Access service can be used to transmit voice, data, or video either on a point to point or multipoint basis. Special Access service is necessary for an IXC's provision of private line service to its customers.

1. Comparability of Service

The principal providers of private line and special access services, other than the LECs, are alternative access providers (AAVs). Other alternative sources include IXC private line

services, private line service resellers, bypass facilities such as microwave, Very Small Aperture Terminals (VSAT), coaxial cable networks, and spare capacity on electric utility private networks.

AAVs provide functionally equivalent alternatives to the LECs' private line and special access services. AAVs can provide the same type of digital and analog facilities from an IXC's point of presence (POP) to an end-user's premises, or between an end user's premises. These facilities can range from a DS0 to a DS4 facility.

There are indications that cable television companies may not be able to provide private line or special access services that are comparable to those of the LECs, at least at this time. For example, one-way coaxial cable does not provide the simultaneous two-way data transmission that customers are demanding. John Holobinko, Vice President of Marketing and Strategic Planning, American Lightwave Systems, concluded that while there may be potential in the future, cable TV's current network architecture cannot provide for such services as local broadcast-quality video feeds to access carrier points of presence (POPs), video conferencing, or T1 access links. Accordingly, it appears that cable TV providers do not provide alternatives to LEC private line services or special access services at this time. However, it also appears that with the appropriate network electronic upgrades, cable TV companies may provide functionally equivalent alternatives in the near future.

Cable companies such as Time Warner have proposed experiments that provide customer access to IXC POPs, bypassing LEC networks. The current and proposed mergers of AAV and cable television networks will make cable television a viable provider of special access and private line services. Continued emergence of cable and AAV technologies will remove the current technical barriers that cable television faces in providing private line and special access services. When a cable company decides to participate in this market, they will do so as an AAV. Some cable companies such as Time-Warner have already been certificated as AAVs.

The absence of cable companies from this market at the present time is not a crucial determinant of the competitive level of private line or special access service. AAVs and IXCs could provide effective competition in some geographic areas if all legal restrictions are lifted. Also, AAVs and cable companies are experiencing increasing cross-ownership, and their

networks are beginning to intertwine. This will increase the AAVs' competitiveness in the future, while making the cable companies less of a direct competitive threat and more like holding companies for AAVs.

In conclusion, we find that AAVs and IXCs offer functionally equivalent private line and special access services.

2. Market Coverage of Competitors

AAVs are restricted by statute from providing private line services between unaffiliated entities. AAVs are also restricted from providing the special access portion of private line service between unaffiliated entities. While AAVs provide a technically comparable alternative to the LECs' private line/special access services, the markets that they can target are limited to the affiliated entity market. For example, an AAV can only provide private line service between a bank's main office and its branches. It could not provide private line service between a bank branch and an information service provider, or a bank and the Federal Reserve Bank. AAVs also are restricted from providing the special access portion of a private line that connects two nonaffiliated entities, such as connecting a local bank in Miami with a brokerage house in Jupiter. AAVs can presently provide a special access line from an end user to an IXC's POP for the IXC's switched services. However, this ability is only a part of the special access market. Providing special access connections for private lines is a significant part of the special access market as a whole.

AAVs continue to maintain that the statutory prohibition on providing their own switched services impedes their ability to compete more effectively in the private line/special access markets. This restriction prohibits AAVs from using packet switching to further enhance their networks' efficiencies. Although we recognize this as a limitation that should be removed, we do not believe that the switched service restriction is a crucial determinant of the competitiveness of these markets. AAVs can still compete with LECs if they are allowed to sell their services to the same customers.

Intermedia Communications of Florida (ICI), AT&T, and Sprint indicated that they target large business customers with remote locations and those who have high bandwidth needs. ICI indicated that the type of customers more likely to purchase LEC dedicated services versus those of an alternative provider are those

customers who cannot access an AAV's network, customers with a large portion of their connectivity requirements within a LEC service area, and customers requiring connectivity between unaffiliated entities.

An independent study submitted by United supports the contention of ICI as to the type of customers targeted by AAVs. In the study "Competitive Assessment of the Market for Alternative Local Transport", Dr. Joseph Kraemer found that large end-users identify a number of competitive advantages obtained by using AAVs. These advantages included a focus on high capacity services, price, flexibility in provisioning and service levels, 24-hour centralized network monitoring capability, diverse routing by means of an urban ring architecture, and higher levels of customer service based on a "we try harder" philosophy. AAVs tend to be less expensive, charging rates ten to twenty percent lower than LECs.

Dr. Kraemer also notes that AAV penetration tends to be highest among end-users that are telecommunications-intensive, such as those providing financial services. This is the very market on which LECs concentrate their marketing efforts. In certain geographic areas such as dense, urban areas, AAVs are expected to be significant competitors in the market within three years of entering the market. As long as a LEC does not compete in terms of price, service, and technology, an AAV is expected to garner a 40 to 50 percent share of DS1 and DS3 markets in the relevant geographic area.

While Kraemer argues that the market for transport is increasingly competitive and growing significantly, Dr. Lee Selwyn and Dale N. Hatfield argue that the expansion of AAVs has contributed to the perception that local competition has arrived. In their article, "The Enduring Local Bottleneck: Monopoly Power and the Local Exchange Carriers", they conclude that AAV economic impact on LECs has been "more smoke than fire." Based on a review of access revenues, Selwyn and Hatfield concluded that AAVs have captured 0.8% of the market. While academics may differ on the existence or extent of competition, the question for us becomes the extent of competition in Florida.

United indicated that private line and special access services are extremely competitive in geographic areas where AAVs and other providers have constructed or leased facilities. While United did not cite specific evidence of market expansion of AAVs within its Florida service area, the Company provided independent nationwide studies supporting its contention of expanding market coverage by AAVs. The pattern of AAV growth begins with an

entrance into large urban areas. AAVs then follow large end-users and IXCs to progressively smaller urban areas. AAVs were expected to operate in over 60 of the 75 largest cities in the United States by the early 1990s. Initially, AAVs develop relationships with IXCs to interconnect local IXC facilities with DS3 services, then move on to providing end-user access to IXCs with DS3 and DS1 services. AAVs also support end-user point-to-point service with DS3, DS1, DS0, and fractional T1 services.

Southern Bell has indicated that competition from AAVs is most likely present in densely populated metropolitan areas such as Jacksonville, Tampa, Orlando, and Miami. As an example, Southern Bell cited ICI's completion of 240 miles of fiber networks surrounding the cities of Orlando, Tampa, Miami, and Jacksonville.

GTEFL also indicated that it faces significant competition from AAVs, specifically ICI and Metropolitan Fiber Systems (MFS). The Company indicated that ICI has concentrated its fiber network around large customers such as the University of South Florida, Tampa International Airport, and the large business districts. ICI's fiber network, in some cases, runs parallel with GTEFL's, specifically around the Downtown Tampa area and the Westshore Business District.

Of the thirteen LATAs and Market Areas in the state of Florida, certificated AAVs either provide or have proposed to provide private line and special access services in the following:

- Tallahassee Market Area
- Jacksonville LATA
- Orlando LATA
- Tampa Market Area
- Southeast LATA

In the Tallahassee Market Area, one AAV, Comcast, has proposed to provide private line services to the Tallahassee/Leon County area. The Jacksonville LATA currently has four certificated AAVs that are providing or have proposed providing private line service. They include ICI, Jacksonville Teleport, Continental Fiber Technologies, and Commercial Communications. The Orlando LATA has three certificated AAVs that either provide or propose providing private line service. They include ICI, Time Warner, and FiberCap. The two certificated AAVs servicing the Tampa

Market Area are ICI and Digital Media partners. The Southeast LATA is served by ICI, Metropolitan Fiber Systems of Miami, TCG America, Hyperion Telecommunications, Commercial Communications, and Access Transmission Services.

There are also indications that AAVs and IXC market their private line and special access services to business customers in densely populated urban areas. Almost all AAVs either provide or have proposed providing service in central and south Florida. AAVs in Florida have specifically targeted the cities of Jacksonville, Miami, Orlando, and Tampa for service provision. A review of AAV applications for each of the currently certificated AAVs indicated that business customers were the primary customers to which private line services were being marketed. The review also indicated that AAVs market high bandwidth services from DS1 to 100 Mbps, plus other services. A review of 45 of the 306 IXC tariffs on file at the Commission indicates that 16 (45%) provide private line services. These services are also targeted at business customers with high bandwidth needs.

The number of companies that received certification as AAVs peaked in 1992 and has been decreasing since then. Ten of the current 15 AAVs received their certifications in 1992. Four were certified in 1993 while only one has been certified in 1994.

In summary, it appears that the provision of private line and special access services by alternative sources is mostly in geographic areas with large urban populations. The customers for whom the AAVs and IXCs compete in this area are business customers with high bandwidth needs. While AAVs and LECs compete for the high bandwidth market, AAV market coverage is limited by Florida statutes. AAVs can only provide private line services between affiliated entities. Because of legal barriers AAVs are locked out of the non-affiliated entity market. The legal restriction on AAVs eliminates their ability to provide technically similar private line/special access services to the nonaffiliated market. Removal of the current statutory restrictions will increase the market coverage of AAV private line/special access service. However, until this is done, Private Line and Special Access Service do not pass muster under this criteria.

3. Size and Product Line Scope of Competitors

AAVs and IXCs concentrate on providing high bandwidth digital private line/special access services. AAVs provide DS0-DS4 facilities. These facilities may be used to provide intraexchange and interexchange private line service, tie line

service for a customer's Local Area Network, special access, video imaging, and video conferencing. LECs provide both analog and digital private line services as well as low bandwidth and high bandwidth services. LEC private line services are also used for LAN to LAN connectivity, special access, and video imaging/conferencing. LECs have focused their concerns regarding private line competition on the high bandwidth digital market.

Since AAVs and IXC's have targeted the high capacity market, it appears that any competition in the supply of private line services is primarily in the high bandwidth, digital private line area. This area appears to be the focus of competition for private line and special access services.

4. Performance of Competitors

Of the IXC's that reported revenues from private line services, we attempted to determine their rate of growth during the period 1990 through 1993. The results varied from IXC to IXC. Wiltel, RealCom, and Cable & Wireless realized significant growth in revenue between the years 1992 and 1993. ATT-C indicated a decline in revenues. Without information on AAV private line revenues we cannot assess how well AAVs did during the same time period.

5. Level of LEC Performance

The performance of the LECs varies depending on the Company during the period 1991-1993. Southern Bell has enjoyed significant positive growth in private line service revenues over the past three years. United's growth in private line service revenues has been positive but not as strong as Southern Bell's. Centel experienced a significant decrease in revenues in the last year of our survey but experienced significant positive growth in the prior year. The rate of growth in special access revenues has declined for each company in the three year period.

6. Other Statutory Factors

Our review of the economic criteria indicates a substantial level of competition notwithstanding the lack of market coverage due to legal limitations. Accordingly we find it appropriate to evaluate the service pursuant to the other statutory criteria.

- a) Effect on maintenance of basic local service - As the LECs lose market share, they will lose contribution. Contribution plays an integral part in the maintenance of affordable residential rates. This loss of

contribution should ultimately be offset with contributions toward universal service from LECs, AAVs, and other competitors.

- b) Overall impact on availability of existing services - We anticipate no negative impact on the availability of existing services.
- c) Consumer benefits from competition - Consumer benefits from competition are already evident in this market. The biggest benefit available to consumers is the benefit of choice. Further competition will only add to those benefits in the short and immediate run via further reductions in prices. As prices charged by one competitor move closer to the other competitor as well as closer to costs, future emphasis will be placed on service quality. We expect this to happen so long as cross-subsidies are avoided.

7. Conclusion

Upon consideration of the above analysis, we find that private line and special access services are not effectively competitive at this time. Our analysis shows that private line and special access service does not pass the market coverage criterion. Legal barriers face potential alternative providers, leaving customers with no comparable alternatives. Customers that demand private line connectivity between their premises and those of a nonaffiliate are limited in choice to the LECs due to statutory restrictions and technical barriers.

We note that once the legal barriers are removed, market coverage of AAV private line and special access services will increase and these services service will become effectively competitive in certain geographic areas. In addition, with the continued merger of AAV and cable company technology and upgrades in cable television networks, the technical barriers to cable companies will be removed. Moreover, even if the restrictions on AAVs were removed and the restrictions on cable were not, private line and special access services would still be effectively competitive since customers would still have adequate choices for private line service.

G. Foreign Exchange Service

Foreign exchange service is exchange service furnished to a subscriber from an exchange other than the one from which the subscriber would normally be served. A local telephone number

from the foreign exchange is provided to the subscriber. This allows subscribers to have local presence and two-way communications in an exchange different from their own. The service is provisioned via dedicated facilities from the subscriber's premises to the foreign office. Foreign exchange service is provided as a voice grade service and is not represented as suitable for satisfactory transmission of data. While LECs make use of private lines when providing foreign exchange service, foreign exchange service differs from private line service in one primary aspect. The provision of foreign exchange involves the use of a central office switch that is used to provide dial tone and access to the network by subscribers physically located in the foreign exchange. Private line as a stand alone service, does not involve the use of a switch.

There are four components necessary for providing foreign exchange service. They include the closed end facility, the home wire center, the open end facility, and dial tone. The closed end facility is the dedicated portion that runs from the customer's premises to the open end facility. The open end facility denotes the dial tone end of the foreign exchange service. This is where network switching within the foreign exchange occurs. The home wire center denotes the wire center from which a customer would normally be served local exchange service. Finally, dial tone refers to the audible tone sent from an automatic switching system to a customer to indicate that the equipment is ready to receive dial signals.

An example of foreign exchange service would be an airline's reservation service. Because of the advertised low air fare, a customer in Vero Beach decides to reserve a flight on D'Haeseleer Airlines. She looks up the number for D'Haeseleer Airlines in the Yellow Pages. While the number she dials is a local number, the call is being answered in Riviera Beach. D'Haeseleer Airlines maintains a local presence in Vero Beach via the foreign exchange service it has purchased from the LEC. To the Vero Beach customer the call is toll free.

1. Alternative Providers of Foreign Exchange Service

Southern Bell was the only LEC that identified alternative providers of foreign exchange service. Southern Bell listed Sprint's Foreign Exchange service and discounted outbound and inbound long distance services offered by IXCs. The listed services include AT&T's "The i Plan" and MCI's "Friends and Family."

2. Comparability of Alternative Services

The IXC services identified by Southern Bell do not appear to be comparable to LEC provided foreign exchange service. The IXC services cited by Southern Bell require use of the LECs' switched network. The LEC's switch is necessary for the provision of dial tone in the foreign exchange. IXCs are not allowed to provide local switching; therefore, they cannot provide dial tone.

3. Conclusion

Since our review of foreign exchange service did not reveal any comparable alterations, we find that the seminar is not effectively competitive. As a result, a discussion of the remaining factors is unnecessary.

VI. SERVICES FOR FURTHER INVESTIGATION

Consistent with our plan to systematically examine LEC services as established in Order No. PSC-983-1768-FOF-TP, the next group of services to be reviewed is:

WATS
800 Service
Hot Line/Warm Line Service
Recording service
Bill Processing Service
Selective Class of Call Screening
Customized Code Restrictions
976 Service
Watch Alert Service
UniServ
Conference Calling
Video transport services

We have investigated only a portion of the list of potentially competitive services. Our investigation shall continue with the services listed above.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Time Warner's and FCTA's Motion to Strike the response and concurrence filed by BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company is denied as set forth in body of this Order. It is further

ORDERED that the Motions to Defer this Proceeding filed by United and Centel as well as the associated Motions to join and concur in the motions to defer are denied as set forth in the body of this Order. It is further

ORDERED that the appropriate analytical methodology to determine the competitive status of a service are as set forth in the body of this Order. It is further

ORDERED that the appropriate regulatory treatments for effectively competitive services is as set forth in the body of this Order. It is further

ORDERED that Call Waiting is not effectively competitive as set forth in the body of this Order. It is further

ORDERED that Call Forwarding is not effectively competitive as set forth in the body of this Order. It is further

ORDERED that Three-Way Calling is not effectively competitive as set forth in the body of this Order. It is further

ORDERED that Speed Calling is effectively competitive as set forth in the body of this Order. It is further

ORDERED that the appropriate regulatory treatment for Speed Calling is minimum price tariffs. It is further

ORDERED that each LEC shall file a current incremental cost study for all Speed Calling features within 90 days of the date this Order becomes final as set forth in the body of this Order. It is further

ORDERED that the initial minimum floor price for Speed Calling shall be the current tariffed rate or the bottom of the approved band, whichever is applicable. It is further

ORDERED that tariff changes for Speed Calling shall be allowed to go into effect after seven days from the date that the tariff seeking the change is filed without further Commission review. It is further

ORDERED that Centrex/ESSX Service is effectively competitive as set forth in the body of this Order. It is further

ORDERED that the appropriate regulatory treatment for Centrex/ESSX is to detariff the service. It is further

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ORDERED that each LEC shall file a current incremental cost study for all Centrex/ESSX features within 90 days of the date this Order becomes final as set forth in the body of this Order. It is further

ORDERED that the initial minimum floor price for Centrex/ESSX Services shall be the current tariffed rates or the bottom of the approved band, which ever is applicable. It is further

ORDERED that Private Line Service and Special Access Services are not effectively competitive as set forth in the body of this Order. It is further

ORDERED that Foreign Exchange Service is not effectively competitive as set forth in the body of this Order. It is further

ORDERED that the Commissions' investigation shall continue with the additional services set forth in the body of this Order. It is further

ORDERED that any protest filed to any of the actions proposed in Sections III, IV, or VI, or to the determination of the competitive status of any service set forth in Section V of this Order shall be specific as to the action and Section or specific service being protested. If no protest is filed to any specific action in Sections III, IV, or VI or to the specific determination of the competitive status of any service in Section V within 21 days of the issuance of this Order, then such action or the determination of the competitive status of such service shall become final. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 17th day of October, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

TWH

by: Kay Hegan
Chief, Bureau of Records

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.

As identified in the body of this order, preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on November 7, 1994. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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

If the actions in Sections III, IV, V and VI of this Order become final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the Commission's final action in Section II of this Order may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and

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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 wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.