BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of tariff filing to amend shared tenant services regulations by BellSouth Telecommunications, Inc. (T-95-704 filed 11/1/95)	DOCKET NO. 951511-TL
In Re: Proposed repeal of Rules 25-4.0041, F.A.C., Provision of Shared Tenant Services for Hire, and 25-24.557, F.A.C., Types of Shared Tenant Services Companies; and proposed amendment of Rules 25-24.555, and 25-24.560 through 25-24.585, F.A.C., relating to Shared Tenant Services.	DOCKET NO. 951522-TS ORDER NO. PSC-97-0393-FOF-TL ISSUED: April 9, 1997

The following Commissioners participated in the disposition of this matter:

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

FINAL ORDER ESTABLISHING RATES, TERMS AND CONDITIONS FOR SHARED TENANT SERVICES PURSUANT TO CHAPTER 95-403, LAWS OF FLORIDA

BY THE COMMISSION:

I. BACKGROUND

Chapter 95-403, Laws of Florida, provides for numerous changes in this Commission's oversight of the telecommunications industry. Prior to the revisions, the provision of shared tenant services (STS) was limited to a single building serving commercial tenants therein. Certificates were also limited to a location-by-location basis. Pursuant to the new law, STS providers are no longer prohibited from providing service to non-commercial, unaffiliated entities in more than one building. In particular, Section 364.339, Florida Statutes, was amended by the 1995 Legislature to: 1) Require certification of all STS providers; 2) Remove the commercial designation and single building restriction effective January 1, 1996, and allow service to residential tenants; 3) Require that applicants have sufficient technical, financial, and managerial capabilities to provide shared tenant service; and 4)

Allow service to be offered and priced differently to residential and commercial tenants if deemed to be in the public interest.

On November 1, 1995, BellSouth Telecommunications, Inc. (BellSouth) filed a revised STS tariff which it asserted was consistent with the revisions to Section 364.339, Florida Statutes. We approved the tariff by Order No. PSC-96-0021-FOF-TL, issued January 8, 1996, in Docket No. 951511-TL. This Order also encompassed our proposed agency action to amend our shared tenant services regulations. Subsequently, the National Private Telecommunications Association (NPTA) and Network Multi-Family Security; ALLTEL Florida, Inc. (ALLTEL); Quincy Telephone; and US Telesys, L.P., each protested Order No. PSC-96-0021-FOF-TL and requested a formal hearing. United Telephone Company of Florida, Central Telephone Company of Florida (SPRINT), GTE Florida Incorporated (GTEFL), Intermedia, and the Florida Cable Telecommunications Association (FCTA) intervened.

In light of the 1995 changes to Section 364.339, Florida Statutes, we established Docket No. 951522-TS, to consider repealing Rule 25-4.0041, Florida Administrative Code, and Rule 25-24.557, Florida Administrative Code, and amending Rules 25-24.555 and 25-24.560 through 25-24.585, Florida Administrative Code, all relating to Shared Tenant Services.

At the December 19, 1995, Agenda Conference, we voted to propose the staff-recommended changes to the above-cited Rules. They were published in the Florida Administrative Weekly and comments were timely filed by the NPTA, FCTA, U.S. Telesys, L.P., Network Multi-Family Security, Park Central Properties, ALLTEL, and the Joint Administrative Procedures Committee. On January 26, 1996, ALLTEL and U.S. Telesys, L.P., filed timely requests for a hearing.

On April 5, 1996, ALLTEL, pursuant to Section 120.54(17), Florida Statutes (1995), and Rule 25-22.016(16)(a), Florida Administrative Code, requested that we suspend our rulemaking proceeding and convene a separate draw-out proceeding under Section 120.57(1), Florida Statutes. In the alternative, ALLTEL requested that the staff rule hearing be suspended and the proceedings in Docket Nos. 951522-TS and 951511-TL be consolidated for hearing before the full Commission. On April 9, 1996, BellSouth Telecommunications, Inc. (BellSouth), pursuant to Sections 120.54(17) and 120.57, Florida Statutes, and Rule 25-22.016(6)(a), Florida Administrative Code, petitioned the Commission for an evidentiary hearing on the proposed rule changes.

We denied the request for the draw-out proceeding, but granted the request to consolidate Dockets Nos. 951511-TL and 951522-TS for

an evidentiary hearing before the full Commission. See Order No. PSC-0677-FOF-TS. We conducted the evidentiary hearing on January 14, 1997. At our March 19, 1997, Special Agenda Conference, we considered our decision on BellSouth's STS tariff and the policy issues relating to rule changes for the provision of shared tenant service. Having considered the evidence presented at hearing, the post hearing briefs of the parties, and the recommendations of our staff, our decision is set forth below.

II. STS COMPETITION IN SMALL RATE OF RETURN REGULATED LOCAL EXCHANGE (LEC) TERRITORIES

A. Small Rate of Return LECs Versus Price Regulated LECs

ALLTEL witness Eudy argues that Section 364.052, Florida Statutes, protects small LECs from competition from alternative local exchange carriers (ALECs). She further states that there is very little difference between ALECs and the provision of STS and that any difference is a legal difference and not a functional one. Thus, ALLTEL concludes that because STS is the same as ALEC service, Section 364.052, Florida Statutes, applies to the provision of STS.

FCTA argues that it is axiomatic that the meaning of a statute is determined by ascertaining the legislature's intent, and words used in a statute must be construed in context and considered as a whole in light of the general purpose the statute seeks to accomplish. Miele v. Prudential-Bache Securities, Inc., 656 So. 2d 470 (Fla. 1995). Moreover, FCTA argues, the legislative intent is to be derived from the plain language of a statute. Zuckerman v. Alter, 615 So. 2d 661 (Fla. 1993).

FCTA further argues that when the Florida Legislature undertook the rewrite of Chapter 364, Florida Statutes, in 1995, Section 364.339, Florida Statutes, relating to the provision of STS, was amended to provide criteria for the certification of STS providers and to eliminate the restriction on the provision of STS services to residential tenants. According to FCTA, the Commission is still required to determine whether the service is in the public interest with respect to the authorization to provide STS service.

FCTA also argues that Section 364.052, Florida Statutes, was created at that time to provide for the protection of small LECs remaining under rate of return regulation from competition by ALECs for the provision of basic local telecommunications services. The limitation applies only to the provision of basic local exchange service. According to FCTA, there is no express limitation on the competitive provision of other types of telecommunications

services. FCTA asserts that all other types of telecommunications competition are not only authorized in all LEC territories, but are expressly found to be in the public interest.

Intermedia argues that nothing in Section 364.052, Florida Statutes, or in any other provision of Chapter 364, Florida Statutes, contemplates protecting small LECs from STS competition, much less grants the Commission authority to adopt a rule establishing such protection. Intermedia further states that under Section 120.536(1), Florida Statutes, specific statutory language is required to support the adoption of a rule. According to Intermedia, Section 364.052, Florida Statutes, provides no basis under Chapter 120, Florida Statutes for the Commission to adopt a rule granting small LECs safe harbor from STS competition.

We note that Sprint, GTEFL, and BellSouth took no position on this issue.

Upon consideration, we do not believe Section 364.052, Florida Statutes, precludes increased STS competition for small LECs pursuant to Section 364.339, Florida Statutes. Small LECs have been subject to competition from STS providers under Section 364.339, Florida Statutes, prior to the enactment of Section 364.052, Florida Statutes.

We agree with FCTA that STS is a distinct service from the services provided by ALECs and, therefore, is not included under Section 364.052, Florida Statutes. The language of the statute is clear that Section 364.052, Florida Statutes, does not include restricting competition from services already allowed by the statutes prior to the rewrite. While we do not believe that Section 364.052, Florida Statutes, protects the small LECs from competition by STS providers per se, Section 364.339, Florida Statutes, grants us the discretion to adopt rules and policies that provide for the systematic development of competition in the marketplace for the provision of STS. Specifically, we have exclusive jurisdiction over STS providers, and therefore, have the ability to set restrictions for the provision of STS service where the public interest is served. The law is clear that the Commission has the authority during a transitional period of deregulation to prevent cream-skimming of profitable areas. See US Sprint Communications Co v. Marks, 509 So 2d 1107 (Fla. 1987) (Toll monopoly areas).

We find that small rate-base regulated LECs should be subject to different STS requirements than price regulated LECs. Therefore, in order to allow for controlled development of competition in the small LEC territories, limitations shall be placed on the provision of STS. Accordingly, we shall retain the

250 trunk limitation, the prohibition on establishing private dedicated facilities, the ban on intercom calling, and the requirement to fully partition trunks for small rate-of-return regulated LECs.

B. Small Rate-Base Regulated LEC STS Requirements

ALLTEL proposes three alternatives it believes we should consider to assure controlled development of competition in small LEC territories. First, ALLTEL suggests we could limit the geographic scope of STS to the territories of price-regulated LECs only, and allow ALLTEL to withdraw its STS tariff until it becomes subject to price regulation. Second, we could retain the traditional limitations on the provision of STS in small LEC territories, but allow competition from STS providers with the proposed tariff and rule modifications in price-regulated LEC territories. Third, we could allow ALLTEL to keep its STS tariff as is and require STS providers to seek certification on a location-by-location basis when seeking to serve in a small LEC territory. ALLTEL argues that each of these proposals is consistent with Chapter 364, Florida Statutes, and would promote an orderly transition to competition.

ALLTEL witness Eudy testified that when the Commission first considered the provision of STS, certain limitations were placed upon STS providers to restrict their competition with LECs. The original purpose for those limitations was to temper the loss of revenues, to reduce the threat of by-pass of the LECs' switched public network, and to promote the Commission's overall universal service objectives. Witness Eudy stated that those objectives are still valid in light of the 1995 revisions. As to the repeal of the single building and commercial only restrictions that previously applied, she believes that the Legislature did not intend for those restrictions to be removed for the rate of return regulated small LECs. Even if the Legislature did so intend, she believes the Commission has the authority to ensure an orderly transition to competition.

ALLTEL witness Eudy described the negative impact on rates should the limitations be lifted. She argued that the negative economic impact of greater competition would result in higher rates. NPTA's witness Simon questioned witness Eudy's conclusions, stating that she did not consider any off-setting revenues earned by the small LEC as a result of the STS service.

NPTA argued that in order for competition to flourish in this state, uniform rulings, tariffs, and guidelines must be established so that potential competitors know by what rules they are playing. It believes establishing different requirements, based upon size of

the LEC will inhibit competition. According to NPTA, any STS provider that is disadvantaged because the smaller LECs have a different tariff structure, might decide not to enter that particular marketplace.

NPTA argues that ALLTEL failed to establish any negative experiences with STS providers based upon the current tariffs; nor was evidence produced to show that small rate-base regulated LECs should be subject to different STS requirements than price regulated LECs.

We note that BellSouth, FCTA, GTEFL, Intermedia, and SPRINT only discussed this issue in the context of whether Section 364.052, Florida Statutes, precludes increased competition in small LEC territories.

Upon consideration, we find that we do not have the statutory authority to ignore the repeal of the single building or commercial only restrictions. To read the statutes in such a manner would be a violation of our authority. The restriction of the provision of STS to commercial only tenants was deleted from Section 364.339, Florida Statutes, as well as the restriction that only a single building could be served. To the extent that our rules prohibit this type of service, such restrictions should be eliminated.

We agree, however, with ALLTEL that we do have the authority to place other reasonable restrictions on STS providers in order to carry out the intent of the statute, which is to ensure an orderly transition to competition in the small LEC territories. We believe that to best serve the public interest and to develop fair competition in areas where small LECs have not elected price cap regulation, other restrictions would be reasonable. For instance, we believe the limitations that are set forth in Part II.A. of this Order are reasonable. They are the 250 trunk limitation, the prohibition on establishing private dedicated facilities, the ban on intercom calling between unaffiliated entities, and the requirement to fully partition trunks. These are restrictions that serve the public interest and retain a level playing field in the small LEC territories during the transition to a competition based market. We believe these limitations will protect the public interest by allowing for a controlled entry of STS providers service to residential tenants into the small LEC territories.

III. ACCESS BY THE CARRIER OF LAST RESORT (COLR) TO RESIDENTIAL TENANTS

A. STS Providers' Duty to Insure Access by the COLR to Residential Tenants

All parties agree that the carrier of last resort (COLR) should be allowed access to its customers. The parties do not agree, however, on the method of access. All parties except BellSouth believe a minimum point of entry for demarcation should be established. We note, however, that demarcation points are not an issue in this proceeding. Accordingly, we only address the policy issue of whether the COLR should be provided access to its customers by the STS provider.

ALLTEL's witness Eudy testified that customers should have the option of taking service from the incumbent local exchange carrier (ILEC). According to witness Eudy, if the end user customers do not continue to receive this option, the STS provider will effectively become a monopoly provider for telecommunications services within a discrete geographic area. We believe Ms. Eudy was describing the COLR responsibilities, assuming that the ILEC would be the responsible entity.

BellSouth's witness Tubaugh testified that "in Section 364.339(5), Florida Statutes, the Legislature re-affirms the right of a commercial tenant to obtain direct access to the lines and services of the serving LEC as a condition of certification by an STS provider. I do not believe that the Legislature intended that residential customers not be afforded that same right of service and choice."

BellSouth's witness Tubaugh testified further that "the Florida consumer expects the COLR to maintain timely and high quality telecommunications standards." Furthermore, "[s]uch an obligation is fair and reasonable only if the carrier of last resort has control of the facilities over which service is provided." According to BellSouth, the term "access" should be defined to mean that the COLR is allowed to place its facilities all the way to each end user's premises. Upon review, we do not agree with this interpretation of access. Currently, Rule 25-24.575(11), Florida Administrative Code, requires the LEC to pay reasonable compensation to the STS provider if the STS provider's cable is used and the cost is calculated on a pro rata basis. We believe the intent of this rule was to allow the use of a STS provider's cable where it meets the electrical requirements of the National Electric Codes and National Electric Safety Codes for telecommunications cable, and the cost of doing so is no more than it would cost the incumbent to place its own facilities. To

require access for placement of additional cable in excess of adequate capacity would be duplication of facilities and in our opinion is unnecessary. We do agree, however, with BellSouth witness Tubaugh that the LECs must have access to the cable for installation and repair purposes.

We note that FCTA states that a LEC should have access to residential tenants for the purpose of responding to requests for service as the COLR. It also states that the reponsibilitiy to fulfill COLR obligations upon request should not be used as an opportunity to interfere with an STS provider's established business relationships. With respect to FCTA's position, however, we note that FCTA did not provide a witness to support its position.

GTEFL witness Beauvais testified that affirming access to the COLR for residential tenants is necessary to enable the COLR to fulfill its obligations under Chapter 364, Florida Statutes. According to witness Beauvais, this includes furnishing basic local exchange service to any person requesting such service within the company's service territory.

Intermedia witness Brown agreed that the COLR should have access to its customers, but he departs from the requirement that the access should be provided by the STS provider. Rather, he argues that the access should be gained by moving the demarcation point, thus, allowing the building owner to be in control of which company serves the tenant. Witness Brown states that whether a facility is new with an owner-provided inside wire, or old, with a LEC-provided inside wire or network wire, there should be some sort of reasonable compensation established when the carriers use the wire to reach the end users. Upon review, we agree that there should be compensation if the wire of another party is used, as long as the cost of doing so is reasonable.

NPTA witness Simons generally favors and endorses the concept that STS providers should insure access to the COLR. NPTA witness Simons further states that the multi-dwelling unit owner eventually will lose control over his property if required to allow any provider unfettered access to the apartments.

Sprint-Florida witness Merkle states that in order for competition to be realized, all customers, residential and business, must have access to alternative service providers.

In summary, all parties agree that the COLR should be allowed access to serve its customers. Most parties proposed a demarcation point change to the minimum point of entry (MPOE) to the property as a preferred method of achieving access by the COLR as well as

other providers. However, as previously discussed, the demarcation point rule is not at issue in this proceeding.

Upon consideration, we find that in order for an STS provider to be a competitor of an ILEC, both parties must have the ability to provide service to the end user. Otherwise, the STS provider becomes a mini-monopoly. Sprint argues that an STS provider should only be allowed to provide service in a location where the property owner, developer or landlord will allow customers access by the COLR. We believe that through an STS provider's contract with the property owner, access to the COLR could be achieved. If the proposed rule is adopted requiring access by the COLR as a service standard for STS providers, we believe that the rule would prohibit a STS provider from entering into a contract with a property owner that does not allow the COLR access.

Based on the foregoing, STS providers shall be required to insure access by the COLR to the residential tenants in a facility served by an STS provider. The COLR shall use existing facilities of the STS or landlord where the facilities meet the standards set forth in the National Electric Code and the National Electric Safety Code and pay reasonable compensation as set forth in proposed Rule 25-24.575(11), Florida Administrative Code.

B. Unconstitutional Taking

All parties essentially agree that the requirement of allowing the COLR access to the end user is not considered a taking. Based upon comments filed, staff drafted an alternative to the proposed rule. Subsequent comments and the parties' agreement on this issue are based upon the alternative draft rules.

NPTA more narrowly agrees on this issue. It states that a minimum point of entry should be established and a reasonable price for access must be paid. NPTA witness Simons states that the Association was concerned that other providers may be allowed to place their own facilities on the premises of the building resulting in the property owner giving up his right to control his property.

We note ALLTEL raises several issues in its brief. First, ALLTEL questions whether the requirements of the provision cause a taking. Second, ALLTELL argues that the appropriate party to challenge the requirement, the property owner, has not raised the issue. Third, ALLTEL argues the record before the Commission is insufficient for making an informed decision on this issue. And, finally, ALLTEL asserts that the requirement has been part of the STS rules for a number of years and no owner has successfully challenged the requirement.

An unconstitutional taking occurs when private property is appropriated by the state where the use does not serve a public interest or where reasonable compensation has not been given. Limiting direct access to the COLR and giving the STS provider the option of allowing access over its facilities appears to serve a public purpose with the least encroachment on the private property. Compensating the STS provider at an amount no greater than the COLR's cost to serve through the installation of its own facilities appears to provide reasonable compensation to the property owner. Staff's alternative rule proposal seems to serve the public interest by guaranteeing access to the COLR by the tenant and limits the impact of the appropriation of the real property by requiring access only by the COLR. In addition, the alternative rule requires that the property owner be compensated by the COLR for the use of the facilities.

Upon consideration, we find that we are without authority to decide the issue of constitutionality of a particular rule. Rather, this issue is more appropriately decided in the courts. However, to the extent that the requirement is narrowly tailored to meet the public interest of providing basic local telecommunication service to the public, such as limiting the direct access requirement to only the COLR, and the property owner is reasonably compensated for the use of his property by the COLR, it appears the elements for an unconstitutional taking are not present in this case.

IV. APPROPRIATE RATES FOR RESIDENTIAL TENANTS

Shared Tenant Service interconnection rates are currently published in each of the LECs' General Services/Subscriber Tariffs, generally in Section A23 entitled Interconnection of Local Exchange Services to Shared Tenant Service. The rate structure for inward trunks is on a flat rate basis, with outward/combination trunks priced at 60% of the flat trunk rate plus usage charges.

All the LECs believe the current rate structure contains the appropriate rates for residential tenants served by STS providers. We note that the provisioning of STS resold to residential tenants is a business usage of trunks by the STS provider, the same as STS service resold to commercial tenants.

Intermedia and the NPTA believe the current rate structure is discriminatory and anti-competitive because it allows the COLR to charge higher rates for STS service than for comparable business or residential service. Intermedia witness Brown recommended a specific rate proposal equal to the single line, flat-rated, business rates (B1) with a 20% resale discount, without differentiating as to the STS provider's clients. The witness did

not perform any cost studies in support of his plan, but provided the information to give us a point of reference. In responding to the question: "... do you believe the Commission can in this proceeding change particular companies' rates?" The witness answered "No".

NPTA witness Simons stated in his prefiled testimony that he would be submitting supplemental or rebuttal testimony on how the interconnection STS rate should be calculated. We note, however, that he did not file supplemental or rebuttal testimony on this issue. The witness testified that in other states, such as Texas, Arizona, Georgia, California, Virginia, Maryland, and Illinois, residential multi-tenant service providers pay rates that are at least comparable to those paid by other customers. He further testified that STS rates in states outside the BellSouth area are consistently lower than the rates charged to STS providers in Florida. The witness did not submit a specific rate proposal nor furnish any documentation to support his conclusions.

We note that the FCTA did not take a position on this issue.

Upon consideration, we find that the currently published rates for STS interconnection are appropriate for residential tenants of STS providers. We note that PBX trunks are indistinguishable as to the type of usage, whether it be residential or business. Any difference in usage levels will be reflected in the number of trunks required. If fewer trunks are required for residential usage, this will result in lower average costs to the STS provider per access line resold to a residential tenant. NPTA's witness argues that if the usage is indistinguishable, then why would the number of trunks be different? We note that while the usage is indistinguishable, residential tenants tend to have lower usage than commercial tenants; hence, fewer trunks are typically required in a residential environment.

We also note that the purpose of our inquiry into this issue was not to change LECs' STS rates, but to determine if the current rates are the appropriate STS interconnection rates for resold service to residential clients. Incumbent LECs believe existing STS rates are correct for STS resold services to residential clients. The two STS interests, NPTA and Intermedia, presented no specific rates or evidence for a rate differential for resold service of residential clients. In fact, the witnesses for Intermedia and NPTA agreed that there should not be a different rate structure for STS service to residential end users. We find the record is devoid of any substantive evidence to differentiate STS rates between resold services to residential versus commercial tenants.

NPTA's witness argues that the FCC's proposed rulemaking, NPRM CC 96-98, which addresses nondiscriminatory interconnection, requires this Commission to adopt flat rate trunking at equivalent rates for STS business users. Upon review, we note that if the STS providers are dissatisfied with the current STS interconnection rates in Florida, they should follow the provisions of 47 U.S.C. §§ 251 and 252 and enter into negotiations for interconnection, unbundling, or resale rates.

In summary, we find that the evidence does not support a finding that we require different rates for STS resold services to residential clients. We also find that BellSouth's rates and the rates of the other LECs are appropriate for STS interconnection in Florida. Accordingly, we approve the LECs rates for STS interconnection in Florida.

V. LIMITS TO GEOGRAPHIC LOCATION

The LECs tariffs for interconnection of local exchange services to STS currently contain a provision, as one of the Conditions for Service, which reads:

> Resale is permitted where facilities permit within the confines of specifically identified continuous property areas under the control of a single owner or management unit. Areas designated for resale may be intersected or transversed by public thoroughfares provided that the adjacent property segments created by intersecting or transversing thoroughfares would be continuous in the absence of the thoroughfare...

This provision is generally contained in Section A23 of each local exchange company's tariff.

Without this tariff provision, the LECs believe we would be unable to distinguish between STS service and that of an ALEC. They argue that both compete with the ILEC, but under different regulatory requirements. They argue that the responsibilities placed upon an ALEC are greater than those placed upon an STS provider. The LECs argue that using a scenario with an STS provider connecting two adjacent unrelated properties, be it a campus of office buildings or a neighboring apartment complex, the STS provider would be operating like an ALEC, but without the required certification and greater responsibilities. They argue that any STS provider wishing to operate in this fashion, serving multiple properties using a single switch, has the option to seek ALEC certification.

Intermedia, FCTA, and NPTA, all believe that geographic limits are inappropriate, and that the Legislature intended to remove geographic limits and promote STS competition in all LEC territories.

Intermedia witness Brown argues that previous restrictions on geographic scope were an attempt to limit the success of STS providers. Upon review, we do not agree with this conclusion, since the statute, prior to the 1995 amendment, required certification on a location-by-location basis. With the removal of this location-by-location restriction, our staff has recommended that the proposed rule, Rule 25-24.565(2), Florida Administrative Code, for existing certificate holders should provide:

> On or after January 1, 1996, Shared Tenant Service providers with certificates granted prior to January 1, 1996, are authorized to provide shared tenant services statewide to tenants as defined in Section 25-24.560(9).

We also note that applicants for new certification will also receive statewide authority under the proposed Rule 25-24.567(4)(a), Florida Administrative Code, which provides:

> Shared tenant authority granted to all companies is on a statewide basis and is restricted to tenants as defined in Section 25-24.560(9).

Therefore, effective January 1, 1996, all STS certification would be on a statewide basis. The proposed geographic limitation is one of the conditions for establising STS rates, not in the certification process. With the exception of ALLTEL, all the other parties were in agreement that certification should be on a statewide basis. As discussed previously, ALLTEL argued that STS in the territories of the small LECs should be limited to service of commercial tenants in a single building. On the other hand, ALLTEL believes the tariff provision to be necessary and argues that the provisioning of STS and alternative local exchange company (ALEC) services are virtually identical. Both involve the sharing and resale of basic local exchange services that compete with the ILEC.

When asked about the differences between STS providers and ALECs, Intermedia witness Brown stated, "currently, the major provision that makes them (STS) different from ALECs is the provision of them having to purchase something out of the tariff." When queried further, the witness agreed the proposed geographic provision was simply a matter of the LECs' pricing their rates.

The witness went on to express his belief that STS providers will probably vanish in the next couple of years because they look like an ALEC. "Considering that ICI has both STS and ALEC certificates, how would the Commission know in a particular instance whether ICI was acting as an STS provider or an ALEC?" The witness responded: "If we're purchasing STS service under the STS tariff of the incumbent local exchange company versus instituting our agreement as far as interconnection and resale."

Upon consideration, we find that the geographic scope provision, along with the other "Conditions for Service" relating to STS interconnection rates, enables us to make a distinction between whether service is being provided by an STS provider or an ALEC. Limiting geographic scope is a necessary tariff provision and shall be approved as one of the parameters employed in the LECs' pricing of STS interconnection rates. Chapter 364.339(4)(e), Florida Statutes, specifically provides that in considering if STS is in the public interest this Commission shall consider "the geographic extent of the service to be provided."

Based on the foregoing, we find that limits to the geographic scope of the provision of STS are appropriate and are required as one of the conditions for the provisioning of STS rates. Otherwise, there would be no distinction between STS providers and ALECs for regulatory purposes. The geographic scope shall be within the confines of specifically identified continuous property areas under the control of a single owner or management unit. Accordingly, we find the geographic scope provision in BellSouth's tariff and the similar provisions in the other LECs' tariffs are appropriate.

Based on the foregoing, it is

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

ORDERED that small rate-base regulated local exchange companies shall be subject to different Shared Tenant Service requirements than price-regulated local exchange companies, as discussed in the body of this Order. It is further

ORDERED that Shared Tenant Service Providers shall insure access by the Carrier of Last Resort to residential tenants, as discussed in the body of this Order. It is further

ORDERED that the LECs' current rates for residential Shared Tenant Service interconnection are appropriate and, are hereby approved, as discussed in the body of this Order. It is further

ORDERED that the geographic scope of Shared Tenant Service shall be within the confines of specifically identified continuous property areas under the control of a single owner or management unit, as discussed in the body of this Order. It is further

ORDERED that Docket No. 951511-TL is closed, and the proposed rules in Docket No. 951522-TS shall be amended consistent with this Order, and brought to us for adoption.

By ORDER of the Florida Public Service Commission, this 9th day of April, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: _____
Chief, Bureau of Records

(S E A L)

MMB/DWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.