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June 18, 1993

Mr. Steve C. Tribble
Director, Div. of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

Re: Extended Area Service
Dockets No. 870790-TL, 900039-TL, 910022-TL, 910029-TL, 910528-TL, 910529-TL, and 870248-TL

Dear Mr. Tribble:

Enclosed please find one original and fifteen copies for each of seven motions by Southern Bell Telephone and Telegraph Company to modify Orders entered in the following EAS dockets:

Docket No. 870790-TL, In re: Request by Gilchrist County Commissioners for extended area service throughout Gilchrist County

Docket No. 900039-TL, In re: Resolution by the Orange County Board of County Commissioners for extended area service between the Mount Dora exchange and the Apopka, Orlando, Winter Park, East Orange, Reedy Creek, Windermere, and Lake Buena Vista exchanges

Docket No. 910022-TL, In re: Resolution by Bradford County Commission requesting extended area service within Bradford County, Union County and Gainesville

Docket No. 910029-TL, In re: Request by the Volusia County Council for extended area service between the Sanford exchange (Osteen and Deltona) and the Orange City and Deland exchanges

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Mr. Steve C. Tribble
June 18, 1993

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Docket No. 910528-TL, In re: Request by Putnam County Board of County Commissioners for extended area service between the Crescent City, Hawthorne, Orange Springs, and Melrose exchanges, and the Palatka exchange

Docket No. 910529-TL, In re: Request by Pasco County Board of County Commissioners for extended area service between all Pasco County exchanges

Docket No. 870248-TL, In re: Resolution by Holmes County Board of County Commissioners for extended area service in Holmes County, Florida

Although these orders were entered in different dockets, the issue involved in each is the same. In each docket, the Commission ordered Southern Bell to obtain an MJF waiver in order to implement an optional $.25 calling plan on one or more interLATA routes. Southern Bell filed waiver requests related to each of the seven dockets, and all seven were denied on May 18, 1993. Therefore, Southern Bell is filing these motions in the above-referenced dockets to request relief in each from the requirement to implement the $.25 plans on the designated interLATA routes.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

J. Phillip Carver (OZ)

J. Phillip Carver

Enclosures

cc: All Parties of Record
A. M. Lombardo
Harris R. Anthony
R. Douglas Lackey

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by Putnam County Board of County Commissioners for extended area service between the Crescent City, Hawthorne, Orange Springs, and Melrose exchanges and the Palatka exchange	)	Docket No. 910528-TL
	)	Filed: June 18, 1993

MOTION FOR PARTIAL MODIFICATION OF ORDER NO. 25772

COMES NOW, BellSouth Telecommunications Inc., d/b/a Southern Bell Telephone and Telegraph Company, ("Southern Bell"), pursuant to Rule 25-22.037, Florida Administrative Code, and hereby files its Motion for Partial Modification of Order No. 25772, and states as grounds in support thereof, the following:

1. In the above-styled docket, the Florida Public Service Commission ("Commission") entered Order No. 25772, on February 24, 1992, which required Southern Bell to provide on certain designated routes an optional extended area service plan whereby subscribers would be billed at a flat rate of $.25 per call ("$.25 plan"). Specifically, this plan was ordered to be made available for the following routes:

Hawthorne to Palatka
Keystone Heights to Interlachen
Orange Springs to Palatka
Hawthorne to Interlachen
Keystone Heights to Florahome
Keystone Heights to Palatka
Melrose to Palatka

2. Since the implementation of the plan on these routes would necessarily entail providing service across one or more LATA boundaries, the above-referenced Order also required that Southern Bell petition the United States District Court for the District of Columbia ("Federal Court") in an attempt to obtain a waiver from the provisions of the Modification of Final Judgment ("MFJ") entered in the case styled, The United States of America v. Western Electric Company, Inc. and American Telephone and Telegraph Company, Civil Action No. 82-0192. Without this waiver, the MFJ would otherwise prohibit the provision of service by Southern Bell across a LATA boundary. Southern Bell timely requested the waiver as ordered by this Commission.

3. Southern Bell recently received in response to its waiver request an Order entered on May 18, 1993, by the Federal Court in Civil Action No. 82-0192. In this Order, the Federal Court rejected Southern Bell's request for a waiver of the MFJ to the extent necessary to implement the $.25 plan on the above-referenced routes. A copy of the Order is attached hereto as Exhibit "A".

4. Accordingly, Southern Bell cannot implement the $.25 plans at issue, as ordered by this Commission, without violating the terms of the MFJ. For this reason, Southern Bell requests that this Commission partially modify Order No. 25772 to relieve

Southern Bell of the obligation to implement the $.25 plan on the routes identified above.

WHEREFORE, Southern Bell respectfully requests the entry of an Order granting its Motion for Partial Modification of Order No. 25772.

Respectfully submitted,

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY

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EXHIBIT "A"

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Plaintiff,

v.

WESTERN ELECTRIC COMPANY, INC. AND AMERICAN TELEPHONE AND TELEGRAPH COMPANY,

Defendants.

Civil Action No. 82-0192 (NHG)

FILED

MAY 18 1993

NANCY M. MAYER-WHITTINGTON

ORDER

Pending before the Court are waiver requests submitted by BellSouth and South Central Bell seeking to provide flat rate inter-LATA services in parts of Florida and Alabama.[1] BellSouth seeks to implement an optional Extended Area Service (EAS) plan

[1] At issue are waiver requests submitted over a period of several months for the following communities in Florida: (1) Graceville to Ponce de Leon and Defuniak; (2) Sanford to Deland and Sanford to Orange City; (3) Orlando to Mount Dora; (4) Trenton to Branford, Trenton to High Springs, Newberry to Branford, and Newberry to Trenton; (5) Lawtey to Gainesville, Raiford to Gainesville, and Starke to Gainesville; (6) Hawthorne to Interlachen, Hawthorne to Palatka, Keystone Heights to Palatka, Melrose to Palatka, Orange Springs to Palatka, and Keystone Heights to Florahome and (7) Brooksville to Hudson.

South Central Bell and the Alabama Public Service Commission (APSC) seek a waiver request to provide inter-LATA service for the Jackson County area in northeast Alabama. Unlike the Florida requests, APSC approved the use of reduced rates, not flat fees, for inter-LATA calls involving customers in Jackson County. The Department of Justice consolidated the Florida and Alabama requests.

whereby ratepayers would be billed at a flat rate of $.25 for every inter-LATA call placed between these Florida communities. For the reasons stated in this order, these waiver requests are denied. As further discussed below, the waiver request submitted by South Central Bell for Jackson County, Alabama involves different issues and will be decided once the Court receives a more detailed recommendation from the Department of Justice on this proposal.

In designing and implementing the nationwide LATA structure, a critical aspect of the consent decree, this Court recognized that the lines being drawn across the country were not intended to be rigid and inflexible. The Court has consistently acknowledged the need to make minor adjustments to LATA boundaries where the competitive effects of such adjustments are minimal and a sufficient community of interest across LATA borders is evident.

However, the Court rejected the use of optional extended area arrangements whereby customers would be given the option of paying an additional flat fee to obtain an extended local calling area. See United States v. Western Electric Co., 569 F. Supp. 990, 1001-02 n.54 (D.D.C. 1983). In addition to the fact that an underlying principle of the decree was to prohibit the Regional Companies from providing interexchange service, optional EAS plans provide discounts for calls that would otherwise be carried competitively. Thus, under the LATA structure as it was approved by the Court and implemented over the past decade, waivers have

been approved for non-optional EAS plans where a sufficient community of interest is demonstrated.

The motion of BellSouth seeks permission to provide inter-LATA service even though the Florida Public Service Commission (FPSC) has specifically found that a sufficient community of interest does not exist between the affected communities. The FPSC has determined that a non-optional EAS plan is not justified under the factual circumstances surrounding the demographics and calling patterns of these areas. Consequently, it has approved this "optional" EAS plan[2] in order to afford relief to those consumers who are adversely affected by the placement of LATA boundaries.

Basically, BellSouth asks the Court to carve out a new exception to the general prohibition on the provision of interexchange service by the Regional Companies. The company argues that the rapidly changing demographics in Florida, and particularly in the central region of the state, necessitate a flexible response to the problems posed by LATA boundaries drawn in 1983.

This Court recognizes that local regulators have a particular expertise in addressing LATA issues and that the FPSC, in the past, has demonstrated that it "is a strong body and one

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[2] The parties dispute whether this plan is properly categorized as an "optional" one. See October 2, 1992 Response of the Florida Public Service Commission, at 5-6. However labeled, it is clear that the proposal is markedly different from traditional non-optional EAS plans approved in the past. See United States v. Western Electric Co., 569 F. Supp. 990, 1001-02 n.64 (D.D.C. 1983).

committed to promoting competition." Id., at 1032. However, the Court concurs with the Department of Justice's conclusion that to embark down the path proposed by the FPSC here could initiate a "piecemeal dismantling of the MFJ's prohibition of BOC provision of interexchange services." See Department of Justice Report, at 2-3.

In this instance, BellSouth would be allowed to extend its local monopoly to supplant interexchange carriers on these routes despite the absence of a community of interest. The Court agrees with the point raised by the Department and several other interested which submitted comments that once the doors are opened to these types of waivers it will be difficult to formulate a principled means of deciding future requests. In the past, the Court has rejected similar proposals for optional EAS plans; there is no basis for rejecting these decisions or that reasoning. See May 4, 1992 Order on BellSouth Request to Provide Extended Local Calling Service Between the Milton and Roxboro, North Carolina Exchanges.

The rejection of these waiver requests does not necessarily foreclose all possible forms of relief for affected consumers. Once sufficient communities of interest between these areas develops non-optional EAS plans may be appropriate. In the interim, the Department of Justice has identified other possible means of bringing the applicable rates down. See Department of Justice November 9, 1992 Reply, at 2-3.

Turning to the Alabama waiver request, the Court believes that the waiver request submitted by the Alabama Public Service Commission differs in two material respects from the Florida request, but that these distinctions have not been fully addressed by the parties. As noted in the October 2, 1992 letter from the APSC, that body concluded that an "overwhelming community of interest" existed for this waiver request. See October 2, 1992 Letter of APSC, at 2. Furthermore, the APSC proposal calls for provision of inter-LATA service at reduced rates still sensitive to the time and distance of a call, as opposed to the flat rate fee at issue in the Florida waiver requests. The Court is concerned that by being consolidated with the BellSouth requests for waivers in Florida, the unique aspects of the Alabama request may have been overlooked. Consequently, the Court requests that the Department of Justice prepare a supplemental report specifically addressing the propriety of the Alabama waiver request at issue here.

For these reasons, it is this 18th day of May, 1993

ORDERED, that the requests by the BellSouth Corporation and the Florida Public Service Commission for waivers permitting the implementation of inter-LATA flat-rate calling plans in the communities identified in the Department of Justice's September 18, 1992 report be and they are hereby denied; and it is further

ORDERED, that the Department of Justice submit a supplemental report to the Court within twenty-five days on the issues raised by the waiver request submitted by the Alabama Public Service Commission. All parties will have fifteen days thereafter to reply to the Department of Justice's supplemental filing.

HAROLD H. GREENE
United States District Judge

CERTIFICATE OF SERVICE
Docket No. 910528-TL

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States Mail this 18th day of June, 1993 to:

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