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August 17, 1995

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Blanca S. Bayo, Director
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101 E. Gaines Street
Tallahassee, Florida 32301

Re: Docket No. **920260-TL**, In re: Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of Southern Bell Telegraph and Telephone Company

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and sixteen copies of the Florida Interexchange Carriers Association's Post-Hearing Statement and Post-Hearing Brief, in the above docket.

I have enclosed a disk containing the Post-Hearing Statement and Post-Hearing Brief entitled "920260.brf", formatted in WordPerfect Version 5.1. Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

VGK

Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of Southern Bell Telegraph and Telephone Company.	DOCKET NO. 920260-TL FILED: August 17, 1995

POST-HEARING STATEMENT

AND

POST-HEARING BRIEF

OF

THE FLORIDA INTEREXCHANGE CARRIERS ASSOCIATION

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TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

SUMMARY AND OVERVIEW OF ARGUMENT 1

ARGUMENT 4

ISSUE 5

IF APPROVED, WOULD SOUTHERN BELL'S ECS PLAN BECOME PART OF BASIC LOCAL TELECOMMUNICATIONS SERVICE AS DEFINED IN SECTION 364.02(2), FLORIDA STATUTES? 4

ISSUE 6

IF IT IS NOT PART OF BASIC LOCAL TELECOMMUNICATIONS SERVICE, DOES SOUTHERN BELL'S ECS PLAN VIOLATE THE IMPUTATION REQUIREMENT OF SECTION 364.051(6)(c), FLORIDA STATUTES? 5

ISSUE 2

IF THE SOUTHERN BELL PROPOSAL IS APPROVED, SHOULD THE COMMISSION ALLOW COMPETITION ON THE EXTENDED SERVICE CALLING ROUTES? IF SO, WHAT ADDITIONAL ACTIONS, IF ANY, SHOULD THE COMMISSION TAKE? 11

ISSUE 4

SINCE THIS DOCKET WAS OPENED PRIOR TO THE NEW LAW BEING ENACTED, SHOULD THE UNSPECIFIED $25 MILLION RATE REDUCTION SCHEDULED FOR OCTOBER 1, 1995, BE PROCESSED UNDER THE FORMER VERSION OF CHAPTER 364, FLORIDA STATUTES? 21

ISSUE 7

DOES SOUTHERN BELL'S ECS PROPOSAL VIOLATE ANY OTHER PROVISION OF THE REVISED CHAPTER 364, FLORIDA STATUTES, EXCLUDING THOSE PREVIOUSLY IDENTIFIED IN THE POSITIONS ON THE ISSUES LISTED IN THE PREHEARING ORDER? 24

ISSUE 1

WHICH OF THE FOLLOWING PROPOSALS TO DISPOSE OF $25 MILLION FOR SOUTHERN BELL SHOULD BE APPROVED? 25

A) SBT'S PROPOSAL TO IMPLEMENT THE EXTENDED CALLING SERVICE (ECS) PLAN PURSUANT TO THE TARIFF FILED ON MAY 15, 1995. (T-95-304)

B) CWA'S PROPOSAL TO REDUCE EACH OF THE FOLLOWING BY $5 MILLION:

C) MCCAW'S AND FMCA'S PROPOSAL THAT A PORTION BE USED, IF NECESSARY, TO IMPLEMENT THE DECISIONS RENDERED IN DN 940235-TL

D) ANY OTHER PLAN DEEMED APPROPRIATE BY THE COMMISSION.

ISSUE 3

WHEN SHOULD TARIFFS BE FILED AND WHAT SHOULD BE THE EFFECTIVE DATE? 26

CONCLUSION 27

TABLE OF CITATIONS

Page No.

Cases

Adams v. Culver, 111 So.2d 665 (Fla. 1959) 22

Florida Interexchange Carriers Association v. Beard,
624 So.2d 248, 250 (Fla. 1991) 6

Lincoln v. Florida Parole Commission, 643 So.2d 668
(Fla. 1st DCA 1994) 22

United States v. Western Electric Co., Inc.,
569 F. Supp. 990, 1109 (D.D.C. 1983) 14

Florida Statutes

Section 364.01(3) 12

Section 364.02(2) 4, 22, 23

Section 364.051(6)(a) 12

Section 364.051(6)(a)2 24

Section 364.051(6)(b) 23

Section 364.051(6)(c) 5, 24

Section 364.161 18

Section 364.162 18

Section 364.385(2) 22

Florida Administrative Code

Rule 25-22.056 1

Commission Orders

Order No. 24859 . . . . . 7, 8

Order No. 25708 12

Order No. PSC-95-0034-FOF-TP 10

Order No. PSC-95-0203-FOF-TP 15

PRELIMINARY STATEMENT

Pursuant to Rule 25-22.056, Florida Administrative Code, the Florida Interexchange Carriers Association files its Post-Hearing Statement of Issues and Positions and its Post-Hearing Brief.[1] The issues in this case have changed since the issuance of the Prehearing Order; four new issues were added at the conclusion of the hearing. In FIXCA's view, Issues 5, 6 and 2 are the most critical issues and are therefore discussed first. The remaining issues are then discussed in the following order: Issues 4, 7, 1 and 3.

SUMMARY AND OVERVIEW OF ARGUMENT

Using the cover of its obligations under the Settlement Agreement approved by the Commission, Southern Bell has presented the Commission with an ECS proposal which will end competition on most South Florida toll routes and which will violate the spirit and the letter of the recently passed telecommunications statute. As proposed, the filing must be rejected. However, FIXCA has provided the record evidence necessary for the Commission to easily modify Southern Bell's proposal should the Commission desire to introduce ECS-like prices.

In the recently passed telecommunications statute, the legislature made it clear that one of its main objectives was that competition occur in all aspects of the telecommunications market.

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[1] The following abbreviations are used in this brief. The Florida Interexchange Carriers Association is referred to as FIXCA. Southern Bell Telephone and Telegraph Company is referred to as Southern Bell. The Florida Public Service Commission is called the Commission. LEC referes to local exchange company, IXC refers to interexchange carrier and ECS refers to Southern Bell's proposed Extended Calling Service.

This legislation removed the LECs from the requirements of rate of return regulation previously administered by this Commission as a surrogate for competition and gave the LECs great pricing freedom over non-basic services, providing them with the ability to raise rates by as much as 20% per year.

The sole protection that consumers have from subsequent rate increases is an ability to "take their business elsewhere" in response to a price increase. But, there can be no alternative to Southern Bell's ECS service if its rivals are unable to offer ECS-like services due to excessive rates for the use of Southern Bell's network. Thus, to protect consumers, the statute included a clear imputation safeguard intended to ensure that Southern Bell's rivals could offer competitive alternatives to Southern Bell's non-basic services, such as ECS.

Through its proposal Southern Bell is attempting to circumvent this important consumer safeguard by proposing ECS prices which clearly fail the imputation test for a non-basic service, both as articulated in the new statute and as approved by this Commission in its access imputation order. In addition, Southern Bell has failed to provide an interconnection rate (which is necessary to meet imputation standards), a wholesale ECS service for resale, and the ordering and provisioning systems needed for these rates to yield actual, viable, competitive alternatives.

While Southern Bell failed to propose the necessary interconnection and wholesale rates to allow ECS to be implemented, FIXCA provided such rates. FIXCA's proposed rates would retain the same relationship between ECS price levels and the interconnection rates which the IXCs would pay as now exists between the MTS and access services they would replace. Therefore, if the Commission decides to pursue an ECS-like service, it has sufficient information in the record to cure the deficiencies inherent in Southern Bell's filing and to allow the service

to go forward (after the necessary implementation parameters are in effect). Alternatively, the Commission may use the interim refund methodology outlined in the Settlement Agreement while the additional elements required for ECS are reviewed or restructure PBX and DID as suggested by other parties to this proceeding.

ARGUMENT

ISSUE 5

IF APPROVED, WOULD SOUTHERN BELL'S ECS PLAN BECOME PART OF BASIC LOCAL TELECOMMUNICATIONS SERVICE AS DEFINED IN SECTION 364.02(2), FLORIDA STATUTES?

FIXCA's Position: *No. The definition of basic local telecommunications service does not include extended calling service plans approved by the Commission on or after July 1, 1995.*

The appropriate framework to review the ECS service is the standard applicable to a non-basic service. While there may be many issues in dispute between the other parties and Southern Bell in this case, Southern Bell agrees that its ECS proposal is a non-basic service under the new law and that the distinctions previously made between local and toll service now have little relevance. (Tr. 149, 431).

The definition of "basic local telecommunication service" provided in section 364.02(2) of the new legislation is clear as to the categorization of extended service calling plans. The statute states:

> For a local exchange telecommunications company, such term [basic telecommunications service] shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

Emphasis added. It is beyond dispute that if the Commission approves Southern Bell's ECS service, approval will not meet the July 1, 1995 deadline[2] for inclusion of such plans in the basic

[2] The Commission is not scheduled to vote on Southern Bell's ECS proposal until September 12, 1995.

local telecommunications service category.[3]

ISSUE 6

IF IT IS NOT PART OF BASIC LOCAL TELECOMMUNICATIONS SERVICE, DOES SOUTHERN BELL'S ECS PLAN VIOLATE THE IMPUTATION REQUIREMENT OF SECTION 364.051(6)(c), FLORIDA STATUTES?

FIXCA's POSITION: *Yes. Each non-basic service must meet the imputation requirements. Southern Bell averaged multiple services together in contravention of the statute and has not included all monopoly components in its imputation calculation; nor has Southern Bell shown that the service covers its direct costs for the non-monopoly components of the service.

The most important safeguard included in the new law is the imputation standard in section 364.051(6)(c). This section states:

> The price charged to a consumer for a non-basic service shall cover the direct cost of providing the service and shall, to the extent a cost is not included in the direct cost, include as an imputed cost the price charged by the company to competitors for any monopoly component used by a competitor in the provision of its same or functionally equivalent service.

Emphasis supplied. This section prevents monopoly providers from leveraging their monopoly services to give themselves an advantage in the marketplace.

---

[3] An argument might be made that a few of the proposed ECS routes were covered by some kind of extended calling plan before July 1 and therefore those particular routes should be included in the basic local telecommunications service category. However, that would be the case pursuant to the statute only if those routes remained under their current calling plan. It is undisputed that the proposed ECS plan which is the subject of this docket is a new plan not in existence or ordered by the Commission on or before July 1, 1995. Thus, none of the routes proposed by Southern Bell for ECS fall into the basic local telecommunications category.

Rules of Statutory Construction

As the Commission examines this section of the new statute, it may be instructive to recall and to apply a cardinal rule used by the courts when called upon to review statutory language:

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

Florida Interexchange Carriers Association v. Beard, 624 So.2d 248, 250 (Fla. 1991). Thus, if the statute is clear on its face, as the imputation subsection is, there is no room for interpretation.

The Monopoly Component: Switched Access Service

Southern Bell agrees with FIXCA that the proposed ECS plan must pass an imputation test. (Tr. 376). However, Southern Bell did not perform the imputation test set out in the statute -- i.e., that ECS prices, on their own, exceed the price of the monopoly components used to provide the service, plus the direct cost of any non-monopoly component. Significantly, the Commission's preexisting imputation methodology provides the appropriate methodology to compute the "monopoly component" of the ECS service, which is switched access service.[4] This existing Commission methodology was the culmination of several months of industry workshops which were overseen by Staff. The resulting methodology represents an industry consensus. (Tr. 377).

[4] Southern Bell admits that the functionally equivalent services of its rivals are toll services. It also admits that the charges it will impose on its rivals are access charges. (Exhibit 20).

Importantly, in this docket, the Commission must confront precisely the same issues that were studied and addressed in great detail in the imputation workshops and subsequent imputation order. Order No. 24859, Docket No. 900708-TL. The Commission should continue to follow its longstanding policy which accurately identifies the price that the LECs' competitors pay for the LECs' monopoly network. When this methodology is applied, the ECS service fails the imputation test. (Tr. 299).

Southern Bell's Changes to the Commission's Methodology Are Inappropriate and Do Not Comply With the Law

Averaging ECS With Toll Service

Southern Bell admits that rather than performing the imputation test on the separate service of ECS alone, it averaged ECS with its intraLATA toll services. (Tr. 365). This is contrary to the Commission's existing methodology[5], violates the new statute, and flies in the face of Southern Bell's own position that ECS is not a toll service! (Tr. 301).

The new statute's imputation section clearly and unequivocally provides that the price for each service (singular) must exceed the price of monopoly components provided to competitors and its other direct costs. It is not surprising that this is the standard adopted by the Legislature since it is simply a codification of the Commission's long-standing access imputation policy

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[5] Southern Bell admits that its methodology does not comply with the Commission's imputation order:

> Q. And the test that you are suggesting in your testimony, I guess beginning on Page 4, Line 2, is not the same test that is applied in this Commission Order 24859; is that correct?
>
> A. (Mr. Hendrix): That is correct.

(Tr. 378).

which requires that the retail price must cover the price of all monopoly components plus other direct costs. Order No. 24859, Docket No. 900708-TL.[6]

Southern Bell had two equally implausible explanations for its purported statutory interpretation. First, Southern Bell "explained" that even though the word "service" appears in the singular form in the subsection, somehow singular and plural forms of the word should be viewed as interchangeable.[7] This argument runs afoul of the statutory construction rule quoted above as well as common sense. (Tr. 388-389).

Second, Southern Bell argued that because the proposed ECS service and intraLATA toll are "functionally equivalent", the statute permits these multiple services to be averaged together for purposes of conducting the imputation test. (Tr. 390). The most that can be said about this novel argument is that it is true that the phrase "functionally equivalent" appears in this subsection of the statute. However, it is clear that the term is intended to require Southern Bell to impute the price of every monopoly component which it sells to its competitors who provide a service "functionally equivalent" to the one provided by Southern Bell. Nowhere does the subsection state (or even imply) that functionally equivalent services (which ECS and Southern Bell's intraLATA toll are not) which a LEC provides may be averaged together for the purpose

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[6] Note that the new statute does not alter the application of the Commission methodology to calculate monopoly access components.

[7] A portion of Mr. Hendrix's "rationale" was:

> And I'm saying that if you were to look at the statute in total before concluding that that section that is referenced with "service" being singular that it is talking about a singular, single service. And when I went back and read through this, that's not the case.

(Tr. 389).

of the imputation test.[8] The term "functionally equivalent" applies to the services of competitors not the services of Southern Bell.[9]

Finally, even using Southern Bell's imputation methodology, the imputation test was performed incorrectly. In Mr. Hendrix's rebuttal testimony, he states that 13.5 cents per minute is the average revenue per minute for November 1994 which he included in his imputation test. (Tr. 365; Exhibit 7, Hendrix deposition, p. 256). According to his testimony, this number includes toll[10] and ECS. However, when asked to calculate the number for the same month using just toll revenue, Mr. Hendrix calculated the same number -- 13.5 cents. (Tr. 403). It is impossible for these two numbers to be the same.

When the appropriate, Commission-approved, service specific imputation test is performed, as was done by Mr. Gillan, it is clear that ECS fails the imputation test. Mr. Gillan's calculations demonstrate that ECS fails to pass the appropriate imputation test because while the average ECS revenue per minute is $0.0642, the access charge is well above that at $0.0745. (Tr. 299).[11]

Southern Bell's proposed ECS service fails the imputation test. It cannot be legally implemented unless it passes that test, either by raising the ECS prices (which FIXCA does not recommend) or by providing an interconnection rate to replace switched access (as proposed by

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[8] It is instructive to note that Southern Bell did not include flat-rate EAS routes in its "functionally equivalent" analysis. (Tr. 416; Exhibit 7, Hendrix deposition, p. 24).

[9] Southern Bell's argument would put it in direct violation of the non-discrimination provision of the statute. See Issue 7.

[10] Toll includes MTS and optional calling plans.

[11] Mr. Gillan's analysis does not account for stimulation which would cause the average revenue to decline.

FIXCA). In addition, the other elements discussed by FIXCA in Issue 2 must be in place before ECS service is provided.[12]

Monopoly Components

Southern Bell has failed to include its access charges for local transport in its imputation calculation even though transport remains a monopoly component. In order for there to be a competitive alternative for local transport, an entity would have to develop a network that goes to every Southern Bell central office in the Southeast LATA from which ECS service either originates or terminates. That entity would then need to acquire switched access collocation service from Southern Bell for each central office. The entity would need to install a tandem switch to route the calls originating and terminating at each of those central offices. There is no such arrangement in place today (and Southern Bell did not identify any such switched access cross-connections)[13], so carriers cannot avoid Southern Bell's local transport charge. (Exhibit 7, Gillan deposition, pp. 22-23).

Further, even if there were such competition, Southern Bell still failed to consider all monopoly elements. The Commission's recent order on local transport restructure, Order No. PSC-95-0034-FOF-TP, Docket No. 921074-TP, permits Southern Bell to impose a "residual

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[12] It is also FIXCA's position that the Commission's imputation methodology cannot be changed in this docket for procedural and due process reasons, including the fact that no notice has been given to affected parties that the Commission was contemplating a change in the imputation methodology in this docket and the fact that even companies who are a party to this docket were not given the opportunity to rebut the change in methodology proffered by Southern Bell. FIXCA raised these fundamental issues via a motion to strike portions of Mr. Hendrix's rebuttal testimony and will not repeat them here.

[13] Of 65 cities, there have been only 3 such requests. (Tr. 380-381). Clearly, there is no such arrangement on all the routes ECS would cover. (Tr. 425).

interconnection charge" (RIC). This charge will be imposed on every minute of switched access even if a competitive alternative provider (CAP) is used. (Tr. 410-411). A competitor can not avoid Southern Bell's entire charge for local transport because a competitor is required to pay Southern Bell the RIC.[14] (Exhibit 7, Hendrix deposition, pp.30-31; Gillan deposition, p. 23). In addition, even if a CAP were present and being used, Southern Bell has not considered the other monopoly charges, such as collocation and cross-connection which would be imposed on the CAP. Thus, Southern Bell has failed to impute all monopoly components in the imputation calculation it has done for ECS -- even if one were to assume that competition for some components of local transport existed.

ISSUE 2

IF THE SOUTHERN BELL PROPOSAL IS APPROVED, SHOULD THE COMMISSION ALLOW COMPETITION ON THE EXTENDED SERVICE CALLING ROUTES? IF SO, WHAT ADDITIONAL ACTIONS, IF ANY, SHOULD THE COMMISSION TAKE?

FIXCA's Position: *If the Commission approves the Southern Bell ECS plan, it must ensure that competition continues on these routes. The Commission must require ECS to cover imputed costs, must provide an interconnection rate for IXCs, and must make a wholesale-like ECS service available for resale.*

The New Statute

The Legislature has made clear its intent regarding competition in enacting the new telecommunications statute:

[14] Prior to the approval of the local transport tariff (which will not occur until after the proposed ECS implementation date), Southern Bell would impose the entire charge for local transport even if a CAP were used. (Exhibit 7, Gillan deposition, p. 23).

> The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure.

Section 364.01(3). Thus, the Commission must ensure that competition continues on the routes Southern Bell has proposed for ECS.[15]

In order for competition to exist, it is self-evident, but worth emphasizing, that there must be multiple providers from which consumers may choose. Under the new statute, vibrant competition is the only tool available to the Commission to protect consumers.

To ensure such choices in the marketplace, the legislature recognized that safeguards were necessary so that those companies with monopoly power do not distort the dynamics of competition. Such safeguards are especially important in light of the fact that the new legislation permits Southern Bell to raise rates for non-basic services by as much as 20% in a single year.[16] Section 364.051(6)(a). If consumers have no viable choice of providers of non-basic services, there will be no safeguard against excessive rates.

The Commission previously kept a check on rates and had authority to refund the overearnings of regulated utilities. As was often said, the Commission was a surrogate for

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[15] In fact, unlike the Commission's decision on GTE's ECS service, Order No. 25708, Docket No. 910179-TL, the Commission no longer has the discretion to curtail competition.

[16] If Southern Bell's interpretation of the statute is followed, it would suggest that it would be permissible to combine all toll services with ECS for purposes of the 20% increase per year provision of the new law. Even without extending Southern Bell's logic, the Commission should be concerned that Southern Bell could lower business rates and inflate residential rates so long as the average effect was no greater than a 20% increase per year.

competition. Such authority no longer exists under the new law. Now competition substitutes for the Commission's oversight. The only protection that the Commission can provide is to establish (as the statute requires) conditions which will ensure robust competition on the routes in question in this docket. Such competition will perform the function formally reserved to the Commission -- it will prevent Southern Bell from increasing rates, lowering quality of service or otherwise exploiting its market position.

ECS Will Remonopolize Competitive Routes

Failure to Pass the Imputation Test

As discussed in detail in Issue 6 above, one of the most important ways that competition will have the opportunity to thrive is through the access imputation requirement. As demonstrated, Southern Bell's proposed ECS does not pass the appropriate imputation test. This means that if the ECS service is approved as proposed, Southern Bell will be permitted to provide this service at a price which does not cover costs and which therefore no competitor can hope to match. Such anticompetitive behavior cannot be sanctioned by this Commission.

The Southeast LATA

To understand the impact ECS will have on competition, it is important to understand what the ECS service would do. Even a quick glance at Attachment C of Exhibit 1 illustrates the magnitude of Southern Bell's proposal. ECS would take some 150 competitive toll routes[17]

[17] Incredibly, some of the routes proposed for ECS are over 100 miles long. For example, the Key West to Miami ECS route is 135 miles long. (Tr. 121; Exhibit 14). Further, on the Friday before the hearing, Southern Bell attempted to add an additional 36 routes to its proposal which were not included with its original filing while admitting that these routes did not meet even Southern Bell's own criteria. (Exhibit 5; Tr. 121).

and (in just Phase 1 of the plan) convert them to ECS. After ECS, there will be no more competition on these routes. (Tr. 317).

Of particular importance to the Commission should be the fact that the majority of routes Southern Bell proposes to convert to ECS are in the Southeast LATA. The current toll revenue on the proposed ECS routes is approximately $120 million. If ECS is implemented, about $100 million of that revenue will be diverted out of the competitive market to ECS. The Southeast LATA will be gutted insofar as toll traffic competition is concerned. (Tr. 317-318).

This outcome is particularly troubling since the Southeast LATA owes its very existence to this Commission's stated commitment to competition. As this Commission is aware, the Southeast LATA combines a number of large metropolitan cities. At divestiture, the Court permitted these areas to be combined based on this Commission's commitment to competition:

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

United States v. Western Electric Co., Inc., 569 F. Supp. 990, 1109 (D.D.C. 1983) (footnotes omitted). The conversion of these routes to ECS would run counter to the Court's understanding of the competitive situation in the Southeast LATA.

Conversion to 7-Digit Dialing

Further, if the Commission approves ECS as proposed, Southern Bell will convert the dialing pattern on these routes from their current 1+ dialing pattern to a 7-digit dialing pattern for calls Southern Bell carries. (Tr. 84, 96-97, 98-99, 113). Competitors of Southern Bell will be able to carry these calls only on a 1+ (1 plus 10 digit) basis.

This dialing pattern conversion has two effects. First, as the Commission is well aware, after lengthy hearings, it ordered the implementation of 1+ dialing for all intraLATA traffic. Order No. PSC-95-0203-FOF-TP, Docket No. 930330-TP. By converting ECS calls (which before ECS would be carried by all providers on a 1+ basis) to 7 digits for Southern Bell only, Southern Bell will effectively remove this traffic from the competitive pressures and the consumer benefits associated with intraLATA presubscription which the Commission articulated in its 1+ order. In other words, Southern Bell will perform an "end run" around the Commission's presubscription order on these routes.

Second, from a consumer prospective, residential customers will have to attempt to determine whether a 7-digit call is an ECS call for a flat 25 cents or a call which carries with it a per minute charge. This will be very confusing. (Tr. 264-265). Businesses will lose control over toll calling by their employees. (Tr. 256).

Mandatory Nature of ECS

Additionally, Southern Bell's ECS is a mandatory service--it is the only way in which Southern Bell will carry calls on the ECS routes. (Tr. 112). Thus, Southern Bell has effectively bundled competitive interexchange service with local exchange service. At least at the current time, no competitor can do this because local competition is essentially non-existent and will not exist for quite some time. If approved at all, ECS should be an optional service. (Tr. 300-301).

Southern Bell's Arguments

In response to the parties' concerns about the elimination of competition on the proposed ECS routes, Southern Bell blithely maintains that competition will continue in the face of ECS. The arguments Southern Bell makes have no merit and should be rejected.

Southern Bell witness Stanley argued that because on some short duration, short haul calls IXC rates might be cheaper than the ECS rate, remonopolization would not occur. Mr. Stanley attempted to illustrate this with Exhibit 3. However, in order for a consumer to apply Mr. Stanley's analysis and choose an alternative carrier (even for the very limited number of calls[18] noted in Exhibit 3), the consumer would have to know (in advance of placing a call) how far away the called party was (mileage band), how long the call would last (call duration) and what time period the call was in (day, night weekend, evening). (Tr. 104).[19] If the consumer knew all this information before placing each call, the consumer would save (at most) a grand total of under 6 cents for such calls. (Tr. 107). It strains credibility to believe that a consumer will go through this kind of exercise and that therefore, competition will continue to exist on these routes, especially when, as noted above, ECS is bundled with local service.

Southern Bell also argued that IXCs can use "melded" access rates to try to beat Southern Bell's high cost of intrastate access. As Southern Bell's Mr. Stanley admitted, however, this is simply not the case: when an IXC purchases a minute of intrastate access, it pays Southern Bell for a minute of intrastate access. (Tr. 117; Exhibit 7, Gillan deposition, p. 24). IXCs cannot lower their intrastate access costs on ECS calls by using interstate access. (Tr. 130, 240). As Mr. Gillan put it, it simply does not make sense for an IXC to charge 6 cents a minute to carry a call and then turn around and pay Southern Bell 7.5 cents a minute for the same call. (Tr. 316). No business can survive long doing that.

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[18] Mr. Stanley had no idea how many residential calls are actually less than a minute in duration. (Tr. 107).

[19] Mr. Stanley admitted that an IXC would never be cheaper on a route longer than 11 miles and that the average call duration for a residential call is 4.2 minutes. (Tr. 125).

Finally, Southern Bell's "solution" to the elimination of competition on the ECS routes is to apply the same agreement on all the ECS routes which FIXCA and Southern Bell have on six routes in the Dade/Broward area. (Exhibit 2). As the Agreement itself makes clear, the Agreement only postponed for another day the dispute between Southern Bell and FIXCA (Exhibit 2; Tr. 100), is not a *solution* to the issues raised in regard to those routes, and was certainly never intended to have application to the vast ECS proposal made in this case.

Additional Action the Commission Must Take If It Approves ECS

ECS cannot go into effect as proposed. In addition to the imputation standard discussed in Issue 6, the new statute contains other safeguards designed to ensure that competition has the opportunity to occur. Such safeguards include provisions requiring Southern Bell to provide an interconnection rate to originate and/or terminate ECS traffic as well as unbundling network functions and components for resale with the creation of wholesale service. These provisions will allow others to compete by differentiating the products they can provide. The key to this competitive framework lies in ensuring that Southern Bell's network can be used by its rivals to offer retail service.

In order for the Commission to approve ECS, it must:

*ensure that ECS passes the imputation test (see discussion in Issue 6 which is incorporated herein by reference);

*adopt an interconnection rate for the use of Southern Bell's network that complies with the Commission's imputation test and permits competition on these routes (Tr. 313);

*adopt a wholesale ECS service that enables other carriers to provide ECS-like service supported by their own marketing and customer account expertise (Tr. 313);

*ensure that Southern Bell has activated the necessary ordering and provisioning systems to implement an appropriate interconnection rate and wholesale-ECS service. (Tr. 313).

Interconnection

Section 364.162 requires Southern Bell to provide an interconnection rate to competitors for the use of Southern Bell's network to originate and terminate ECS-like traffic. Southern Bell has failed to provide such a rate with its ECS proposal. An interconnection rate will allow competitors to provide their own switching of ECS-like services and to add new features or functions, such as account billing. (Tr. 307). Not only is an interconnection rate required by section 364.162, such a rate also must be provided for Southern Bell to satisfy the imputation standards of the statute. (Tr. 316).

As pointed out in Mr. Gillan's testimony, the statute contains an ambiguity regarding the *process* to be followed to establish an interconnection rate for IXCs. The statute refers only to negotiations between alternate local exchange carriers and LECs. However, it is clear that all disputes must be resolved by the Commission. (Tr. 327-328). FIXCA has proposed an interconnection rate of $0.0227, which approximates intrastate access. (Tr. 314-315; Exhibit 19). The Commission should adopt an interconnection rate in this docket if it decides to let the ECS plan go forward.

Unbundling and Resale

Section 364.161 provides that each LEC must unbundle its network features, functions and capabilities for resale. Southern Bell must provide a wholesale-ECS service with all retail support functions unbundled from its price. The wholesale price must reflect at least the cost savings experienced by Southern Bell but should not be below Southern Bell's cost. (Tr.

305). A wholesale rate will allow additional price competition to occur because competitors will be able to provide retail functions like billing, collection and customer support. (Tr. 306).

Southern Bell attempted to imply that the unbundling of the ECS service into its wholesale equivalent -- that is, unbundling the transmission and routing of ECS from customer support, billing and other retail activities -- is somehow inconsistent with the statute. This is not the case. The statute requires exactly the type of unbundling FIXCA has proposed so that services can be offered to consumers along with other functions competitors can provide. (Tr. 325-326).

FIXCA has proposed a wholesale rate of $0.0455 which is approximately two times the interconnect rate because it includes both originating and terminating charges. (Tr. 314). The Commission should adopt a wholesale rate in this docket.[20]

Ordering and Provisioning Systems

As a practical matter, to implement an interconnection rate and a wholesale-ECS service, Southern Bell must put ordering and provisioning systems in place to permit the transfer of billing and other account management information to the IXC. (Tr. 307). The Commission must ensure that these systems are in place so that interconnection and resale can actually occur.

Retention of Customer Choice

Additionally, the Commission should retain the 1+ dialing pattern on these routes so that measured-ECS service can be distinguished from flat-rate local calls and to preserve the consumers' discretion afforded by the Commission's order on intraLATA presubscription.

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[20] Alternatively, if the Commission prefers for the parties to negotiate interconnection and wholesale rates, it may so instruct them. During the negotiations, the Commission may return the $25 million via the interim refund mechanism of the Settlement Agreement, (Tr. 342), or the Commission may implement the rates presented by FIXCA on an interim basis while it conducts further review regarding interconnection and wholesale rates.

Finally, ECS should only be permitted to be offered as an optional service, not bundled with other services.

FIXCA's Approach

As discussed in detail above, before ECS may be approved by this Commission, it must incorporate the elements prescribed by statute, including an interconnection rate and a wholesale service for resale. Such elements were not provided with Southern Bell's tariff filing, but have been proposed by FIXCA.

FIXCA has presented several options to the Commission if it first decides that an ECS service is the appropriate way to dispose of the $25 million refund. First, to furnish a solution to the problem of Southern Bell's failure to provide all the elements necessary for the Commission to approve its proposal, FIXCA calculated and provided to all parties an appropriate interconnection rate and an appropriate resale rate. (Exhibit 19). These rates permit ECS to pass the imputation test. The appropriate interconnection rate for each end of an ECS call is $0.0227, which maintains the same ECS to interconnection relationship as now exists between MTS and access. (Tr. 314-315).[21] The appropriate wholesale resale rate is $0.0455, which is double the interconnection rate since the wholesale service will involve both ends of the call. (Tr. 314). Thus, if the Commission desires, it may implement the rates calculated by FIXCA (along with requiring the other items discussed earlier) and permit ECS to go into effect.

Alternatively, if the Commission wants to explore these rates further, it may utilize the interim refund mechanism provided in the Settlement Agreement to return the $25 million to

[21]If the Commission adopts FIXCA's proposed rate, Southern Bell's mark-up on the rate will still be in excess of 200%. (Tr. 315-316).

ratepayers until interconnection and wholesale rates have been established. (Tr. 342). Application of the interim refund mechanism answers the fundamental question regarding how to dispose of the $25 million which Southern Bell is obligated to return to ratepayers.[22] Another option would be for the Commission to implement the rates proposed by FIXCA on an interim basis pending further review.

Finally, the Commission has the alternative of using the $25 million to reprice PBX trunks and DID to create a more competitive market as suggested by the Ad Hoc Telecommunications Users Group. (Tr. 251-253).

ISSUE 4

SINCE THIS DOCKET WAS OPENED PRIOR TO THE NEW LAW BEING ENACTED, SHOULD THE UNSPECIFIED $25 MILLION RATE REDUCTION SCHEDULED FOR OCTOBER 1, 1995, BE PROCESSED UNDER THE FORMER VERSION OF CHAPTER 364, FLORIDA STATUTES?

FIXCA's Position: *No. For both legal and practical reasons, this proceeding should be governed by the new statute. However, even if ECS is processed under the old law, ECS would violate the new statute immediately upon price cap election.*

As noted in Issue 5, though the parties may disagree about many issues in this docket, they do agree that the appropriate statutory framework to apply to Southern Bell's proposal is the new telecommunications law. Both legal and practical reasons support this position.

[22] Use of the interim mechanism addresses Commissioner Kiesling's and Commissioner Deason's concern that this is a rate proceeding to determine how to dispose of the $25 million refund. (Tr. 332, 340).

Legal

The statute's savings clause is found at section 364.385(2). The savings clause is specific as to the treatment of proposals for extended calling service plans. Specific legislative direction takes precedence over general statutory language. Adams v. Culver, 111 So.2d 665 (Fla. 1959); Lincoln v. Florida Parole Commission, 643 So.2d 668 (Fla. 1st DCA 1994).

The first sentence of the savings clause states:

> All applications for . . . extended calling service pending before the commission on March 1, 1995 shall be governed by the law as it existed prior to July 1, 1995.

Thus, clearly applications for extended area service filed after March 1 are governed by the new law.[23] It is undisputed that Southern Bell's ECS proposal was filed after March 1.

Further on in the section, one sentence indicates that proceedings which are pending on July 1, 1995 are to be governed by prior law. While some proceedings may be governed by prior law, in this case, as soon as Southern Bell elects price cap regulation, the standards for non-basic service apply to its ECS plan since it was not ordered before July 1. Section 364.02(2). (See Issue 5). The last sentence of the savings clause section provides that a proceeding which has not progressed to a hearing by July 1, 1995 (which this proceeding clearly had not) may be governed by the old law only with the consent of all parties and the Commission--a condition which has not been met in this case. The Commission should apply the savings clause's specific language regarding ECS plans.

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[23] Commissioner Deason asked why the ECS routes could not simply be declared EAS routes and therefore escape the imputation requirement. (Tr. 432-433). While the Commission could approve EAS, the non-basic service standards would still be applicable since the service would not be ordered by the Commission before July 1, 1995. See section 364.02(2).

Practical

There are several practical reasons for analyzing ECS pursuant to the new law. First, the case was tried and the evidence was presented under the framework of the new law. Both Mr. Gillan and Mr. Hendrix analyzed ECS pursuant to requirements of new statute, not the previous law.

Even more important, however, is the fact that if the Commission were to approve this plan without taking into consideration the requirements of the new law, as soon as price cap regulation is elected by Southern Bell, ECS will become a non-basic service since it was not approved before July 1, 1995; see section 364.02(2). Parties will have the ability to file complaints with the Commission which will demonstrate that they are not being treated fairly under section 364.051(6)(b) of the new law. That section provides:

> The commission shall have continuing regulatory oversight of non-basic services for purposes of . . . ensuring that all providers are treated fairly in the telecommunications market.

The Commission will then hear the same testimony and evidence about the service's failure to pass the statute's imputation standard and the lack of interconnection and resale rates. Essentially, the Commission (and the parties) will go through the same process twice. This is inefficient and expensive for both the Commission and the parties. The new law's standards should not be ignored and then revisited again in a few short months. The Commission should deal head on with the serious problems raised by Southern Bell's ECS proposal and resolve them now by adopting the interconnection and wholesale rates.

ISSUE 7

DOES SOUTHERN BELL'S ECS PROPOSAL VIOLATE ANY OTHER PROVISION OF THE REVISED CHAPTER 364, FLORIDA STATUTES, EXCLUDING THOSE PREVIOUSLY IDENTIFIED IN THE POSITIONS ON THE ISSUES LISTED IN THE PREHEARING ORDER?

FIXCA's Position: *Yes. Under Southern Bell's reading of "functionally equivalent" in section 364.051(6)(c), the ECS plan violates the non-discrimination provision of the statute.*

Section 364.051(6)(a)2 provides, in part, that:

> the local exchange telecommunications company shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers.

Emphasis supplied. The intent of this provision, which appears in the section on non-basic service, is clear -- a LEC may not discriminate among similarly situated customers. If, as Southern Bell argues, ECS and intraLATA toll are the same for purposes of the imputation test (a proposition with which FIXCA disagrees), Southern Bell has run afoul of the quoted non-discrimination provision. Southern Bell proposes to charge customers who are receiving essentially the same service, according to Southern Bell, and who are therefore "similarly situated", different prices. Such a pricing proposal discriminates against Southern Bell's intraLATA toll customers and is therefore impermissible.[24]

[24] Of course, this is not a problem unless the Commission accepts Southern Bell's strained "functionally equivalent" argument.

ISSUE 1

WHICH OF THE FOLLOWING PROPOSALS TO DISPOSE OF $25 MILLION FOR SOUTHERN BELL SHOULD BE APPROVED?

A) SBT'S PROPOSAL TO IMPLEMENT THE EXTENDED CALLING SERVICE (ECS) PLAN PURSUANT TO THE *TARIFF FILED ON MAY 15, 1995.* (T-95-304);

B) CWA'S PROPOSAL TO REDUCE EACH OF THE FOLLOWING BY $5 MILLION:

1. BASIC "LIFELINE" SENIOR CITIZENS TELEPHONE SERVICE;
2. BASIC RESIDENTIAL TELEPHONE SERVICE;
3. BASIC TELEPHONE SERVICE TO ANY ORGANIZATION THAT IS NON-PROFIT WITH 501(C) STATUS;
4. BASIC TELEPHONE SERVICE OF ANY PUBLIC SCHOOL, COMMUNITY COLLEGE AND STATE UNIVERSITY;
5. BASIC TELEPHONE SERVICE OF ANY QUALIFIED DISABLED RATEPAYER;

C) MCCAW'S AND FMCA'S PROPOSAL THAT A PORTION BE USED, IF NECESSARY, TO IMPLEMENT THE DECISIONS RENDERED IN DN 940235-TL;

D) ANY OTHER PLAN DEEMED APPROPRIATE BY THE COMMISSION.

FIXCA's Position: *The Commission must reject Southern Bell's proposal because it fails to pass the required imputation standard and because it would remonopolize a significant portion of the intraLATA toll market in the Southeast LATA in direct contravention of the intent of the new telecommunications legislation, unless FIXCA's recommendations are adopted.*

FIXCA has no position on which of the proposed alternatives the Commission should implement. However, if the Commission wants to implement an ECS-like plan, for the reasons discussed in detail in other issues, Southern Bell's ECS plan must be rejected as proposed. FIXCA's testimony in this docket focuses on what the Commission must do if it

decides it wants to proceed with Southern Bell's ECS proposal or something like it. If the Commission decides to permit such a service, it must ensure that the service meets the imputation requirement and it must put into place the elements described in Issue 2, including an interconnection rate and resale provisions, before permitting Southern Bell to offer such a service.

ISSUE 3

WHEN SHOULD TARIFFS BE FILED AND WHAT SHOULD BE THE EFFECTIVE DATE?

FIXCA's Position: *If the Commission decides to proceed with ECS, tariffs should be filed as soon as possible incorporating the necessary elements described above. However, until such tariffs are in place or the Commission adopts the rates provided by FIXCA, the Commission should use the interim refund mechanism in the Settlement Agreement.*

The elements which must be in place before ECS may be implemented are described in Issues 2 and 6 above. Until those elements are in place either via the rates proposed by FIXCA or after further proceedings to determine such rates, the Commission should use the interim refund mechanism of the Settlement Agreement to return the $25 million to ratepayers.

CONCLUSION

Southern Bell has proposed a service which is unlawful under the new telecommunications statute because it fails to comply with the fundamental requirements of that statute which were put in place to promote competition. Unless the Commission requires the ECS plan to pass the statute's (and the Commission's) imputation test, requires that the service be available for resale and provides an interconnection rate for competitors, the ECS plan cannot be approved. If the Commission wants to put ECS into place, FIXCA has offered evidence to allow it to do so. However, without all the required elements in place, Southern Bell's proposed ECS plan must be rejected.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Florida Interexchange Carriers Association's Post-Hearing Statement and Post-Hearing Brief have been furnished by hand delivery* or by U.S. Mail to the following parties of record, this 17th day of August, 1995:

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