BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for review of rates and charges paid by PATS providers to LECs	)	DOCKET NO. 860723-TP ORDER NO. 25312 ISSUED: 11-12-91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
BETTY EASLEY
GERALD L. GUNTER
MICHAEL McK. WILSON

ORDER GRANTING IN PART AND DENYING IN PART MOTIONS FOR RECONSIDERATION AND/OR CLARIFICATION OF ORDER NO. 24101

BY THE COMMISSION:

I. BACKGROUND

On February 14, 1991, we issued Order No. 24101, our Final Order after hearing in this docket. Subsequently, the following pleadings were filed:

1. Motion for Reconsideration and/or Clarification of Commission Order No. 24101, filed March 1, 1991, by Central Telephone Company of Florida (Centel).

2. Motion for Reconsideration of Commission Order No. 24101, filed March 1, 1991, by Southern Bell Telephone and Telegraph Company (Southern Bell).

3. Motion for Clarification and/or Reconsideration, filed March 1, 1991, by GTE Florida, Incorporated (GTEFL).

4. Motion for Reconsideration, filed March 1, 1991, by Intellicall, Inc. (Intellicall).

5. Motion for Reconsideration of Order No. 24101, filed March 1, 1991, by the Florida Pay Telephone Association, Inc. (FPTA).

6. Request for Oral Argument, filed March 1, 1991, by FPTA.

7. Motion for Reconsideration and Clarification, filed March 4, 1991, by United Telephone Company of Florida (United).

8. Motion to Enlarge Time for Filing Motion for Reconsideration, filed March 7, 1991, by United.

9. Response to Motion for Reconsideration, filed March 11, 1991, by GTEFL.

10. Response to Motions for Reconsideration of Order No. 24101, filed March 13, 1991, by FPTA.

11. Response to FPTA's Motion for Reconsideration, filed March 15, 1991, by Southern Bell.

12. Motion for Extension of Time, filed June 21, 1991, by GTEFL.

13. Response to Motion for Extension of Time, filed July 3, 1991, by FPTA.

By Order No. 24425, issued April 24, 1991, the Prehearing Officer denied FPTA's Request for Oral Argument. In addition, the Prehearing Officer granted United's Motion to Enlarge Time for Filing Motion for Reconsideration.

All of the requests for specified confidential treatment that remained pending after the hearing were disposed of by Order No. 24531, issued May 14, 1991. In that Order, the Prehearing Officer both granted and denied various portions of a number of requests for confidentiality that were filed by several different parties to this proceeding.

We initially considered all of the motions for reconsideration/clarification at our June 11, 1991, Agenda Conference. At that time, we made our final determination on all issues, except those involving the level of rates charged by local exchange companies (LECs) to nonLEC pay telephone service (NPATS) providers for interconnection to the LEC network. As to the level of the interconnection rates, we determined it was appropriate to consider the matter further at a subsequent Agenda Conference. Accordingly, we directed our staff to return at a later date with a further recommendation on this specific issue.

The terms of Order No. 24101 require all LECs in Florida to file tariffs to become effective sixty (60) days following the issuance date of the order on reconsideration. Further, Order No. 24101 contemplates that all changes made through this proceeding become effective simultaneously. For these reasons, we determined that only one order would be issued to dispose of all the issues raised on reconsideration/clarification. Accordingly, no order was issued following our action on June 11, 1991.

Subsequently, the matter came before us at our July 30, 1991, Agenda Conference. At that time, we again deemed it appropriate to defer the matter of the interconnection rates for consideration at a later date.

By Order No. 24901, issued August 8, 1991, we closed Docket No. 891168-TC. We took this action because all of the matters that remained pending related only to issues arising in Docket No. 860723-TP. We then considered the remaining issues at our September 10, 1991, Agenda Conference.

II. INTRODUCTION

The purpose of a motion for reconsideration is to bring to the attention of the tribunal some point of fact or law which it overlooked or failed to consider when it rendered its decision. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In other words, to prevail on a motion for reconsideration, the movant must show that our decision is based on a mistake of fact or law. Id.

Our rules do not expressly address a party's right to seek clarification of an order. However, Rule 25-22.060, Florida Administrative Code, outlines the procedures applicable to a party seeking reconsideration. A review of the various requests for clarification reveal that what is actually sought through these pleadings amounts to no more than reconsideration. Accordingly, our decision of the various requests for reconsideration and/or clarification will be based upon the standards for judging a request for reconsideration; that is, whether in making our decision we overlooked or failed to consider some matter. Overall, the parties have failed to make such a showing. However, we do find it appropriate to reconsider and/or clarify certain limited areas of our decision as reflected below.

III. LEC RETENTION OF 0+ LOCAL AND 0+ INTRALATA TRAFFIC

FPTA has requested that we reconsider our decision to deny authorization to NPATS providers to handle 0+ local and 0+ intraLATA traffic through the use of store and forward technology. As grounds for its request, FPTA asserts that there are specific errors in Order No. 24101 that contribute to us reaching incorrect conclusions regarding the application of our 0+ policy.

First, FPTA claims that there is no basis for the following statement which appears at page 11 of Order No. 24101:

> Since the inception of competition in the provision of pay telephone services in Florida, we have reserved to the LEC all calls originated from NPATS using the following dialing patterns: (1) all 0- calls; (2) all 0+ local calls; and (3) all 0+ intraLATA calls.

FPTA's claim that there is no basis for this statement is nothing more than an attempt by FPTA to reargue its case yet another time. In Order No. 24101, we set forth the history of our traffic routing requirements at length. We will not repeat that extensive history here. We do wish to note, however, that merely because Order No. 14132 contained no explicit statement regarding mandatory traffic routing by NPATS providers, does not mean that Order No. 14132 can be cited for the proposition that NPATS providers are not subject to these requirements. This becomes clear when it is recalled that our traffic routing requirements were never at issue until we gave AOS providers authority to operate. See Orders Nos. 19095 and 20489.

FPTA next alleges that it is incorrect for us to assert at page 20 of Order No. 24101 that "it was our intention to include the operator service function as well," after stating that "We have not wavered from our original decision that all 0+ local and 0+ intraLATA toll calls must be handled by the LEC." Again, FPTA is attempting to reargue its case. We included the above statement in Order No. 24101 as a point of clarification only.

Finally, FPTA claims that the record does not support the following statement which appears at page 20 of Order No. 24101:

> There was no evidence introduced in this proceeding to indicate that the policy outlined in Section III-B above and reaffirmed by Order No. 23540 should be changed as a whole or that NPATS providers should receive a special exemption separate from other telecommunications entities.

FPTA asserts that it submitted extensive evidence and, further, disagrees that it has asked for any kind of "special exemption." As to the first part of this argument, we agree that it is incorrect to state that no evidence was introduced by FPTA. Accordingly, we shall amend the statement quoted above to read as follows:

> The evidence submitted in this proceeding did not persuade us that the policy outlined in Section III-B above and reaffirmed by Order No. 23540 should be changed as a whole or that NPATS providers should receive a special exemption separate from other telecommunications entities.

We believe that our statement should be so amended in order to reflect that we received and considered evidence, although we were not persuaded by it. However, it should be noted that this rewording is a clarification only. As to the second part of the above argument, we simply disagree with FPTA. We stand by our original statement because our traffic routing requirements apply to all telecommunications companies.

FPTA has also presented four additional points in support of its argument that our traffic routing requirements do not apply to NPATS providers. FPTA asserts that: 1) there is no long-standing 0+ pay telephone policy that precludes the use of store and forward processing; 2) 0+ local calls have never been precluded under the intraLATA toll policy; 3) the technologies and policies permitting 1+ call handling support 0+ call handling; and 4) the technical limitations of store and forward cited in the Order either do not exist or have been corrected.

FPTA's first and second assertions above amount to a mere rehashing of its arguments at the hearing. FPTA's third assertion ignores our endorsement of the North American Numbering Plan. Finally, FPTA's fourth assertion disregards our clear statement at page 20 of the Order that our denial of the authority to utilize

store and forward processing for these calls was a decision totally independent of any perceived deficiencies of the technology involved.

Intellicall has requested that we revise or delete certain portions of our discussion of the technical deficiencies of store and forward in Section III-C of Order No. 24101 to correct outdated and/or incorrect information. Intellicall then asks that we reevaluate our decision, to the extent the incorrect or outdated information contributed to our decision.

Intellicall has specifically requested that we revise our discussion of collect calling to rotary dial telephones because the deficiencies noted in the Order have now been eliminated by the introduction of new features subsequent to the close of the hearing in this matter. We shall deny this portion of Intellicall's request because the discussion in the Order is based upon evidence of record that was accurate as of that date.

Intellicall has also requested that we revise the wording on page 18 of the Order that implies that store and forward does not transmit the "bong" tone immediately after receiving the 0+ dialing. We agree that this implication is incorrect and is not supported by the record. However, we still believe that immediate delivery of the "bong" tone on all 0+ calls should remain a requirement wherever store and forward technology is deployed. Accordingly, Order No. 24101 is hereby corrected at page 18 to reflect that store and forward does not offer a menu to the end user on 0+ calls before transmitting the "bong" tone.

Intellicall's last request regarding this issue is that we reevaluate our decision, to the extent the outdated or incorrect information contributed to that decision. Such action on our part is not necessary. As we stated above in our discussion of FPTA's motion, our denial of authority to utilize store and forward processing for these calls was a decision totally independent of any perceived deficiencies of the technology involved.

FPTA's final request for reconsideration relative to this issue is that we reconsider our decision to deny NPATS the authority to utilize store and forward technology for 0+ local and 0+ intraLATA calls originating from confinement facilities. In support of its request, FPTA asserts that we overlooked evidence presented by two FPTA members in earlier prison waiver proceedings.

Adler Communications, Inc. (Adler) and Peoples Telephone Company (Peoples) each filed a petition, in November, 1989, and March, 1990, respectively, for authority to handle 0+ local and 0+ intraLATA calls via store and forward technology from confinement facilities. Adler's petition was denied. In so doing, we stated that the issue of using store and forward technology to handle 0+ local and 0+ intraLATA toll calls would be addressed in this docket. See Order No. 22907-A, issued May 17, 1990, Also, Witness Fedor of Adler actively participated in this proceeding and provided testimony regarding Adler's petition for a rule waiver to provide pay telephone service in the Marion County Jail. With regard to Peoples' request, we deferred ruling upon its petition until after the completion of proceedings in this docket. See Docket No. 900195-TC.

FPTA asserts that Order No. 24101 neglects to include the consolidation of Adler and Peoples into this docket. FPTA further asserts that there is no indication that the evidence presented on store and forward use in prisons was properly considered in reaching a decision for confinement facilities. Both of these assertions are incorrect. As we have explained above, neither Adler's nor Peoples' cases were consolidated into this docket, although a representative of Adler provided testimony in this proceeding. Further, FPTA's claim that we overlooked or failed to consider evidence ignores the plain language of our Order. At page 46 of Order No. 24101 we state:

> Our decision on store and forward technology is discussed at length in Section III of this Order. For the reasons set forth therein, we find that NPATS providers shall not be granted an exception from that ruling for their operations in confinement facilities. All of the considerations that entered into our general decision on this matter apply with equal force here. No evidence was introduced to justify a different result merely because the instrument is installed in a confinement facility.

For these reasons, we shall not reconsider our decision to deny NPATS the authority to utilize store and forward technology for 0+ local and 0+ intraLATA calls originating from confinement facilities.

IV. END USER RATES

FPTA has requested that we reconsider the level of rate caps in light of our decision on store and forward. In support of this request, FPTA states that Order No. 24101 is fundamentally contrary to the ongoing purpose of this docket, which, according to FPTA, has been to address the rate level for interconnection and other policies which prevent NPATS from bringing the benefits of competition to consumers of this state. FPTA argues that the reduction in end user rates places NPATS in a worse situation than the status quo.

FPTA claims there are three fundamental errors which must be corrected through reconsideration. According to FPTA, these errors are: 1) the Order misconstrues the policy and evidence regarding the need for and operation of a rate cap; 2) the Order relies on facts that are not true or relevant in rejecting FPTA's plan for competition; and 3) the Order's conclusions regarding economic data are inconsistent with the evidence of record.

In support of its first claim, FPTA asserts that the Order, at pages 20 to 21, incorrectly states that rate caps were originally set exclusively to protect ratepayers. Order No. 24101 states at pages 20 to 21:

> Our main thrust in authorizing rate caps when we originally allowed competition in the pay telephone market was to protect the ratepayers in Florida who depend upon pay telephones for their communications needs.

In determining rates to be charged by NPATS providers to end users, we stated in the original payphone order:

> Our main interest in this case is to protect the ratepayers of the State of Florida....In this regard, we are concerned with assuring that the introduction of competitive PATS does not result in the substitution of an unregulated monopoly for a regulated monopoly in the PATS area.

Order No. 14132, at page 15. In addition, we stated in that order:

> While we believe that the introduction of competitive PATS will be beneficial to the ratepayers of Florida, we feel it is our duty to protect the PATS user from becoming a captive buyer having to purchase low grade telephone service at exorbitant prices....We believe a proper mechanism can be implemented where the benefits of competition will be present and the PATS user will be protected. This mechanism is the imposition of maximum rate regulation on non-LEC PATS providers.

Id. These quotations clearly demonstrate that the cited language in Order No. 24101 is not in error as claimed by FPTA.

In further support of its first claim, FPTA also asserts that Order No. 24101 is incorrect in stating on page 21 that "we have seen no evidence in this proceeding that pay telephone service is truly a competitive market as to end users." FPTA argues that it presented evidence of a number of ways in which end users have benefitted from the presence of NPATS providers in the marketplace. This, however, is not grounds for reconsideration. The evidence FPTA refers to does not negate our quoted statement. FPTA is merely attempting to reargue its case after the hearing.

FPTA's final assertion in support of its first claim is that Order No. 24101 incorrectly states at page 24 that the NPATS surcharge was originally established to provide compensation for cashless calls. This argument is not a new one to us. We simply disagree with FPTA on this issue, as we have in the past. See Order No. 20610, where this argument was considered at length and then rejected.

FPTA's second claimed fundamental error is that Order No. 24101 relies on specific facts that are not true or relevant. The first error cited by FPTA appears at page 23 of the Order where we state that "NPATS providers are not guaranteed the opportunity to earn a reasonable return on their investment." FPTA argues that this is an erroneous conclusion. Quite simply, we disagree. In so holding, we found that the rationale supporting this conclusion in the AOS arena applies with equal force to the NPATS industry. See International Telecharge, Inc. v. Wilson, 573 So. 2d 816 (Fla. 1991).

The second factual error claimed by FPTA is our statement at page 23 of the Order that NPATS providers are "prohibited from competing for 0- and 0+ local and intraLATA traffic." We have thoroughly discussed this subject in Section III above and do not agree that our statement in Order No. 24101 is in error.

The last factual error cited by FPTA in support of its second claimed fundamental error is that Order No. 24101 is incorrect at page 23 where it states that "Southern Bell and GTEFL are restricted from competing in the interLATA interstate and interLATA intrastate markets." FPTA argues that not only are Southern Bell and GTEFL unrestrained in their ability to compete in the interLATA market, but they also can enjoy significant competitive advantage through interLATA access charge commission payments and joint bids with IXCs. Again, FPTA is attempting to reargue its case after the fact and has not shown that our statement is in error.

FPTA's third claim of fundamental error in Order No. 24101 is that our conclusions regarding the economic data are completely inconsistent with the evidence of record. FPTA asserts that the favorable economic condition of NPATS providers described in the Order is based upon a complete misstatement of the evidence regarding the introduction of the $.75 intraLATA surcharge. FPTA denies that the introduction of the intraLATA surcharge was an enhancement to NPATS revenues and that, in fact, it actually resulted in a decrease in revenues in 1990, as compared to 1989. Once again, FPTA is attempting to reargue its case. FPTA's claimed revenue decrease is the result of members divesting themselves of traffic reserved to the LECs (traffic for which FPTA members were supposed to be receiving no revenue prior to our action to establish the intraLATA surcharge). The fact that certain NPATS providers did not recognize Order No. 20610 does not make FPTA's argument valid. Accordingly, we find no grounds for reconsideration on FPTA's claimed fundamental errors.

Finally, FPTA asserts that if we do not return the rate caps to their old levels, we must convene an entirely new proceeding under Chapter 364, Florida Statutes, as revised effective October 1, 1990. FPTA, however, does not "flesh out" this assertion and we are unable to find any support for this claim. Accordingly, we shall not take such action in this docket.

A. Set Use Charge

Southern Bell, GTEFL, United, and Centel all requested reconsideration and/or clarification of whether the $.25 "set use" charge for 0- and 0+ revenue generating interLATA calls is optional or mandatory. Section IV-C of Order No. 24101 addresses the rate cap on end user charges for 1+, 0+, and 0- interLATA toll calls placed from NPATS pay telephones. We found it appropriate to allow a $.25 "set use" charge to be placed on all revenue generating 0- and 0+ interLATA toll calls placed from NPATS pay telephones and to require the LECs to apply the $.25 "set use" charge to revenue generating 0- and 0+ interLATA calls placed from LPATS, as well.

Southern Bell states that it provides billing and collection services, either by tariff or contract, to many, but not all, interexchange carriers. Therefore, Southern Bell is not able to apply the "set use" charge where it has no billing and collection relationship with the interLATA interexchange carrier. United, GTEFL, and Centel also requested reconsideration due to their inability to bill and collect the "set use" charge from interexchange carriers when billing is done by someone other than the LEC. In addition, it may be possible that NPATS have a situation where they do not have a billing and collection agreement with an IXC, either.

Our purpose in requiring that the "set use" charge be applied to LPATS was to establish a rate element for the cost of the pay telephone and the pay telephone operation. The application of the "set use" fee places the cost squarely on the cost-causer---the end user. It was also used to establish uniform rates between LPATS and NPATS and to alleviate the marketing disadvantage that NPATS providers claim exists when a surcharge or "set use" charge is placed only on its pay telephones.

Based upon the considerations set forth above, we find it appropriate that the "set use" fee be optional for interLATA calls. Accordingly, we shall clarify Order No. 24101 to allow the "set use" fee to be optional on interLATA 0- and 0+ calls, both for LPATS and NPATS.

GTEFL also requested clarification as to whether the "set use" charge is optional or mandatory for revenue generating 0- and 0+ local and intraLATA calls from LPATS and NPATS. Our primary purpose in creating the "set use" charge was to add a rate element

to include recovery of the pay telephone investment and the pay telephone operation. Our secondary purpose was to remove customer confusion by establishing uniform rates between NPATS and LPATS to the greatest extent possible. Applying the "set use" charge to LPATS would also eliminate the NPATS providers' claim that they are at a severe marketing disadvantage. Accordingly, we shall clarify that it was our intent that application of the "set use" charge on all revenue generating 0- and 0+ local and intraLATA calls be mandatory for both LPATS and NPATS.

United has requested that we reconsider the language on page 67 of Order No. 24101 which states:

> The cost of billing and collection of the "set use" charge for NPATS providers is considered as part of the interconnection rates; therefore, no additional charge applies to the service.

United argues that the administrative cost of modifying its billing system, and billing, tracking, and remitting the $.25 "set use" fee, which applies to all 0- and 0+ local and intraLATA revenue generating calls dialed from NPATS pay telephones, is significantly greater than performing the same functions for the discretionary $.75 surcharge currently in effect. We shall deny United's request because we considered the cost of billing and collection before we determined it was appropriate that billing, collection, and remitting of the "set use" fee should be a part of the interconnection rate paid by NPATS.

United has noted in its motion that Order No. 24101 is silent regarding how uncollectibles on the "set use" charge should be handled. United requests that we clarify this matter by applying the same procedures as currently apply to the $.75 surcharge. We agree that this matter should have been addressed in Order No. 24101. However, in reviewing the LECs' current tariff provisions for the $.75 surcharge, we find the language to be somewhat vague. We find the uncollectible procedures in Section E-8 of Southern Bell's and GTEFL's Access Tariffs to be most appropriate for the "set use" charge. We believe the procedures for uncollectibles should be the same for NPATS providers as they are for any other entity that the LECs do billing and collection for. Accordingly, all LECs shall file appropriate tariff revisions to become effective no later than sixty (60) days after the issuance date of this Order.

FPTA has also requested that Order No. 24101 be clarified to state that remittance of the "set use" fee by the LECs to NPATS providers should be timely and accurate. FPTA argues that the surcharges presently billed and collected by the LECs are not remitted accurately and on a timely basis to NPATS providers. Also, FPTA states, when remittances are disputed by the NPATS providers, it can take a significant amount of time to correct and remit the proper revenues to the NPATS providers. FPTA requests that such payments or credits be made on the first bill following the billing cycle and be accompanied by a late payment charge applied to each NPATS provider's bill, pursuant to the applicable late payment interest rate each LEC imposes upon its own customers. Also, at a minimum, the LECs should be required to provide the necessary remittance data on magnetic media.

We shall not clarify the Order in the manner requested by FPTA. While we believe that FPTA's request does have some merit and that the LECs should provide payment to the NPATS providers in a timely and accurate manner, there is no evidence on record of the problems in this area. If FPTA has specific information that LECs are not remitting the "set use" charge in a timely fashion, then FPTA should provide us with this information. As to the late payment charge, while problems may exist, we have not received any evidence with regard to the appropriateness or inappropriateness of such a charge either. The same thing applies to the request for magnetic media. Accordingly, FPTA's request is denied on these issues.

FPTA has also requested that we consider using the new revenues from the LPATS "set use" charge to offset a reduction in the NPATS interconnection rate. FPTA argues that applying the new "set use" fee revenues in this manner is appropriate because the new revenues should serve to offset existing related services. We do not agree. Our primary rationale for establishing a "set use" fee was to add a rate element for recovery of the pay telephone operation costs. It was not designed to offset a rate reduction for NPATS or to enhance their profitability. The effect of approving FPTA's request would be that end users of LPATS instruments would be supplementing the rates charged to NPATS providers. This is contrary to our decision to place the cost of LPATS payphone operation and investment on the cost-causer---the end user. We believe revenues associated with the LPATS "set use" fee should benefit the general body of LEC ratepayers, not the NPATS industry.

B. 15-Minute Time Limit

GTEFL's interpretation of Order No. 24101 is that the LEC will be required to bill and collect local call charges, in 15-minute increments, plus the set use charge, on 0- and 0+ local calls from designated NPATS pay telephones. If GTEFL's interpretation is a proper characterization of the Order, then GTEFL requests that we reconsider our decision because GTEFL does not have the ability to comply with the Order. United also seeks reconsideration and/or clarification to make clear that the 15-minute time limit on NPATS pay telephones is not required to be provisioned or supported by the LEC, but will be provided by NPATS providers in their own pay telephones. United also seeks clarification on whether the 15-minute time limit applies to all local calls or only on sent-paid calls.

We find it appropriate to clarify Order No. 24101 to state that the 15-minute time limit is optional and shall be provisioned by the LPATS or NPATS provider who owns the pay telephone. Originally, we determined that the time limit should be allowed for local 0- and 0+ calls, reasoning that since it would be optional, the LECs would be allowed to place the time limit, if technically feasible. However, after consideration, we have determined that the time limit shall be restricted to sent-paid calls. The primary purpose of creating time limits was to protect NPATS providers from paying usage charges excessively greater than the amount they were able to collect: $.25. With regard to the "set use" fee, the charge is a one-time charge and it is not intended to be charged in 15-minute increments. Since the LEC carries 0- and 0+ local calls from NPATS pay telephones, the NPATS provider does not pay usage charges on these types of calls and no time limit is necessary. By applying the time limit only to sent-paid calls, both NPATS and LPATS will have the opportunity to operate with no advantage over the other.

Accordingly, we find it appropriate to clarify Order No. 24101 to state that the 15-minute time limit is optional for both NPATS and LPATS; is restricted to sent-paid calls; and shall be imposed by the either the LPATS or NPATS provider who owns the pay telephone. If a time limit is imposed, the pay telephone provider must post a notice on the pay telephone indicating that the end user will be billed an additional $.25 after 15 minutes or be disconnected. Further, end users shall be verbally notified at least 30 seconds prior to disconnection that the 15-minute time

limit is about to expire and that they will be disconnected if they do not deposit an additional $.25.

C. Compensation Issues

In Order No. 24101, we denied FPTA's request to require the LECs to compensate NPATS providers for routing 0- and 0+ local and intraLATA calls to the LEC from NPATS instruments. We found that such a requirement would amount to making the LECs pay for what we had previously determined should be reserved to them. FPTA has asked that we reconsider this decision either for those NPATS providers who do not utilize store and forward processing, or for all NPATS providers if we continue to deny store and forward processing of 0- and 0+ local and intraLATA calls on reconsideration. However, FPTA does not point to any matter we overlooked or failed to consider in our original decision. FPTA is merely rearguing its position that the LECs should be required to compensate NPATS providers for routing this traffic to the LEC. We have heard this argument many times and we shall not entertain it yet again on reconsideration.

FPTA has also requested that we open a separate proceeding to investigate the appropriateness of compensation for 800, 950, and 10XXX calls (dial-around traffic). In Order No. 24101, we noted the lack of evidence on this issue, as well as our view of some of the merits and detriments of positions taken by parties on both sides of the question. Upon consideration, we find it appropriate to direct that a separate proceeding be instituted to address the question of dial-around compensation.

D. Request for Grandfathering

In Order No. 24101, we directed that the rate cap on sent-paid calls include time-of-day discounts. Previously, the cap on sent-paid interLATA and intraLATA calls was based on the ATT-C or LEC daytime rate (plus $1.00). FPTA has requested that we grandfather existing NPATS instruments incapable of implementing time-of-day discounts on sent-paid calls and permit daytime-only rating at these instruments.

We shall approve FPTA's request. However, no new pay telephones may be added which do not have time-of-day capability. This waiver shall remain in effect for a period of one year from the date of this Order to allow for any technical development or

necessary modifications. At the end of the one year period, if NPATS providers can then demonstrate that technical modifications are not possible or that the costs of such modifications are exorbitant, NPATS providers can then petition us for a further extension. FPTA is hereby directed to provide detailed information regarding the technical limitation to implementing time-of-day discounts for the types of pay telephones that will be grandfathered. NPATS providers shall file this information, including the model number and manufacturer of such instruments, within 90 days following the issuance date of this Order.

E. Extensions of Time

Both United and GTEFL filed requests for extensions of time to make the necessary modifications to their billing systems to implement various portions of the "set use" charge.

United has requested an extension of time to comply with applying the "set use" charge to intraLATA calls from LPATS instruments and local calls from NPATS instruments. At the time of filing its motion, United indicated it would take at least six months to complete the necessary modifications.

We shall approve United's request. United shall make the necessary billing modifications as soon as possible, but no later than December 11, 1991. United shall file a schedule outlining the necessary modifications and estimated completion dates no later than thirty (30) days following the issuance date of this Order. United shall notify us of any possible delays in meeting the December 11, 1991, implementation date. In addition, United shall be required to maintain the current $.75 surcharge for all 0- and 0+ revenue generating calls originating from NPATS instruments until it has completed the modifications to its billing system. Once these modifications are completed, United shall notify all NPATS providers and this Commission that the "set use" fee will go into effect immediately.

GTEFL has requested an extension of time to comply with applying the "set use" charge to 0- and 0+ local and intraLATA calls from LPATS and NPATS instruments. GTEFL states that the reconsideration process in this docket has extended into its transition period for the change-out of its Customer Records and Billing System (CRB) to its new Customer Billing Services System (CBSS). Therefore, GTEFL requests that we not require it to incur

additional costs to install the changes in CRB. GTEFL's new CBSS is currently scheduled to go on-line in mid-November, 1991. Once CBSS is in place, GTEFL will be able to make the necessary modifications to implement the "set use" charge. However, the implementation date of CBSS is subject to change; therefore, GTEFL seeks an extension of time through the first quarter of 1992.

FPTA's response to GTEFL's motion supports the company's request, provided that GTEFL continues to bill, collect, and remit the current $.75 intraLATA surcharge until CBSS is in place and the company can bill the $.25 "set use" fee for 0- and 0+ local and intraLATA calls.

We shall approve GTEFL's request. GTEFL shall continue to bill the $.75 surcharge for 0- and 0+ intraLATA calls placed from NPATS instruments until CBSS is in place and the company can bill the $.25 "set use" charge for 0- and 0+ local and intraLATA calls. GTEFL shall notify all NPATS providers and this Commission when billing of the $.25 "set use" charge will begin.

V. INTERCONNECTION STRUCTURE AND RATES

A. Rates

FTPA seeks several changes associated with the interconnection rate and usage rates paid by NPATS providers to the LECS. In that regard, FPTA raises a host of arguments, all of which are related to the issue of interconnection rates and usage rates.

The established rate for NPATS interconnection, prior to the issuance of Order No. 24101, was a flat rate line charge of eighty percent (80%) of the applicable B-1 rate. Through Order No. 24101, we chose to leave the interconnection rate unchanged.

The established usage rates, prior to the issuance of Order No. 24101, included an on-peak measured rate element for local calls of $.04 for the first minute of use and $.02 for each additional minute of use, for all LECs which are able to measure and bill usage. The established off-peak measured rate element, for all LECs which are able to measure and bill usage, with the exception of Southern Bell, was $.03 for the first minute of use and $.01 for each additional minute of use. The rates for Southern Bell were $.02 for the first minute of use and $.01 for additional

minutes of use. Through Order No. 24101, we chose to lower the on-peak measured rate element to $.03 for the first minute of use and $.015 for each additional minute of use. The off-peak measured rate element was lowered to $.02 for the first minute of use and left unchanged at $.01 for additional minutes of use.

FPTA has requested we change the interconnection rate to a $20.00 per month line charge that includes the access line, all necessary screening and blocking, touchtone service, and the End Use Common Line (EUCL) charge. FPTA has also requested that we adopt a measured rate consisting of a $.01 set-up charge, with an around-the-clock usage rate of $.008 per minute.

In support of its request, FPTA makes the following arguments: 1) the approved rates are excessive; 2) we have misunderstood the purpose of the price squeeze; 3) the intraLATA toll surcharge authorized in 1990 represented a revenue decrease; 4) Southern Bell's cost data should not be used as the basis for setting industry-wide rates; 5) the Order incorrectly states that FPTA has not provided "clear evidence of any benefit to end users of lowering the interconnection rates" other than "vague assertions that more locations could be served;" 6) the Order has incorrectly placed the burden on FPTA to demonstrate that the current rates are excessive; and 7) "the Order at page 40 confuses the purpose of rate caps in order to obfuscate the need for interconnection rate reductions" (emphasis added). Each of these arguments are discussed separately below.

In addition, GTEFL requested reconsideration of our decision to change the on-peak measured rate element for local calls from $.04 for the first minute of use to $.03. GTEFL argues that this results in a situation where the long run incremental costs are barely covered. GTEFL requests an increase in this rate element back to the old level.

FPTA claims that our newly approved rate levels are excessive. However, the new rates are lower than existing rates. "Excessive" is a matter of judgment and degree, and the contribution level provided by these services is lower than that of many other services. Finally, FPTA has not shown a mistake of fact or law in the rate setting process. We note that the rates paid by NPATS providers are lower than those paid by any other type of providers who resell access to the local network.

FPTA claims that the most critical error in our Order is our "complete misunderstanding of the purpose and import of the 'price squeeze' analysis." This claim is addressed separately at length in Section V-B below.

FPTA next argues that Southern Bell's cost data should not be used as the basis for setting industry-wide rates. At pages 14-15 of its motion, FPTA states "moreover, even if there was only one carrier's data in the record, that carrier's information should not be automatically assumed to be average or normal for the industry. By way of comparison, Southern Bell's R-1 and B-1 rates are among the highest in Florida. If this is all the data the Commission has, it must act based upon the understanding that it is premising rates upon the highest cost carrier in Florida." FPTA's statement shows a complete misunderstanding of the rate setting process as it pertains to local service rates. R-1 and B-1 rates for all LECs in Florida are set residually, based on revenue requirements. Local service rates can be affected by many factors, including separations, pooling, and the level of MTS rates, for example. No inference can be drawn as to the level of costs for individual services when only the rates are known. Furthermore, no evidence exists in the record as to the level of costs for GTEFL or Centel. Without such evidence, it is clearly incorrect to state that Southern Bell is necessarily the highest cost carrier in Florida and it is incorrect to say it is unreasonable to use the reported costs of one carrier to set industry-wide rates.

FPTA challenges the assertion in Order No. 24101 that FPTA has not provided "clear evidence of any benefit to end users of lowering the interconnection rates" other than "vague assertions that more locations could be served." However, the evidence referred to in FPTA's reconsideration request does not credibly challenge this statement. FPTA's motion refers to testimony by FPTA witnesses Cornell and Hanft who argued that reduced rate levels make it economically feasible to serve more locations, and that lower costs will lead to the placement of phones at locations with lower revenue streams. Without taking issue with these points, what remains unclear is how end users will benefit. In the record, FPTA offered no evidence that there is an unmet need for pay telephones at low and medium volume locations, only assertions that FPTA members cannot compete for low and medium volume locations. FPTA witnesses were asked both in depositions, and at the hearing if there was an unmet need for pay telephones at low and medium volume locations or if any outside parties had called

for a wider distribution of pay phones. Repeatedly, the answer was "No." Therefore, when it is argued that lower costs will lead to the placement of phones at locations with lower revenue streams, what is meant is apparently not new locations, but displacement of existing locations.

Since there is no evidence of unmet need at low volume locations, lowering the interconnection rate could only mean that FPTA could better compete to replace existing LEC pay telephones. While this may or may not benefit location providers, it is not clear to us how end users would benefit. This is why we believe the Order is correct. The Order reflects that several parties testified that the vast majority of the benefits of competition have flowed to location providers. There was only slight evidence of any benefit to end users. There is the questionable benefit of a $.20 local rate (rather than $.25) from the pay telephones of two NPATS providers (a questionable benefit, since the record shows that most end users deposit $.25 anyway, and receive no change or credit). While this may be a benefit to the users of those particular phones, less than one in five NPATS telephones in Florida offer the $.20 rate. Some NPATS providers charge rates on sent-paid toll calls that are below applicable ATT-C or LEC rates. On the other hand, the record shows that some NPATS providers charge substantially more than ATT-C rates for interstate calls. Some NPATS providers do charge rates on interLATA store and forward calls that are below applicable ATT-C rates. However, an end-user could receive a similar discount from any LEC pay phone which is presubscribed to MCI or Sprint (or other IXCs). Alternatively, an end user could dial a 10XXX or 950 access code and choose MCI or Sprint or some other IXC and receive a discount from ATT-C rates. Thus, the benefit to the end user of NPATS phones replacing LEC phones is not clear.

FPTA next claims that the Order has incorrectly placed the burden on FPTA to demonstrate that current rates are excessive. "Indeed, placing the burden upon NPATS providers in this manner is the exact opposite of any other rate case situation where the LEC bears the burden of proving the reasonableness of its rates." What the FPTA has failed to note is that this is not a rate case situation. The LECs have not come us seeking a rate increase, nor have we, on our own motion, initiated a change in LEC rates. Rather, it is FPTA that has requested rate reductions, charging that existing rates are excessive. One may readily imagine the potential for excessively long and costly rate proceedings if every

party receiving service from a LEC could petition the Commission for rate decreases and place the burden on the LEC of proving the reasonableness of its rates upon nothing more than bald assertions of "excessiveness." We believe that the party seeking change bears the burden to come forward with at least a preliminary showing that existing, tariffed rates are excessive. FPTA has failed to make such a showing.

FPTA then claims the Order has made an "attempt to minimize adverse financial data by stating the virtues of the 1990 intraLATA toll surcharge ... [which] actually represented a revenue decrease for many NPATS providers due to the loss of a usage commission in addition to the up to $1.00 surcharge." This argument is totally without merit. Any usage commissions on intraLATA toll calls could only have come from traffic carried in direct violation of previous Commission orders. See our discussion in Section III of this Order. The extent to which such revenues are included in the financial data proffered by members of FPTA is unknown.

We particularly take issue with FPTA's statement at page 16 of its motion that "the Order at page 40 confuses the purpose of rate caps in order to obfuscate the need for interconnection rate reductions" (emphasis added). While the Order may or may not "obfuscate" the issue at hand, FPTA's statement assumes a purpose and intent in the Order which does not exist. The Order discusses, at page 40, claims by FPTA that rates to end users would be lower if the interconnection rate structure and usage rates were changed. The Order states that this might be true if the payphone industry were characterized by perfect or effective competition. However, since a large part of the body of payphone users is made up of captive customers and transient customers, truly effective competition cannot exist in this industry. The Order only mentions rate caps, at page 40, to note that they are necessary to protect captive customers, and that if rate caps are necessary, truly effective competition cannot exist. FPTA's motion argues that rate cap regulation and rates to end users below the cap are not antithetical. We stand by our Order.

Finally, GTEFL has requested that we reconsider our decision to lower the on-peak measured rate element from $.04 to $.03 for the first minute of use. Although a rate of $.03 per minute of use in the on-peak period provides only a small contribution for the initial minute of use, the level of contribution is higher for subsequent minutes. This is because the costs for the initial

minute of use include a set-up cost which does not apply to subsequent minutes. Inasmuch as the average length of a call is over two minutes, the rate of $.03 per minute provides a reasonable level of contribution. When we lowered this rate element, we recognized these factors.

For all the reasons set forth above, we shall deny both FPTA's and GTEFL's motions on these points. We have not been shown any mistake of fact or law to warrant reconsideration.

B. Price Squeeze

FPTA claims that the most critical error of fact or law is the "complete misunderstanding of the purpose and import of the 'price squeeze' analysis." However, the price squeeze analysis is merely an analytical tool, and, as such, we are free to give it whatever weight we choose. We have determined that the price squeeze analysis is not appropriate for the pay telephone industry. FPTA responds at page 12 of its motion that "the 'price squeeze' test applies whenever the monopoly charges competitors more than it charges itself." No party disputed that the LEC charges NPATS more than the LEC charges itself (since the LEC does not charge itself anything). The more appropriate question is whether there is a legitimate reason for a price differential. Where the "price squeeze" analysis fails is that it does not take into account any economic or policy rationale for different prices among competitors. We have provided several justifications for a price differential, primarily public interest concerns, such as maintaining pay telephones in public interest locations, as well as maintaining other low-volume, low-profit locations.

The price squeeze analysis is purely a numerical analysis which does not allow for any policy input. As an example of a numerical analysis which excludes policy inputs, consider classical monopoly pricing. A profit-maximizing monopoly would like to charge a monopoly price where marginal cost equals marginal revenue. From the perspective of the monopolist, this is the correct price to charge, since profits are maximized. However, a policy input then enters the equation. Regulators require, for policy reasons, that the monopolist charge a lower price.

Similarly, the figures which are derived by applying the price squeeze analysis merely tell the analyst whether there is some impediment to achieving maximum competition. The Order

specifically stated at page 39 that "where maximum competition is a Commission goal, a price squeeze analysis could be very useful." We have specifically stated that maximum competition is not the goal for pay telephone services. Rather, a limited form of competition would seem to best serve the end-user. That is, allowing some competition in the pay phone industry is in the public interest; however, structuring the industry for maximum competition would be destructive because of the loss in the number of public interest and low volume locations which would be served. We have not misunderstood, overlooked, or failed to consider the price squeeze analysis. Neither was there any error of fact or law regarding the price squeeze analysis. Accordingly, we shall not grant reconsideration on this point.

VI. SCREENING AND BLOCKING

GTEFL and Centel have requested that we reconsider or clarify our requirement to offer central office blocking of international DDD calls 011+, 1+900, 1+976, and 976 local calling on an unbundled basis.

Centel states that it is not clear whether it is required to make each of the options individually available for the NPATS providers to be able to select one or two of the options, or if it is required to offer the services in combination. Likewise, GTEFL states that, "To provide these services individually requires additional processor memory..."

These statements show that Centel and GTEFL both interpreted the unbundling statement on page 45 of the Order as meaning that the four blocking features were to be unbundled from each other. However, that was not our intent. We intended that these services could be offered as a package, but that the package should be unbundled from other blocking options. For example, as stated in the Order, some LEC tariffs offered 1+900 blocking to NPATS providers bundled with the blocking of all 1+ dialing, and 976 blocking only with an option which included blocking all seven-digit local dialing. Accordingly, our Order is hereby clarified to accurately reflect our intent. The following sentence which appears at page 45 of the Order should be deleted:

> Additionally, we find it appropriate to require the LECs to offer these blocking options on an unbundled basis.

The following sentence should be substituted for the deleted sentence:

> Additionally, we find it appropriate to require the LECS to offer these four blocking options unbundled from any other blocking.

VII. CONFINEMENT FACILITIES

The only request for reconsideration and/or clarification that we received relative to our decisions on confinement facilities related solely to the use of store and forward technology to handle 0+ local and 0+ intraLATA traffic. Our discussion of that request is contained in Section III of this Order.

VIII. COSTS AND REVENUES

FPTA claims in its motion that evidence of record does not support any finding that LPATS revenues exceed costs. The motion goes on to assert that we in fact made a finding that revenues exceed costs for the LPATS operations of Southern Bell, GTEFL, and United. However, we made no such finding. The language of the Order clearly states "GTEFL, Southern Bell, and United appear, from the information provided, to be profiting from their deployment of pay telephones." In making a finding that LPATS operations appear to be profitable, we recognized that reasonable people could disagree about the proffered evidence. However, there was sufficient competent evidence to make the finding described in the Order. Therefore, no reconsideration of this finding is necessary.

Regarding Southern Bell's cost data, FPTA's motion merely reargues its case, repeating every argument which was raised in its post-hearing brief. The motion also claims, "the finding at page 54 of Order No. 24101 that Southern Bell's payphone operations are profitable is contrary to Southern Bell's own evidence. Hearing Exhibit 20 supplied by Southern Bell states that none of Southern Bell's local telephone operations are recovering their costs." What FPTA has consistently failed to recognize is that Southern Bell's pay telephone operations are profitable in the aggregate.

FPTA argues that local traffic should be examined separately from 0- and 0+ intraLATA toll traffic, since 0- and 0+ intraLATA toll traffic is reserved to the LEC regardless of whether the LEC or NPATS provider transmits the call. However, if viewed on the basis of local traffic only, it appears that no NPATS provider would be profitable. FPTA further argues that coin phones and coinless phones should be examined separately, since FPTA only provides coin phones. These are both attempts to separate integral parts of Southern Bell's pay telephone operations to show that those operations are not profitable, but the conclusion remains that, in the aggregate, the operations are profitable. In examining pay telephone operations, as in an examination of any other business, one cannot undertake a separate examination of basically inseparable (joint-use) facilities if the question at hand is the overall profitability of a service. For example, Southern Bell does not provide pay telephones which serve local traffic only. It is therefore inappropriate to examine local revenues apart from other revenues which a pay telephone generates. Every argument which FPTA raises in this regard we have already considered and given due weight.

At page 1 of its motion, FPTA states "By this Order, the Commission instructs the local exchange companies to place pay telephones irrespective of need and without any economic justification in revenues collected or commissions paid." This is a fundamental misstatement by FPTA. Our Order does not contemplate that the LECs will place pay telephones "irrespective of need or without economic justification" primarily because it is not in the interest of the LECs to do so. In discussing the wide provision of pay telephones, the Order notes that there may be some low volume locations which are not explicitly identified (by local government, etc.) as needing pay telephone services. However, this statement does not imply that pay telephones are placed irrespective of need. Rather, the LECs perform their own internal need assessment to determine which locations should be served. We are unaware of any problem in this regard.

FPTA's motion, at page 23, referring to Rule 25-4.076(1), Florida Administrative Code, states "the only requirement for LEC payphone placement is for one instrument per exchange to be made available to the public on a 24-hour basis, 'where practical.'" Again, this is not totally accurate. The rule also provides that "a telephone company may not be required to provide pay telephone service at locations where the revenues derived therefrom are

insufficient to support the required investment unless reasonable public requirements will be served" (emphasis added). In other words, LECs can be required to serve locations which may not be economically justified. No similar requirement applies to NPATS providers. The point is that the requirement for placement of a payphone in every exchange is not the only requirement which governs LEC payphone placement. While we have not found it necessary to order the placement of pay telephones in particular locations, we certainly have that authority.

FPTA also claims that there is no basis in the record for "concluding that it is appropriate for the general body of ratepayers under these circumstances to support small LEC pay telephones where costs exceed revenues." But simply on the basis of logic, it is clear that such a conclusion is appropriate. The small LECs are required by administrative rule to provide at least one payphone per exchange. Yet, the small LECs offered undisputed evidence that the costs of their payphone operations exceed the revenues. Clearly, then, the shortfall must be made up by the general body of ratepayers. FPTA's claim in this regard is also without merit.

Since FPTA has not shown anything we overlooked or failed to consider, its motion for reconsideration shall be denied on these points.

IX. MISCELLANEOUS ISSUES

A. Incremental Billing

Southern Bell and United have each requested that we reconsider or clarify our language in Order No. 24101 as it relates to billing usage in 1/10 second increments. After reviewing the record, we find that their requests should be granted. The record clearly reflects that both Southern Bell and United are able to record in 1/10 of a second increments but are only able to bill in increments of 1/10 of a minute. Accordingly, our billing increment requirement on page 61 of Order No. 24101 shall be corrected to 1/10 minute for Southern Bell and United instead of 1/10 second.

B. Competition

FPTA's motion for reconsideration requests that we "reestablish competition as the fundamental policy underlying

payphone service regulation." We do not believe our Order has changed our underlying philosophy regarding pay telephone regulation.

From the time of our original order authorizing competition in the pay telephone market, maximum competition has never been our intention. Rather, Order No. 14132 authorized a limited form of competition. Although the term "limited competition" is not used in the Order, it is clear that only limited competition was authorized. To this end, substantial safeguards, such as rate caps, were put in place to be certain that this limited competition did not harm the public. In later orders, this same concept was applied. For example, once alternatives to LEC operator services were available, we reserved certain traffic to the LECs. Essentially, competition was authorized to the extent that we found it to be in the public interest.

FPTA's motion claims that the Legislature concurred in the conclusion that competition was in the public interest by amending Section 364.335, Florida Statutes. This assertion is not quite accurate. Rather, the Legislature granted this Commission the authority to grant certificates to pay telephone providers without making a determination of need. The Legislature made no finding that competition in the pay telephone industry is in the public interest, whether that competition be limited or all-out.

Finally, FPTA's attempt to claim that Order No. 24101 makes any change in the "fundamental policy underlying payphone regulation" is spurious. Nowhere does the Order state that competition is no longer in the public interest in this industry. In fact, the Order specifically states at page 30 that our "goals include a move to a competitive marketplace where feasible..."

In outlining some of the reasons why maximum competition in this industry is not in the best interests of the general public, our Order discusses a market failure, wherein low volume locations might not be served by competitive providers. While FPTA's motion discounts the existence of such a market failure, FPTA's own arguments lend credence to this finding. At page 21 of its motion, FPTA points out that "LEC witnesses testified that they are under increasing pressure to remove low volume location stations." The irony is that it is competition from NPATS that is pressuring the LECs to examine their pay telephone operations with a new eye for

profitability. The drive for profitability on a per-station basis, rather than on the basis of overall pay telephone operations, is precisely the market failure our Order has described. If LECs, which presently do not charge or impute to themselves the tariffed rates for PATS access, cannot profitably serve such low volume locations, it strains credulity to believe that a nonregulated, for-profit company can profitably serve such locations regardless of how low interconnection rates might fall (as long as the rates cover costs).

In summary, our Order has not changed the underlying philosophy regarding pay telephone regulation, and FPTA has not raised any related issue which merits reconsideration. If anything, the Order has merely refined our position towards competition in the pay telephone industry. Since FPTA has not shown any mistake of fact or law in this regard, FPTA's motion shall be denied on this point.

C. Compensation Opportunity

FPTA's motion asks that we find that NPATS providers do not have a sufficient opportunity to be fairly compensated under existing regulations. However, we can find no evidence to support such a conclusion.

The record shows that some NPATS are profitable while others are not. It is not quite clear to us what is meant by "a sufficient opportunity to be fairly compensated." However, the fact that some firms are profitable certainly implies that a sufficient opportunity to be fairly compensated exists. Since competition was first allowed in the pay telephone industry in Florida, the interconnection rates have been lowered several times and the number of NPATS access lines has grown dramatically. Beyond this, one may consider the idea of a rational businessperson. The pay telephone industry is one which requires substantial capital, some technical knowledge, and some measure of business acumen. It is very difficult to believe that rational businesspersons would enter a market, putting substantial capital at risk, if there was not a "sufficient opportunity to be fairly compensated."

In addition, we believe that FPTA has misinterpreted the law in this area. There is no legal requirement that NPATS providers are entitled to the opportunity to earn a fair return on their

investment. The Florida Supreme Court recently rejected identical arguments in the context of AOS providers. See International Telecharge, Inc. v. Wilson, 573 So. 2d 816 (Fla. 1991). The Court's rationale in the AOS arena applies with equal force to NPATS providers. NPATS providers, like AOS providers, have no obligation to serve any group, can enter and exit the market at will, can concentrate on only the most profitable areas, have no continuing relationship with end users, and are not compelled by law to make any investments. Id. at 818-19. Accordingly, NPATS providers, like AOS providers, are not entitled to the assurance of a fair return on their investment.

Moreover, FPTA has raised no argument which merits reconsideration. FPTA has not pointed out any error of fact or law, or information which we overlooked or failed to consider. Accordingly, its motion shall be denied on this issue.

D. Commission Payments

FPTA has requested that we clarify that LPATS can only pay commissions to premises owners on revenue received from the LPATS "set use" fee and not on revenues received from 0- and 0+ local and intraLATA toll and operator service revenues. FPTA argues that 0- and 0+ local and intraLATA calls amount to monopoly revenues since NPATS are not permitted to compete for this traffic if store and forward is not authorized.

Based on the record, there is no evidence to establish the appropriate mechanism with regard to paying commissions to premises owners. Commission payments were not an issue in this docket and FPTA's request to limit commission payments by LPATS is outside of the scope of this docket. Accordingly, FPTA's motion shall be denied in this respect. We note, however, that FPTA has filed a complaint against Southern Bell regarding this same subject. See Docket No. 910590-TL.

E. Direct Billing Services by LECs to PATS

FPTA notes in its motion that Order No. 24101 was silent on the issue of requiring the LECs to allow for direct acceptance of billing information from NPATS providers.

Our review of the record indicates that this issue was inadvertently left out of the Order. There was considerable

discussion regarding this requirement at the Agenda Conference. We intended to order the LECs to provide billing and collection services to NPATS providers. Currently, NPATS providers must use a clearinghouse for billing and collection services.

Accordingly, we find it appropriate to approve FPTA's request for clarification that the LECs should provide billing and collection services to NPATS providers. However, it shall be the responsibility of NPATS providers to provide the billing information in the same format required of other telecommunication entities for which the LEC does billing and collection. Further, there was no evidence regarding whether the LECs would require a minimum call volume. Therefore, if a minimum call volume is necessary, the LECs and NPATS providers shall work together in establishing an appropriate call volume. The billing and collection requirements shall be the same as approved in section E-8 of Southern Bell's and GTEFL's Access Tariffs which outline the billing and collection requirements to IXCs. LECs shall file tariffs establishing direct billing and collection for NPATS providers, to become effective 60 days following the issuance date of this Order.

F. Pending Motion of Small LECs

On July 12, 1990, the nine small LECs filed a Motion to Augment Representative Party and Join the Real Parties in Interest and Postpone the Scheduled Hearing. Motions in Support of the small LECs' Motion were filed by GTEFL and Southern Bell on July 27, 1990. FPTA filed its Opposition to the small LECs' Motion on July 24, 1990.

On August 1, 1990, the first day of the hearing, counsel for the small LECs stated that he wanted this Motion held for ruling until after the hearing was over. His rationale for this request was that the merits of his arguments would be clear once the hearing was concluded and the staff had submitted its recommendation.

The thrust of the small LECs' Motion is that a meaningful proceeding cannot be had without the participation (or, at a minimum, the joinder) of all holders of pay telephone certificates in Florida. Further, the small LECs see FPTA in the position of a "buffer" between the "true" adversarial parties. Finally, the

small LECs assert that they have been frustrated in their attempts to conduct useful discovery upon FPTA.

A substantial record has been compiled in this matter and we have made decisions on each of the issues before us. Thus, a meaningful proceeding could and did take place, contrary to the claims of the Motion. Further, the small LECs have not requested reconsideration of a single issue, which leads us to believe that the small LECs were not materially hampered in their efforts to put on their case. Accordingly, this Motion shall be denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each and every finding set forth herein is approved in every respect. It is further

ORDERED that certain language in Order No. 24101 is hereby amended and/or clarified in the manner and for the reasons set forth herein. It is further

ORDERED that Order No. 24101 is hereby affirmed in every other respect. It is further

ORDERED that all tariffs required by Order No. 24101 shall now be filed in accordance with the time frames set forth in that Order. It is further

ORDERED that all tariffs required by our decisions herein shall be filed as set forth in the body of this Order. It is further

ORDERED that the "set use" charge element of the rate cap for 0- and 0+ interLATA calls shall be optional for calls originating from both LEC and nonLEC pay telephones. It is further

ORDERED that the "set use" charge element of the rate cap for 0- and 0+ local and intraLATA toll calls shall be mandatory for calls originating from both LEC and nonLEC pay telephones. It is further

ORDERED that the 15-minute time limit shall be optional for both LEC and nonLEC pay telephones and shall only be applied to sent-paid calls. It is further

ORDERED that a separate proceeding shall be instituted to address the issue of the appropriateness of compensation for dial-around traffic. It is further

ORDERED that a limited waiver of our time-of-day discounting requirement is hereby granted in accordance with the terms and conditions set forth herein. It is further

ORDERED that the Requests for Extensions of Time filed by United Telephone Company of Florida and GTE Florida, Incorporated are hereby approved in accordance with the terms and conditions set forth herein. It is further

ORDERED that local exchange companies shall provide direct billing and collection services to nonLEC pay telephone providers in accordance with the directives set forth herein. It is further

ORDERED that the Motion to Augment Representative Party and Join the Real Parties in Interest and Postpone the Scheduled Hearing filed by the nine small local exchange companies is hereby denied for the reasons set forth in the body of this Order. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 12th day of NOVEMBER, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

by: Kay Flynn
Chief, Bureau of Records

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NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer 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.