BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into the regulatory safeguards required to prevent cross-subsidization by telephone companies	) DOCKET NO. 910757-TP) ORDER NO. PSC-93-0344-PHO-TP) ISSUED: 03/08/93

Pursuant to Notice, a Prehearing Conference was held on February 26, 1993, in Tallahassee, Florida, before Chairman J. Terry Deason, as Prehearing Officer.

APPEARANCES:

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On behalf of Florida Ad Hoc Telecommunications Users Committee.

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On behalf of AT&T Communications of the Southern States, Inc.

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On behalf of Central Telephone Company of Florida.

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On behalf of Florida Cable Television Association.

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On behalf of Florida Interexchange Carriers Association.

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On behalf of MCI Telecommunications Corporation.

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On behalf of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company.

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On behalf of the Citizens of the State of Florida.

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On behalf of the Commissioners.

PREHEARING ORDER

I. CASE BACKGROUND

By Order No. 24910, issued August 13, 1991, the Commission determined that issues regarding cross-subsidization should be addressed in a forum separate from the development of the local exchange company cost of service methodology docket, Docket No.

900633-TL. Accordingly, this docket was opened to examine the regulatory safeguards required to prevent cross-subsidization by telephone companies. On September 20, 1991, intervening parties submitted briefs addressing the legal requirements of revised Chapter 364. Based on the reaction of the parties at the February 4, 1992, Agenda Conference, the Commission determined that any proposed agency action issued would be protested by the parties. Accordingly, by Order No. 25816, issued February 4, 1992, this docket was set for hearing.

By Order No. 24853, issued July 25, 1991, the Commission acknowledged the Office of Public Counsel's (OPC's) notice of intervention. BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell), GTE Florida Incorporated (GTEFL), United Telephone Company of Florida (United), Central Telephone Company of Florida (Centel), ALLTEL Florida, Inc., AT&T of the Southern States, Inc. (ATT-C), MCI Telecommunications Corporation (MCI), US Sprint Communications Company Limited Partnership (Sprint), the Florida Interexchange Carriers Association (FIXCA), the Florida Cable Television Association (FCTA), the Florida Pay Telephone Association, Inc. (FPTA), and the Florida Ad Hoc Telecommunications User's Committee (AdHoc) have also intervened in this proceeding.

By Order No. PSC-92-1323-PCO-TP, issued November 16, 1992, the prehearing procedure was established for this docket. The final prehearing conference was scheduled for February 26, 1993. The evidentiary hearing is scheduled for March 10 through 12, 1993, in Tallahassee.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the

information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be

presented by written exhibit when reasonably possible to do so.

5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

WITNESS	APPEARING FOR	ISSUES NOS.
Mike Guedel (Direct)	AT&T	1-4, 6-9
Mark Cicchetti (Direct)	FCTA	All Issues

WITNESS	APPEARING FOR	ISSUES NOS.
David B. Denton (Direct)	So. Bell	5, 6, 7, 8, 8a, 8b, 8c, 8e, 9a, 9b
F. B. Poag (Direct)	United	All issues except Issue 5
Edward C. Beauvais (Direct/Rebuttal)	GTEFL	All Issues
Richard D. Emmerson (Direct/Rebuttal)	So. Bell	1, 2, 3, 4, 7, 8
Gene E. Michaelson (Rebuttal)	Centel	1-4, 8, 8a, 8b

V. BASIC POSITIONS

AD HOC'S POSITION: Adopts FIXCA's basic position.

AT&T'S BASIC POSITION: AT&T's basic position is that the Commission should adopt procedures to ensure that prices charged for competitive services cover the costs that a LEC incurs in providing those services. Such procedures should include the establishment of price floors for each LEC service, and those price floors should include all of the direct costs incurred in providing the service. To the extent that tariffed monopoly services or elements are utilized in providing the competitive service, the tariffed rates of such monopoly services should be imputed as direct costs of providing the competitive service. Each LEC should be precluded from pricing its competitive offerings below the established price floors, but should be permitted significant pricing flexibility above the price floors.

Further, the Commission should adopt specific safeguards with respect to the provision of monopoly services to ensure that each LEC does not use its monopoly position to advantage itself in or otherwise distort the functioning of related competitive markets. These safeguards, consistent with the concepts of Open Network Architecture (ONA), should ensure the general universal

availability of monopoly services in an unbundled format at non-discriminatory, cost based rates.

CENTEL'S BASIC POSITION: As will be demonstrated in Central Telephone-Florida's positions on the specific issues to be addressed in this proceeding, the inquiry into cross-subsidy only applies to services determined by the Commission to be effectively competitive services. The sole purpose of that inquiry is to ascertain whether the LEC's effectively competitive service is being cross-subsidized by the LEC's monopoly services. The only economically justifiable test for determining cross-subsidy is to compare the LEC's effectively competitive service revenues to the total incremental costs from offering that service.

FCTA'S BASIC POSITION: The rewrite of Chapter 364, Florida Statutes, has broadened the scope of the Commission's public policy considerations when engaging in its ratemaking and regulatory activities with regard to telecommunications services. To properly carry out its regulatory and ratemaking functions in this broader arena, the Commission is obligated recognize the continuing emergence of the competitive telecommunications market. As a matter of law and policy, the Commission must further prevent providers of telecommunications services from engaging in anti-competitive business practices which subsidize competitive services from rates paid by customers of monopoly services.

Under the new public policy considerations of Chapter 364, Florida Statutes, the Commission must determine what services constitute "monopoly", "competitive" and "effectively competitive" services.

Once establishing the appropriate meaning for the key terms, the Commission should establish and enumerate the prohibited activities and components of cross-subsidization as the Legislature intended. Having first determined the criteria for a "competitive service", "effectively competitive service", and a "monopoly service", as well as what business conduct constitutes unauthorized cross-subsidization, the Commission can then apply the appropriate regulatory safeguards to carry out the expanded public policy expressed in Chapter 364, Florida Statutes.

FIXCA'S BASIC POSITION: The legislative intent clearly expresses a desire to allow competition to develop in Florida's telecommunication markets. One of the safeguards expressly provided by the Legislature is a prohibition against subsidization

(Chapter 364.3381). Importantly, the Legislature did not precisely define the term, thus leaving it to this Commission to establish an appropriate standard.

The appropriate definition, however, must extend beyond the narrow, technical definition embraced by theoretical economists that is founded on the notion of marginal, incremental, or even long run total service incremental costs. Such a standard is meaningless in an industry where "incremental costs" explains only a small fraction of the firm's cost of business. Applying this standard would assure that ratepayers continue to unreasonably pay rates to cover the costs of investments and personnel that are also engaged in competitive activities.

The basic question before the Commission is the appropriate division of a firm's common costs when it is engaged in the joint provision of both monopoly and competitive services. Any multiproduct firm spreads its common costs among its products to the extent made possible by competitive conditions in each market. Uniquely among telecommunications companies, the local telephone company serves markets with little or no competition. These markets would bear a disproportionate assignment of common costs because they enjoy no competitive protection -- unless the Commission plays this role and arbitrates, through an "allocation" of the LEC's "intrastate investments and expenses," their share of these common costs. Thus, the assignment of costs to competitive services is intended as a protection against the monopoly service bearing an unreasonable burden of the common costs.

The assignment of common costs by the regulator is a policy balance between the competitive interests of the local telephone company in exploiting its monopoly advantage, the state's interest in the competitive process to provide incentives for efficiency and responsiveness to needs of consumers, and the ratepayers' interest in relief from shouldering the LEC's common costs. The need for balancing is clearly evident when evaluated from the perspective of the local telephone company. If the LEC recovers some of its common costs in markets where there is competition, it is likely to lose market share (even if its revenues are higher). Assigning these costs to its monopoly markets both assures their recovery and maximizes the LEC's market share in the competitive market. The LEC's desired balance between market share and ratepayer benefit is likely to be far different than the balance that the Commission would strive to achieve. Thus, it is necessary that the Commission

perform this role by assigning a portion of common costs to the LEC's competitive services.

Further, if the local telephone company is allowed to burden the monopoly portion of its operation with all the common costs of the firm, the captive ratepayer gains no benefit from the LEC's participation in any other market. Only by an allocation to competitive services will ratepayers benefit from the joint provision of competitive and monopoly services.

The only rational solution requires that the Commission establish an assignment of common costs to the LEC's competitive operations that assures that captive customers are not asked to maintain LEC market share at artificially high levels by the absolution of its competitive services from contributing to the common costs of the company.

FPTA'S BASIC POSITION: FPTA's primary purpose in this proceeding is to help promote the emergence of full and fair competition in the telecommunications marketplace. This purpose is consistent with the goals of and legislative intent enunciated in the revised chapter 364, Florida Statutes, which directs the Commission to ensure against all forms of anticompetitive behavior including cross-subsidization. Cross-subsidization, as the term is used in chapter 364, is a statutory construction and should be broadly defined to include more than strictly economic notions of cross-subsidy. Further, cross-subsidization of any and all LEC competitive services must be ensured against without regard to whether such services also qualify as effectively competitive services. To this end, the Commission should, at minimum, require the LECs to segregate their investment and expense for each competitive service according to an embedded, fully distributed cost methodology. Further, the LECs must be prohibited from providing any preference or advantage to their own competitive services.

GTEFL'S BASIC POSITION: It is GTEFL's position in this proceeding that the appropriate definition of cross-subsidization is that definition contained in accepted economic literature and antitrust opinions. That definition is as follows: cross-subsidization is the pricing of some services above their incremental costs in order to allow other products sold by the same firm to be priced below their incremental costs of production. The foregoing definition and its regulatory application in Florida is only pertinent to those specific services which have been found to be "effectively

competitive" pursuant to Sections 364.338 and 364.3381. The Commission should not be misled by the attempts of some parties in this docket to expand the definition of cross-subsidization beyond its economic, legal and Chapter 364 meanings. Cross-subsidization does not include the broad panoply of actions which come under the generic heading "anticompetitive practices." Cross-subsidization is a strict price cost test and does not include such matters as price discrimination, utilization of favorable economies of scale, affiliate transactions, disparate rates of return between services and other such matters.

MCI'S BASIC POSITION: The issue of what is a cross-subsidy and whether cross-subsidy exists should be defined within the context of a firm which provides the telecommunications technology and functionality of the local distribution network. The local exchange companies (LEC) offer functional services in both monopoly or virtual monopoly markets and in competitive or potentially competitive markets. It is certain that cross-subsidies exist within existing LEC tariffs as a result of historic pricing policies and based on the various cost tests that the LECs have proffered over time -- incremental, fully distributed and embedded. Whether and to what extent these cross-subsidies are anti-competitive should be the focus of the Commission.

The first issue that the Commission must address is the "unbundling" of LEC-defined services into their functional elements for analytical purposes. Many LEC services contain network functionality which are supplied in monopoly or virtual monopoly markets and competitive and potentially competitive markets. (A good example of this with which the Commission is familiar is BellSouth's ESSX service.) The Building Blocks approach, which has been advocated by Dr. Nina Cornell in Docket Nos. 871254-TL (regulatory flexibility for LECs), 880423-TP (ONA), 900633-TL (LEC cost study methodology), and 920260-TL (comprehensive review of Southern Bell) provides the framework for this analysis and remediation of anti-competitive cross-subsidy.

As telecommunications technology advances, it is inevitable that more markets for telecommunications functionality will become potentially competitive. BellSouth recognizes the potential of telecommunications technology advancement in its request for the Commission to establish new depreciation rates for what it describes as a "feature-rich, robust and self-adjusting" network, capable of keeping up with the rapid pace of technological evolution in the telecommunications industry. The Commission must

determine which of these "features" in this evolving network are provided under monopoly or virtual monopoly market conditions and which of these "features" are provided in competitive or potentially competitive markets.

SOUTHERN BELL'S BASIC POSITION: The appropriate definition of cross subsidization, as that term is used in Section 364.3381, Florida Statutes, is the economic definition expressed by Southern Bell's witness Richard D. Emmerson. Dr. Emmerson states that a cross subsidy exists when the revenue caused by provision of a particular segment of the firm's output is exceeded by the incremental cost of producing that segment of the firm's output, i.e., when the cost of providing a product or service exceeds the revenues derived from that product or service. Any definition beyond this economic definition is not supported by academic or scientific literature.

The presence or absence of cross subsidization can be detected through the use of the total incremental cost test. The total incremental cost test measures the consequences of providing a service as compared to not providing the service. No allocation of unaffected or shared costs is included in the cost figures used in the test. The appropriate incremental cost to be used according to the total incremental cost test is the incremental cost of the entire service, with the service defined as that portion of the firm's output to which the tested price or tariff applies. Cross subsidization is the only form of anti-competitive behavior that has been identified by the legislature in Chapter 364, Florida Statutes. Thus, it is unclear whether there are any other forms of anti-competitive behavior that Chapter 364 authorizes the Commission to prohibit. Cross subsidization should not be confused with other forms of anti-competitive behavior such as tying arrangements, monopolizing through illegal mergers and acquisitions, price fixing, or refusal to deal. The Commission rules allow for a party that believes anti-competitive behavior is occurring to invoke the complaint process. This process is a well known route for pursuing all types of various private interests that are affected by firms regulated by the Commission. Therefore, there is simply no need for an additional policing process that would be wasteful of both Commission and local exchange company ("LEC") resources.

As used in Chapter 364, there is no distinction between the terms "effectively competitive", "subject to effective competition", and "competitive." The Commission has considered

this issue and affirmed its interpretation when it accepted the Staff's recommendation on this issue on December 14, 1992 in Docket No. 920255-TL and 910590-TL. Therefore, Section 364.338 and 364.3381, Florida Statutes, must be read in conjunction with one another. Section 364.338 requires a determination as to whether a service is effectively competitive. Only then does Section 364.3381 require a determination as to whether the service is subject to a cross subsidy.

At the time a service is determined to be effectively competitive, that service should also be checked for compliance with the requirements of Section 364.3381. The Commission should allow the LECs a period of time to bring, if necessary, a newly determined effectively competitive service into compliance with Section 364.3381. After a service has been deemed effectively competitive and the Commission has provided the LECs with an opportunity to bring, if necessary, the service into compliance with Section 364.3381, then the LECs should not be allowed to provide that service without assuring that the requirements of Section 364.3381 have been met. Any subsequent analysis required by the Commission should only be on an as needed basis, such as that which might be required to respond to a Commission complaint.

The Commission should not require LECs to identify all services offered that are also offered by other providers or identify the nature of the competition for services offered by other providers. These requirements would be neither appropriate nor necessary. Further, such reporting requirements would be burdensome for the LECs. Finally, it would be difficult for the LECs, despite their best efforts, to comply with these burdensome reporting requirements.

UNITED'S BASIC POSITION: Cross-subsidization is the use of subsidization by a local exchange telecommunications company from rates paid for monopoly services to price a competitive service below its cost. Cross-subsidization is detected by comparing the total revenues for all competitive services subject to the jurisdiction of the Commission provided by the local exchange company to the total direct incremental costs for the same services. When the total competitive revenues equal or exceed the total direct incremental costs, no cross-subsidization exists. The application of the provisions of 364.3381 require a Commission determination that the service is effectively competitive. Once a service has been found to be effectively competitive and the cross-subsidization tests completed; only routine and normal auditing

should be required. The local exchange companies should not be burdened with repeated cost studies and provision of competitive information the publication of which could be used to the advantage of their competitors. In the increasing competitive environment of telecommunication services, less regulation is appropriate. No new or additional actions are required by the Commission with regard to cross-subsidization.

OPC'S BASIC POSITION: Despite claims by local exchange companies about competition for their services, it is ironic that not one local exchange company has yet proposed that any of its services is subject to effective competition. As a first step, the Commission should promptly review all local exchange company inside wire maintenance services in a §120.57(1) proceeding (with full discovery rights to all parties) and determine whether these services are subject to effective competition. As it stands now, the Commission has allowed the regulated rates of the largest local exchange companies to be set too high in recent rate proceedings, refuses to place revenues subject to refund, and allows these companies to keep profits from inside wire maintenance activities in excess of a reasonable profit level -- all to the detriment of the customers of regulated services.

STAFF'S BASIC POSITION: For purposes of this Prehearing Order, Staff is not proposing a basic position. Staff's positions on the issues are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VI. ISSUES AND POSITIONS

ISSUE 1: What is the appropriate definition of cross-subsidization, as contained in Section 364.3381, Florida Statutes?

AD HOC'S POSITION: Ad Hoc adopts FIXCA's position on this issue.

AT&T'S POSITION: Cross-subsidization, as addressed in Section 364.3381, Florida Statutes, contemplates a situation where investments and/or expenses associated with the provision of a competitive service are inappropriately borne by monopoly ratepayers.

CENTEL'S POSITION: Cross-subsidization, for purposes of Section 364.3381, Florida Statutes, should be defined as the support of a local exchange company's (LEC's) effectively competitive services whose prices do not cover total incremental costs with revenues from the LEC's monopoly services.

FCTA'S POSITION: The appropriate definition of cross-subsidization, as contained in Section 364.3381, Florida Statutes, consists of business conduct or activities by a monopoly telecommunications services provider wherein the monopoly business provides any benefit to its competitive business for which the monopoly and its ratepayers are not fully compensated by the competitive business; where the monopoly business provides any benefit to its competitive business that it does not provide to competitors; or when the monopoly business provides any benefit to its competitive business under more favorable terms and conditions than it provides to a competitor.

FIXCA'S POSITION: In the context of Section 364.3381, cross-subsidization occurs when a service fails to recover an appropriate allocation of the local telephone company's accounting costs (i.e., as calculated using the company's intrastate investment and expenses).

FPTA'S POSITION: Pursuant to chapter 364, cross-subsidization is appropriately defined as any activity on the part of the LEC monopoly involving a competitive service that works to the detriment of the LEC's monopoly ratepayers. Cross-subsidy and/or anticompetitive behavior exists whenever the regulated LEC provides a benefit to its own competitive business that it does not provide to other telecommunications competitors, or if the regulated monopoly provides any service to itself under more favorable rates, terms and conditions than provided to competitors.

GTEFL'S POSITION: The appropriate definition of cross-subsidization to utilize is that definition contained in accepted economic literature and relevant antitrust opinions. Cross-subsidization is defined by GTEFL as the pricing of some services above their incremental costs in order to allow other products sold by the same firm to be priced below their incremental costs of production. It is the comparison of price with incremental cost which is the valid determinant of the presence of cross-subsidies.

Cross-subsidization unequivocally does not include such matters as price discrimination, leveraging of economies of scope

and scale, barriers to entry, above cost affiliate transactions, alternative services earning different rates of return and other such matters. These items may be relevant to issues pertaining to the overall competitive atmosphere in which a service is offered; however, they are not relevant in any manner, shape or form to whether cross-subsidization is occurring.

An analysis of Chapter 364 demonstrates that the foregoing position is correct. In Section 364.01(3)(d) Fla. Stat. (1991), the legislature indicates that the Commission is to prevent anticompetitive behavior while explicitly identifying cross-subsidization as a separate category. If the legislature had intended to apply a broader meaning to the term "cross-subsidization" it would not have been named as a specific term, but rather, would have been included in the generic context of anti-competitive practices.

MCI'S POSITION: No position for purposes of this Prehearing Order.

SOUTHERN BELL'S POSITION: A cross subsidy exists when the revenue caused by the provision of a particular segment of the firm's output is exceeded by the incremental cost of producing that segment of the firm's output.

UNITED'S POSITION: Cross-subsidization is not defined in the statute. One can infer from reading the statute however, that cross-subsidization is the use of subsidization by a local exchange telecommunications company from rates paid for monopoly services to price a competitive service below its cost.

OPC'S POSITION: Cross-subsidization may be defined as the transfer of costs from competitive operations to regulated operations or the lack of appropriate compensation, where warranted, from competitive operations to the regulated operations.

STAFF'S POSITION: Once a service is found to be effectively competitive in accord with the provisions of Section 364.338, the cross-subsidization restraints of Section 364.3381 become operative. Cross-subsidization exists when effectively competitive services are priced below their relevant costs, and the resulting revenue shortfall is recovered through the rates for monopoly services.

ISSUE 2: How can the presence or absence of cross-subsidization be detected?

AD HOC'S POSITION: Ad Hoc adopts FIXCA's position on this issue.

AT&T'S POSITION: Detection of the presence or absence of cross-subsidization, as defined in Section 364.3381, would require the identification of the costs (investments and expenses) associated with the provision of competitive services. To the extent that it is demonstrated that these costs are not being borne by monopoly ratepayers, then cross-subsidization, according to the statute, would not exist.

CENTEL'S POSITION: The presence or absence of cross-subsidization can be detected by determining whether the LEC's effectively competitive service generates revenues greater than the total incremental costs of offering the service.

FCTA'S POSITION: The presence or absence of cross-subsidization can be detected by comparing the price of services to the cost for providing such services, and further by comparing the prices and practices of the monopoly service provider when making available services or benefits to its own competitive business in comparison to what it offers the same monopoly services or benefits to the other competitive service providers. Further cross-subsidy can be detected by determining whether or not the monopoly provider pays in excess of market price for goods and services received from its own competitive operations or on purchases from affiliated companies, and when it is determined that a competitive service or activity does not bear its appropriate share of the costs, including prorata overhead, when offered by a monopoly service provider.

FIXCA'S POSITION: The existence of cross-subsidization (as contemplated by Section 364.3381) can be detected by a comparison of a service's revenues to its aggregate costs (as calculated using a cost allocation methodology as required by Section 364.3381.)

FPTA'S POSITION: The presence of cross-subsidization can best be detected by requiring the LEC monopoly to deal at arm's length with its competitive operations. It is further necessary for the LECs to provide the Commission with adequate cost information for the protections to ratepayers and competitors provided in chapter 364 to be implemented.

GTEFL'S POSITION: Cross-subsidization of monopoly services by effectively competitive services can be detected by comparing a product's price to its causally related incremental cost. An incremental cost study methodology is required to determine the issue of cross-subsidy relative to the prices being charged. This approach has been accepted by the antitrust courts. MCI Communications v. American Telephone and Telegraph Company, 708 Fed.2d 1081 (7th Cir. 1983), cert. denied 464 U.S. 891 (1983). In such case, the Court stated as follows:

> MCI's argument presumes the customers of monopoly services will have to pay higher prices if AT&T prices below FDC (fully distributed cost) in markets where competition is present. (citations omitted) Such arguments, ignore the nature of cost and revenues in a multi-service enterprise. AT&T's unattributable overhead costs do not increase when AT&T offers a new service, nor do they decrease when a service is discontinued. When a multi-product firm prices a competitive service above its long-run incremental cost, no cross-subsidy can occur because the additional revenues produced exceed all additional costs associated with the competitive service and provide a contribution to the unallocable common cost otherwise borne by the firm's existing customers.

MCI'S POSITION: No position for purposes of this Prehearing Order.

SOUTHERN BELL'S POSITION: The appropriate test for determining which services are receiving cross subsidies is the total incremental cost test. Under this test, a cross subsidy exists when the total incremental revenue generated by a service is less than the total incremental cost of the service.

UNITED'S POSITION: The presence or absence of cross-subsidization can be detected by comparing a company's total revenues for all competitive services subject to the jurisdiction of the Commission to the total direct incremental costs for the same services. When the total competitive revenues equal or exceed the total direct incremental costs, no cross-subsidization as defined in Section 364.3381(1) exists.

If a telecommunication company has more than one competitive service, the important point is that monopoly services do not cross-subsidize competitive services. For example, assume a company offers three services; A, B and C; with A and B being

competitive service offerings and C being a monopoly service offering. A may be priced below direct incremental cost while B is priced above its direct incremental cost. As long as A and B in the aggregate cover their direct cost, neither is subsidized by C, and the company is in compliance with 364.3381(1).

OPC'S POSITION: Both the long-run incremental cost and stand-alone cost of the service should be reviewed.

STAFF'S POSITION: The presence of cross-subsidization can be determined by comparing the revenues generated from a service with the costs of providing the service (or, equivalently, a service's price(s) with its unit cost(s)).

ISSUE 3: Does the detection of the presence or absence of cross-subsidization require a cost standard? If so, what is the appropriate cost standard?

AD HOC'S POSITION: Ad Hoc adopts FIXCA's position on this issue.

AT&T'S POSITION: Yes. The appropriate cost standard is that set forth in AT&T's response to Issue 8.

CENTEL'S POSITION: Yes. The detection of the presence or absence of cross-subsidization requires a cost standard. The appropriate cost standard is total incremental cost.

FCTA'S POSITION: Yes. Fully distributed cost methodology is the appropriate standard.

FIXCA'S POSITION: Yes. The appropriate cost standard would be based on a service's cost based on an allocation of the firm's accounting costs as determined by the Commission.

FPTA'S POSITION: Yes. Section 364.3381, Florida Statutes, requires the LEC to segregate all of its intrastate investments and expenses in accordance with a Commission-approved cost methodology which: (1) ties back to the books and records of the company, and (2) properly allocates investment and expense for all monopoly services and each competitive service. Thus, the appropriate standard is an embedded, fully distributed cost approach.

GTEFL'S POSITION: Yes. The appropriate cost standard to utilize is incremental cost based on accepted economic literature and antitrust court decisions.

MCI'S POSITION: No position for purposes of this Prehearing Order.

SOUTHERN BELL'S POSITION: A cost standard is required for the detection of the presence or absence of cross subsidization. The appropriate cost to be used according to the total incremental cost test is the incremental cost of the entire service, where the service is defined as that portion of the firm's output to which the tested price or tariff applies.

UNITED'S POSITION: Yes. The test relied upon by economists and legal authorities to detect cross-subsidization is long run incremental cost. The seminal case of MCI Communications v. American Tel. & Tel. Co, 708 F.2d 1081, 1123-24 (1983), cites both legal and economic authorities and concludes that a long run incremental cost test is the appropriate test for cross-subsidies.

The MCI case is a predatory pricing case, but it specifically addresses the allegation of AT&T "subsidizing its competitive services with revenues derived from services in which it retains a monopoly." (at p. 1123) Section 364.338(1) also addressed predatory pricing and cross-subsidization, and states in part that:

> It is the legislative intent that, when the commission finds that a telecommunications service is effectively competitive, market conditions be allowed to set prices so long as predatory pricing is precluded, monopoly ratepayer be protected from paying excessive rates and charges, and both ratepayers and competitors be protected from regulated telecommunications services subsidizing competitive telecommunications services. [emphasis added]

OPC'S POSITION: Both long-run incremental cost and stand-alone cost of the service should be reviewed. To the extent that a competitive service may be priced at less than stand-alone cost, it is possible only because of efficiencies which exist because there is a monopoly network.

Before a service is unregulated, some compensation must be made to monopoly ratepayers for those efficiencies. In addition, some allocation of common overheads must be made.

STAFF'S POSITION: Yes. Incremental cost is the proper cost benchmark against which to determine the presence or absence of cross-subsidization.

ISSUE 4: As used in Section 364.3381, Cross-subsidization, what specific types of behavior are considered to constitute "cross-subsidization"? Specifically, should cross-subsidy be understood in a narrow sense (a function of the relationship between price and cost) or a broad sense (to include various other forms of anticompetitive behavior)?

AD HOC'S POSITION: Ad Hoc adopts FIXCA's position on this issue.

AT&T'S POSITION: Cross-subsidization addresses a particular type of anticompetitive behavior--specifically a behavior that would recover a portion of the cost associated with the provisioning of a competitive service through rates charged for monopoly services. Prohibitions against other types of anticompetitive behavior are covered in other parts of the statute.

CENTEL'S POSITION: Cross-subsidy should be understood in a narrow sense; namely, the relationship between revenues and total incremental cost. The other forms of anti-competitive behavior to be prohibited are adequately addressed elsewhere in Chapter 364 and the federal and state statutes governing business dealings, including the antitrust laws. These forms of anticompetitive behavior are too numerous to list and are not, in any event, relevant to this proceeding.

FCTA'S POSITION: Specific types of behavior constituting "cross-subsidization" include the following:

* Cross subsidy occurs when losses incurred from competitive services are financially subsidized through funds from the monopoly ratebase and operations.

* Cross subsidy occurs when the monopoly provides service to its company's competitive services under terms and conditions more favorable than those services provided to other companies providing the competitive service.

* Cross subsidy occurs when the monopoly provides service to its company's competitive services that the monopoly will not provide to other competitors.

* Cross subsidy occurs when the monopoly pays in excess of market price for goods or services received from its own competitive operations, or on purchases from affiliated companies.

* Cross subsidy occurs when a service or activity does not bear its appropriate share of the costs, including prorata overhead, of providing the service or activity and those costs are instead covered by revenues received from monopoly services or activities.

The policies of the Commission in prohibiting anti-competitive behavior should be understood in a broad sense and are enumerated as such in Section 364.338(1), Florida Statutes.

FIXCA'S POSITION: Cross-subsidy as defined in Section 364.3381 concerns the relationship between a service's price and cost. Other anticompetitive behavior -- such as denying competitors necessary access to the LEC's essential network -- are generally prohibited under the statute's requirement that the LEC's rates be just and reasonable (Chapter 364.03, Florida Statutes) and its practices non-discriminatory (Chapter 364.10, Florida Statutes).

FPTA'S POSITION: Cross-subsidy and/or anticompetitive behavior occurs when:

1. Losses incurred from competitive services are financially subsidized through revenues from monopoly services (cross-subsidy).

2. The LEC monopoly pays in excess of current fair market price for products or services received from its subsidiaries, or from affiliated companies (cross-subsidy).

3. A LEC competitive service does not bear its appropriate share of the costs of providing the service, including a pro rata share of overhead, and those costs are instead covered by revenues received from monopoly services (cross-subsidy).

4. The LEC monopoly provides service to its own competitive activity under rates, terms, and conditions more favorable than those services are provided to other companies offering similar competitive service (anticompetitive behavior).

5. The LEC monopoly provides services to its own competitive services that the monopoly will not provide to other companies (anticompetitive behavior).

The term "cross-subsidization", as used in chapter 364, Florida Statutes, should be defined to include more than strictly economic cross-subsidy. A close reading of the statute as a whole reveals the legislative intent to protect ratepayers and competitors by requiring the Commission to ensure against all forms of cross-subsidy.

GTEFL'S POSITION: The only type of behavior which constitutes cross-subsidization under Section 364.3381 is pricing some services above their incremental costs in order to allow other services sold by the same firm to be priced below their incremental costs. Please see the Company's response to Issue No. 1.

MCI'S POSITION: No position for purposes of this Prehearing Order.

SOUTHERN BELL'S POSITION: Cross subsidization should be understood as a function of the relationship between price and cost. It should not be confused with other forms of anti-competitive behavior and the term should not include any other forms of anti-competitive behavior.

UNITED'S POSITION: Cross-subsidization, as used in Section 364.3381, should be interpreted in the narrow sense as a function of prices and costs. The text of Section 364.3381(1) clearly provides this direction.

OPC'S POSITION: Cross-subsidy should be considered in the broad sense. The Commission should be concerned not only with the relationship between price and cost, but also with any actions which might prevent or preclude equal access to those competitive markets which have been approved by the Commission.

STAFF'S POSITION: In the context of Section 364.3381, cross-subsidization is properly interpreted in a narrow sense, in terms of a service's relationship between price and cost. However, although in Section 364.3381 cross-subsidization is not synonymous with anticompetitive behavior, staff would note that Section 364.01(3)(d) refers to anticompetitive behavior and provides that the Commission should "ensure that all providers of telecommunications services are treated fairly, by preventing

anticompetitive behavior and eliminating unnecessary regulatory restraint."

ISSUE 5: Is there a distinction between the terms "effectively competitive," "subject to effective competition," and "competitive" as used in Chapter 364? (LEGAL)

AD HOC'S POSITION: Ad Hoc adopts FIXCA's position on this issue.

AT&T'S POSITION: No.

CENTEL'S POSITION: No.

FCTA'S POSITION: Yes. The terms "competitive", "effectively competitive", and "subject to effective competition" are not interchangeable terms as they appear in Chapter 364 and to use them interchangeably presumes that the Legislature intended no purpose for the selection of the different language in the different sections of the law. Such assumption violates a basic test of statutory construction enumerated by Florida Supreme Court in Vocelle v. Knight Bros. Paper Company, Inc., 118 So. 2d 664, 667 (Fla. 1st DCA 1960) (emphasis supplied), as follows:

> Every statute must be construed as a whole and the legislative intent determined, if it be possible, from what is said in the statute. If the language of a statute is clear and not entirely unreasonable or illogical in its operation, the court has no power to go outside the statute in search of excuses to give a different meaning to words used in the statute. A statute should be so construed as to give a meaning to every word and phrase in it and, if possible, so as to avoid the necessity of going outside the statute for aids to construction.

FIXCA'S POSITION: Yes.

FPTA'S POSITION: Yes. "Effective competition" relates to services experiencing true and fair competition between two or more providers of a functionally equivalent service pursuant to the same terms and conditions.

The term "subject to effective competition" means that a particular service has the potential to become effectively

competitive. It denotes a lesser state of competition which does not rise to the level of effective competition but can become effectively competitive if given the chance.

"Competitive" services refer to a broad range of services for which there is some competition. Thus, all "effectively competitive" services, all services "subject to effective competition" and even some "monopoly" services fall under this umbrella term.

GTEFL'S POSITION: No. The terms "competitive" and "effectively competitive" are used synonymously in regard to the provision of LEC services. The term competitive may have other meanings when not used in association with LEC telecommunications services.

A comprehensive analysis of Chapter 364 requires the observation that the terms "competitive" and "effectively competitive" have been used in the chapter for certain specific reasons and that they may not be synonymous in all uses throughout the Chapter. However, it is quite clear that the two terms are used synonymously as they pertain to the regulation of LEC-provided telecommunications services. Quite simply, there is competition by non-LEC providers and then there is that level of competition designated as "effectively competitive" which justifies a change in how the service is regulated for the LEC. This latter category only has significance when a change in the traditional manner of regulating the LEC is deemed necessary to meet the legislative intent of the chapter. If a change is found to be appropriate, then - and only then - do the cross-subsidization provisions of Section 364.3381 take effect.

It is GTEFL's opinion that while the Legislature granted the Commission a wider scope of authority to regulate certain competitive aspects of the telecommunications industry than previously existed in the old Chapter 364, that this grant of authority is not all encompassing. The Commission must control the continuing emergence of all aspects of the competitive telecommunications environment in Florida to ensure that any increase to the existing levels of competition benefits the public by making modern and adequate telephone services available at reasonable prices.

In making the foregoing grant of jurisdiction, the Legislature saw fit to include specific legislative intent in Section 364.01 which places a basic parameter on the Commission's actions, to wit: the Commission's exclusive jurisdiction must protect the general

welfare by insuring that basic telecommunications services are available to all residents of the state at reasonable and affordable prices and that competition will be encouraged only if it benefits the public by making modern and adequate telecommunications services available at reasonable prices. If the Commission deems that competition is appropriate, then it must insure that all providers of telecommunications services are treated fairly and that the regulatory treatment of the local exchange carrier (LEC) may be modified if so doing does not reduce the availability of adequate basic local exchange service to all citizens of the state at reasonable and affordable prices.

Chapter 364 then goes on to specify how the foregoing legislative intent should be carried out in the exercise of the Commission's administrative discretion and expertise. In this regard, of particular importance is the definition of monopoly service which is set forth in Section 364.02(3). Said section defines monopoly service as follows:

> Monopoly means a telecommunications service for which there is no effective competition, either in fact or by operation of law.

Service is defined in Section 364.02(6) to be considered in its broadest and most conclusive sense.

Therefore, after expressing a general legislative intent that competition should be pursued if it produces benefits to the public, the legislature immediately gives the Commission concrete direction as to what the word competition or competitive means in Section 364.02(3) which pertains to LECs. That specific direction is all services which are not subject to effective competition are monopoly services.

Section 364.338 gives a further statement of legislative intent regarding effective competition as follows:

> It is the legislative intent that, where the Commission finds that a telecommunications service is effectively competitive, market conditions be allowed to set prices so long as predatory pricing is precluded, monopoly ratepayers be protected from paying excessive rates and charges, and both the ratepayers and competitors be protected from regulated telecommunications services

subsidizing competitive telecommunications services. (Emphasis added).

The Legislature then goes on to state in the subsections of Section 364.338 that in determining whether a specific service provided by a LEC is subject to effective competition that the Commission must consider the following factors:

(a) The effect, if any, on the maintenance of basic local exchange telecommunications service.

(b) The ability of consumers to obtain functionally equivalent services at comparable rates, terms, and conditions.

(c) The ability of competitive providers in the relevant geographic or service market to make functionally equivalent or substitute services available at competitive rates, terms, and conditions.

(d) The overall impact of the proposed regulatory change on a continued availability of existing services.

(e) Whether the consumers of such service would receive an identifiable benefit from the provision of the service on a competitive basis.

(f) The degree of regulation necessary to prevent abuses or discrimination in the provision of such service.

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

If the Commission finds that a particular service meets all of the foregoing criteria and is subject to effective competition, then the Commission may exempt the service from some of the requirements of Chapter 364 and prescribe different regulatory requirements than are otherwise prescribed for a monopoly service. This different regulatory treatment includes the requirement that if the service is provided as a part of the regulated Company that sufficient safeguards shall be implemented to insure that the rates for monopoly services do not subsidize competitive services.

Thus, the determination under Section 364.338 that a LEC service is subject to effective competition engages the cross-subsidization provisions of Section 364.3381. Until such a

determination is made pursuant to the provisions of 364.338, the provisions of 364.3381 have no applicability.

The foregoing discussion demonstrates that Chapter 364 contains two different aspects of competition. First, the Commission has a general directive to further competition if it is in the public's best interest. Obviously, the grant of IXC, PATS and AAV certificates indicate competitive services and entities are operating in Florida. The terms "monopoly service" and "effectively competitive" do not relate to this aspect of regulation in Florida. Effective competition becomes a consideration when traditional regulation is to be modified for the regulated LEC for that particular service. It is only this latter step that engages the cross-subsidization rules. There is no other option under this statute.

MCI'S POSITION: No position for purposes of this Prehearing Order.

SOUTHERN BELL'S POSITION: There is no distinction between the terms "effectively competitive", "subject to effective competition," and "competitive" as used in Chapter 364. The Commission has already considered this issue and affirmed this interpretation when it accepted the Staff's recommendation on this issue on December 14, 1992, in Docket No. 920255-TL and 910590-TL.

UNITED'S POSITION: No. Section 364.02(3) defines monopoly services as follows: "'Monopoly service' means a telecommunications service for which there is no effective competition, either in fact or by operation of law." The definition is clear and concise. The definition precludes any categories of service other than monopoly service and service for which effective competition exists.

United interprets the words "effectively competitive" and "effective competition" as used in the phrase "subject to effective competition" and "competitive" to mean the same thing. The words "subject to" used before "effective competition" have no effect on the meaning of the phrase, nor on the process established by Sections 364.02(3) and 364.338, but merely apply the phrase "effective competition."

OPC'S POSITION: No position for purposes of this Prehearing Order.

STAFF'S POSITION: No.

ISSUE 6: Does the application of the provisions of 364.3381 first require a determination that a service is effectively competitive, pursuant to the provisions of 364.338? If not, what criteria should be used to identify those services subject to the provisions of 364.3381?

AD HOC'S POSITION: Ad Hoc adopts FIXCA's position on this issue.

AT&T'S POSITION: The provisions of paragraph (1) and paragraph (2) of Section 364.3381 clearly apply to the issue of cross-subsidization between competitive and monopoly services. Assuming that all regulated LEC services are monopoly provided services unless otherwise determined by the Commission, then a determination that a service is competitive pursuant to the provisions of 364.338 would be required to invoke the applicability of these paragraphs. Paragraph (3) of Section 364.3381 deals with the relationship between regulated and unregulated services and does not seem to be dependent upon the provisions of Section 364.338.

CENTEL'S POSITION: Yes.

FCTA'S POSITION: No. The criteria to identify the services subject to the provisions of 364.3381 is an issue of fact and a simple determination that others are providing services that are provided by a monopoly provider.

FIXCA'S POSITION: No. Any "competitive service" is subject to the cross-subsidy protection required by Section 364.3381. Competitive services are those services that are offered by both the local telephone company and at least one other provider. It is not necessary that these services be "effectively competitive" as that term is used in Section 364.338 to be protected from cross-subsidy behavior. Indeed, if that were the case, the statute would be internally inconsistent and absurd on its face in that a service would need to become effectively competitive before it was protected from the very cross-subsidization that the LEC could use to preclude competition. Similarly, a LEC would be permitted to cross-subsidize services wherever such cross-subsidization could be expected to be successful to prevent effective competition from developing.

FPTA'S POSITION: No. Section 364.3381 applies to "competitive" services regardless of whether each service also meets the criteria of an effectively competitive service. If a service is offered by

one or more providers pursuant to the same or equivalent rates, terms, and conditions, the provisions of section 364.3381 apply.

GTEFL'S POSITION: Yes. Please see the Company's response to Issue No. 5.

MCI'S POSITION: No position for purposes of this Prehearing Order.

SOUTHERN BELL'S POSITION: The application of the provisions of Section 364.3381 first requires a determination that the service is effectively competitive. This determination is made pursuant to the provisions of Section 364.338.

UNITED'S POSITION: Yes. If a service has not been found to be a competitive service, it is by definition, Section 364.02(3), a monopoly service. Section 364.3381 addresses cross-subsidies between competitive and monopoly services; thus, a service or services must first be determined to be competitive before Section 364.3381 is applicable.

OPC'S POSITION: A determination about the existence of effective competition must be made.

STAFF'S POSITION: Yes.

ISSUE 7: Section 364.01(3)(d), indicates that the Commission should prevent anticompetitive behavior in order to ensure that all telecommunications providers are treated fairly. Other than cross-subsidization, which is explicitly identified in the statute, are there identifiable forms of anticompetitive behavior that the Commission should prohibit? If so, what are they, what restrictions are appropriate, and how should any restrictions be implemented?

AD HOC'S POSITION: Ad Hoc adopts FIXCA's position on this issue.

AT&T'S POSITION: Yes. The Commission must prohibit the LECs from utilizing their monopoly position, with respect to the provision of local exchange services, in a manner that would distort, manipulate, or otherwise unfairly influence the development of related competitive markets. To prevent such anticompetitive behavior, the Commission must ensure that all monopoly services are provisioned in a manner that is:

1) sufficiently unbundled so as not to force customers to purchase elements or services that they do not want or desire,

2) absolutely unbundled from the provision of competitive products/services to remove the opportunity for unfairly influencing the competitive market through discriminatory provisioning or pricing of a monopoly service, and

3) generally universally available at like terms and conditions to all customers at prices which reflect the underlying costs of providing the particular services.

These guidelines, which are generally consistent with the pure concepts of Open Network Architecture (ONA), will guard against the potential for discriminatory provisioning (with respect to both price and availability) and promote the development of competition in related competitive markets.

CENTEL'S POSITION: See Central Telephone-Florida's Position on Issue 4.

FCTA'S POSITION: Yes.

FIXCA'S POSITION: The Commission should clearly prohibit other forms of anticompetitive behavior. Establishing an exhaustive list of such behavior is not possible; but there are at least two major categories of such behavior which would include:

- Obtaining a necessary monopoly input (such as access) at a "cost" less than the tariffed price that the input is made available to its rivals.

- Denying competitors the use of its monopoly network on the same terms and conditions that the LEC uses to provide a competitive service.

In the context of interexchange service, necessary restrictions to prevent such anticompetitive behavior would include opening the 1+ intraLATA market to competition, requiring the local telephone company to obtain access at tariffed access charges, and the establishment of an "interexchange service cost" that would include all the direct costs of providing interexchange service (marketing, advertising, sales costs, etc. . .) plus an allocation of the company's common costs as required by Section 364.3381.

FPTA'S POSITION: Yes. Other identifiable anticompetitive behaviors can be summarized as follows:

1. predatory pricing practices;

2. business practices where monopoly ratepayers are required to pay excessive rates and charges;

3. business practices which would make monopoly services available on a discriminatory basis;

4. business practices which are unjust, unreasonable, unduly preferential, or in any manner in violation of law;

5. business practices which provide equipment, facilities or service which is inadequate, inefficient, improper or insufficient;

6. business practices which provide an undue or unreasonable preference or advantage.

Under certain factual circumstances, the above practices may also result in cross-subsidization.

Appropriate restrictions include, pursuant to section 364.338, requiring that LEC services which are effectively competitive or subject to effective competition be offered pursuant to a fully separate subsidiary. As a less desirable alternative to a fully separate subsidiary, the Commission may implement accounting safeguards. Finally, the Commission must implement reasonable safeguards to ensure that, pursuant to section 364.338(6), the LECs give no undue preference or advantage in access to local network facilities either to a LEC competitive service or an individual competitor's service.

GTEFL'S POSITION: The Commission should prohibit predatory pricing (price below incremental cost) by every carrier in Florida. Beyond the foregoing specific item, the broad term "anticompetitive behavior" and the restrictions placed thereon would be required to be determined on a service-by-service, company-by-company basis. That which may be objectionable in one instance may not be relevant or of significance in another situation.

MCI'S POSITION: No position for purposes of this Prehearing Order.

SOUTHERN BELL'S POSITION: Cross subsidization is the only form of anti-competitive behavior that has been identified by the Legislature in Chapter 364. Thus, it is unclear whether there are any other forms of anti-competitive behavior that Chapter 364 authorizes the Commission to prohibit. If a party believes that "anti-competitive" behaviors are occurring, the Commission's normal complaint process is available as a remedy.

UNITED'S POSITION: No, there are no specifically identified forms of anticompetitive behavior which the Commission should prohibit. However, anticompetitive safeguards are identified in Section 364.338(3)(b)3. regarding the Commission's responsibilities related to services subject to effective competition. Section 364.338(3)(b)3 states:

> When authorizing different regulatory requirements pursuant to subparagraph (a)1., the commission:... 3. Shall require that the competitive service be provided pursuant to anticompetitive safeguards, which may include imputing the price of the monopoly services used in providing a competitive service as a cost of providing such service, or offering the tariff rates for such monopoly services separately and individually and on a nondiscriminatory basis to all persons, including other telecommunication companies.

OPC'S POSITION: Other forms of anticompetitive behavior include predatory pricing, charging monopoly ratepayers excessive rates, the provision of monopoly services on a discriminatory basis, and practices which are unduly preferential.

STAFF'S POSITION: Yes. Section 364.338(1) prohibits predatory pricing. Like cross-subsidization, predatory pricing is prevented by ensuring that the price for a competitive service is not below its incremental cost. Staff believes that actual occurrences of predatory pricing are probably rare; accordingly, alleged instances should be evaluated on a case by case basis, in terms of the above price/cost standard. Other than predatory pricing, at this time staff is not aware of other forms of anticompetitive behavior which should be prohibited.

ISSUE 8: Once the Commission has defined cross-subsidy and the type of services that are subject to the provisions of 364.3381, what actions should the Commission take:

AT&T'S POSITION: The Commission should ensure that the prices charged for all services deemed to be competitive exceed an established price floor. The floor should be set at the incremental cost incurred in providing the service and/or group of services. The incremental cost should include the tariffed **rate** of any/all monopoly services used in the provision of the competitive service. Further, the Commission should establish an allocation procedure to divide corporate overhead expense between the monopoly and competitive category to ensure that monopoly ratepayers are not unfairly burdened.

The Commission must also ensure that the provision of monopoly services, which are used in conjunction with competitive services, is in accordance with the safeguards enumerated in AT&T's response to Issue No. 7.

CENTEL'S POSITION: The Commission should ascertain whether the revenues from the effectively competitive services exceed the total incremental costs of the service.

FCTA'S POSITION: Adopt a cost allocation methodology and other regulations to identify and prevent authorized cross-subsidization.

FPTA'S POSITION: The Commission should adopt an embedded, fully distributed cost methodology and other regulations to identify and ensure against cross-subsidy.

SOUTHERN BELL'S POSITION: It would be proper for the Commission to rely on a complaint process to determine whether any individual competitive service is priced below its proper incremental cost, or whether competitive services in the aggregate are not compensatory. No further testing beyond the complaint process need be required. Incentive regulation as well as the market itself assures that cross subsidization is not occurring in that both the market and incentive regulation provide the incentive for a regulated firm to maximize its profits.

UNITED'S POSITION: The Commission need only ensure that the revenues for the services cover the direct cost of the services.

ISSUE 8a: How often and under what circumstances should the Commission require tests of specific services to ensure that the requirements of 364.3381 have been met?

AD HOC'S POSITION: Ad Hoc adopts FIXCA's position on this issue.

AT&T'S POSITION: Price floors which contain the monopoly rate component should be adjusted any time the underlying tariff rate changes. AT&T has no position on the establishment of other requirements at this time.

CENTEL'S POSITION: Once a service has been determined by the Commission to be effectively competitive, the LEC should be given a fair opportunity to demonstrate that the revenues from the service will exceed the total incremental costs of the service. Thereafter, the Commission should rely upon the competitive marketplace to govern prices. In the event there is a complaint by a competitor, or the Commission on its own questions the cost/revenue relationship of any effectively competitive service, the Commission can require the LEC to demonstrate that the revenues from the service exceed the services' total incremental costs.

FCTA'S POSITION: No position for purposes of this Prehearing Order.

FIXCA'S POSITION: The Commission should establish service-specific cost estimates for each LEC in LEC-specific proceedings. For Southern Bell, the Commission should establish an "interexchange services" revenue requirement at the conclusion of the present rate case. This step is a prerequisite to granting Southern Bell additional rate flexibility and is an alternative to requiring Southern Bell to establish a separate subsidiary for all of its competitive services.

FPTA'S POSITION: FPTA takes no position for purposes of this Prehearing Order.

GTEFL'S POSITION: In the case of a new service, a showing should be made at the time the tariff is submitted that the price of the service exceeds its incremental cost at the level of output projected. In addition, the incremental revenues generated by the service should cover the incremental cost of providing the service plus any fixed costs associated with the service and if the service is part of a group of services, that the individual service makes some positive contribution to covering the common cost of the group. In the case of a major price change, appropriate analysis should be submitted to verify that the price being proposed or charged is greater than or equal to the incremental cost of the service at issue.

MCI'S POSITION: No position for purposes of this Prehearing Order.

SOUTHERN BELL'S POSITION: It would be proper for the Commission to rely on a complaint process to determine whether any individual competitive service is priced below its proper incremental cost, or whether competitive services in the aggregate are not compensatory. No further testing beyond the complaint process need be required. Incentive regulation as well as the market itself assures that cross subsidization is not occurring in that both the market and incentive regulation provide the incentive for a regulated firm to maximize its profits.

At the time a service is determined to be subject to effective competition, it should also be checked for compliance with the requirements of Section 364.3381. The Commission should allow the LECs a period of time to bring, if necessary, a newly determined effectively competitive service into compliance with Section 364.3381. Any subsequent analysis required by the Commission should only be on an as needed basis, such as that which might be required to respond to a Commission complaint.

UNITED'S POSITION: After the original determination of effective competition, the Statutes prescribe several avenues the Commission may follow. Based on the procedures then ordered, and the implementation of these procedures, normal auditing should be sufficient to satisfy that requirements have been met. A requirement which burdens the local exchange company with frequent service specific cost studies places the local exchange company at a competitive cost disadvantage.

OPC'S POSITION: Every four years, to coincide with the filing of MMFRs.

STAFF'S POSITION: At this time, staff envisions two specific occasions when cross-subsidy tests would be appropriate. First, Chapter 364.035(3) requires large (greater than 100,000 access lines) local exchange companies to file modified minimum filing requirements (MMFRs) with the Commission every 4 years, or 4 years after the previous MMFR filing, and small (fewer than 100,000 access lines) LECs to file MMFRs every five years. Tests to ensure that the requirements of 364.3381 have been met for effectively competitive services should be conducted in conjunction with these MMFR filings. Second, for new services, tests should be conducted at the time proposed tariffs for the effectively competitive service are filed. In addition to these general requirements,

cross-subsidy tests may be appropriate in various specific circumstances (e.g., given a petition alleging the existence of cross-subsidization of an effectively competitive service) which potentially are too numerous to identify at this time.

ISSUE 8b: Should the Commission establish accounting requirements for those services subject to the provisions of 364.3381?

AD HOC'S POSITION: Ad Hoc adopts FIXCA's position on this issue.

AT&T'S POSITION: AT&T has no position on this issue for purposes of this Prehearing Order.

CENTEL'S POSITION: No. It is premature for the Commission to establish accounting requirements for those services found to be effectively competitive. As the Commission gains experience with the statutory standards to be followed for overseeing the provision of effectively competitive services, the Commission can adopt accounting requirements that will best fit a specific effectively competitive service.

FCTA'S POSITION: Yes.

FIXCA'S POSITION: Yes.

FPTA'S POSITION: Yes. In order to comply with sections 364.3381(1) and (2), an embedded, fully distributed cost approach is necessary.

GTEFL'S POSITION: No. The accounting structure used in Florida is designed to produce financial data for regulatory reporting purposes, not to track the financial performance of a service, product or group of products. If an accounting system is to be developed on a product-oriented functional basis, that task is beyond the scope of this proceeding. GTEFL is of the opinion that no additional accounting requirements are appropriate or necessary. The incremental cost approach is sufficient to guard against cross-subsidization by a telecommunications provider.

MCI'S POSITION: No position for purposes of this Prehearing Order.

SOUTHERN BELL'S POSITION: No. The total incremental cost test is the economically correct method to determine whether cross subsidy exists. Beyond use of the total incremental cost test, there is no

need to create a costly additional administrative burden in the form of "accounting requirements."

UNITED'S POSITION: No, the Commission only needs to ensure that revenues for competitive services in the aggregate cover direct costs. No new accounting requirements are required. If a service is found to be effectively competitive, and cost allocations are required for ongoing accounting purposes; the cost allocation procedures already approved and in place should be sufficient.

OPC'S POSITION: Yes. However, fully separated subsidiaries offer greater protection against cross subsidization.

STAFF'S POSITION: No. Under certain circumstances it may be appropriate for the Commission to mandate the implementation of accounting requirements for a given effectively competitive service. However, staff believes that it is premature to mandate generic accounting requirements for competitive services because this action would preclude other options which, depending upon the service and specifics surrounding its provision, might be preferable. Accordingly, at this time the need to establish accounting requirements should be addressed on a case-by-case basis.

ISSUE 8c: Should the Commission prohibit local exchange companies (LECs) from offering services subject to the provisions of 364.3381, without assuring that the requirements of 364.3381 have been met?

AD HOC'S POSITION: Ad Hoc adopts FIXCA's position on this issue.

AT&T'S POSITION: Yes.

CENTEL'S POSITION: No. Because of the fast moving nature of the telecommunications marketplace, the Commission should allow a LEC's effectively competitive service to go into effect immediately, with the requirement that the LEC demonstrate the absence of a cross-subsidy within a reasonable time frame, not to be less than one year.

FCTA'S POSITION: Yes.

FIXCA'S POSITION: This requirement is unrealistic since the local telephone companies are today offering services that are subject to

Section 364.3381 without having demonstrated that its requirements have been met. Consequently, to prohibit the LEC from offering services until this requirement is met would require that it withdraw from the market a number of services (including, for instance, all of its interexchange products) until the Commission could test them for cross-subsidy. The Commission should, instead, rapidly initiate investigations for the major LECs (beginning with Southern Bell) to establish allocation methodologies for the major service categories (such as interexchange toll).

FPTA'S POSITION: Yes. The language of section 364.3381 is mandatory.

GTEFL'S POSITION: No. Such a result is not only nonsensical it is contrary to the specific provisions of Section 364.338 which require the Commission or a party to initiate action to determine whether a service is effectively competitive. One result under the statute is that action is never taken.

MCI'S POSITION: No position for purposes of this Prehearing Order.

SOUTHERN BELL'S POSITION: The requirements of Section 364.3381 do not apply until a service has been determined to be subject to effective competition under the provisions of Section 364.338. After such a determination the Commission should assure at that point that the service meets the requirements of the Section 364.3381. The Commission should allow the LECS adequate time to take any necessary action to be in compliance with Section 364.3381 after a finding of effective competition.

UNITED'S POSITION: No. The telecommunications marketplace is dynamic and evolving. Any procedure which would delay the offering of a new service until an effectively competitive finding was made would in essence deny the public access to new services and would deny the LECs the right to compete for new revenues. Neither the company nor the customer should be denied service opportunities to satisfy a lengthy review process.

If a service is to be offered in the regulated environment, the FPSC has appropriate means now to require cost support for the prices and has the option to deny the tariff. If the service is to be offered in the non regulated environment, Commission approved accounting allocation procedures are already in place.

OPC'S POSITION: Yes.

STAFF'S POSITION: Yes. However, the local exchange companies should be afforded a reasonable timeframe, to be determined by the Commission but not to exceed one year, to meet the requirements of 364.3381 for their effectively competitive services.

ISSUE 8d: Does the language of the statute imply that cross-subsidy is appropriate or acceptable in some cases and unacceptable or inappropriate in others? If so, under what circumstances is it to be judged acceptable or not?

AD HOC'S POSITION: Ad Hoc adopts FIXCA's position on this issue.

AT&T'S POSITION: No. The statute is intended to prohibit all cross-subsidization of competitive services by monopoly services.

CENTEL'S POSITION: No. Except for the prohibition against monopoly services cross subsidizing effectively competitive services, the statute is neutral with respect to whether cross-subsidy is appropriate or inappropriate, acceptable or unacceptable in any other circumstances.

FCTA'S POSITION: No.

FIXCA'S POSITION: No.

FPTA'S POSITION: The language of Chapter 364 implies that cross-subsidy may be acceptable in the limited instance of furthering the Commission's universal service goals. The Commission should make such a determination on a case-by-case basis.

GTEFL'S POSITION: Cross-subsidy concerns are only applicable for those services which have been found to be effectively competitive under the provisions of Section 364.338. Therefore, monopoly services may be priced pursuant to welfare maximizing goals which could result in prices below incremental cost. Such prices would be in the public interest in the sense that they maximize the sum of consumer plus produce a surplus subject to an earnings constraint placed on the firm.

MCI'S POSITION: No position for purposes of this Prehearing Order.

SOUTHERN BELL'S POSITION: Southern Bell has no position on this issue at this time.

UNITED'S POSITION: The intent of the statute was not to judge the appropriateness or acceptability of a cross-subsidy. The intent of the statute was to ensure that monopoly services do not subsidize services that the Commission has determined to be effectively competitive under Section 364.338.

OPC'S POSITION: No position for purposes of this Prehearing Order.

STAFF'S POSITION: No. The statute prohibits cross-subsidization of effectively competitive services by monopoly services; it is silent as to whether or not cross-subsidization is appropriate or acceptable in any other cases.

ISSUE 8(e): What other actions should be taken?

AD HOC'S POSITION: Ad Hoc adopts FIXCA's position on this issue.

AT&T'S POSITION: AT&T has no position on this issue for purposes of this Prehearing Order.

CENTEL'S POSITION: No position for purposes of this Prehearing Order.

FCTA'S POSITION: Identify services offered by local exchanges which are also offered by other providers; further, the Commission should determine the nature of the competition between such providers.

FIXCA'S POSITION: No position for purposes of this Prehearing Order.

FPTA'S POSITION: FPTA takes no position for purposes of this Prehearing Order.

GTEFL'S POSITION: No position for purposes of this Prehearing Order.

MCI'S POSITION: No position for purposes of this Prehearing Order.

SOUTHERN BELL'S POSITION: No other action is appropriate at this time.

UNITED'S POSITION: None at this time; without knowing the form of the alternative regulation and the services involved, additional actions are unnecessary.

OPC'S POSITION: No position for purposes of this Prehearing Order.

STAFF'S POSITION: No position for purposes of this Prehearing Order.

ISSUE 9: Should the Commission order the LECs to:

a) identify all services they offer which are also offered by other providers?

b) identify the nature of the competition for services offered by other providers?

AD HOC'S POSITION: Ad Hoc adopts FIXCA's position on this issue.

AT&T'S POSITION: AT&T has no position on this issue at this time.

CENTEL'S POSITION: a) No. The LEC cannot possibly know whether each of its services may also be provided by others.

b) No. The LEC is not necessarily privy to the nature of competition for the LEC's services.

FCTA'S POSITION: Yes.

FIXCA'S POSITION: No position for purposes of this Prehearing Order.

FPTA'S POSITION: a) Yes. The legislative intent of chapter 364 can only be carried out by first identifying services that are effectively competitive, subject to effective competition, and competitive.

b) Yes. The LECs are in the best position to begin the identification process.

GTEFL'S POSITION: No. The local exchange carriers are not necessarily in a position to be aware of all the services which are offered by the other carriers or nontelecommunications firms. However, if the Commission desires such information, GTEFL submits

that the requirement should be imposed on all firms in the marketplace, including nonregulated intervenors before the Commission. All participants in the market, whether those firms are price/service regulated or not, should be required to submit such information.

MCI'S POSITION: No position for purposes of this Prehearing Order.

SOUTHERN BELL'S POSITION: Neither of the above actions are appropriate nor necessary. Section 364.338(2) provides a means by which the Commission can make a determination as to whether a service is effectively competitive. There is no statutory requirement that would compel reporting prior to this determination process as suggested in Issue 9. Secondly, such requirements would be burdensome for the LECS.

UNITED'S POSITION: No to both questions. First, in many cases the LEC does not know whether there is or is not competition for specific services. Secondly, if the competition is truly effective, the nature and extent of the competition will be closely guarded by the competing firms. It is doubtful that, even with an extensive study, the LECs could present a complete picture. Thirdly, to order the LECs to provide the information creates an undue burden on the LECs.

Before any such study/project should be initiated, a determination should be made as to what will be done with the information and how it is to be used. Such a determination would serve to establish the data to be collected and what specific information, criteria and parameters are to be included for the results to be the most useful for the intended study purpose.

OPC'S POSITION: Yes.

STAFF'S POSITION: No, not at this time. However, staff would note that in Docket No. 930046-TP, a data request has been sent to the four major Florida LECs in order to obtain information required to identify any effectively competitive services currently offered by these companies and the nature of the competition they face. Other than this observation, staff has no position at this time.

VII. EXHIBIT LIST

WITNESS	PROFFERED BY	I.D. NO.	DESCRIPTION
Mike Guedel	AT&T	MG-1	Industry Structure Chart
David B. Denton	So. Bell	DBD-1	State Docket Activity
Edward C. Beauvais	GTEFL	ECB-1	Resume
Richard D. Emmerson	So. Bell	RDE-1	Definition and Concepts
		RDE-2	Comments on Fully Distributed Costs
Gene E. Michaelson	Centel	GEM-1	Professional Experience

Staff has not yet completed the list of exhibits which it intends to utilize in this proceeding. Staff will supply a list of exhibits to all parties prior to the hearing.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

There are no proposed stipulations.

IX. RULINGS

The Prehearing Officer made the following rulings at the February 26, 1993, Prehearing Conference:

1. Approved withdrawal of Southern Bell's Motion for Reconsideration of Order No. PSC-92-1323-PCO-TP Establishing Prehearing Procedure, filed November 25, 1992.

2. Approved FPTA's Motion to Accept Prehearing Statement filed January 22, 1993; Centel's Request for Leave to File Prehearing Statement filed January 25, 1993; and, Ad Hoc's Petition for Acceptance of a Late-Filed Prehearing Statement filed January 29, 1993.

It is therefore,

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 8th day of March, 1993.

J. TERRY DEASON, Chairman
and Prehearing Officer

(S E A L)

PAK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice

should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.