

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: AN INVESTIGATION INTO THE STATE-)	DOCKET NO. 880423-TP
WIDE OFFERING OF ACCESS TO THE LOCAL)	ORDER NO. 20695
NETWORK FOR THE PURPOSE OF PROVIDING)	ISSUED: 2/6/89
INFORMATION SERVICES.)	

Pursuant to Notice, a Prehearing Conference was held on January 4, 1989, in Tallahassee, Florida, before Commissioner Michael Mck. Wilson, as Prehearing Officer.

APPEARANCES:

NORMAN H. HORTON, JR., Esquire, Mason, Erwin & Horton, 1020 East Lafayette Street, Suite 202, Tallahassee, Florida 32301 on behalf of ALLTEL Florida, Inc., Florida Telephone Company, Inc., Gulf Telephone Company, Indiantown Telephone System, Inc., Northeast Florida Telephone Company, Inc., Quincy Telephone Company, St. Joseph Telephone and Telegraph Company, Southland Telephone Company and Vista-United Telecommunications.

LEE L. WILLIS, Esquire, and JAMES D. BEASLEY, Esquire, Ausley, McMullen, McGehee,, Carothers and Proctor, Post Office Box 391, Tallahassee, Florida 32302 on behalf of Central Telephone Company of Florida.

THOMAS R. PARKER, Esquire, GTE Florida Incorporated, P. O. Box 110 MC 7, Tampa, FL 33601-0110 on behalf of GTE Florida, Inc.

J. LLOYD NAULT, Esquire, and LAWRENCE GILL, Esquire, Southern Bell Telephone and Telegraph Company, c/o Frank Meiners, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301 on behalf of Southern Bell Telephone and Telegraph Company.

ALAN BERG, Esquire, United Telephone Company of Florida, Box 5000, Altamonte Springs, Florida 32716-5000 on behalf of United Telephone Company of Florida.

MICHAEL W. TYE, Esquire, 315 South Calhoun Street, Suite 505, Tallahassee, Florida 32301 on behalf of AT&T Communications of the Southern States, Inc.

RICHARD D. MELSON, Esquire, Hopping, Boyd, Green and Sams, Suite 420, First Florida Bank Building, Post Office Box 6526, Tallahassee, Florida 32314; and, KENRIC E. PORT, Esquire, MCI Telecommunications Corporations, 400 Perimeter Center, N.E., Suite 400, Atlanta, Georgia 30346 on behalf of MCI Telecommunications Corporation.

*STEPHEN R. BELL, Esquire, Squire, Sanders & Dempsey, 1201 Pennsylvania Avenue, N.W., P.O. Box 407, Washington, D.C. on behalf of Information Services Providers Alliance.

*KATHLEEN VILLACORTA, Ranson & Wiggins, Post Office Drawer 1657, Tallahassee, Florida 32302 on behalf of Microtel, Inc.

BRUCE W. RENARD, Esquire and FLOYD R. SELF, Esquire, Messer, Vickers, Caparello, French and Madsen, Post Office Box 1876, Tallahassee, Florida 32302 on behalf of Telus Communications, Inc. and US Sprint Communications Company.

TODD M. HOEPKER, Esquire, Dempsey & Goldsmith, 605 E. Robinson, Orlando, Florida 32803, and DOUGLAS METCALF, Communication Consultants, Inc., 1600 East Amelia Street, Orlando, Florida 32803 on behalf of Florida Ad Hoc Telecommunication Users Committee.

JOSEPH A. MCGLOTHLIN, Esquire, Lawson, McWhirter, Grandoff & Reeves, 522 East Park Avenue, Suite 200, Tallahassee, Florida 32301 on behalf of Florida Interexchange Carriers' Association and Florida Cable Television Association

**JAMES S. BLASZAK, Esquire, Heron, Burchette, Ruckert & Rothwell, 1025 Thomas Jefferson Street, N.W., Suite 700, Washington, D.C. 20007, on behalf of Coalition of Open Network Architecture Parties and Committee of Corporate Telecommunications Users

CHARLES BECK, Esquire, Office of the Public Counsel, c/o Florida House of Representatives, The Capitol, Tallahassee, Florida 32399-1300 on behalf of the Citizens of the State of Florida.

PRENTIS PRUITT, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0862 on behalf of the Commissioners.

ENNIS L. JACOBS, JR., Esquire, and TRACY HATCH, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863 on behalf of the Commission Staff.

- * - Reflects substituted counsel (See Pending Matters).
- ** - Party filed Notice of Withdrawal subsequent to Prehearing Conference.

PREHEARING ORDER

I. BACKGROUND

This proceeding is a generic investigation by the Florida Public Service Commission into a vast array of services that

use the telecommunications system to transmit information or, that enhance, modify, or redirect transmissions in ways not directly related to telephonic transmission. These services, generally referred to as "information services", are valuable to consumers because of the content of the transmission or because of the manner in which transmissions are modified. Information services is a term of art however, that will be specifically defined in these proceedings.

These proceedings will also examine the policies and practices of the local exchange companies (LECs) in allowing both affiliated and nonaffiliated business entities access to the local network for the delivery of information services to the consuming public.

Industry workshops were held on April 13, 1988, and on May 23, 1988 to gather input on the existing market and legal environments. This input indicated that a full evidentiary hearing was necessary to deal with the complex issues surrounding this subject. A formal workshop was held on July 25, 1988 to identify the issues to be litigated.

Many external developments merit significant interest in this docket. Foremost are the Computer Industry (CI) proceedings at the Federal Communications Commission (FCC). In the Second Computer Inquiry, 77 FCC 2d 384 (1979) (CI II), aff'd. sub nom, Computers and Communications Industry Associated v. F.C.C., 693 F.2d 198 (D.C. Cir. 1982), cert. den., Louisiana P.S.C. vs. United States, 461 U.S. 938 (1983), the FCC found that "enhanced services", as they could be identified by its definition in 47 C.F.R. Section 64.702(a), were not included in the services regulated under the Communications Act of 1934, and therefore should not be regulated by the FCC. In order to avoid frustration of this federal policy, the FCC. deemed it necessary to preempt state regulation of such services. A crucial element of this decision was the absence of any guidelines by which this definition would be applied to existing and new services. When combined with the extremely fast pace of technological advancements in both hardware and hardware intelligence, and the ambiguity of the existing definition, this decision allowed the FCC to assert virtually open-ended jurisdiction to restrict state authority over improvements to existing services and over all new services.

The FCC initially chose to allow the Bell Operating Companies (BOCs) to offer these enhanced services but only through separate subsidiaries, commonly referred to as the structural separation requirement. This scheme of regulation of enhanced services drastically changed with the FCC's decision in the Third Computer Inquiry, 104 FCC.2d 958 (1986) (CI III). In this proceeding, the BOCs were allowed to offer enhanced services on an integrated basis with the imposition of certain nonstructural safeguards. These nonstructural safeguards consist of the network disclosure mandates of the Open Network Architecture (ONA)/Comparably Efficient Interconnection (CEI) process, and the accounting separations process in the federal "Part X" procedures.

The participation of Southern Bell, the largest LEC in Florida, in the information services market is controlled by federal antitrust litigation. Federal District Judge Harold Greene has approved the Modified Final Judgment (MFJ) in U.S. v. AT&T, 552 F.Supp 131 (D.D.C. 1982), aff'd sub nom. Maryland v. U.S., 460 U.S. 1001, 75 L.ED.2d 472 (1983), that prohibits BOC provision of "information services", as defined in those proceedings. Subsequent orders have conditionally allowed the BOCs to provide specific information services. This Court's authorization is required for all information services offered by Southern Bell in Florida.

Several services proposed by Southern Bell will be affected by the decision in this proceeding. In Docket No. 870766-TL, Southern Bell proposed to offer a packet switching service that included a protocol conversion component. At its November 29, 1988, Agenda Conference, the Commission determined that packet switching and certain aspects of protocol conversion should be offered on a regulated basis. The tariff rates for the approved service will be determined in subsequent proceedings. In Docket No. 881323-TL, Southern Bell filed a proposal to offer a two-way measured access line for information services providers only, and to offer a package of special call features that are crucial to the provisioning of information services. At its November 29, 1988 Agenda Conference, the Commission voted to allow these tariffs, but limited them to a special test of information services by Southern Bell and others in West Palm Beach. Any policy implications of this decision were deferred to this docket.

II. TESTIMONY AND EXHIBITS

Upon insertion of a witness's testimony, exhibits appended thereto may be marked for identification. After opportunity for opposing parties to object and cross-examine, the document may be moved into the record. All other exhibits will be similarly identified and entered at the appropriate time during hearing. Exhibits shall be moved into the record by exhibit number at the conclusion of a witness's testimony.

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

In order to efficiently organize the numbering and presentation of exhibits the parties have been assigned the following witness identification number sequences:

Centel	10-19
GTEFL	20-29
So. Bell	30-39
United	40-49
AT&T	50-59
ISPA	70-79
MCI	80-89
Microtel	90-99
Telus	100-109
US Sprint	110-119
FIXCA	120-129

ADHOC	130-139
FCATV	140-149
Northeast	150-159
ALLTEL	160-169
Quincy	170-179
St. Joe	180-189
Southland	190-199
Vista-United	200-209
Gulf	210-219
Floralta	220-229
Indiantown	230-239
Citizens	240-249
Staff	250-259

NOTE: In the interest of saving time, the presentation of Direct and Rebuttal Testimony by each witness has been consolidated to a single appearance on the witness stand. Witnesses are cautioned that they remain subject to recall, if necessary, for clarification or in order to avoid confusion from the presentation of testimony out of normal sequence.

III. ORDER OF WITNESSES

<u>Witness</u>	<u>Witness No.</u>	<u>Appearing For</u>	<u>Date</u>	<u>Issues</u>
<u>Direct and Rebuttal</u>				
Lombardo	30	Sou. Bell	2/15	15, 16
Boltz	31	Sou. Bell	2/15	1, 12-14
Payne	32	Sou. Bell	2/15	5-11, 15,16
Glassburn	20	GTEFL	2/15	
Griffin	40	United	2/16	1, 5-16
Wahlen, Becker	10, 11 (As Panel)	CENTEL	2/16	
Guedel	50	AT&T	2/16	
Harcharik	70	ISPA	2/16	1, 5, 6, 8-12, 14-15
Dewey	71	ISPA	2/16	13, 14
Ozburn	80	MCI	2/17	5-7, 9-12, 14-16
Mayne	130	ADHOC	2/17	
<u>Rebuttal Only</u>				
Cornell	81	MCI	2/17	6, 10-11, 13-15
Sievers	110	U.S.Sprint	2/17	
Wilkerson	140	FCATV	2/17	

IV. BASIC POSITIONS

AT&T'S BASIC POSITION: AT&T fully supports the concept of Open Network Architecture ("ONA"). ONA can provide a promising gateway for the broad dissemination of future telecommunications services and an efficient vehicle for making those services available to all telecommunications users. To ensure the realization of the highest potential benefits, AT&T recommends that the implementation of ONA include appropriate unbundling of LEC capabilities, universal availability of those capabilities, and a structure to ensure that all users including the LECs can purchase like-offered capabilities at like rates, terms, and conditions.

MCI'S BASIC POSITION: The Florida Public Service Commission should fully investigate the manner in which local exchange companies will provide access to the local network for information service providers. Four safeguards should be implemented to prevent LECs from abusing their bottleneck monopoly position. First, the LECs should be required to impute to themselves the access rate charged to competing enhanced service providers for access to the local network. Second, the local exchange companies should be required to fully unbundle basic service elements to the level required by ESPs and IXCs. Third, the LECs should charge a single price for a BSE, with that price being based upon the cost of providing the service. Fourth, basic service elements should be available to all ESPs and IXCs without any user or use restrictions.

In addition to these four safeguards, the Commission should implement sufficient guidelines to prevent the local exchange companies from controlling the enhanced service provider market. Specifically, guidelines should be implemented to prevent LECs from cross-subsidizing their information services with revenues generated from their local exchange services. Guidelines should also be adopted to prohibit LECs from discriminating against competing enhanced service providers in the determination of (1) which basic service elements should be offered, and (2) at what price. The Commission should ensure that there will be a market for the development of new information services in the future, and that the Florida consumers will decide what information services should be available, not the local exchange companies.

MICROTEL'S BASIC POSITION: Microtel's basic position is that full development and deployment of information services in Florida is desirable to ensure Florida's continuing emergence as a leader in the use of telecommunications technology. Microtel believes that the Florida Public Service Commission (FPSC) should adopt policies which promote the development of a competitive information service industry.

Generally, as the FPSC develops its policies, it should focus on not allowing those in control of the

"bottleneck" to retard or hinder the development or availability to information services. When examining the issue of access to the local network for the purpose of providing information services, the FPSC must insure that:

- (1) the rates and conditions under which access is provided are just and reasonable;
- (2) there are no restrictions on use or user;
- (3) there is parity with interstate access charges thus avoiding the problems created by the disparity between carrier intrastate and interstate access charges;
- (4) there are appropriate safeguards to ensure that the LEC does not abuse their monopoly power by manipulating new markets or cross-subsidizing their unregulated activities with earnings from the regulated side;
- (5) the principles of open network architecture (ONA) to proceed and develop and ensure they are being met; and
- (6) the marketplace and not the LEC is allowed to determine the type of access available to information services.

TELUS' BASIC POSITION: The two principle issues in this docket involve the provision of information services by the LECs and the rates, terms, and conditions governing information services providers' access to the local network. For there to be meaningful competition in the provision of information services to Florida consumers, the LECs cannot be permitted to conduct their information services operations in a manner that would provide them an unfair competitive advantage. In addition, the rates, terms, and conditions of interconnection must be on a nondiscriminatory and unbundled basis.

US SPRINT'S BASIC POSITION: ONA is a non-structural safeguard prescribed by the FCC. The unbundled provision of services by the BOCs on a cost-based and non-discriminatory basis is the quid pro quo for the elimination of the separated subsidiary requirement for the local exchange companies' ("LECs") provision of information services. The regulatory policy behind ONA is that the unbundling of network features coupled with the cost-based non-discriminatory access to those features, is necessary to reduce or eliminate the BOCs' ability to harm competition in enhanced services markets by manipulating access to or use of their bottleneck local facilities. The Commission should ensure that fundamental ONA principles are reflected in all LEC service offerings and rates related to access to the local network for enhanced services.

Specifically, the price of ONA network functionalities should be cost-based. As unbundled basic

service elements, ONA network functionalities are monopoly service offerings. It would be inappropriate to base the price of such functionalities on factors such as the value of the local network, the use of the functionalities by enhanced service providers, the degree of competition in enhanced services markets, or the identity of the customer. This is particularly true where the LEC is both the monopoly supplier of access and an ESP competitor. Moreover, ONA network functionalities should be available to all customers who wish to purchase them under existing access arrangements. Finally, LEC-affiliated enhanced service providers ("ESPs") should not be permitted to take unfair competitive advantage of their relationship to the LEC in obtaining access to the local network and information concerning customers.

CENTEL'S BASIC POSITION: Centel urges this Commission to treat this docket as a general investigation for background into the subject of information services. For purposes of consistency and efficiency the rate structure, definition of terms and conditions of service should mirror the FCC decisions on these issues. Intrastate rate levels to information service providers should, however, be based on individual LEC costs.

GTEFL's BASIC POSITION: GTEFL believes that the public benefits to be derived from information services will be maximized if LECs are permitted to offer these services in a deregulated environment wherein certain nonstructural safeguards are maintained to ensure a level playing field for all competitors. Under these safeguards, LEC-affiliated ISPs and non-LEC ISPs would pay identical rates for equivalent network functionality, through the use of unbundled, ONA-type tariffs. Since existing telco rate structures would be extremely vulnerable to arbitrage, the new open network tariffs, at least initially, should apply only to ESPs, and under these tariffs ESPs should be required to pay usage sensitive rates for services provided to their clients.

SOUTHERN BELL'S BASIC POSITION: Southern Bell believes that with its full participation in the information services industry, with maximum utilization of its telecommunications network, and with the broad availability of that network, the benefits of the Information Age will be promptly and efficiently brought to the Florida ratepayer. Southern Bell firmly believes that local exchange access by information service providers should be provided under intrastate tariffs. Furthermore, Southern Bell believes that a usage sensitive tariff structure is necessary in order for Information Age services to be provided to those subscribers who desire them without burdening those subscribers who do not wish to utilize them. Finally, Southern Bell believes that its participation in the information services industry must be treated consistently at the state and federal levels to ensure that Florida consumers realize the full benefits of such participation and are not inconvenienced by conflicting regulatory requirements.

UNITED'S BASIC POSITION: United's basic position in this proceeding is that the provision of information services should not be regulated. However, local exchange carrier (LEC) provision of access to the local network to information service providers should be regulated. However, local exchange carrier (LEC) provision of access to the local network to information service providers should be regulated in general. Terms and conditions of any LEC open network architecture (ONA) service tariff should be uniform to the extent possible. In any event, rates should be LEC-specific. Unless authorized by the customer, access to customer proprietary network information (CPNI) should be restricted by the LEC to only those persons necessary to ensure that services ordered from the LEC function properly and those involved with normal account maintenance. The offering of collocation to information service providers on LEC premises should not be mandated, but rather left to the option of the LEC. Accounting safeguards are sufficient to accommodate LEC provisioning of information services. The LEC information service operation should compensate the LEC regulated entity for access to the regulated network via tariffed charges. As appropriate, compensation through contractual arrangements should also be available.

ADHOC'S BASIC POSITION: AdHoc fully endorses the concept of enhanced services and recognizes the benefits for all users of the potential new offerings available from enhanced service providers, and from the LECs using their enhanced transport technologies. We believe however that a distinct difference exists between the LEC as a provider of enhanced transport services and the LEC as an enhanced service provider. To the extent that the LECs are the sole provider of transport services, FPSC regulation is necessary to ensure fair, reasonable and nondiscriminatory rates, conditions of service and access. The entry of the LECs into the enhanced services marketplace requires the regulators of the LECs monopoly services to carefully scrutinize the LECs to prevent the use of monopoly revenues to subsidize competitive enhanced services.

FCATV'S BASIC POSITION: For the purposes of this docket, "information services" should be defined so as to explicitly exclude video programming. A precise definition is needed to avoid any ambiguity in the determinations reached or in the policy statements made in this proceeding. However, if the term is intended to include video programming, then the safeguards identified by other parties to govern the participation by LECs in information services are inadequate. Local telephone companies should not be permitted to provide video programming in their respective telephone service areas.

FIXCA'S BASIC POSITION: FIXCA has no position at this time. However, it reserves the right to state a position prior to or during the prehearing conference based on its opportunity to fully review the prefiled testimony and exhibits, as well as the issues generated by other parties.

ISPA'S BASIC POSITION: Competitive information service providers (ISPs) offer a wide variety of services to the citizens of Florida. ISPs are dependent on the local exchange carriers (LECs) for communication services, such as local access and private lines, which are necessary in the provision of information services and which constitute a major component of ISP costs. Thus, the cost of ISP services to the end user is extremely sensitive to the cost of access services and other communication services.

Since ISPs use local access in the same manner as many other business customers, local access for ISPs should continue to be provided through the same tariffs available to all other business users. New Open Network Architecture (ONA) offerings should be provided pursuant to cost-based tariffs and, to the extent that it is technically feasible, Basic Service Elements (BSEs) should be available for use with existing access arrangements. Ancillary Services should be provided on a cost-based and non-discriminatory basis.

In developing additional policies for the implementation of ONA in Florida, the Florida Public Service Commission (PSC) should encourage Southern Bell Telephone and Telegraph Company to be more responsive to ISP requests for ONA service, to treat Customer Proprietary Network Information in a symmetrical fashion, to offer physical collocation to ISPs where available space permits, and to provide information on new ONA tariffs and changes in tariff offerings related to ONA in a timely fashion.

Further, the PSC should ensure that Florida ratepayers are compensated when LEC-related ISPs receive services or assets contributed by the monopoly ratepayer. Finally, the PSC should ensure that the LECs do not discriminate in any way between affiliated ISPs and competitive ISPs.

PUBLIC COUNSEL'S BASIC POSITION: The Commission should encourage the development of a vibrant, competitive market for the offering of information services in Florida. At the same time, measures should be taken to ensure regulated ratepayers do not cross-subsidize the unregulated offering of information services by the local exchange companies or their affiliates.

STAFF'S BASIC POSITION: None pending discovery.

V. ISSUES AND POSITIONS:

ISSUE 1: For the purpose of this docket, what is the appropriate definition of information services?

AT&T'S POSITION: An information service is defined by the MFJ as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information which may be conveyed via

telecommunications." In Computer Inquiry III/ONA language, the appropriate term is "Enhanced Service", which includes any service that uses interstate communication and: involves subscriber interaction with stored information; or performs data processing; or (in addition) performs protocol conversion. Information services, as defined above, also fall under the definition of enhanced services.

MCI'S POSITION: MCI has no position on this issue at this time. MCI reserves the right to address this issue in its brief at the conclusion of these hearings.

MICROTEL'S POSITION: Microtel believes that an appropriate definition of information services is as follows:

The term "information services" shall refer to services, offered over common carrier transmission facilities, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's additional, different or restructured information; or involve subscriber interaction with stored information.

TELUS' POSITION: "Information services" and "enhanced services" are synonymous terms, and should in substance be defined in accordance with the FCC definition found at 47 C.F.R. §64.702(a):

Those services [utilizing telecommunications transmission facilities] which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.

US SPRINT'S POSITION: The definition of information services established in the Federal Communications Commission's Computer Inquiry III decision, and contained in 47 C.F.R. Section 64.702, should be used for purposes of this docket.

CENTEL'S POSITION: For purposes of consistency, "information services" should be defined the same at the state level as at the federal level. Thus, using Judge Greene's definition in United States v. American Telephone and Telegraph Co., 552 F. Supp. 131 (D.D.C. 1982), information services would be defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information which may be conveyed via telecommunications." Id. at 229.

GTEFL'S POSITION: For the purpose of this investigation, an information service is one that provides a user the capability to generate, acquire, store, transform, process, retrieve, utilize, or make available information conveyed over the public telecommunications network. Excluded from this definition would be any service capability used to manage, control, operate the public network.

DUTHERN BELL'S POSITION: The appropriate definition of information services is: "Those services offered over a common carrier transmission facilities used in interstate or intrastate communications, which employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information; or provide the subscriber additional, different or restructured information; or involve subscriber interaction with stored information; but does not include basic telephone transmission communications and adjunct services which facilitate use of the basic network without changing the nature of basic telephone services."

UNITED'S POSITION: United defines information services as the development and provision of information itself as opposed to the transport of the information. Such development and provision may include the acquisition, storage, transformation, processing, or retrieval of the information.

ADHOC'S POSITION: Information services are services offered to the end user that act on the format, content or other aspects of subscriber information and that provide the subscriber an additional, different or restructured information, or that involves subscriber interaction with stored information. Enhanced transport describes telecommunications services including protocol conversion and packet switching. The FCC describes information service and enhanced transport offerings under their more global definition of enhanced services.

FCATV'S POSITION: The definition should fit the scope of the proceeding. Parties and the Commission appear to focus on services involving computerized data transmitted through the LEC's switch. However, parties have offered a definition which, in some circles, has been construed more broadly. For purposes of this docket, the term should be defined so as to explicit exclude video programming.

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

ISPA'S POSITION: ISPA suggests that the appropriate definition of information services is the definition of enhanced services adopted by the Federal Communications Commission which appears in 47 C.F.R. §64.702(a). In other words, information services shall refer to services, offered over common carrier transmission facilities, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.

PUBLIC COUNSEL'S POSITION: The FCC defines the term "enhanced service" as services offered over common carrier transmission facilities which employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Under modified final judgment, the term "information services" is used to include all enhanced services except protocol conversion.

The Committee of Corporate Telecommunications Users and the Coalition of Open Network Architecture Parties has proposed to use the term "information services" to describe subscriber interaction with stored information and the term "enhanced transport" to describe protocol conversion and packet switching services. These are useful distinctions which should be utilized in this docket.

STAFF'S POSITION: We generally agree with Ad Hoc that subcategorizing this area into information services and enhanced transport offerings may be helpful. Information services are services offered to the end user that act on the format, content or other aspects of subscriber information and that provide the subscriber additional, different or restructured information, or that involve subscriber interaction with stored information. An enhanced transport offering is high level protocol conversion. Consistent with the Commission's ruling in Docket Number 870766-TP, we believe that low level protocol conversion and packet switching are basic services. We believe that both information services and enhanced transport offerings should be considered information services.

ISSUE 2: Does the Florida Public Service Commission have jurisdiction over the provisioning of LEC information services? What is the rationale for this? What statutory changes, if any, should be proposed? (Legal)

AT&T'S POSITION: AT&T will address this legal issue as necessary in its posthearing briefs.

MCI'S POSITION: Yes. The Florida Public Service Commission has jurisdiction over the provisioning of intrastate information services by local exchange companies.

MICROTEL'S POSITION: Microtel will provide its legal position on this issue in its Post Hearing Statement in this docket.

TELUS' POSITION: Telus intends to address this legal issue in its posthearing brief.

US SPRINT'S POSITION: US Sprint will address this legal issue in its post-hearing brief.

CENTEL'S POSITION: Centel will provide its position on these legal issues in its Posthearing Statement.

GTEFL'S POSITION: No. The Federal Communications Commission has indicated in its Computer Inquiry II and III Orders that information services are enhanced services and are nonregulated offerings.

SOUTHERN BELL'S POSITION: The Commission's jurisdiction is limited to the imposition of nonstructural safeguards not inconsistent with those adopted by the FCC in its Computer Inquiry III decision set forth in its Report and Order released June 16, 1986, in CC Docket No. 85-229. The FCC preempted the Florida Public Service Commission with respect to the enhanced services operations of the Bell Operating Companies on the grounds that the replacement of structural separation with nonstructural safeguards is crucial to the promotion of efficient national telecommunications services. The FCC's preemptive action is currently being challenged in an appeal before the U. S. Court of Appeals for the Ninth Circuit. Any potential conflicting state regulatory action should await the outcome of the federal court proceedings which should be dispositive of the preemption issue.

UNITED'S POSITION: The Florida Public Service Commission has been pre-empted in the area of information service services by the Federal Communications Commission's Computer Inquiry decisions, and by the AT&T divestiture decree (Modification of Final Judgment).

In Computer Inquiry II, the FCC found that enhanced services were not common carrier communications services even when offered by entities that otherwise were carriers.

In Computer Inquiry III, the FCC reaffirmed that states are pre-empted from imposing common carrier tariff regulations on enhanced services. In addition, the FCC prevented the states from imposing structural separation requirements on AT&T and the Bell Operating Companies with respect to their

provision of enhanced services. The FCC also pre-empted inconsistent state regulation of the non-structural safeguards, e.g., comparably efficient interconnection (CEI) and Open Network Architecture (ONA), adopted in CI III.

In approving the Modification or Final Judgment, Federal District Court Judge Harold Greene found that state law is pre-empted to the extent it conflicts with the MFJ. The divested Bell Operating Companies are presently prevented from providing certain information services by virtue of the line-of-business restrictions of the MFJ.

Additional pre-emption in the area of cable television is found in the Cable Communications Policy Act of 1984 (47 U.S.C. Section 553 et seq.) and the FCC Rules (47 C.F.R. Section 63.54 et seq.), which prohibit telephone companies from providing cable television services in their telephone service areas.

The rationale for the pre-emptions is found in the CI decisions and in the MFJ.

United knows of no statutory changes which should be proposed.

ADHOC'S POSITION: The Commission clearly has jurisdiction over the provisioning of enhanced transport services by the LEC. The Commission also has jurisdiction and the responsibility to assure that the LEC does not unduly abuse its primary charter of providing fair, reasonable and nondiscriminatory rates for the ratepayers in Florida while earning for itself a fair and reasonable rate-of-return.

FCATV'S POSITION: No position at this time.

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

ISPA'S POSITION: ISPA will provide its legal position in its Brief in this Docket.

PUBLIC COUNSEL'S POSITION: Read broadly, the definition of a "telephone company" contained in Section 364.02, Florida Statute (1987) includes the provisioning of information services by local exchange companies and others. The FCC, however, has preempted state regulation of information service providers.

STAFF'S POSITION: No position pending receipt of parties' briefs.

ISSUE 3: Does the Florida Public Service Commission have jurisdiction over the provisioning of access to the local network for the purpose of providing intrastate and interstate information services? What is the rationale for this? What statutory changes, if any, should be proposed? (Legal)

AT&T'S POSITION: AT&T will address this legal issue as necessary in its posthearing briefs.

MCI'S POSITION: Yes. The Florida Public Service Commission has jurisdiction over access to the local network. This includes jurisdiction over access for the purpose of providing interexchange telecommunication service and for the purpose of providing information services.

MICROTEL'S POSITION: Microtel will provide its legal position on this issue in its Post Hearing Statement in this docket.

TELUS' POSITION: Telus intends to address this legal issue in its posthearing brief.

US SPRINT'S POSITION: US Sprint will address this legal issue in its post-hearing brief.

CENDEL'S POSITION: Centel will provide its position on these legal issues in its Posthearing Statement.

GTEFL'S POSITION: Yes. The Florida Public Service Commission has jurisdiction to regulate access to, and usage of, LEC facilities as the medium for the delivery of enhanced services between information providers and end users.

SOUTHERN BELL'S POSITION: The Florida Public Service Commission has jurisdiction over the provisioning of access to the local network connections and services used by information service providers to provide intrastate information services. Therefore, no statutory changes should be proposed.

UNITED'S POSITION: The Florida Public Service Commission may have jurisdiction over the provisioning of access to the local network for the purpose of providing intrastate information services. The rationale would be similar to that used to provide interconnection for cellular carriers. United knows of no order similar to the FCC order in the cellular situation which specified jurisdictional boundaries for interconnection; however, FCC Docket No. 88-2 may result in such an order. On the other hand, United is not aware of any prohibitions other than those mentioned in response to Issue 2 above. United knows of no statutory changes which should be proposed.

ADHOC'S POSITION: No position at this time.

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FCATV'S POSITION: No position at this time.

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

ISPA'S POSITION: ISPA will provide its legal position in its Brief in this Docket.

PUBLIC COUNSEL'S POSITION: The Florida Public Service Commission unquestionably has jurisdiction over the provision of access to the local network for the purpose of providing intrastate information services. The Commission may also have jurisdiction over the provisioning of access to the local network for the purpose of providing interstate information services because this access is in many ways akin to the provisioning of local service.

STAFF'S POSITION: No position pending receipt of parties' briefs.

ISSUE 4: Are information service providers telephone companies as defined by Florida Statutes, Chapter 364.02? Does this Chapter adequately define/specify the Florida Public Service Commission's jurisdiction? What statutory changes, if any, should be proposed? (Legal)

AT&T'S POSITION: AT&T will address this legal issue as necessary in its posthearing briefs.

MCI'S POSITION: MCI has no position on this issue at this time. MCI reserves the right to address this issue in its brief at the conclusion of these hearings.

MICROTEL'S POSITION: Microtel will provide its legal position on this issue in its Post Hearing Statement in this docket.

TELUS' POSITION: At this time Telus does not believe that information services providers are telephone companies. Telus intends to more fully address this legal issue in its posthearing brief.

US SPRINT'S POSITION: US Sprint will address this legal issue in its post-hearing brief.

CENDEL'S POSITION: Centel will provide its position on these legal issues in its Posthearing Statement.

GTEFL's POSITION: Information service providers are not telephone companies as defined by Section 364.02.

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SOUTHERN BELL'S POSITION: No. To the extent information service providers do not provide "telephonic communication service" for hire, they are not telephone companies as that term is defined in Chapter 364.02, Florida Statutes.

UNITED'S POSITION: Whether or not information service providers fall within the definition of telephone company found in Section 364.02, Florida Statutes, depends on the manner in which they provide service. It is possible for information service providers to fall within the definition, but the method in which they provide service must be known in order to make this determination.

The question of whether Section 364.02, Florida Statutes, adequately defines the jurisdiction of the Commission is too broad an issue to answer in a short issue response. Recommendation for change to this statutory section, if any, can be found in the comments of the Florida Telephone Association concerning the sunset review of Chapter 364 which have been provided to the Commission.

ADHOC'S POSITION: No position at this time.

FCATV'S POSITION: No position at this time.

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

ISPA'S POSITION: ISPA will provide its legal position in its Brief in this Docket.

PUBLIC COUNSEL'S POSITION: Information service providers fit within the statutory definition of the term "telephone company," which in turn adopts a broad definition of the term "telephone line". FCC preemption in this area, however, prevents the Florida Public Service Commission from exercising jurisdiction over information service providers per se.

STAFF'S POSITION: No position pending receipt of parties' briefs.

ISSUE 5: What type of access connections to the local exchange network, basic service elements (BSEs), and other LEC services are necessary for an information service provider to provide information services?

AT&T'S POSITION: In order for an information service provider to provide information services there needs to be access to the local exchange network for intraLATA, interLATA intrastate, and interLATA interstate services. AT&T takes no position at this time on the required set of BSEs.

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MCI'S POSITION: The Florida consumers generally, and the Florida information services market specifically, should determine what type of access connections, what basic service elements, and what other LEC services are necessary for the provision of information services. Rather than making a determination at this point in time, the Florida Commission should adopt sufficient guidelines to ensure that the local exchange companies will be responsive to the ESPs and the IXCs in determining what types of access and BSEs will be offered in the future. The Commission should not allow the LECs to control what information services will be available to enhanced service providers. The Commission should adopt safeguards to prevent LECs from abusing their bottleneck monopoly position in determining what BSEs will be offered and at what price.

MICROTEL'S POSITION: Microtel takes the position that the FPSC should not limit consideration of the issues in this case to the framework of the Bellcore ONA model since many parties have taken exception to this model on the federal level. The Commission should require the LECs to provide access to the local network for information services as required or dictated by the marketplace. In addition, Microtel takes the position that access for enhanced service providers (ESPs) should be completely unbundled.

TELUS' POSITION: At this time, it appears that the presently tariffed interconnection services appear to meet the technical needs of the industry. However, Telus will address this issue more fully after further discovery is conducted.

US SPRINT'S POSITION: The basic local network capabilities currently utilized in the provision of enhanced services, and which will substantially satisfy ESP requirements in the future, include a line-side connection to the LEC's central office switching facilities, transport, signaling, switching, billing and network management services. ESPs also require improved access to LEC network operational support systems and access to customer proprietary network information.

CENTEL'S POSITION: Access connections to the local exchange network can be provided in a number of ways to the information service provider. Line-side and trunk-side connections, as well as direct inward dial (DID) trunks, can be used by the information provider. The type of connection can vary with the BSE ordered by the information service provider.

GTEFL's POSITION: Information Service Providers (ISPs) presently subscribe to a number of tariffed services for network access. These include switched access lines such as Bls, PBX trunks, DID trunks, and interLATA access facilities, Feature Groups A,

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B, C. and D. ISPs may also utilize point-to-point facilities from the company's private line tariff as well as special access lines from intrastate and interstate access tariffs. Finally, a number of optional features and services such as custom calling service, touch calling service, etc., are utilized (primarily by end users) in accessing the services of ISPs.

SOUTHERN BELL'S POSITION: Various analog and digital interconnections to the switched and dedicated networks are necessary for an information service provider to provide information services. Basic service elements are the optional network capabilities associated with the interconnection of the information service provider with its customer. Southern Bell is prepared to offer information service providers a variety of access connections and BSE options as reflected in its proposed ONA plan, as well as additional service options which satisfy the ONA screening criteria for new network capabilities.

UNITED'S POSITION: Currently, information providers purchase access to United's network via offerings in the general exchange and/or access service tariffs. United does not have an open network architecture (ONA) tariff at this time and is not able at this point to specify the optimal array of access connections, BSEs, and other services that should be made available under such a tariff. However, fundamentally, the provision of these services should be demand driven. Input from information providers is necessary to define not only the various LEC service arrangements to be provided, but also the degree of unbundling that should occur in the rate structures.

ADHOC'S POSITION: Those access connections currently offered by the LECs in their standard tariffs for business and residential telecommunication services can adequately handle the needs of most information services providers. When commonly available interconnection arrangements are used, they should be provided without restriction and at the same rate, terms and conditions under which they are usually provided. As future improvements in the network become available, they should be provided on a nondiscriminatory basis.

FCATV'S POSITION: No position at this time.

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

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ISPA'S POSITION: The members of ISPA provide computer-based non-voice information services, including value-added network (VAN) services with protocol conversion, electronic mail, transaction processing, and a wide variety of database access services. Such "data" ISPs need two types of access connections to the local exchange network -- switched (dial) and dedicated (private line) -- and a relatively small number of BSEs and other LEC services, in order to provide their information services.

"Data" ISPs currently utilize ordinary business lines obtained from the LEC's local exchange tariff for their local dial access. For the convenience of users located in other exchange areas, some ISPs also utilize foreign exchange (FX) and "800" service. For dedicated, permanent connections between an ISP and a user with high-volume requirements, or between multiple computer "nodes" within an ISP's network, ISPs currently utilize ordinary analog and digital private line services, typically operating at speeds ranging from 2,400 to 56,000 bits per second.

ISPs need to continue utilizing these dial and dedicated services, under the present tariff arrangements. The introduction of ONA in Florida should not affect ISPs' ability to continue utilizing such services. Additionally, "data" ISPs have expressed the need to obtain new ONA functionality. Among those requested are the following:

1. Calling number identification (CNI) capability on dial lines.
2. Uniform access number for dial lines.
3. Data Over Voice (DOV) access capability.
4. Access to Operational Support Systems (OSS).
5. LEC billing services for ISPs.
6. Collocation.

Using the terminology of the "Uniform ONA Model" coined by the Regional Bell Holding Companies, these ISP requests for LEC services variously encompass BSEs; Basic Service Arrangements (BSAs), Complementary Network Services (CNS), and Ancillary Services.

PUBLIC COUNSEL'S POSITION: This information should be provided by the information service providers in this docket.

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STAFF'S POSITION: ISPs require connection to and use of the local network through a local loop (either a 2-wire or 4-wire basic end office connection) plus local switching and local transport. This is currently provided at tariffed rates such as single flat rate business lines (1FBs), single measured rate business lines (1MBs), or PBX trunks.

In addition, ISPs require any one or a combination of various central office software features in order to provide service to their customers. These features include touch-tone, various types of call forwarding, call waiting, as well as many features associated with the transport of data, packet switching, and network interfacing. Some or all of these features will be referred to as BSEs. An ISP's requirements will depend on the type, scope and complexity of information provided.

ISSUE 6: Under what procedures should the connections discussed in Issue 5 be offered and how, by whom, and to what degree should unbundling of such connections discussed in the issue be determined?

AT&T'S POSITION: Basic Service Elements and other services provided through ONA should be made available without restrictions or penalty to all customers. It is AT&T's position that these LEC interconnection services be offered to IXCs as well as other customers through unrestricted local tariffs or intrastate access tariffs. Failure to provide such offerings could significantly stifle the efficient development of a national enhanced service marketplace. The LECs should be subject to appropriate unbundling requirements. At a minimum the LECs should unbundle offerings to enhanced services providers to the extent that such offerings are unbundled for the LECs' own use in the provision of enhanced services.

MCI'S POSITION: The level of unbundling of both access and basic service elements should be determined by the needs of ESPs and IXCs. The Commission should not allow LECs to control the information services market through the bundling of access and/or basic service elements.

Procedures should be adopted to prevent LECs from abusing their monopoly position in determining which BSE's will be offered and what price. Specifically, procedures should be adopted to ensure that the cost of providing basic service elements is accurately calculated, that the price for basic service elements is based upon cost plus a reasonable amount of contribution, and the technical feasibility of a basic service element is objectively determined.

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The Commission should take immediate steps to eliminate the bundling abuses presently engaged in by LECs before implementing procedures to prevent those abuses from occurring the future. The local exchange companies should be required to immediately unbundle their present services (such as ESSX). The procedures for determining what types of access and BSEs should be offered, should first be applied to LEC's existing services.

MICROTEL'S POSITION: Microtel believes that these services should be offered to enhanced service providers on an unbundled basis. In addition, Microtel takes the position that these access connections should be available to all users. Finally, Microtel believes that the extent of unbundling should ultimately be determined by the ESP and/or the end user and not the LEC.

TELUS' POSITION: The LECs should be required to provide local network access on an unbundled basis at tariffed rates that recover costs plus a reasonable contribution, and which do not unfairly discriminate between similar uses or users of the local network. In particular, LEC-affiliated information services providers cannot be permitted to interconnect to the network on a preferential basis compared to nonLEC providers. The LECs must also be required to unbundle services to the extent technically feasible to meet the needs and reasonable requests of information services providers.

US SPRINT'S POSITION: LECs should be required to provide local network access arrangements on a non-discriminatory, unbundled and cost-based tariffed basis. The rates for these services should be cost-based. The principle of non-discrimination should preclude both preferential treatment of the LEC-affiliated ESP as well as differential treatment of customers using the same or similar services. Unbundling of services should be required to the extent technically feasible and if sufficient demand exists for the stand-alone service. The objective of promoting the development of competition in the enhanced services market, with its attendant benefits of greater efficiency and innovation, should guide the Commission's inquiry in this context.

CENTEL'S POSITION: Access connections offered to the information providers should follow accepted guidelines for that type of access connection, as specified in tariffs for those access connections listed in number 5. Unbundling should be done so far as practical. Each service should be examined to determine the extent to which it should be unbundled.

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GTEFL'S POSITION: As LECs, in addition to providing network access for information services, increasingly choose to become actual providers of information services, it will be necessary that network access and functionality be offered on a basis which ensures parity for all users in terms of technical capability as well as price. The company believes that open network access, as reflected in ONA-type tariffs, will allow the competitive provision of innovative new telecommunication services and promote the widest use of such services.

SOUTHERN BELL'S POSITION: The access connections and basic service elements should be available to all information service providers on an unbundled basis through local exchange tariffs. The LECs should decide the proper level of unbundling of network capabilities as well as the types of access connections available based upon market demand, utility to the information service provider, and technical and costing feasibility criteria.

UNITED'S POSITION: United endorses the parameters in the FCC's Comparably Efficient Interconnect concept which states that the carrier must make available standardized hardware and software interfaces that are able to support transmission, switching, and signaling identical to those utilized in the information service. However, the LECs should make the decision (based on customer needs, market demand, current network capabilities, costs, and other relevant factors) as to the types of access, BSEs, and other services to be offered. The basic services which underlie carriers' information services may need to be unbundled from other basic service offerings. Input from information providers will be necessary to establish technical standards, tariff structures, and the degree of unbundling necessary to offer equal treatment to all customers.

ADHOC'S POSITION: Nine principles of ONA implementation address, inter alia, the conditions under which interconnection should be provided. In brief, these nine principles include: (1) National/statewide uniformity of technical standards, nomenclature and tariff structures; (2) neutral access to network functions; (3) unbundling of network functions; (4) statewide availability of ONA features; (5) independence from existing end-user tariff services; (6) unrestricted availability of basic service elements (BSEs) to all users and ESPs; (7) cost-based pricing; (8) rate deaveraging based upon user controllable efficiencies; (9) permitting users and ESPs to collocate, or minimizing the collocation advantage to the LECs.

Unbundling of individual service features and functions should be implemented only where it is

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reasonably cost-effective and efficient to do so from a technical standpoint. At the same time, "bundling" should not be employed as a device for accomplishing market segmentation and price discrimination. That is, the availability of any particular feature or function should not be "tied" to any "package" of features, pricing plan, or billing arrangement. Instead, the feature or function should be offered incrementally relative to existing basic exchange service interconnections.

FCATV'S POSITION: No position at this time.

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

ISPA'S POSITION: Local access connections, BSAs, and BSEs should be provided by the LEC on an unbundled, tariffed basis. Existing service offerings should be cost-based and provided to all users on a non-discriminatory basis, with just and reasonable rates, terms and conditions. Services offered by LECs outside of a tariff, such as Ancillary Services (i.e., billing and collection), must be provided on a cost-based non-discriminatory basis. This will help ensure a competitive marketplace for enhanced services in which consumer benefits will be maximized.

Services provided by the LECs should be reasonably unbundled. If unbundling is technically feasible and if sufficient demand exists for a stand-alone offering, then the service should be offered on an unbundled basis. Unbundling promotes efficiency and innovation in that it permits users to pick and choose the functionalities that they require.

Provision should be made for ISP participation in the decision to provide ONA services, and provision should be made for LECs to notify ISPs of all significant decisions with respect to ONA service offerings.

PUBLIC COUNSEL'S POSITION: Unnecessary bundling of services should be discouraged by the Commission.

STAFF'S POSITION: The BSEs proposed in Bell's ONA plan should be offered immediately under tariff. Other BSEs to be provided under tariff should be proposed jointly by a committee to be formed, and which should consist of LEC and industry representatives.

With respect to unbundling, all BSEs should be offered separately and independently. Their provision should not be tied to, or contingent upon,

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utilization of any Basic Serving Arrangement (BSA) (e.g., measured usage rate). In addition, the Commission should determine whether other services currently classified as auxiliary by Southern Bell (e.g. network diagnostics), should be offered under tariff.

ISSUE 7: How do you define intrastate access and how should mixed jurisdictional traffic be handled?

AT&T'S POSITION: Intrastate access is the physical and/or technical connections and software required to utilize the facilities and/or functional capabilities of a local distribution supplier to process and move information from a customer's premise to a carrier's point-of-presence (POP) or POP equivalent within a particular state. Intrastate access for information services is no different than access for voice and/or data services. If terms and conditions are consistent among relevant jurisdictions, then there should be no concern regarding mixed jurisdictional traffic. If terms and conditions are not consistent, then mixed jurisdictional traffic can be handled in the same manner as it is currently handled in the access environments: measurement where possible, estimates (i.e. PIUs) where required.

MCI'S POSITION: Intrastate access should be defined as access provided in association with a service that originates and terminates in a given state. The Commission should continue to define intrastate and interstate in the same manner that it presently does with long distance traffic. The Commission should also continue to handle mixed jurisdictional traffic as it does today. When difficulty arises in determining the jurisdictional nature of traffic, the Commission should adopt functional surrogates.

MICROTEL'S POSITION: Traditionally intrastate access is defined as the access provided by the LEC associated with a call that originates and terminates within a given state. Microtel takes the position that the FPSC should avoid the trap of being overly concerned about jurisdictionally-mixed traffic. Additionally, if the FPSC ensures that there is little or no differential between access charges for information services between jurisdictions this emerging technology's development will be enhanced to the benefit of all.

TELUS' POSITION: Intrastate access is interconnection to the local network for the origination and termination of traffic within Florida. Multijurisdictional traffic for information services is not only possible but, in fact, occurs today. It is known that existing information services providers do not have mainframe computer facilities in most cities, yet they may

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have local seven digit telephone numbers in such cities. The result is a local business line carrying traffic which may be originated or terminated locally or interexchange on a flat rate basis to an information services provider. To further complicate this scenario, there could be information services providers that use one number but have intraLATA and interLATA information/data sources to which they in turn route the calls. In this case, there would apparently be mixed traffic on a local access line. In the case of 800/900 usage which is carried on FG-C or FG-D trunk groups, one will also face the difficult problem of identifying the PIU carried, a problem already being addressed by the Commission in other proceedings.

US SPRINT'S POSITION: Intrastate access services should be defined as those services required for origination and termination over the local network of services which are jurisdictionally intrastate in nature. US Sprint will address the legal issues raised here in its post-hearing brief.

CENTEL'S POSITION: Since information services are under the jurisdiction of the FCC, state regulation should follow the guidelines set by the FCC. Any services, however, provided through the local tariff would be under Florida's jurisdiction.

GTEFL's POSITION: Intrastate access consist of switched or dedicated telco facilities furnished to an Information Services Provider (ISP) to provide access between the state-located facilities of the ISP and its end users located within the state.

Mixed jurisdictional traffic will present problems in the proper application of rates, if rates are different for the different jurisdictions. In the case of IXC traffic, this problem is presently being addressed through the use of "percent interstate use" (PIU) factors. A principal concern with the use of PIU factors is the necessary reliance on customer-provided data for billing purposes. Such concern is alleviated to some extent by LEC-conducted audits of customer data.

SOUTHERN BELL'S POSITION: Access to the local exchange network for the provision of intrastate information services should be treated jurisdictionally like any other local exchange service. The local exchange facilities offered to the information service provider should be used to carry local, intrastate and interstate calls. The definition and handling of mixed jurisdictional traffic should be further explored in the upcoming Part 69 rulemaking and state-federal joint conference.

UNITED'S POSITION: Intrastate access may be defined as communications services provided to customers by

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local exchange carriers for the purpose of completing connections between end users and interexchange carriers or other service providers for communications originating and terminating within the state.

In those instances where usage sensitive rates are applicable and jurisdiction is an issue, jurisdiction should be determined through direct measurement where practical and through PIUs provided by the information service provider otherwise. However, the LEC should have the opportunity to audit the information service provider's development of PIU to mitigate tariff shopping. For flat-rated services, the jurisdiction would depend upon the nature of the service and the tariff(s) involved.

ADHOC'S POSITION: No position at this time.

FCATV'S POSITION: No position at this time.

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

ISPA'S POSITION: As contemplated by this issue, "intrastate access" may refer to local access utilized in the provision of intrastate information services. End users like ISPs, who have mixed jurisdictional traffic, have historically utilized local exchange services in the provision of their services. There does not appear to be any policy reason to deny ISPs the option of continuing to use local exchange services.

PUBLIC COUNSEL'S POSITION: Intrastate access is the provisioning of access to an information service provider for the purpose of offering intrastate information services to end users. The Commission may have jurisdiction over the provisioning of access for the interstate information services, in which case there would be no need to address the handling of mixed jurisdictional traffic. Otherwise, mixed jurisdictional traffic should be handled either through direct measurement, if technologically feasible by the information service provider, or alternatively through the use of PIU factors.

STAFF'S POSITION: Staff believes that intrastate access should be defined as the provision of access to the local network by the LEC. Whether a call finally terminates at an ISP's data base in another state is not relevant to whether the access purchased by an ISP is interstate or not. The access is intrastate.

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ISSUE 8: How do information service providers currently interconnect to the local exchange network for the purpose of providing information services? (Informational)

AT&T'S POSITION: AT&T's current information services connect to the local exchange network through a range of services including business exchange, 800 Service, special access lines, voice grade private lines, and DDS.

MCI'S POSITION: MCI has no position on this issue at this time. MCI reserves the right to address this issue in its brief at the conclusion of these hearings.

MICROTEL'S POSITION: Microtel has no position on this issue at this time.

TELUS' POSITION: Information services providers interconnect to the local network through currently tariffed access offerings (e.g., 1 FB, PBX, FX, 800, 900 services).

US SPRINT'S POSITION: Information service providers currently utilize ordinary business lines for interconnection to the LEC's central office. Customers of ISPs use local lines or private line service to access enhanced services, depending on their traffic volume requirements.

CENTEL'S POSITION: Currently Centel does not provide service other than basic local telephone service to any information service providers. However, if service were to be provided, Centel would provide access as discussed in Issue 5.

GTEFL's POSITION: Information Service Providers (ISPs) presently subscribe to a number of tariffed services for network access. These include switched access lines such as BIs, PBX trunks, DID trunks, and interLATA access facilities, Feature Groups A, B, C, and D. ISPs may also utilize point-to-point facilities from the company's private line tariff as well as special access lines from intrastate and interstate access tariffs.

SOUTHERN BELL'S POSITION: Information service providers connect to the LEC network using a variety of local exchange tariffed services depending on the type of service they provide, the services or features they require, and the relative prices of the various LEC services which are available.

UNITED'S POSITION: To the best of UTF's knowledge, information service providers currently order access to the local exchange from the general exchange and/or access service tariffs. Access interconnections are generally in the form of lines and trunks.

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ADHOC'S POSITION: ESPs connect to the network using presently available switched and private line services purchased from the LECs.

FCATV'S POSITION: No position at this time.

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

ISPA'S POSITION: See ISPA's response to Issue 5 above.

PUBLIC COUNSEL'S POSITION: No position.

STAFF'S POSITION: Currently, Information Service Providers use standard line side, end office connections offered under tariff, such as 1FB, 1MB lines and PBX trunks.

ISSUE 9: Should interconnection rates, terms and conditions be statewide?

AT&T'S POSITION: Optimally, terms and conditions and basic rate structures should be consistent throughout the state. Rates should be cost based allowing for some deviation in absolute rate levels among companies to reflect demonstrated cost differences.

MCI'S POSITION: Yes. Interconnection terms and conditions should be standardized to the extent feasible throughout the country.

MICROTEL'S POSITION: Microtel believes it is appropriate to have uniform interconnection terms and conditions statewide and to the extent possible even nationwide. This state of uniformity would ensure universal access to these services and enable the enhanced services market to become fully competitive.

TELUS' POSITION: To the extent possible, interconnection terms and conditions should be statewide. Individual interconnections may need to be LEC-specific to reflect company specific costs or currently tariffed rates.

US SPRINT'S POSITION: Interconnection terms and conditions should be uniform to the extent feasible. However, existing interconnection rates, terms and conditions for local business lines do not need to be modified for ONA purposes. The Commission should ensure, however, that interconnection conditions are not manipulated by the LEC to discriminate against non-affiliated ESPs or otherwise to hamper the development of

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competition in the enhanced services market. Cost-based rates should be required on a statewide basis.

CENDEL'S POSITION: Centel believes that rate levels should not be statewide. Rates should be based on the LEC's cost of providing that particular service.

GTEFL'S POSITION: Uniform rates are not appropriate. Instead, rates should reflect the relevant cost and market conditions faced by each of the different local exchange carriers. In order to promote compatibility and to facilitate interconnection to the widest degree possible, the company believes that a reasonable degree of uniformity of technical standards and service element definitions should be encouraged across telephone companies, not only statewide, but on an interstate basis as well.

SOUTHERN BELL'S POSITION: It may be appropriate for interconnection rates, terms and conditions to vary based on local factors. However, rate structures, terms and conditions should be the same within a LEC service area to ensure consistent administration.

UNITED'S POSITION: No. LECs should not be required to tariff and provide ONA services if insufficient demand exists to warrant the investment. However, where conditions warrant, special assembly contracts may be appropriate. Where ONA is offered, the technical specifications, terms, and conditions should be uniform to the extent possible. However, rates should be LEC-specific and reflect the individual LEC cost characteristics and market conditions.

ADHOC'S POSITION: Ideally, yes. Should the Commission decide on cost-based rates by LEC however, AdHoc recommends that terms, conditions and tariff structures be available and standard throughout Florida.

FCATV'S POSITION: No position at this time.

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

ISPA'S POSITION: Existing interconnection rates, terms and conditions for business lines need not be modified in order to implement ONA. Current exchange tariffs appear to satisfy the requirements of ISPs and their customers. Interconnection terms and conditions should, to the maximum extent possible, be uniform. As noted by the Chairman and Prehearing Officer in Order No. 19957-A issued November 9, 1988, uniformity is an important ONA

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policy objective. Of course, rates, terms and conditions must not be manipulated by the LEC to segregate ISPs, to discriminate against unaffiliated ISPs, or to otherwise impede the full development of information services for consumers in the State of Florida or nationwide.

PUBLIC COUNSEL'S POSITION: Rate structures and features should be statewide and, to the extent practicable, consistent and compatible with interstate standards. Rate levels should be determined on a company-by-company basis.

STAFF'S POSITION: The methodology for determining rates should be statewide. The terms and conditions should be statewide. The rate levels may be company-specific. This does not address which local exchange companies should be required to offer the services. Staff believes that services, when introduced, should be offered on a statewide basis to the extent possible. Companies should demonstrate why they should be excluded from the offering of a particular service element.

ISSUE 10: What guidelines should be used for determining rate structures and rate levels for features (Basic Service Elements) and interconnection (access) to the local exchange network and ancillary or optional services for the purpose of providing information services?

AT&T'S POSITION: The basic ONA model developed by the RBOC's can provide a workable structure for the provision of access to the local exchange. The particular offerings should be made available for all customers on a non-discriminatory basis. Rates should reflect the underlying cost of providing the services. These interconnection services are monopoly provided services and the LECs, therefore, should not be permitted to strategically price or charge "what the market will bear".

MCI'S POSITION: Four safeguards should be implemented to prevent LECs from abusing their bottleneck monopoly position. First, the LECs should be required to impute to themselves the access rate charged to competing enhanced service providers for access to the local network. Second, the local exchange companies should be required to fully unbundle basic service elements to the level required by ESPs and IXCs. Third, the LECs should charge a single price for a BSE, with that price being based upon the cost of providing the service. Fourth, basic service elements should be available to all ESPs and IXCs without any user or use restrictions.

In addition to these four safeguards, the Commission should implement sufficient guidelines to

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prevent the local exchange companies from controlling the enhanced service provider market. Specifically, guidelines should be implemented to prevent LECs from cross-subsidizing their information services with revenues generated from their local exchange services. Guidelines should also be adopted to prohibit LECs from discriminating against competing enhanced service providers in the determination of (1) which basic service elements should be offered, and (2) at what price. (Ozburn).

MICROTEL'S POSITION: Microtel believes there are at least four basic guidelines which should be used by the FPSC for determining the appropriate rate structure and rate levels for BSE interconnection and optional services for the purpose of providing information services. First, since the LECs are monopoly providers of local access the price they charge for access should be based upon the cost of providing the service. Second, the LEC should be required to impute to themselves the access rates imposed (charged) to competing enhanced service providers. Third, the LECs should be required to unbundle BSEs to the extent required by IXCs and ESPs. Finally, there should be no restrictions placed on resale or the use of BSE or interconnection by the LECs.

TELUS' POSITION: The Commission should be guided by the principles of (1) nondiscriminatory treatment between information services providers and other users of the network, (2) nondiscriminatory treatment between information services providers, (3) the unbundling of services to the extent technically feasible, and (4) cost-based and reasonable rates offered pursuant to tariff.

US SPRINT'S POSITION: ONA services should be offered pursuant to cost-based and non-discriminatory tariffs, with just and reasonable terms. The price of ONA offerings should be based on the costs of those offerings. A cost of service standard is simpler to oversee in a fair, non-discriminatory and objective manner than would be the "social engineering" implicit in establishing prices based upon such notions as the value of the network, contribution levels, perceived demand for enhanced services, or the identity of user groups. Ancillary services should be offered under non-discriminatory terms and conditions, and should be cost-based.

CENTEL'S POSITION: Centel believes that the rate structure should mirror the interstate rate structures and rate levels should be based on the cost of providing that service. An acceptable means of recovering the cost of a service is usage sensitive pricing. This pricing is designed to allow the user to pay for what is used, rather than burdening the general ratepayer with subsidizing these costs.

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GTEFL'S POSITION: Rates for access to the public network should be reflective of the underlying costs involved, and therefore should be designed to produce additional revenues as additional costs are incurred. The most appropriate structure would include a flat monthly charge to cover the cost of providing access to the switched network plus usage sensitive rates to cover the traffic sensitive costs for use of the switched network. Network features and functionally should be provided on a basis on open network access as reflected in ONA-type tariffs. Such tariffs will ensure parity in terms of technical capability and price between LEC and nonLEC ESPs, and thus will allow the competitive provision of innovative new telecommunications services and promote the wide use of such services.

SOUTHERN BELL'S POSITION: Rate structure and levels must be designed to encourage the development of information services without burdening the general ratepayer or those who choose not to avail themselves of the information services. Rates should generally be related to costs and, where costs vary with usage, rate elements should be priced on a usage sensitive basis. Ancillary services should not be provided under tariff. (Payne)

UNITED'S POSITION: Guidelines for determining rate structures and rate levels may include, but should not be limited to, market conditions and demand, technologies employed, costs, cross elasticities with other services, and value of service considerations. The primary objective should be to encourage the development of information services while avoiding cross subsidization from other ratepayers.

ADHOC'S POSITION: ONA should not be viewed as a source of "contribution." Rather, cost-based pricing should be the overarching principle guiding the development of rate structures for BSEs and basic interconnection. "Ancillary" and "optional" services also should be regulated to the extent the LECs retain substantial market power over those services. Rates for these regulated services should be cost-based.

FCATV'S POSITION: No position at this time.

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

ISPA'S POSITION: Rate levels and tariff policies for local exchange loops, BSAs, BSEs, Ancillary Services, and other LEC services have a significant

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impact on the ability of ISPs to offer a broad array of information services to the business and residential consumers in Florida. The Florida PSC should strive to establish rates and policies for these LEC services which will encourage the provision of information services in Florida. The following guidelines will help meet that goal.

1. ISPs should continue to secure access and feature services, as do other business users, under tariffs of general applicability.
2. Rates for such services should continue to be established under existing policies of the Florida PSC.
3. New BSAs and BSEs should be offered pursuant to cost-based tariff offerings. Such rates should be established in such a fashion as to ensure that residential users do not subsidize such offerings.
4. Ancillary Services or other optional ONA services which are not provided under tariff should also be provided on a cost-based non-discriminatory basis.
5. BSAs, BSEs, and Ancillary Services should be provided on an unbundled basis.

These guidelines protect the interests of residential ratepayers, promote information services, and adequately compensate local exchange carriers.

PUBLIC COUNSEL'S POSITION: Unnecessary bundling of services should be avoided. Rate levels should be sufficient to cover costs and provide some contribution to the general body of ratepayers, yet they should not be so high as to discourage the development of a robust, effectively competitive marketplace for the provisioning of information services to end users.

STAFF'S POSITION: The appropriate rate levels and rate structures should be determined based upon the following considerations:

1. Customer impact (i.e., the effect of price changes on current feature offerings.)
2. Prevention of discrimination by LEC between LEC and non-LEC ISPs.
3. Prevention of cross subsidization by LEC regulated operations of LEC non-regulated operations, (i.e. LEC non-regulated costs should not be borne by the general body of ratepayers).
4. Promotion of optimal use of the existing LEC network.

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5. Rates charged to other users of the LEC network for the same or similar services.
6. Cost recovery for new BSEs and BSAs developed in the future.

Based upon these considerations, we believe current rates and the rate structure for access to the local network, as stated in Issue 8, should not be changed. In addition, currently tariffed offerings, such as custom calling features that are used by ISPs, should continue to be offered at current rates.

ISSUE 11: Should the interconnection tariff include user/use restrictions and, if so, what use restrictions should apply and how should such use restrictions be implemented?

AT&T'S POSITION: No. User/use restrictions are not in the best interest of information service providers or consumers of information services. Such restrictions would preclude or stifle the growth and development of information services that are widely available to all service providers and consumers.

MCI'S POSITION: No. User and use restrictions enable local exchange companies to discriminate in the offering of access and basic service elements. If user and use restrictions are allowed, this will enable local exchange companies to control what information services will be offered to Florida consumers. If local exchange companies are required to fully unbundle access and basic service elements, and if purchasers of those services are able to resell the services, this will eliminate the danger of the local exchange company using discrimination and cross-subsidization to favor its own retail services over those services offered by competitors. (Ozburn).

MICROTEL'S POSITION: Microtel is opposed to any user/use restrictions in the interconnection tariff. As indicated above, Microtel believes the services should be unbundled and anyone choosing to purchase a service should be allowed to do so. In addition, the purchaser should be allowed to use the purchased service for whatever purpose he chooses.

TELUS' POSITION: Telus is presently unaware of any user/use restrictions other than the need for all information services providers (LEC and nonLEC alike) to obtain access on an equal and uniform basis.

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US SPRINT'S POSITION: ONA offerings should be available to all customers under existing access arrangements. In particular, the Commission should reject any attempts to force ESPs to abandon their existing access arrangements and instead use usage-sensitive interconnection arrangements. Such user/use restrictions should be rejected because there has been absolutely no convincing demonstration that LECs or their local ratepayers would suffer any harm absent such restrictions, because they are unenforceable and because they will adversely affect the price and scope of information services available to Florida citizens.

CENTEL'S POSITION: Centel believes that user/use restrictions should apply. Without some type of use restriction, for example, the interexchange carriers could obtain service from ISP tariffs and avoid obtaining service from access tariffs. Thus, the LEC could potentially lose revenue from access charges for long distance services. The area of user/use restrictions needs to be carefully considered by the FCC and the state commissions working closely together in establishing parameters for information services.

GTEFL'S POSITION: At the present time, the structure of telephone rates reflects arbitrary cross subsidies which, historically, have been used to support the public policy goal of keeping residential rates and, to a lesser extent, small business rates at affordable levels. For some period of time, therefore, it may be necessary to impose use and/or user restrictions on services offered via unbundled open-network tariffs. Absent such restrictions, users would have the opportunity to arbitrage or "tariff shop" for the lowest rates for a given service. This, in turn, could quickly undermine the very basis of universal service.

SOUTHERN BELL'S POSITION: Use/user restrictions in conjunction with usage sensitive tariffs are one way to ensure that information services providers, who generally are high volume users of the network, cover the cost of the network services they use. Another method is to permit any customer who opts to use the ONA network capabilities to do so, but in conjunction with usage sensitive pricing. While either tariff structure will help alleviate the subsidy flowing to high volume users of the network as a result of averaged, flat-rated pricing and will reduce tariff shopping opportunities that would otherwise exist, the latter proposal would ensure tariff structure consistency among all business customers, including high volume users of the network, who utilize ONA network capabilities. (Payne)

UNITED'S POSITION: User/use restrictions should apply when necessary to ensure use of the

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appropriate tariff to prevent tariff shopping. United is not in a position at this time to determine the need for or precise nature of such restrictions.

ADHOC'S POSITION: No. As is true now, users should be able to purchase and use any tariff service without restriction.

FCATV'S POSITION: No position at this time.

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

ISPA'S POSITION: Interconnection tariffs should not include user or use restrictions that attempt to distinguish between classes of end users. ISPs are business customers of the LECs who use the same service in the same fashion as do other business users. User or use restrictions which discriminate between ISPs and other end users are not justified, will seriously skew the market against existing ISPs, will adversely affect Florida consumers, and will be unenforceable.

PUBLIC COUNSEL'S POSITION: The local exchange companies should be required to show by clear and convincing evidence that user/use restrictions are necessary before the Commission allows such restrictions to be implemented. The local exchange companies have not met that standard in this docket.

STAFF'S POSITION: User/Use restrictions should not apply. Since we are advocating that rates charged to ISPs should be the same as rates charged to other users for the same or similar services, user/use restrictions are not necessary.

ISSUE 12: How should customer proprietary network information (CPNI) be defined? What, if any, CPNI requirements should apply?

AT&T'S POSITION: The FCC defined CPNI as "information which an affiliate acquires by virtue of the corporation's common carrier activities."

The information to be treated as CPNI is generally considered to be data such as the customer's name, address, account numbers, the network locations that serve the customer, the type of services used by the customer, the quantities of services used by the customer, usage information (e.g., minutes of use), billing information (e.g., call detail and amounts paid), and access arrangements.

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MCI'S POSITION: MCI has no position on this issue at this time. MCI reserves the right to address this issue in its brief at the conclusion of these hearings. (Ozburn).

MICROTEL'S POSITION: Microtel believes it is appropriate to define customer proprietary network information (CPNI) as any information generated as a result of transactions between LECs and customers involving basic network services. The FPSC must insure that the LECs do not gain an unfair competitive advantage over competing enhanced service providers through access to CPNI. Access to CPNI should be available to all ESPs but only upon obtaining the signed authorization of the customer.

TELUS' POSITION: CPNI is information that relates to the type, location, and quantity of equipment and facilities (regulated and unregulated), customer identity, billing information, and customer calling patterns. This would include the existence of touchtone service, data lines, etc. It would also include, for example, information down to the base level of how many times a customer called a travel agency, airline, restaurant, Directory Assistance, etc. It would further include toll usage calling patterns. Persons or entities (LECs) possessing CPNI should not release such information to any other party, including the LEC to its own information/enhanced services operation, without the prior, written approval of the customer to whom the data relates.

US SPRINT'S POSITION: Customer proprietary network information is information possessed by the LECs about the network, traffic and characteristics of customers who consume information services. Specifically, CPNI includes the following: (1) the customer's billing name, address and telephone number; (2) the customer's number of lines and class of service associated with these lines; (3) the customer's usage data, including minutes of use, calling patterns and traffic flow information; (4) the network services taken by the customer; (5) the customer's billing information, including current charges, long distance records, billing summaries, and local usage records; and (6) the customer's credit information.

The Commission should forbid the asymmetric disclosure of CPNI as between LIC-affiliated ESPs and non-affiliated ESPs. Preferential access to CPNI presents serious dangers to the development of competition in the enhanced service market. Moreover, symmetry of CPNI disclosure rules for all ESPs should not be dependent upon customer election of such treatment. Disclosure should be granted only where customers have authorized release, regardless of the ESP's affiliation.

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CENDEL'S POSITION: CPNI is information that a carrier receives from its customer in the provision of information services, which is not available from any other source.

Since the independent LECs are not subject to the FCC's CPNI requirements, Centel does not believe that such requirements should be imposed on the independent LECs at the state level.

GTEFL'S POSITION: Presumably, disclosure of such information by an LEC to its affiliated ESP would unfairly provide the affiliate with potentially valuable market information not otherwise available to competing, independent information service providers. Under already existing GTEF procedures, customer-specific information of the type in question is not disclosed to outsiders unless specifically authorized in writing by a customer, or unless requested under appropriate legal authority. In order to ensure adequate safeguards for CPNI, GTEF would require that the company's present disclosure restrictions be applied in a manner which treats its own ESP affiliate like any other "outsider."

SOUTHERN BELL'S POSITION: Customer proprietary network information (CPNI) is: "The type(s), location(s) and quantity of all the network services to which a customer subscribes, how much the customer uses those services, and the customer's billing records." CPNI should be provided to other vendors only upon the express written authorization of the customer. The customer should have the right to ask Southern Bell to not share that information outside of its network operations. (Boltz)

UNITED'S POSITION: CPNI should be defined as any information or data that pertains to the customer's interconnection with the LEC. This may include, but is not limited to, the type(s) of services ordered, the quantities, and usage and billing information. Unless authorized by the customer, United's policy is to restrict access to CPNI by personnel other than those necessary to ensure that services ordered from United function properly and those involved with normal account maintenance. This policy should be appropriate for all LECs.

ADHOC'S POSITION: CPNI includes any information generated from transactions between LEC and a customer using any LEC provided telecommunication service. As regards requirements, any ESP should be required to obtain written authorization from a customer before accessing that customer's CPNI or distributing it to any other entity.

FCATV'S POSITION: No position at this time.

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FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

ISPA'S POSITION: There are two types of Customer Proprietary Network Information (CPNI). The first type of CPNI is customer-specific information which the LEC has within its possession. Such information may include customer name, billing address, billed telephone number, class of service, type of customer premises communication equipment, calling patterns, directory advertising, and toll usage. The second type of CPNI is aggregate data on usage levels and traffic patterns for network services in a particular service area. Customer-specific CPNI is valuable in ISP sales activities. Aggregate CPNI is useful in the technical economic design of an ISP's services, such as in locating and "sizing" its network access nodes.

Knowledge of customer specific CPNI gives marketing and sales personnel important information about a customer's service requirements. First, it permits a sales group to efficiently screen a large number of prospective customers, to identify those with high traffic volume or other characteristics of interest to a particular ISP. Those which can become large accounts are separated from those accounts with less potential. Second, it permits a substantially more "targeted" sales approach to those customers who are deemed to be potentially large accounts.

The FCC's existing asymmetrical CPNI rules unfairly assist the LECs in competing against ISPs. For example, a well-targeted sales presentation to a prospective customer which employs the prospect's current service and usage data in almost all cases will be better received than a sales presentation which does not contain such targeted information. Under the FCC's existing asymmetrical disclosure rules, the LEC-affiliated ISP may have access to customer-specific information more readily than non-affiliated ISP, whereas LEC-affiliated ISPs will be granted access unless the customer specifically denies it.

This Commission need impose only one requirement to ensure that CPNI is equally available to both LEC and non-LEC ISPs. That one requirement is that no ISP, whether LEC-affiliated or not, shall receive access to a user's CPNI unless that user directs that the information be made available to the ISP. This symmetrical CPNI rule is nondiscriminatory and promotes fair competition while protecting the customer's privacy. Aggregate CPNI would continue to be handled as it is today -- disclosure upon request.

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PUBLIC COUNSEL'S POSITION: CPNI should be defined to include any information generated from transactions between the LEC and a customer involving basic network services. All enhanced service providers, including unregulated affiliates of an LEC as well as LEC unregulated activities connected with the provisioning of enhanced services, should be required to obtain authorization from a customer before it can access CPNI.

STAFF'S POSITION: Staff believes that CPNI should be defined as, but not limited to, the types, locations, and quantity of all services to which a customer subscribes, how much the customer uses the services, access arrangements, type of customer premises communication equipment, toll usage and the customer billing records. There is also aggregate CPNI which is data on usage levels and traffic patterns for network services in a particular service area. Staff believes that the following CPNI requirements should apply. All information service providers, including the LEC's affiliates, should be required to obtain written authorization from a customer before it can access that customer's CPNI. Moreover, LEC personnel who have access to CPNI should be prohibited from performing duties for the LEC-affiliated ISP and from divulging such information to the LEC-affiliated ISP, unless authorized in the manner described above.

ISSUE 13: How should collocation be defined? Under what terms and conditions, if any, should it be offered?

AT&T'S POSITION: In the context of this investigation "collocation" refers to operating or locating specific equipment or facilities used in the provision of unregulated/competitive services with equipment and facilities used in the provision of local exchange regulated (basic or not enhanced) services.

Local exchange companies should be permitted to collocate their enhanced service equipment in their central offices provided that they comply with applicable CEI/ONA requirements and other non-structural safeguards.

Local exchange companies should not be required to offer collocation to other ESPs.

MCI'S POSITION: Collocation should be defined in such a manner so as to allow competing information service providers to obtain access to the local network by the same efficient interconnection and at the same rate as enjoyed by the local exchange company for its own information services. If it is not possible for competing information service providers to collocate upon the central office premise, then the rate structure for access should be

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adjusted to eliminate the inherent advantage enjoyed by the local exchange company. The local exchange company should not be allowed to abuse its position as owner of the central office premises to discriminate against competing information service providers. (Cornell)

MICROTEL'S POSITION: Microtel believes collocation may be generally defined as the placement of one service provider equipment on the premises of another interconnected service provider. Because of the cost savings and technical efficiencies generated by collocation to the end user Microtel believes collocation is an essential element of the FPSC's policy relating to information services. The arguments raised by the LECs against collocation generally involve space and security concerns. Microtel acknowledges that space limitations may necessarily limit where physical collocation might be possible. However, virtual collocation is a viable solution to this concern and such a solution will result in financial equality among all ESPs. In addition, Microtel believes there are a number of ways to provide security in event of collocation (physical) but suggest this too is a moot concern if the FPSC adopts a virtual collocation policy with respect to ESPs.

TELUS' POSITION: Collocation is the actual physical placement of equipment within a LEC switching center, Serving Wire Center, or business office. Collocation, if allowed for LEC-affiliated information services providers, should be allowed for all providers on equal terms and conditions. Some LEC-affiliate ESP equipment may in fact be physically and electronically integrated with the LEC switch. If this is the case, then other non-affiliated ESPs must be allowed to collocate at a fair market price that reflects the advantage to the LEC of the LEC affiliates' integration of such facilities. If there is to be no collocation, then virtual collocation or virtual control office provisioning may be appropriate.

US SPRINT'S POSITION: "Collocation" typically refers to either physical or virtual collocation. Physical collocation is the placement of non-LEC-affiliated ESP's equipment in an LEC's central office. Virtual collocation refers to the equal pricing of all ESP local loops but does not require the LEC to provide central office space to non-affiliated ESPs. Virtual collocation produces parity in local loop charges between LEC-affiliated and non-affiliated ESPs.

In structuring collocation terms and conditions, the Commission should seek to formulate a policy that: (1) recognizes the physical limitations of individual central offices; (2) recognizes the technical and economic benefits of physical

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collocation; (3) prevents LECs from abusing their monopoly control over local facilities by charging excessive interconnection rates or rental for central office space; and (4) prevents LECs from discriminating against competing ESPs by arbitrarily denying or limiting competing ESPs' collocation opportunities.

CENTEL'S POSITION: Collocation should be defined as the placement of a customer's equipment for providing information services in the carrier's central office for the purpose of minimizing transmission costs.

The independent LECs should not be subject to any mandatory collocation requirements. It is sufficient that the carrier charges the information services provider the same rates that the carrier charges itself in the provision of such services.

GTEFL'S POSITION: The term "collocation" refers to the installation or placement of nonLEC equipment with a LEC central office.

Telcos should not be required to offer collocation. It is a GTEF company policy not to permit nonTelco equipment or noncompany personnel within its central offices. This long-standing policy is based upon a number of factors, including considerations related to floor-space planning, physical security, and privacy of communications.

SOUTHERN BELL'S POSITION: Collocation means that equipment which is needed to provide an information service is physically placed in the LEC central office facility. Collocation of non-LEC equipment in the LEC central office facility should not be offered. "Virt. Collocation" should not be required as it would deprive the Florida customer of the full benefit of legitimate cost efficiencies realized by the LEC. (Boltz)

UNITED'S POSITION: Collocation is the utilization of the LEC's floor space by LEC customers and/or competitors. The actual availability of floor space will determine whether or not collocation is a practical alternative. Collocation should not be mandatory. When vacant space exists, United desires to maximize its revenue opportunities from collocation as long as proper steps are taken to deal with issues such as security and liability. Non-LEC entities should pay an appropriate rental fee to the LEC regulated operation.

ADHOC'S POSITION: Collocation by ESPs is desirable and should be allowed. If collocation is impossible, then required facilities should be made available to ESPs within certain geographical limitations that assure that ESPs are not prejudiced in the quality or cost of services required for them to competitively participate in the information age.

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FCATV'S POSITION: No position at this time.

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

ISPA'S POSITION: Traditionally, "collocation" has referred to the placement of one service provider's equipment (concentrators, processors, switches, etc.) on the premises of another service provider in order to minimize transmission and other costs and thus enhance the efficient delivery of services. In an ONA environment, collocation is frequently described as either "physical" or "virtual".

Physical collocation generally means the actual placement of an ISP's equipment in an LEC's central office. In such an arrangement, all the technical, operational and economic efficiencies of "short wire" connection between the ISP's equipment and the local exchange switch can be realized.

Virtual collocation describes the situation in which only the LEC-affiliated ISP's equipment is located on telephone company premises but affiliated and non-affiliated ISPs do not obtain any of the technical and operational advantages of physical collocation. Further, while virtual collocation may equalize loop costs among service providers, it does not produce all of the economic efficiencies that physical collocation would produce.

Physical collocation should be offered by the LECs to ISPs who desire to collocate their equipment in LEC central offices. Assuming that available space exists in a suitable central office, this space should be made available -- under reasonable terms -- to all ISPs on a first-come, first-served basis.

Collocation can be offered under terms which provide reasonable access by ISP personnel, yet respond to the security and administrative concerns of the LECs. [Dewey].

PUBLIC COUNSEL: Collocation is the placement of equipment belonging to a information service provider in a local exchange company's central office. Collocation should be allowed if sufficient protective terms and conditions to protect the local exchange companies can be implemented. If the Commission should decide against physical collocation, virtual collocation should then be granted through tariff structure and rates. An effectively competitive market for information services may not develop without physical, or at least virtual, collocation.

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STAFF'S POSITION: Physical collocation is the utilization of LEC facilities and floor space by the LEC owned ISPs and/or non LEC ISPs. Virtual Collocation refers to the equal pricing of a LEC ISP's access located in a LEC CO and a non LEC ISP's access located outside of the CO premises.

Physical collocation should be mandatory. However, in instances where technical or physical limitations exist, virtual collocation should be required.

ISSUE 14: What, if any, safeguards (structural or otherwise) should apply for the LEC provisioning of information services?

AT&T'S POSITION: To promote fair and vigorous competition in the market for information services, at least two non-structural safeguards must be established to accommodate LEC participation.

First, the LECs must be required to allocate all relevant costs to their information services operations to prevent any cross-subsidization between competitive services and regulated monopoly services.

Second, the LEC should provide comparable interconnection to its basic services in a non-discriminatory manner at the same rates, terms and conditions as the LEC provides like services to its own information services operations.

MCI'S POSITION: The same safeguards set forth in MCI's response to Issue No. 10 also apply to Issue No. 14. (Ozburn)

MICROTEL'S POSITION: Microtel believes that it is mandatory that the FPSC impose safeguards to ensure that LECs providing information services do not receive an unfair competitive advantage over competing non-LEC/ESPs. Microtel's position is fairly consistent with that of the FCC on this issue, that is, that structural safeguards are appropriate until the development and implementation of an ONA plan which includes CEI and the development of a cost allocation manual for tracking and separating regulated and non-regulated costs. In addition, there must be guidelines for disclosure of network interface information as well as guidelines for handling CPNI before the FPSC eliminates structural safeguards.

TELUS' POSITION: For a level playing field, the LECs' provision of information services should be pursuant to a fully separated, unregulated LEC subsidiary with no common equipment, employees, assets, or funding. However, the FCC's Computer III decision, if not reversed on appeal, seems to have

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obviated this option. The proposed ONA and CEI options can help remove some of these concerns, but they do not address the business issues (i.e., cross subsidization and predatory pricing) and in fact raise new problems for CPNI and collocation. At a minimum, therefore, there should be strict accounting and functional separations between regulated monopoly and competitive activities, and "equal treatment" implementation of ONA and CEI. This Commission must also be vigilant in the enforcement of such requirements to prevent any LEC abuse in this area in the absence of a fully separated subsidiary.

US SPRINT'S POSITION: Should the FCC's decision in its Computer Inquiry III order to preempt state regulation of enhanced services be overturned on appeal, the Florida Commission should consider the imposition of a structural safeguard such as requirement that LEC-affiliated ESPs be operated through a fully separate subsidiary. Absent such an appellate ruling, the Commission should ensure that the LECs' provisioning of information services makes use of the local network and customer information under the same rates, terms and conditions as competing non-affiliated ESPs.

CENTEL'S POSITION: Centel believes that structural requirements and other restrictions are not necessary for the independent LECs. Since the LECs are not subject to such requirements at the federal level, Centel believes that the states should not impose such requirements.

GTEFL'S POSITION: Telco's should be allowed to provide information services on a deregulated basis without the requirement for a separate subsidiary. As a deregulated offering, normal tariffs would apply to all tariffed service elements and tariffed access facilities used by the LEC offering. Any nontariffed resources used in the provision of the LEC information service offering would be charged back to the LEC's deregulated operations based on allocation rules established in FCC Docket No. 86-111.

SOUTHERN BELL'S POSITION: The only safeguards necessary are nonstructural and include appropriate cost allocation, customer proprietary network information (CPNI) notification and network disclosure requirements, and nondiscriminatory service rules. These nonstructural safeguards provide adequate protection for all parties. (Boltz)

UNITED'S POSITION: Accounting safeguards are sufficient for the LEC provisioning of information services. United has in place today accounting procedures and mechanisms to capture and record costs associated with non-regulated services. These procedures are adaptable to the provision of

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information services. United uses these procedures today to account for activities such as inside wire and customer premises equipment. Actual costs such as labor, material, supervision, and directly assigned overheads are captured and reported directly to the associated service. Other costs, such as data processing, insurance, and common overheads, are also captured and assigned to various services as appropriate.

ADHOC'S POSITION: Cost-based rates and general nondiscrimination requirements are at the core of the non-structural safeguards necessary to promote true competition in the provision of information services.

FCATV'S POSITION: If "information services" is intended to include video programming, the safeguard of the existing restrictions which presently prohibit telephone companies from engaging in video programming in their own telephone service areas should be retained. (Witness: Wilkerson)

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

ISPA'S POSITION: In addition to requiring the provision of generally available cost-based unbundled service elements as described in response to Issues 6, 8, 9, 10, and 11, two fundamental principles should apply to the LEC provision of information services. First, the ratepayer's interests should be protected. The monopoly ratepayer should be fully "compensated" by the LEC-affiliated ISP when that ISP receives assets or services contributed by the monopoly ratepayer. Second, LECs should not be permitted to discriminate against unaffiliated ISPs in the provisioning of any ONA service, collocation or CPNI. [Harcharik and Dewey]

PUBLIC COUNSEL: Full structural separation would best protect regulated ratepayers against the cross-subsidization of information service by local exchange companies, but it would not offer the most efficient service for end users. The cost allocation procedures utilized by the local exchange companies should be vigorously investigated.

STAFF'S POSITION: Staff believes that structural separation should not be imposed; however, at a minimum, the following non-structural safeguards should apply:

- a. Costs should be allocated using fully distributed costing methodology;

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- b. Pricing should be non-discriminatory
- c. Pricing of access should be the same for non-LEC ISPs as for the LEC-affiliated ISP, whether the non-LEC ISPs are physically collocated ISPs or non-collocated; and
- d. All enhanced service providers including the LECs' affiliates, should be required to obtain written authorization from a customer before it can access that customer's CPNI. LEC personnel who have access to CPNI should be prohibited from working for the LEC-affiliated ISP and from divulging CPNI unless there is positive authorization by the customer. Yes. Staff believes that the LEC's provision of information services should be subject to regulation. This is necessary to protect the information service market from any potential anticompetitive practice by the LEC.

ISSUE 15: Assuming that the Florida Public Service Commission does have jurisdiction, should the Florida Public Service Commission regulate the LEC provision of information service and, if so, in what manner?

AT&T'S POSITION: No. The market for information services is competitive. This competition will adequately "regulate" the rates charged and services offered by all information service providers including the LECs.

However, in establishing the LECs as information service providers, the Commission must insure that each LEC properly allocates all relevant cost to its information services operation and that each LEC provides its regulated services in a non-discriminatory manner which promotes fair and unrestricted competition.

MCI'S POSITION: Yes. The Commission must regulate the LEC provisioning of information services to prevent LECs from abusing their monopoly position as the provider of local exchange service by discriminating against competing information service providers. Specifically, the Commission must ensure that revenues from local exchange service are not used by the LECs to subsidize their information services. By fully investigating the information services provided by the LECs, this will enable the Commission to determine whether the LECs are discriminating against competing information service providers in the determination of which basic service elements should be offered and at what price. If LECs are also able to cross-subsidize their information services and are able to arbitrarily price basic service elements as they choose, this will enable the LECs to drive out competition and control the information service provider market. (Ozburn)

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MICROTEL'S POSITION: Microtel takes the position that it is appropriate for the FPSC to regulate the LEC information services providers to the extent necessary to ensure that information services industry is allowed to become fully competitive. If the FPSC implements the safeguards identified by Microtel in previous issues (10-14), Microtel believes the goal of a fully competitive information services industry will develop in Florida to the benefit of all consumers.

TELUS' POSITION: See Telus' position on Issue 14.

US SPRINT'S POSITION: See US Sprint's position on Issue 14.

CENDEL'S POSITION: Centel believes that the FCC preempts Florida's jurisdiction in regulating information services. However, services that are obtained by ISPs out of the local tariff would fall under the jurisdiction of the Florida Commission.

GTEFL'S POSITION: LEC provision of information services should not be subject to regulation; however, if the Commission regulates LEC-provided information services, the rates for such services should be afforded maximum pricing flexibility in order to permit the regulated Telco to compete effectively in this highly competitive marketplace. by requiring that flexibility priced LEC information services are priced above incremental costs, the Commission can ensure that cross-subsidization is avoided and that anticompetitive pricing does not occur.

SOUTHERN BELL'S POSITION: Neither LEC or non-LEC providers of information services should be regulated by the Commission. (Lombardo, Payne)

UNITED'S POSITION: No, LEC provision of information services should not be regulated.

ADHOC'S POSITION: The FPSC should regulate the LEC provision of its enhanced transport tariffs. The FPSC should also assure that any information services provided by the LECs are not benefitted by their ability to provide monopoly elements to all users, but the provision of the information services per se, should not be subject to regulation.

FCATV'S POSITION: No position at this time.

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

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ISPA'S POSITION: Other than to enforce the safeguards described in response to Issues 6, 8, 9, 10, 11, 12, 13 and 14, the Florida Public Service Commission should not regulate LEC provision of information services.

PUBLIC COUNSEL: Yes. The Commission must regulate the LEC provisioning of information services to prevent LECs from abusing their monopoly position as the provider of local exchange service by discriminating against competing information service providers. Specifically, the Commission must ensure that revenues from local exchange service are not used by the LECs to subsidize their information services. By fully investigating the information services provided by the LECs, this will enable the Commission to determine whether the LECs are discriminating against competing information service providers in the determination of which basic service elements should be offered and at what price. If LECs are also able to cross-subsidize their information services and are able to arbitrarily price basic service elements as they choose, this will enable the LECs to drive out competition and control the information service provider market. (Ozburn)

STAFF'S POSITION: Yes. Staff believes that the LEC's provision of information services should be subject to regulation. This is necessary to protect the information service market from any potential anticompetitive practice by the LEC.

ISSUE 16: If the Commission determines that the LEC information services operation should not be regulated, should some form of compensation be required from the LEC information service operation to the regulated entity? If so, what method of compensation should be used?

AT&T'S POSITION: The LEC information service operation should compensate the regulated entity for use of the regulated facilities and services in the same manner and to the same extent as would be required of other unaffiliated information service providers.

MCI'S POSITION: Yes. All costs of the LEC information services operations should be borne by that operation. The LEC regulated operation should be compensated by the LEC information service operation for the use of the local exchange company trademark, good will, advertising, and colocation. The local exchange company possesses certain intangible assets which have been paid for by Florida ratepayers. The LEC information services operation should not be allowed to benefit from these intangible assets without paying for the use of these assets to the LEC regulated operation. (Ozburn)

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MICROTEL'S POSITION: Microtel believes that it is appropriate to require compensation from LECs providing information services. In reality the situation posed by a LEC providing information services is no different from that faced when a LEC is providing long distance service. In the UTLD proceeding, the FPSC deemed it appropriate to order the implementation of safeguards designed to insure that the competitive venture of the LEC is not subsidized by the monopoly local exchange services. Microtel takes the position that similar safeguards to insure that the information services are not being subsidized by monopoly local exchange services. Microtel believes that safeguards similar to those implemented by the FPSC in the UTLD case should be imposed to insure that information services are not being subsidized by monopoly local exchange services. In addition, the payment of a royalty to the regulated entity's ratepayers for use of the trademark name and good will of the LEC is also appropriate. In addition, the payment of a royalty to the regulated entity's ratepayers for use of the trademark, name and good will of the LEC is also appropriate.

TELUS' POSITION: If structural separation is implemented, then the LEC-affiliated ESP should not have to pay a compensation fee, apart from the same payments made by all ESPs for LEC-provided facilities and services. If accounting separations alone are adopted, the LECs should not be allowed to use the local companies' names, logos, trademarks, or receive other preferential, anticompetitive tie-ins, whereupon no payment would be necessary. Telus will address the legal aspects of this issue in its posthearing brief in the event such goodwill use is to be permitted.

US SPRINT'S POSITION: Compensation to the LEC is warranted in light of the substantial advantages accruing to the LEC-affiliated ESP because of the relationship to the monopoly service provider. These advantages include brand-name recognition, customer goodwill, and ready access to communications industry professionals who have been trained at ratepayer expense.

US Sprint has no position at this time regarding the method or level of such compensation.

CENTEL'S POSITION: If the Commission should decide that the service should be unregulated, the LEC's nonregulated entity should be treated equally to other information service providers. Compensation should be based on the same costs as providing service to a non-related entity. The same assets used by the LEC's ISP would also be used by the other ISPs. Thus, if the LEC ISP was to be required to compensate the telephone company for the use of its assets, other ISPs should also compensate the telephone company for the use of those same assets.

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GTEFL'S POSITION: A LEC-affiliated ESP should be required to pay tariff rates for tariffed services and cost-based allocations for use of common resources. No additional compensation or fee should be charged to the ESP affiliate.

SOUTHERN BELL'S POSITION: No form of additional compensation should be required from the LEC information services operation to the LEC regulated entity. The regulated LEC entity will derive appropriate contribution from its tariffed rates which are charged to all information services providers. No additional charge to the LEC information services operation is appropriate. (Lombardo, Payne)

UNITED'S POSITION: The LEC information service operation should compensate the LEC regulated entity for access to the regulated network via tariffed charges. As appropriate, compensation through contractual arrangements should also be rendered. Beyond these forms of compensation, the accounting procedures described in response to Issue No. 14 are sufficient for dealing with the LEC's regulated and non-regulated operations.

ADHOC'S POSITION: Yes, but only to assure that the LEC does not abuse its monopoly power in pricing services for itself and other ESPs. An LEC ESP should be required to purchase telecommunication services from the same tariffs as any other enhanced service provider.

FCATV'S POSITION: No position at this time.

FIXCA'S POSITION: FIXCA has no issues or positions at this time. However, it reserves the right to adopt positions or issues raised in this case after it has had an opportunity to more fully examine the prefiled testimony and exhibits.

ISPA'S POSITION: As indicated in response to Issue 14, ISPA is of the view that the monopoly ratepayer, through the regulated LEC, must be fully "compensated" by the LEC's information service operations to the extent that the carrier's information service operations receive assets or services which the monopoly ratepayer or the regulated entity has contributed.

PUBLIC COUNSEL: A cost compensation fee, similar to that applied in the case of United Telephone Long Distance, Inc., should be utilized.

STAFF'S POSITION: This issue becomes moot if the Commission approves staff's recommendation in Issue 15; however, if the Commission chooses not to regulate LEC provision of information services, a compensation fee should be imposed.

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VI. EXHIBIT LIST

<u>Witness</u>	<u>Proferring Party</u>	<u>Exh. No.</u>	<u>Title</u>
Moller	Staff	Composite 10-A	CENDEL's responses to Staff's Interrogatories, First Set.
Moller	Staff	Composite 10-B	CENDEL's responses to Citizen's Production of Documents, 1st Set.
Glass- burn	Staff	Composite 20-A	GTEFL's responses to Staff's Interrogatories, First Set.
Boltz	Staff	Composite 31-A	Sou. Bell's responses to Staff's Interrogatories, First Set; Nos. 1-3, 7, 20-22, 25-29, 31-35.
Boltz	Staff	Composite 31-B	Staff's Deposition of Boltz; taken 11/12-13/88. Pages to be identified.
Boltz	Staff	31-C	Levels of Protocol Conversion.
Payne	Sou. Bell	32-A	Typical Enhanced Services Connection.
Payne	Staff	Composite 32-B	Sou. Bell's responses to Staff's Interrogatories, First Set; Nos. 4-6, 8-19, 23-24, 30.
Payne	Staff	Composite 32-C	MCI Deposition of Payne; taken 11/18/88. Specific pages to be identified.
Payne	Staff	Composite 32-D	Staff's Deposition of Payne; taken 12/15-16 & 12/20/88.
Payne	Staff	32-E	BellSouth's Summary of Capabilities Analysis.
Payne	Staff	32-F	BellSouth's Special Report Number 4 - Common ONA Model.
Payne	Staff	32-G	BellSouth's ONA Elements cross reference to existing tariffs.
Payne	Staff	Composite 32-H	BellSouth's ONA Illustrative tariff.
Payne	Staff	Composite 32-I	Sou. Bell's responses to Citizen's Production of Documents, All Sets.

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<u>Witness</u>	<u>Proferring Party</u>	<u>Exh. No.</u>	<u>Title</u>
Payne	Staff	Composite 32-J	Sou. Bell's responses to Citizens Interrogatories, 1st Set.
Varner	Staff	Composite 33-A	MCI's Deposition of Varner; taken 1/5/89. Pages to be identified.
Flood	Staff	Composite 34-A	MCI's Deposition of Flood; taken 1/13/89. Pages to be identified.
Davis	Staff	Composite 35-A	MCI's Deposition of Davis; taken 1/9/89. Pages to be identified.
Savage	Staff	Composite 36-A	MCI's Deposition of Savage; taken 1/5/89. Pages to be identified.
Berry- hill	Staff	Composite 37-A	MCI's Deposition of Berryhill; taken 1/5/89. Pages to be identified.
Griffin	Staff	Composite 40-A	United's responses to Staff's Interrogatories, First Set.
Guedel	Staff	Composite 50-A	AT&T's responses to Staff's Interrogatories, First Set.
Harchar- ik	Staff	Composite 70-A	ISPA's responses to Staff's Interrogatories, First Set; Nos. 1-19.
Harchar- ik	Staff	Composite 70-B	Staff's Deposition of Harcharik; taken 11/14/88. Pages to be identified.
Harchar- ik	Staff	Composite 70-C	Descriptions of services provided by ISPs.
Harchar- ik	Staff	Composite 70-D	ISPA's responses to Citizen's Production of Documents, 1st Set.
Harchar- ik	Staff	Composite 70-E	ISPA's responses to Sou. Bell's Interrogatories, 1st Set.
Dewey	Staff	Composite 71-A	ISPA's responses to Staff's Interrogatories, First Set; Nos. 20-22.
Dewey	Staff	Composite 71-B	Staff's Deposition of Dewey; taken 11/14-15/88. Pages to be identified.
Ozburn	Staff	Composite 80-A	MCI's responses to Staff's Interrogatories, First Set.

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<u>Witness</u>	<u>Proferring Party</u>	<u>Exh. No.</u>	<u>Title</u>
Ozburn	Staff	Composite 80-B	Southern Bell's Deposition of Ozburn; taken 1/20/89. Pages to be identified.
Cornell	Staff	Composite 81-A	Southern Bell's Deposition of Cornell; taken 1/23/89. Pages to be identified.
	Staff	Composite 90-A	Microtel's responses to Staff's Interrogatories, First Set.
	Staff	Composite 100-A	Telus' responses to Staff's Interrogatories, First Set.
Sievers	Staff	Composite 110-A	US Sprint's responses to Staff's Interrogatories, First Set.
Mayne	AdHoc	130-A	Florida AD HOC Users Committee.
Mayne	Staff	Composite 130-B	AdHoc's responses to Sou. Bell's Production of Documents, 1st Set.
	Staff	Composite 150-A	Northeast's responses to Staff's Interrogatories, First Set.
	Staff	Composite 160-A	ALLTEL's responses to Staff's Interrogatories, First Set.
	Staff	Composite 170-A	Quincy's responses to Staff's Interrogatories, First Set.
	Staff	Composite 180-A	St. Joe's responses to Staff's Interrogatories, First Set.
	Staff	Composite 190-A	Southland's responses to Staff's Interrogatories, First Set.
	Staff	Composite 200-A	Vista-United's responses to Staff's Interrogatories, First Set.
	Staff	Composite 210-A	Gulf's responses to Staff's Interrogatories, First Set.

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<u>Witness</u>	<u>Proferring Party</u>	<u>Exh. No.</u>	<u>Title</u>
Staff		Composite 220-A	Floral's responses to Staff's Interrogatories, First Set.
Staff		Composite 230-A	Indiantown's responses to Staff's Interrogatories, First Set.

**NOTE: This list does not include late-filed deposition exhibits that will also be relied upon at hearing.

VII. STIPULATIONS:

No issues have been stipulated at this time.

VIII. PENDING MATTERS:

1. Southern Bell has filed a Motion for Protective Order relating to discovery from the Office of Public Counsel. The motion has been withdrawn.
2. The Office of Public Counsel has filed a Motion to Compel on Southern Bell. Also, filed was a request for hearing on Southern Bell's Motion for Protective Order. These motions were withdrawn.
3. The firm of Ranson & Wiggins has filed Notice of Withdrawal for John Davis as counsel to Microtel, Inc. and for Patrick Wiggins as counsel to ISPA.
4. CONAP/CCTU has filed Notice of Withdrawal.

IX. RULINGS:

1. The Staff's Motion to Expedite responses to interrogatories was granted.
2. The Motion of ISPA for a continuance of the hearings was denied.

X. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION:

1. The Party utilizing the confidential material during cross examination shall provide copies to the Commissioners and the Court Reporter in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material 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.
2. Counsel and witnesses should state when a question or answer contains confidential information.
3. Counsel and witnesses should make a reasonable attempt to avoid verbalizing confidential information and, if possible, should make only indirect reference to the confidential information.

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4. Confidential information should be presented by written exhibit when reasonably convenient 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 owner of the information. 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.

If it is necessary to discuss confidential information during the hearing the following procedure shall be utilized.

After a ruling has been made assigning confidential status to material to be used or admitted into evidence, it is suggested that the presiding Commissioner read into the record a statement such as the following:

The testimony and evidence we are about to receive is proprietary confidential business information and shall be kept confidential pursuant to Section 364.093, Florida Statutes. The testimony and evidence shall be received by the Commissioners in executive session with only the following persons present:

- a) The Commissioners
- b) The Counsel for the Commissioners
- c) The Public Service Commission staff and staff counsel
- d) Representatives from the office of public counsel and the court reporter
- e) Counsel for the parties
- f) The necessary witnesses for the parties
- g) Counsel for all intervenors and all necessary witnesses for the intervenors.

All other persons must leave the hearing room at this time. I will be cutting off the telephone ties to the testimony presented in this room. The doors to this chamber are to be locked to the outside. No one is to enter or leave this room without the consent of the chairman.

The transcript of this portion of the hearing and the discussion related thereto shall be prepared and filed under seal, to be opened only by order of this Commission. The transcript is and shall be non-public record exempt from Section 119.07(1), Florida Statutes. Only the attorneys for the participating parties, Public Counsel, the Commission staff and the Commissioners shall receive a copy of the sealed transcript.

(AFTER THE ROOM HAS BEEN CLOSED)


Everyone remaining in this room is instructed that the testimony and evidence that is about to be received is proprietary confidential business information, which shall be kept confidential. No one is to reveal the contents or substance of this testimony or evidence to anyone not present in this room at this time. The court reporter shall now record the names and affiliations of all persons present in the hearing room at this time.

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It is therefore,

ORDERED by Commissioner Michael McK. Wilson, 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 Commissioner Michael McK. Wilson, as Prehearing Officer, this 6th day of FEBRUARY, 1989.


MICHAEL MCK. WILSON, Commissioner
and Prehearing Officer

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