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FILE COPY

August 17, 1995

Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Docket No. 920260-TL

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Brief.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

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Sincerely,

*Charles J. Beck*  
Charles J. Beck  
Deputy Public Counsel

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DOCUMENT NUMBER-DATE  
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Comprehensive Review of the )  
Revenue Requirements and Rate )  
Stabilization Plan of Southern )  
Bell Telephone & Telegraph Company )  
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Docket No. 920260-TL  
Filed: August 17, 1995

CITIZENS' BRIEF

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, file this post-hearing brief.

Legal Issue 1: Since this docket was opened prior to the new law being enacted, should the unspecified \$25 million rate reduction scheduled for October 1, 1995, be processed under the former version of Chapter 364, Florida Statutes?

Position: This proceeding is governed by the law as it existed prior to the 1995 revisions to Chapter 364, Florida Statutes.

Discussion: Section 28 of the Committee Substitute for Senate Bill 1554 states that "proceedings including judicial review pending on July 1, 1995, shall be governed by the law as it existed prior to the date on which this section becomes a law."

This docket began in 1992 as a general rate case proceeding. A settlement reached in January, 1994, forms the basis for the unspecified \$25 million rate reduction at issue in this portion of the docket. Southern Bell's ECS tariff and supporting testimony was filed prior to July 1, 1995.

Since this proceeding was pending on July 1, 1995, it is governed by the law as it existed prior to the 1995 changes made to Chapter 364, Florida Statutes.

One other provision of section 28 to Committee Substitute for Senate Bill 1554 states that "Any administrative adjudicatory proceeding which has not progressed to the stage of a hearing by July 1, 1995, may, with the consent of all parties and the Commission, be conducted in accordance with the law as it existed prior to January 1, 1996." This provision of the statute has no applicability to this proceeding.

First, this provision is merely permissive, not mandatory. There have been no filings by the parties either consenting or not consenting to this provision of the statute.

Second, this permissive portion of the statute does not apply because this proceeding is not an "administrative adjudicatory proceeding." While the term "administrative adjudicatory proceeding" is not defined in the statute, it would appear that

this phrase distinguishes between the quasi-judicial and quasi-legislative functions of the Commission.

An administrative adjudicatory proceeding, for example, might be a proceeding to impose a fine or to revoke a certificate of convenience and necessity. It might be a proceeding to determine the amount of money owed by a customer to a local exchange telecommunications company. This proceeding, on the other hand, is a rate setting proceeding. It is well established that the Commission is acting in its legislative role when setting rates. This proceeding is therefore not an "administrative adjudicatory proceeding."

**Legal Issue 2:** If approved, would Southern Bell's ECS plan become part of basic local telecommunications service as defined in section 364.02(2), Florida Statutes?

**Position:** Southern Bell's proposed extended calling service tariff would be a non-basic service.

**Discussion:** Subpart 2 to section 6 of the Committee Substitute for Senate Bill 1554 states that basic local telecommunications services includes flat rate residential and flat rate single line business services and includes any extended area services routes and extending calling service in existence or

ordered by the Commission on or before July 1, 1995. Since the extended calling service proposed by Southern Bell was not in existence or ordered by the Commission on or before July 1, 1995, it is a non-basic service under the new statute.

**Legal Issue 3:** If it is not a part of basic local telecommunications service, does Southern Bell's ECS plan violate the imputation requirement of section 364.051(6)(c), Florida Statutes?

**Position:** No.

**Discussion:** This provision of the new statute does not require imputation for all non-basic services. It only requires imputation to the extent that a cost is not included in a service's direct cost. The statute states:

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

No party has challenged whether the proposed extended calling service covers its direct cost. The direct cost of toll services is typically alleged to be about two cents per minute or less. The cost of extended calling service would be no more than that. It is

therefore no surprise that no party challenged whether the extended calling service proposed by Southern Bell covers its direct cost.

Even if the imputation requirements did apply to Southern Bell's proposed extended calling service, the cost that would be imputed would be interconnection rates, not access charges.<sup>1</sup> The proposed extended calling service is a local service, and therefore the price charged to competitors for any monopoly component would be, at most, interconnection rates.<sup>2</sup> Thus, even if the imputation requirements of the statute did apply, any challenge would be premature because interconnection rates have not yet been established.

Any interexchange carrier is free to become an alternative local exchange telecommunications company. The statute requires alternative local exchange companies to first attempt to negotiate an interconnection rate with Southern Bell. Should these negotiations be unsuccessful, the Commission then sets the interconnection rate.

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<sup>1</sup> Southern Bell and the interexchange carriers litigated the issue of whether ECS would pass an access charge imputation test. The proper issue, to the extent imputation is an issue at all, is whether ECS would pass an interconnection charge imputation test.

<sup>2</sup> The term "monopoly component" is not defined in the statute. With local competition authorized in Southern Bell's territory effective January 1, 1996, it is not at all clear what any "monopoly component" would be.

**Legal Issue 4:** Does Southern Bell's ECS proposal violate any other provision of the revised chapter 364, Florida Statutes, excluding those previously identified in the positions on the issues listed in the prehearing order?

**Position:** No.

**Original Issue 1:** Which of the following proposals to dispose of \$25 million for Southern Bell should be approved?

**(1)(a):** SBT's proposal to implement the Extended Calling Service (ECS) plan pursuant to the tariff filed on May 15, 1995. (T-95-304).

**Position on (1)(a):** The Commission should approve SBT's proposed ECS plan.

**Discussion:** The Commission should accept Southern Bell's proposal to dispose of the \$25 million by approving ECS on all of the routes proposed by the Company, including those additional routes that were proposed by letter to the Commission dated August 3, 1995.

The plan proposed by Southern Bell provides approximately \$50 million in annual savings to its customers for calling the 289

routes included in the proposal.

Extended Calling Service was designed by this Commission. The Commission initially implemented ECS between the Tampa and St. Petersburg areas. The Commission -- not GTEFL -- developed the rate of \$.25 per call for residential customers and the \$.10/\$.06 rate per minute for business customers. Subsequently, the Commission ordered ECS on numerous other routes, including a number of routes (but not all routes) between Dade and Broward county.

Many other routes still deserve expanded local calling. Southern Bell's ECS proposal provides a rare opportunity to the Commission to address those needs.

The ECS proposal would provide much needed relief to customers throughout Southern Bell's territory. Many of these routes qualify for flat rate EAS due to their calling rates. Among the benefits of Southern Bell's proposal is that it will give county wide calling in Palm Beach county (Tr. 90) and local calling between all of Dade and all of Broward county (Tr. 93).

ECS will have a positive economic benefit along the affected routes (Tr. 94-95; Tr. 53). There is much demand for this offering, and customers have reacted positively to Southern Bell's proposal (Tr. 94-95; Tr. 48). Customers with a need for expanded calling can take advantage of it without imposing higher local



rates on all customers (Tr. 95).

Due to the recent changes to chapter 364, Florida Statutes, it is unlikely that this Commission will be in a position in the future to grant expanded local calling areas. Therefore, Southern Bell's proposal represents the last chance for local calling between communities whose social and commercial fabrics are merging.

(1)(b): CWA's proposal to reduce each of the following by \$5 million:

1. Basic "lifeline" senior citizens telephone service;
2. Basic residential telephone service
3. Basic telephone service to any organization that is non-profit with 501c tax exempt status;
4. Basic telephone service of any public school, community college and state university;
5. Basic telephone service of any qualified disabled ratepayer.

Position on (1)(b): Expanded local calling is a better use of the rate reduction than the proposal made by the CWA.

Issue 1c: McCaw's and FMCA's proposal that a portion be used, if necessary, to implement the decisions rendered in DN 940235-TL.

Position: Expanded local calling is a better use of the rate reduction than the proposal made by McCaw and FMCA.

Issue 1d: Any other plan deemed appropriate by the Commission.

Position: The Commission should approve the Southern Bell ECS plan.

Discussion: Ad Hoc and DOD both propose to reduce PBX trunk rates. These services will likely be among the first to receive the benefit of competitive offerings. It is therefore unnecessary and unwise to apply the \$25 million to a service that will soon receive these benefits from a competitive market. Instead, the Commission should use this opportunity to address local calling scopes and approve the ECS proposal made by Southern Bell.

Issue 2: If the Southern Bell proposal is approved, should the Commission allow competition on the Extended Service Calling Routes?

Position: Yes.

**Issue 2a:** If so, what additional actions, if any, should the Commission take?

Position: No additional action is necessary in this docket. If requested in another docket after failed negotiations concerning interconnection rates, the Commission should require Southern Bell to charge alternative local exchange companies interconnection rates rather than access charges along the ECS routes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 17th day of August, 1995.

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