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VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo, Director
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Florida Public Service Commission
2540 Shumard Oak Boulevard
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Re: Docket No. 920260-TL

Dear Ms. Bayo:

Enclosed for filing in the referenced docket are an original and fifteen (15) copies of the Post-Hearing Brief of the Florida Ad Hoc Telecommunications Users Committee.

Copies of the brief are being served on all parties of record in accordance with the attached Certificate of Service. Please call the undersigned directly if there are any questions.

Sincerely,



Benjamin H. Dickens, Jr.

- ACK _____
- AFA 3
- APP _____
- CAF _____
- CMI Norton
- CTR Enclosures
- EAG _____
- LEG cc: 1 Parties of Record
- LIN 5
- OPC _____
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Comprehensive review of)
the revenue requirements and rate)
stabilization plan of Southern)
Bell Telephone and Telegraph)
Company.)

Docket No. 920260-TL

Filed: August 17, 1995

POST-HEARING BRIEF OF
THE FLORIDA AD HOC TELECOMMUNICATIONS USERS COMMITTEE

PRELIMINARY STATEMENT
AND SUMMARY OF POSITION

The Florida Ad Hoc Telecommunications Users Committee ("Ad Hoc") represents the interests of Florida's largest corporate telecommunications users, from the largest banks and retail companies, to the State of Florida itself. Ad Hoc responds to the post-hearing statement requirement by setting out a summary of its position on each issue identified in the Commission's Prehearing Order, issued July 24, 1995 in this proceeding. Ad Hoc's argument on each issue will follow its summary of position.¹ References to the transcript of record will be identified by the abbreviation "Tr." followed by the appropriate page number. References to exhibits will be made by the abbreviation "Ex." followed by the appropriate number. The parties will be referred to either as they appeared, or as otherwise indicated in the brief.

Ad Hoc has participated in the earlier phases of this proceeding which led to Southern Bell's refund agreement for

¹The legal issues identified in Staff's August 3, 1995 memorandum to the parties are discussed last in this brief.

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substantial overearnings, and it is vitally concerned that this opportunity be seized to correct existing rate imbalances before competition is further subverted.

The Extended Calling Service ("ECS") plan proposed by Southern Bell should soundly be rejected by the Commission. The plan is appallingly predatory in its effect on toll competition, which features retail ECS rates below Southern Bell's wholesale access rates, and dialing patterns which discriminate in favor of Southern Bell and against its competitors. In short, the plan, if approved by the Commission, would turn back the competitive clock in Florida by handing Southern Bell the tools to monopolize Florida's short-haul toll markets. Coupled with the recently passed telecommunications deregulation statute, these changes will give Southern Bell the option to raise ECS rates up to 20% a year. The Commission will be powerless to stop it. Ad Hoc respectfully submits that such a result is beyond the realm of the Commission's legitimate public policy choices. Ad Hoc instead believes that the Commission should choose from other alternatives which reduce rates and enhance competition, instead of creating a fiefdom for Southern Bell.

As a first priority, Ad Hoc believes that the Commission should reduce PBX trunk and Direct Inward Dial (DID) rates. They are currently priced significantly above Southern Bell's ESSX service rates. For instance PBX trunk rates are approximately 600% over ESSX rates, and DID service is provided at no extra charge with ESSX. Nevertheless, the costs of providing the two services

are similar, and they compete for the same market. The effect of this imbalance has been to restrict customer choice between the two services, since PBX customers depend on Southern Bell's facilities to interconnect their privately provided PBX equipment to the telephone network. Thus, by reducing PBX rates now, the Commission can correct at least some of the imbalance while enhancing competition in the marketplace.

Ad Hoc believes that the \$25 million may alternatively be used to lower other services that are priced substantially above costs, such as other business and access services. Such repricing would, as in the case of PBX trunks and DID, further competition and benefit all customers; however, Ad Hoc believes that PBX/DID repricing should be a priority given the substantial competitive harm and reduced consumer choices that flow from the current pricing structure.

In sum, the Commission should recognize Southern Bell's ECS proposal for the short-term, feel-good gimmick that it is. Consumers will get a short-term toll reduction that will crowd competitors out of the market through below-cost pricing. Later, Southern Bell will be free to raise its rates, without intervention by this Commission. Of course, this result would be a public policy train wreck, but it is a likely scenario.

Ad Hoc submits that the Commission can foster competition, instead of letting Southern Bell squelch it, by applying the \$25 million reduction to PBX/DID services as discussed further in this brief.

SUMMARY OF POSITION AND ARGUMENT

ISSUE 1:

Which of the following proposals to dispose of \$25 million for Southern Bell should be approved?

- a) SBT's proposal to implement the Extended Calling Service (ECS) plan pursuant to the tariff filed on May 15, 1995.
- b) CWA's proposal to reduce each of the following by \$5 million:
 - 1. Basic "lifeline" senior citizens telephone service;
 - 2. Basic residential telephone service;
 - 3. Basic telephone service to any organization that is non-profit with 501(c) 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;
- c) McCaw's and FMCA's proposal that a portion be used, if necessary, to implement the decisions rendered in DN 940235-TL.
- d) Any other plan deemed appropriate by the Commission.

Summary of Position: *** Southern Bell's ECS proposal should be rejected as a predatory attempt to lock up the Florida toll market at the same time at which Southern Bell becomes deregulated. The only realistic alternative that will foster competition is to apply the reduction to PBX/DID services as proposed by Ad Hoc.***

ARGUMENT

Ad Hoc respectfully suggests that the PBX/DID reductions proposed in Mr. Metcalf's testimony, and supported by AT&T, Sprint, MCI, FIXCA, McCaw and the Department of Defense, are clearly the most appropriate use of the \$25 million. Reducing these rates will continue to produce competitive benefits over time. This fact is

unassailable when this proposal is measured against Southern Bell's ECS plan. Accordingly, Southern Bell's ECS plan is discussed first.

THE FLAWED ECS PLAN

Southern Bell supposedly offered the ECS plan to help out Florida's citizens who do not have enough EAS calling, (Tr. 74). Also See witness Stanley's Direct Prefiled Testimony, pp. 3-5. Southern Bell has proposed EAS calling for 288 toll routes (Tr. 118); it added 36 of these routes just prior to the hearing as a result of an agreement with the Office of Public Counsel. (Tr. 43). Some of these ECS routes -- allegedly designed to respond to EAS-type customer desires -- are as long as 135 miles, like the Key West - Miami route (Tr. 121). This plan was roundly criticized, almost uniformly, at the hearing. In addition to Ad Hoc's criticisms -- whose members would ostensibly benefit under the plan because of their heavy toll use -- every IXC at the hearing, including FIXCA, criticized the plan's flaws and the obvious, anticompetitive motives behind it. (Tr. 260-61; 311-12; 316-18). The record bears out these charges.

For instance, although the ECS plan supposedly responds to EAS desires, the fact that Southern Bell has proposed 288 ECS routes, when only 24 EAS requests are pending (Tr. 74), suggests something more than Southern Bell simply bending over backwards to make customers happy. Indeed, Southern Bell witness Stanley admitted that the new routes, added just before the hearing, did not even satisfy Southern Bell's own criteria for ECS deployment (TR-119).

He further admitted that he knew of no EAS routes of 135 miles long, like the proposed Miami-Key West ECS route. (Tr. 121).

Southern Bell attempted to counter charges that ECS will sacrifice toll competition; for instance, Mr. Stanley argued that ECS poses no competitive threat to IXCs because Southern Bell can only compete within the LATAS, and because IXCs can combine their interLATA, interstate and international usage (Tr. 76-77). Southern Bell witness Hendrix likewise sought to counter charges by FIXCA witness Gillan (Tr. 312), Sprint witness Key (Tr. 351) and AT&T witness Guedel (Tr. 224-25) that ECS is priced below its costs.

These claims by Messrs. Stanley and Hendrix unravelled quickly at the hearing. Mr. Stanley admitted that IXCS could not in fact use interstate access rates to somehow reduce their costs on the ECS routes (Tr. 130-31). He also admitted that he would not want this Commission to consider non-jurisdictional operations (as he had proposed for the IXCs) in fixing rates for Southern Bell (Tr. 131-32). He further admitted that after ECS is implemented, customers would have to dial a "1" before dialing the number on an IXC carried call, while an ECS call on the same route, carried by Southern Bell, would require dialing only the called number. (Tr. 96-97). It is not hard to imagine the marketplace impact of forcing IXC customers to dial their calls on a "1+" basis -- a dialing pattern customarily used for toll calls -- while Southern Bell is allowed to carry the same call using a dialing pattern used for local calls. Mr. Stanley's attempts to shroud this

anticompetitive impact, based on Southern Bell's self-inflicted MFJ-LATA restrictions, and claims that IXC interstate and international calls are somehow relevant, is nothing more than a smokescreen.

Southern Bell's attempts to prove that ECS is not priced below costs, against the litany of complaints that it is, fares no better. Southern Bell's principal witness on this subject was Mr. Hendrix. Among other things, he sought to show that claims that ECS was priced below its costs² were incorrect, based upon an "imputation test" he performed. See, Prefiled Rebuttal Testimony of Jerry D. Hendrix, p. 5.

An examination of Mr. Hendrix's prefiled and hearing testimony discloses that he had to perform arithmetic gymnastics in order to get Southern Bell's ECS (retail) rates above Southern Bell's intrastate access (wholesale) rates. Mr. Hendrix's rebuttal testimony contains the admission that instead of comparing ECS rates to access rates, he compared an average of ECS rates and rates for intraLATA toll, to Southern Bell's access rates. Hendrix rebuttal testimony, pp. 5-7. Mr. Hendrix's rebuttal testimony also reflects that he intentionally omitted local transport costs from his access charge calculation, claiming that the statutory imputation section (§ 364.051(6)(c) Fla. Stat.) allows such treatment because it is not a "monopoly component." Id., pp. 7-

² Several witnesses, such as FIXCA's witness Gillan, demonstrated that Southern Bell's ECS revenues were below access costs charged to Southern Bell's IXC competitors. See, e.g., Direct Prefiled Testimony of Joseph Gillan, p. 8.

8.

Mr. Hendrix made no showing, however, either in his prefiled rebuttal testimony, or in the July 31 hearing, that either the ECS/toll averaging, or his failure to include access transport costs, was appropriate. For instance, on the ECS/toll averaging issue, he characterized ECS and certain³ toll services as "equivalent," and offered no other reason for their averaging. (Tr. 378-79). Then, in response to a question from Chairman Clark, he testified that Southern Bell considered ECS to be a "basic" service (Tr. 397). By this absurd line of reasoning, local exchange service would be "equivalent" to Message Toll Service - - a proposition that stands reality on its head. And in defending his exclusion of local transport costs, premised upon the presence of alternative service available from Alternative Access Vendors (AAVs), he admitted that most such companies are located in the Southeast LATA (Tr. 379-80). As the Commission well knows, the presence of competitive alternatives in the major population centers in South Florida hardly justifies the assumption that such alternatives exist on rural ECS routes, such as those in the Panhandle. Indeed, getting Southern Bell's ECS rates above its IXC access rates was such a desperate task that Mr. Hendrix even admitted excluding another access component -- the Residual Interconnection Charge (Tr. 411). He agreed that IXCs would have to pay this charge where they compete against Southern Bell's ECS

³(Incredibly, he did not even include all toll services. Tr. 416-18)

service (Tr. 413). In the face of these obvious gymnastics by Mr. Hendrix to defend what, are in fact, predatory ECS rates, Southern Bell's reasons for failing to conduct an ECS cost study (Tr. 400) are obvious.

**THE PBX/DID RATE DISPARITY WITH
ESSX SHOULD BE ELIMINATED**

Instead of endorsing Southern Bell's flawed ECS plan, a substantial number of the parties to this proceeding propose correcting inequities between PBX trunk rates and Southern Bell's ESSX service. These parties include FIXCA, AT&T, MCI, Sprint, the U.S. Department of Defense, McCaw and Ad Hoc. Ad Hoc's witness, Mr. Metcalf, established the clear need for PBX and DID⁴ repricing. For instance, he testified that PBX and DID compete with Southern Bell's ESSX service, and have functionally equivalent features and similar cost characteristics; PBX trunk rates are priced much higher than comparable facilities for ESSX, however. Because customers who purchase PBX equipment must purchase PBX trunks from Southern Bell to make them work, and are charged a much higher rate than for ESSX, the substantial pricing difference between PBX trunks and ESSX service has severely diminished competition in the PBX market. Direct Prefiled Testimony of Douglas S. Metcalf, pp. 4-6; Tr. 260-262. Mr. Metcalf further established that the overpricing of PBX trunks resulted from a fundamentally different pricing methodology. PBX trunks have been priced based on

⁴(DID is a service that is purchased as an adjunct to PBX trunk service; it is provided by Southern Bell at no extra charge with ESSX service.)

perceived value of service, while ESSX, which came along after PBX technology, was priced to cover its incremental costs. See Prefiled Direct Testimony of Mr. Metcalf, p. 5. Mr. Metcalf testified that by reducing PBX trunks and DID service by the \$25 million now available, all users would benefit from the increase in competition, and from service and feature innovations that accompany competition. Id., p.6.

AT&T witness Guedel reinforced those conclusions. In addition to describing how the price of a customer's loop depends only on whether the customer chooses Southern Bell or a PBX vendor for PBX-like service, Mr. Guedel quantified the vastly disparate pricing for these almost identical services. Specifically, he demonstrated that Southern Bell charges \$32.21/month for a loop, while an ESSX customer can pay as little as \$6.30/month, and as much as \$13.50/month -- depending on the customer's distance from the central office -- for the same loop. See Prefiled Direct Testimony of Mike Guedel, pp. 8-11. In discussing this overpricing of PBX loops, Guedel explained during the hearing that, in fact, "ESSX uses significantly more facilities" than does PBX service, because ESSX uses one loop for every main station, while PBX can serve approximately 10 stations with one loop. (Tr. 218-19). Mr. Guedel also testified that the Commission staff had earlier come to the conclusion that the disproportionate pricing difference between PBX loops and ESSX service was not justified by cost factors. (Tr. 241-47).

Southern Bell's witness Stanley sought to rebut Messrs.

Metcalf and Stanley's contentions that PBX trunks and DID service need to be repriced. He argued that ESSX's market share has increased "no more than 1% in the last three years", that Southern Bell has already reduced PBX trunks and DID by \$35 million, and that changing the pricing relationship between PBX trunks and ESSX would not impact competition at all, since ESSX's market share is less than 12%. See Prefiled Rebuttal Testimony of Joseph A. Stanley, Jr., pp. 7-9. Finally, Mr. Stanley contended that a recent Georgia filing by MFS signals that Southern Bell someday may have ESSX competition in Florida -- apparently as an excuse not to reprice PBX. Id., p. 10.

None of these conclusions detract from the fact that PBX trunk prices are wildly disproportionate to ESSX prices -- probably by design -- and are skewing the competitive market. As a threshold matter, it is as important to note what Mr. Stanley did not say in this proceeding, as what he did say. Specifically, in the face of numerous assertions by Messrs. Metcalf and Guedel that PBX and ESSX costs were similar, Mr. Stanley was silent. His prefiled rebuttal testimony did not challenge this fact, his additional direct testimony didn't challenge this fact (Tr. 76-76) and his answer to staff's questions on the subject of ESSX facilities use vis a vis PBX trunk use only produced the following answer: "I'm not a technical person on that. But I'm not aware that -- well, it's not my impression that it [ESSX] necessarily uses more facilities, but I'm not technical enough to go into that. But suffice it to say that I wouldn't agree with that." (Tr. 161).

Ad Hoc submits that this anemic response is telling from a company with Southern Bell's corporate resources. If the costs of providing PBX trunk service were even 100% higher than ESSX, much less 600%, wouldn't Southern Bell have simply demonstrated it and short-circuited the debate? Instead, Mr. Stanley has ignored this issue, offering only the distraction of a few red herrings.

One of those red herrings was his contention that ESSX has less than 12% of the market. He admitted that his study of market share was not "real precise" (Tr. 137--38) and Mr. Metcalf later produced Exhibit 18 that refutes these contentions based on a real customer -- the State of Florida. That exhibit demonstrates a decisive decline in PBX systems purchased by the state between December, 1986 and June, 1995 and a dramatic increase in ESSX service ordered by it, from 9.1% of system distribution versus PBX, to 44.1%, over the same period. In any event, the real import of Mr. Stanley's market share testimony, is that Southern Bell should not have to quit subsidizing ESSX, because it has only garnered 12% of the market against PBX. Its almost casual failure to rebut Metcalf and Guedel's testimony concerning PBX/ESSX costs leads to no other conclusion.

Mr. Stanley's argument that Southern Bell has already reduced PBX trunks and DID charges by \$35 million⁵ is yet another distraction from Southern Bell's central failure to address the

⁵The Commission may take official notice from records within its possession that this \$35 million decrease only reduced the PBX/ESSX rate disparity from approximately 750% to the 600% rate level identified in the record here.

cost issue; this argument fails in any event. The fact of the matter is that wildly distorted PBX/ESSX rates still exist, which in turn are distorting competition in the market as Ad Hoc's Exhibit 18 demonstrates. The \$25 million of overearnings will help fix this distortion. Southern Bell's argument that it has made these rates less distorted in the past, is akin to a driver refusing to refuel his car on a trip, because he neglected to put enough gasoline in it before he left. The Commission should reject such nonsensical logic and do the only thing that has been proposed in this proceeding which will advance competition -- reduce PBX trunk and DID rates.

ISSUE 2: If the Southern Bell proposal is approved, should the Commission allow competition on the Extended Service Calling routes? If so, what additional actions, if any, should the Commission take?

Summary of Position: *** Ad Hoc does not believe the Southern Bell proposal should be approved. If it is approved, the Commission should allow competition on all routes, and it should further require other steps such as correct imputation, ECS resale and interconnection rates as recommended by FIXCA.***

ARGUMENT

As previously discussed in this brief, Ad Hoc believes that ECS should soundly be rejected by this Commission. If, however, the Commission is inclined to allow ECS to take effect, it should first take a number of important steps to ensure that some semblance of competition exists in these markets. FIXCA's witness, Mr. Gillan, identified these steps in his testimony. He testified that the Commission should specifically require Southern Bell's ECS

service to meet the imputation requirements for a non-basic service; as discussed elsewhere in this brief it currently does not. He also testified that the Commission must make a wholesale ECS-like service available for resale; it must provide an IXC interconnection rate for ECS traffic; it must retain 1+ dialing; and it must make ECS optional. See, Prefiled Direct Testimony of Joseph Gillan, p. 18. Ad Hoc submits that these steps should be taken if the Commission approves ECS.

ISSUE 3: When should tariffs be filed and what should be the effective date?

Summary of Position: ***If the Commission rejects Southern Bell's ECS proposal, the tariffs should be filed as soon as possible to be effective October 1, 1995.***

ARGUMENT

If the Commission rejects Southern Bell's ECS plan, the rate reductions which the Commission orders should be filed as soon as possible with a scheduled effective date of October 1, 1995. Such an effective date would comport with the terms of the settlement agreement, and a prompt filing of Southern Bell's tariff revisions would give the Commission and interested parties an opportunity to review the efficacy of the tariffs in implementing the required \$25 million refund. If, on the other hand, Southern Bell's ECS plan is adopted, the Commission will face a more difficult implementation question. Ad Hoc believes that the new legislation may require additional steps to be taken, as outlined in Mr. Gillan's testimony, before ECS rates can be implemented. Yet, the settlement agreement requires the refund to be effectuated by

October 1, 1995. Thus, the Commission may be forced to give effect to the refund requirement in some manner of rate design other than ECS, before it can implement ECS.

Legal Issues Identified in August 3, 1995
Memorandum from Robert V. Elias

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?

Summary of Position and Argument: *** Ad Hoc agrees with the position of AT&T as set forth in its brief and incorporates by reference and adopts AT&T's position and argument on this issue.***

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?

Summary of Position and Argument: *** Ad Hoc agrees with the position of AT&T as set forth in its brief and incorporates by reference and adopts AT&T's position and argument on this issue.***

LEGAL ISSUE 3: If it is not part of basic local telecommunications service, does Southern Bell's ECS plan violate the imputation requirement of Section 364.051(6)(c), Florida statutes?

Summary of Position and Argument: *** Ad Hoc agrees with the position of AT&T as set forth in its brief and incorporates by reference and adopts AT&T's position and argument on this issue.***

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.

Summary of Position and Argument: *** Ad Hoc believes that Southern Bell's ECS plan at a minimum violates the purpose of revised Chapter 364, such as the pro-competitive purpose set out in Section 364.01(3). The plan also violates substantive provisions of the statute, such as Section 364.051(6), requiring the imputation of monopoly components.***

ARGUMENT

Ad Hoc incorporates by reference the discussion in earlier portions of this brief to support its position.

CONCLUSION

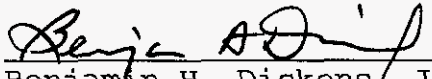
For at least the last 15 years this Commission has been a leader in advocating pro-competitive telecommunications policies at the federal level, and in reflecting these policies within the State of Florida. Its early decisions policing the use of intra-company contracts to gain an unfair advantage in unregulated telecommunications markets, to its later decisions advancing intrastate equal access, reflect the Commission's fidelity to the principle of completion. The Legislature's recent rewrite of Chapter 364 has now codified competition as synonymous with the public interest, and has directed the Commission to continue and expand its policies in this regard. See, Section 364.01 Fla. Stat.

Against this background, the Commission must reject Southern Bell's ECS plan. It is certainly retrograde, and perhaps more anticompetitive than any proposal to come before the Commission in recent memory. Ad Hoc respectfully submits that there is simply no room for this proposal under the Commission's statutory framework.

On the other hand, there are decided pro-competitive benefits that will arise from the PBX/DID repricing that Ad Hoc and the vast majority of parties have advocated. The Commission may not have many more opportunities to correct pricing distortions of the magnitude for the PBX/ESSX market, and Ad Hoc respectfully submits that the present opportunity should be taken, now.

Respectfully submitted,

**The Florida Ad Hoc Telecommunications
Users Committee**



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Dated: August 16, 1995

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Post-Hearing Brief of the Florida Ad Hoc Telecommunications Users Committee has been sent by U.S. Mail on this 16th day of August, 1995 to the following parties of record:

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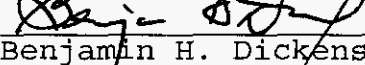
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