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August 17, 1995

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

Re: Docket No. 920260-TL

Dear Mrs. Bayo:

Enclosed for filing in the above referenced docket are an original and fifteen (15) copies of AT&T's Post-Hearing Brief.

Copies of the foregoing are being served on all parties of record in accordance with the attached Certificate of Service.

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Yours truly,

Michael W. Tye

Attachments

cc: J. P. Spooner, Jr.
Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.

Pursuant to Rule 25-22.056, Florida Administrative Code, and Order No. PSC-95-0624-PCO-TL, issued by the Florida Public Service Commission (the "Commission") on May 24, 1995, AT&T Communications of the Southern States, Inc. ("AT&T") files this Post-Hearing Brief in the above-referenced docket and respectfully requests that the Commission adopt the recommendations contained herein.

Background

AT&T has been a party to this case since its inception. AT&T's position throughout these proceedings has been that the access charges of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell") are excessive and should be reduced. Through its participation in this docket, AT&T was a party to the settlement which gave rise to the most recent set of hearings. Pursuant to the terms of that settlement, AT&T was precluded from making a proposal that the $25 million designated for additional rate reductions be used to further reduce intrastate access charges. However, AT&T was not

precluded from participating in the hearings and commenting on the proposals made by other parties who are not constrained by the settlement. In fact, AT&T, by virtue of its status as an interexchange carrier ("IXC"), has a vested interest in the outcome of this case, and is particularly interested in the proposals made by Southern Bell. Southern Bell's proposals are anticompetitive, contrary to the established policies of this Commission, and contrary to standards and policies recently set by the Florida Legislature. Consequently, Southern Bell's recommendations must be denied.

AT&T's Position

AT&T's basic position in this case is that neither the proposal of Southern Bell nor the proposal of the Communications Workers of America ("CWA") properly disposes of the $25 million designated for rate reductions in this proceeding. Southern Bell's proposal is nothing more than an attempt to remonopolize a market that this Commission has previously deemed to be competitive, while CWA's proposal includes reductions in prices for services that are already affordably priced today.[1] Moreover, Southern Bell's proposal is contrary to both the Florida Statutes and the policies of this Commission in that it would result in pricing of intraLATA toll services at rates that are

[1] Tr. Vol. 2, Guedel, p. 203.

substantially below the access charges that Southern Bell's competitors would have to pay Southern Bell for the privilege of carrying competitive traffic on the routes that Southern Bell proposes to remonopolize.

AT&T submits that the proposals of McCaw Communications of Florida, Inc. ("McCaw") and the Florida Ad Hoc Telecommunications Users Committee ("Ad Hoc") have substantial merit and should be adopted. Those proposals would result in reductions in rates for cellular interconnection service and certain services used by PBX customers. Southern Bell's current rates for both types of services are considerably in excess of Southern Bell's costs of providing such services. Moreover, the current pricing of Southern Bell's monopoly services used by PBX customers results in an anticompetitive situation whereby users of Southern Bell's ESSX service receive preferential prices at the expense of PBX users. This rate discrimination is designed to give Southern Bell an advantage over its competitors in the ESSX/PBX market at the expense of consumers who desire to purchase and maintain their own PBX systems. A substantial portion of the $25 million at issue here should be used to abrogate this monopoly leveraging by bringing the rates paid by PBX users more in line with the rates paid by ESSX customers for substantially equivalent services.

Applicable Policies and Legal Standards

For many years both this Commission and the Florida Legislature have recognized the substantial public benefits to be derived from competition in the intrastate telecommunications market. Indeed, in 1990, when the legislature revised Chapter 364, Florida Statutes, through the sunset review process, statements of legislative intent were added which have guided Commission decisions towards the development of effective telecommunications competition. For instance, the 1990 sunset revisions included statements of legislative intent that the Commission should use its exclusive jurisdiction in order to:

> " Encourage cost-effective technological competition and innovation in the telecommunications industry if doing so will benefit the public by making modern and adequate services available at reasonable prices."[2]

Similarly, the 1990 sunset revisions directed the Commission to:

> " Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint."[3]

Over the years, the Commission has adhered to these statutory mandates in a number of important cases, and, indeed, has developed a posture of encouraging and

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[2] Section 364.01(1)(c), Florida Statutes (1993).

[3] Section 364.01(1)(d), Florida Statutes (1993).

protecting intrastate telecommunications competition. In accordance with that policy, the Commission abolished the former Toll Monopoly Areas ("TMAs") in Docket No. 880812-TP.[4] The Commission further sought to foster and protect intraLATA toll competition by establishing access imputation standards for LEC toll services in Docket No. 900708-TL.[5] And, most recently, the Commission sought to expand the ability of intraLATA customers to use the services of competitive service providers by ordering the implementation of intraLATA presubscription in Docket No. 930330-TP.[6] All of these actions were directed towards fostering intrastate telecommunications competition in Florida to the benefit of consumers.

In the most recent legislative session, the Florida Legislature adopted substantial revisions to the provisions of Chapter 364. Those revisions were premised upon a finding that the competitive provision of telecommunications service is in the public interest and will provide substantial benefits to consumers.[7] Consequently, the legislature directed the Commission, among other things, to

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[4] Order No. 23540, issued on October 1, 1990; Order No. 24610, issued on June 3, 1991.

[5] Order No. 24859, issued on July 29, 1991; Order No. PSC-92-0146-FOF-TL issued on April 1, 1992.

[6] Order No. PSC-95-0203-FOF-TP, issued February 13, 1995; Order No. PSC-95-0918-FOF-TP, issued on July 31, 1995.

[7] Section 364.01(3), Florida Statutes (1995 Revised.)

encourage competition (through flexible regulatory treatment)[8] and to promote competition (by encouraging new entrants into telecommunications markets),[9] while retaining the existing requirement that the Commission ensure that all providers of telecommunications services are treated fairly (by preventing anticompetitive behavior.)[10]

In deciding this case, the Commission should remain mindful of its past policies and the stated policies of the Florida Legislature. In total, those policies require the Commission to encourage and foster intrastate competition and to protect consumers and competitors from the anticompetitive acts of those companies that continue to possess monopoly power with respect to telecommunications services. The Commission should be guided by those principles in this case.

The Legal Issues

Since the provisions of Chapter 364 have changed substantially since this docket was initially opened, the parties were directed by the Commission to respond to various legal issues which arose at the hearings. Those

[8] Section 364.01(4)(b), Florida Statutes (1995 Revised.)

[9] Section 364.01(4)(d), Florida Statutes (1995 Revised.)

[10] Section 364.01(4)(g), Florida Statutes (1995 Revised.)

issues were formalized in a memorandum, dated August 3, 1995, from Staff to all parties of record.

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 AT&T's Position: AT&T believes that, while the designated rate reductions incorporated in the Southern Bell settlement agreement and approved by the Commission in Order No. PSC-94-0172-FOF-TL are covered under the former version of Chapter 364, this phase of Docket No. 920260-TL is controlled by the current (revised) provisions of Chapter 364, Florida Statutes.

Argument: This issue presents a novel question for the Commission. While it is true that Docket No. 920260-TL was initiated under the prior version of Chapter 364, Florida Statutes, the rate revisions that are at issue here were not designated and were set for hearing at a future time. Section 364.385(2), Florida Statutes, provides, in relevant part:

> "...Any administrative adjudicatory proceeding that has not progressed to the stage of 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."

Since the issues before the Commission had not proceeded to the stage of hearings prior to July 1, 1995, and since the parties have apparently not agreed that this case should be governed by the prior provisions of Chapter 364, it appears that these proceedings must be governed by the existing provisions of Chapter 364.

On the other hand, the designated future rate reductions agreed to as part of the Southern Bell settlement and approved by the Commission in Order No. PSC-94-0172-FOF-TL, are clearly covered under the former version of Chapter 364. In fact, the new legislation is specific on this point in that it provides:

> " Florida Public Service Commission Order No. PSC-94-0172-FOF-TL shall remain in effect, and BellSouth Telecommunications, Inc., shall fully comply with that order unless modified by the Florida Public Service Commission pursuant to the terms of that order. ..."[11]

Unlike the rate reductions at issue in this proceeding, the designated rate reductions have already passed the hearing phase and have been approved by the Commission, even though some of those reductions will not be implemented until future years.

[11] Section 364.385(3), Florida Statutes (1995 Revised.)

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 AT&T's Position: No. "Basic local telecommunications service" is specifically defined in Section 364.02(2), Florida Statutes, to include only that "extended calling service in existence or ordered by the commission on or before July 1, 1995."

Argument: The recent revisions to Chapter 364 incorporate a specific definition of "Basic local telecommunications service." Such service is clearly defined to include:

> "...voice-grade, flat-rate residential and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited long distance calls within the local exchange area, dual tone multi-frequency dialing, and access to the following: emergency services such as '911,' all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, such term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995."[12]

The statutes make no provision for either Southern Bell or the Commission to expand this definition to include ECS routes ordered after July 1, 1995. The routes proposed by

[12] (Emphasis added.) Section 364.02(2), Florida Statutes (1995 Revised.)

Southern Bell are simply precluded by statute from becoming part of "basic local telecommunications service."

Other provisions of Chapter 364 support the conclusion that adoption of Southern Bell's proposal in this case will not result in the proposed ECS routes becoming part of basic service. The 1995 revisions to Chapter 364 directly address this questions as follows:

> " All applications for extended area service, or extended calling service pending before the commission on March 1, 1995, shall be governed by the law as it existed prior to July 1, 1995. Upon the approval of the application, the extended area service routes, or extended calling service shall be considered basic services and shall be regulated as provided in s. 364.051 for a company that has elected price regulation. ..."[13]

Southern Bell's proposal was not filed until May 15, 1995. Consequently, since the proposal was not pending on March 1, 1995, the proposed ECS plan is precluded from becoming part of basic local service.[14]

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

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[13] Section 364.385(2), Florida Statutes (1995 Revised.)

[14] In fact, Southern Bell's witness, Mr. Hendrix, admitted that ECS "would be a non-basic service." Ex. 7, p. 267.

Summary of AT&T's Position: Yes. Southern Bell's proposed ECS rates fail to cover the direct costs of providing the service plus the imputed price of Southern Bell's intrastate switched access services which Southern Bell's competitors would have to buy in order to compete with Southern Bell on the proposed routes.

Argument: Section 364.051(6)(c), Florida Statutes, seeks to protect and perpetuate intrastate telecommunications competition by requiring that:

> " The price charged to a consumer for a non-basic service shall cover the direct costs of providing the 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."[15]

The effect of this provision is to codify the Commission's existing access imputation standards. The statute simply means that, in the provision of intraLATA toll services, the LEC (in this case Southern Bell), must recover its own direct costs (such as marketing costs and billing and collection costs) and must also impute the prices which a competitor must pay to Southern Bell for the intrastate switched access services which it must utilize in providing the same service (or its functional equivalent) in

[15] Section 364.051(6)(c), Florida Statutes (1995 Revised.)

competition with Southern Bell, at least to the extent that those prices are in excess of Southern Bell's actual costs of providing those intrastate switched access services to itself.

The intent of the statute is essentially the same as the Commission's intent in establishing its access imputation guidelines in Docket No. 900708-TL. The basic premise behind both the statute and the guidelines is that competition can only be fostered and protected by requiring the LECs to include the prices of monopoly services (specifically intrastate switched access services) into the prices that they charge for services that they provide in a competitive market. The goal of both the statute and the guidelines is to place the LEC and its competitors on equal footing with respect to the pricing of competitive services. Such requirements would be unnecessary if LEC access services were priced at cost, but sadly such is not the case in Florida. Moreover, given the recent revisions to Chapter 364, which seriously erode the Commission's ability to reduce intrastate access charges to cost-based rates, proper imputation of access charges is absolutely essential to the development of full and fair competition in this state. In effect, the imputation requirements of Section 364.051(6)(c) and the guidelines of this Commission afford the only protection that consumers and competitors have against LEC abuses of the competitive process.

When tested against the appropriate imputation standards (both in the statute and the Commission's guidelines), Southern Bell's proposed ECS service fails miserably. The evidence indicates that the average revenue for a minute of residential ECS is less than $.06,[16] while an IXC carrying competitive traffic on the same route would have to pay Southern Bell access charges of $.0745 per minute (effective October 1, 1995.)[17] This analysis is consistent with the analysis performed by FIXCA's witness, Mr. Gillan, which also shows that Southern Bell's ECS proposal fails to meet even the most superficial access imputation test.[18] The only reasonable conclusion to be drawn from the evidence of record is that Southern Bell's proposal does not cover even the access charges on the calls in question, much less Southern Bell's direct costs (such as marketing and billing and collecting expenses) which are also required to be covered by the statutory and Commission-imposed guidelines.

Southern Bell has attempted to justify the unlawful and anticompetitive pricing of its ECS proposal by the most disingenuous of arguments. In essence, Southern Bell has

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[16] This figure can easily be computed by dividing the $.25 per call rate by the average duration of a residential call (4.2 minutes as admitted by Southern Bell, Tr. Vol. 1, Stanley, p. 111.)

[17] Tr. Vol. 3, Gillan, p. 299.

[18] Tr. Vol. 3, Gillan, pp. 298-299.

ignored the language of the statute and the Commission's own guidelines. What Southern Bell has proposed is that the mandates of the statute can be met by lumping ECS minutes and revenues together with other intraLATA toll revenues (except WATS and 800 service revenues) and then testing the resulting average revenue per minute against an access charge rate that excludes Local Transport Charges.[19]

Southern Bell's rationale for its argument is two-fold, and both of its premises are equally flawed. First, Southern Bell argues that lumping ECS minutes and revenues together with other (higher priced) intraLATA toll is justified by the fact that "... Southern Bell is aggregating functionally equivalent services."[20] This argument ignores both the clear language and the intent of the statute. The clear language of Section 364.051(6)(c) refers to the provision of the "same or functionally equivalent service."[21] Southern Bell improperly prefers to read "services" where the statute specifically states "service." Its argument can only be sustained through an intentional misreading of the statute.

There is no doubt that a competitor attempting to provide this same service (or its functional equivalent) on

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[19] Tr. Vol. 3, Hendrix, pp. 365-366.

[20] Tr. Vol. 3, Hendrix, p. 366.

[21] Emphasis added.

the affected routes would have to pay Southern Bell more in access charges than it would be able to charge its customers. Thus, Southern Bell's attempt to lump revenues and minutes from ECS service (which is a specific service within Southern Bell's tariffs) together with revenues and minutes from intraLATA toll service (which is a separate and distinct service within Southern Bell's tariffs) thwarts the legislative goal of promoting competition in the provision of "non-basic" services. Moreover, Southern Bell's argument ignores the fact that ECS is dialed on a 7-digit basis while intraLATA toll generally requires the dialing of 10 digits,[22] and further ignores the fact that Southern Bell, itself, has classified the service as "local" in nature by virtue of its inclusion in the local services section of its General Subscriber Service Tariff (Section A2.2).[23] In fact, in the past, ECS-type services have been considered by the Commission to be a type of substitute for flat-rate EAS, but Southern Bell has failed to include any flat-rate EAS minutes in its computations.[24] Had it done so, the average revenue per minute would have undoubtedly been much lower than that contained in Southern Bell's testimony.

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[22] Tr. Vol. 3, Hendrix, pp. 414-415.

[23] Tr. Vol. 3, Gillan, p. 301.

[24] Ex. 7, pp. 273-274.

The other aspect of Southern Bell's imputation test (i.e., the calculation of the appropriate prices to be imputed) is similarly distorted. Specifically, Southern Bell argues that Local Transport Charges should not be included in the access prices to be imputed because local transport is "not a monopoly component for switched access service."[25] Southern Bell offers little or no support for this conclusion, other than speculation that services of alternative access vendors are available in Florida. Southern Bell has made no reasonable showing that IXCs have a comparable alternative to Southern Bell's local transport services on each of the routes in question in this case. However, even if Southern Bell had been able to make such a demonstration, its arguments ignore the fact that IXCs will still have to pay Southern Bell's Residual Interconnection Charge ("RIC") when they use Southern Bell's switched access services to carry calls on the affected routes.[26] Southern Bell did not include the RIC in its access computations in this case, but if it had been included (as it should have been), the access charge figure which it presented to the Commission would have been higher.[27]

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[25] Tr. Vol. 3, Hendrix, pp. 367-369.

[26] Tr. Vol. 3, Hendrix, pp. 411-413.

[27] Tr. Vol. 3, Hendrix, p. 411.

In addition to misstating the appropriate access charges to include in the test required by Section 364.051(6)(c), Southern Bell has completely ignored the other requirements of the statute. Specifically, Southern Bell's computations make no provision for including its direct costs of providing ECS, such as its marketing costs and its billing and collecting costs. Even if access charges were properly imputed (which they were not), ignoring those direct costs would give Southern Bell a substantial advantage over its competitors since each of Southern Bell's competitors must cover its own direct costs as well as the access charges that it must pay to Southern Bell. Therefore, Southern Bell's computation further thwarts the clear language and intent of the statute and this Commission's mandates.

It should be obvious to the most casual observer that Southern Bell's filing in this case is designed to foreclose competition on 288 of its most profitable intraLATA toll routes in direct violation of Chapter 364. In weighing the arguments in this case, the Commission should remain mindful of the stated intent of the recent revisions to Chapter 364. Those revisions were purportedly directed at the encouragement of more, rather than less, competition in the Florida intrastate telecommunications markets. Southern Bell's proposal in this case is destructive of those goals and must be rejected, both as a matter of policy and as a matter of law.

ISSUE 4: Does Southern Bell's ECS proposal violate any other provisions of the revised Chapter 364, Florida Statutes, excluding those previously identified in the positions on the issues listed in the prehearing order?

Summary of AT&T's Position: Yes. Southern Bell's proposal violates both the spirit and intent of the recent revisions to Chapter 364 as discussed in the other portions of this brief. Moreover, Southern Bell's proposal constitutes an anticompetitive act or practice in violation of Section 364.051(6)(a), Florida Statutes.

Other Issues

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. (T-95-304)

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.

<u>Summary of AT&T's Position</u>: Both Southern Bell's proposal and CWA's proposal should be rejected. The Commission should utilize the available funds to implement the proposal of McCaw and FMCA, and should use the remaining funds to reduce the charges for Direct Inward Dialing ("DID") and PBX trunks.

<u>Argument</u>: As previously demonstrated in this brief and by the evidence of record, Southern Bell's proposal in this case is blatantly anticompetitive. It violates both the letter and intent of the law, and it is simply an attempt to remonopolize markets that this Commission has previously sought to open to competition. Approval of Southern Bell's proposal would require the reversal of years of legislative and Commission policy by depriving consumers of the benefits of effective competition on a large number of toll routes that previously have been adequately served by competing carriers. Moreover, approval of Southern Bell's proposal would render the benefits of intraLATA presubscription (which the Commission recently found to be in the public interest) a nullity in large portions of Southern Bell's service territory. The plan must be rejected.

Southern Bell's plan is essentially nothing more than an unlawful anticompetitive response to the pending

implementation of intraLATA presubscription. IntraLATA presubscription, as the Commission well knows, is intended to give consumers the option of choosing a carrier other than the LEC for 1+ intraLATA toll service. When faced with the prospect of losing its monopoly with respect to 1+ intraLATA toll traffic, Southern Bell chooses merely to convert that traffic to 7-digit dialing at prices less than the access charges that its competitors must pay to carry the same calls. This is the response of a monopolist as opposed to the response of a truly competitive company.

Southern Bell seeks to disguise its true intent by arguing that certain "community of interest" considerations justify the remonopolization of the affected routes. This argument is a ruse when one considers that at least one of the routes in question (Miami - Key West) is some 135 miles long.[28] Other routes were included by Southern Bell on the eve of the hearings even though those routes do not even meet Southern Bell's own limited standards.[29] One can only wonder why Southern Bell only began to recognize the "need" for ECS on the affected routes when it was faced with the implementation of intraLATA presubscription. The answer should be obvious. The "need" for ECS on these routes has more to do with Southern Bell's "need" to protect its market than it has to do with the needs of consumers.

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[28] Tr. Vol. 1, Stanley, pp. 120-121.

[29] Tr. Vol. 1, Stanley, pp. 118-119.

In evaluating Southern Bell's proposal, the Commission should not be persuaded by Southern Bell's contentions that consumers will "benefit" from its plan. Those purported "benefits" will be short-lived, if they exist at all. Once Southern Bell has managed to freeze competitors out of the market, it can and probably will raise the rates on the affected routes under the "non-basic" service provisions of Section 364.051(6), Florida Statutes. Southern Bell's own witness admitted that it would be possible for Southern Bell to raise the rates on the affected routes when it becomes subject to price regulation.[30] In fact, the price regulation provisions of Section 364.051(6)(a) will permit Southern Bell to raise the rates for this service as much as 20% per year and there will be little or nothing that the Commission can do to stop the plunder. Having lost the benefits of effective competition on these formerly competitive routes, consumers will be faced with the prospect of being held captive to price increases which the Commission is powerless to prevent. The only solution to this dilemma is for the Commission to protect consumers today, by rejecting Southern Bell's anticompetitive proposal so that future competition can produce the benefits that were intended by the Commission and the legislature.

While superior to Southern Bell's proposal, CWA's proposal is also flawed in many ways. Essentially, CWA

[30] Tr. Vol. 3, Hendrix, p. 414.

would have the Commission reduce rates for services that Southern Bell and the other large LECs have argued (both before this Commission and in the legislature) are already priced below cost. Approval of such a plan, while not nearly as detrimental as the proposal made by Southern Bell, could have the effect of stifling the local exchange competition that the legislature sought to encourage through the recent revisions to Chapter 364. CWA's plan should be rejected for that reason if for no other.

AT&T submits that the Commission should adopt the proposal of McCaw and FMCA by using some of the available funds to reduce cellular access charges. Cellular interconnection service, like switched access service (although not to the same degree), is currently priced significantly above the cost that Southern Bell incurs in providing the service.[31] Rates for this service should be reduced, and this case provides an appropriate opportunity to do so.

AT&T submits that the remainder of the funds available for disposition should be used to reduce the level of discriminatory pricing that currently exists in Southern Bell's provision of DID services and PBX trunk services. This proposal is essentially the same as that proposed by Ad Hoc's witness, Mr. Metcalf.[32] As demonstrated by the

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[31] Tr. Vol. 2, Guedel, p. 207.

[32] Tr. Vol. 2, Metcalf, pp. 248-258.

testimonies of both AT&T and Ad Hoc, Southern Bell's current local pricing structure unfairly discriminates against consumers who own PBX systems as opposed to those customers who subscribe to Southern Bell's ESSX service. The Commission should take the opportunity to eliminate such discrimination.

Currently, the price that a customer pays to Southern Bell for a local loop depends upon that customer's selection of a vendor for PBX/PBX-like features and functions. If a customer selects Southern Bell's ESSX service, he or she will pay less for the loop than if the same customer has selected a PBX from a competitive vendor.[33] This is true even though, under certain circumstances, the same pair of wires may be used as either a PBX trunk or and ESSX loop.[34] Under Southern Bell's current pricing scheme, the price charged for that pair of wires when used as a PBX trunk could be some 600% of the price charged for the same facility when it is used as an ESSX loop.[35] This form of rate discrimination is antithetical to the development of a fully competitive intrastate telecommunications market in Florida.

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[33] Tr. Vol. 2, Guedel, p. 208.

[34] Tr. Vol. 2, Metcalf, pp. 266-267.

[35] Tr. Vol. 2, Metcalf, p. 266-267; Vol. 2, Guedel, pp. 210-211; Ex. 17.

In addition to the price discrimination that exists with respect to Southern Bell's pricing of loops used to provide PBX trunk service, there are other examples of discriminatory pricing in Southern Bell's tariffs. For instance, if a customer who has selected a PBX desires to use Southern Bell's DID and telephone number assignment services, Southern Bell will charge that customer $21.80 per month for each DID trunk and $4.00 per month for each group of 20 numbers. If the customer had purchased Southern Bell's ESSX service (which competes with providers of PBX systems), Southern Bell would have provided those monopoly services to the customer at no charge.[36]

Given the mandates of the recent revisions to Chapter 364, it is imperative that the Commission correct the substantial price differences that exist between these various services. This docket provides a golden opportunity for the Commission to make those corrections and to move forward into the era of competition that was envisioned by the legislature. The Commission should not let this opportunity pass without taking appropriate action.

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?

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[36] Tr. Vol. 2, Guedel, p. 212.

<u>Summary of AT&T's Position</u>: While AT&T maintains that Southern Bell's ECS proposal should be rejected, if the Commission does approve the plan, it must take action (consistent with the testimony of FIXCA's witness, Mr. Gillan) to ensure that viable competition continues on the affected routes.

<u>Argument</u>: AT&T maintains that Southern Bell's ECS proposal is unlawful and is contrary to the express policies of this Commission and the Florida Legislature. It should be rejected for the many valid reasons set forth in this brief and adequately demonstrated by the evidence of record. However, if the Commission does determine that the plan should be implemented, it is imperative that the Commission take appropriate action to ensure that viable competition continues to exist on the affected routes. The testimony of FIXCA's witness, Mr. Gillan, recommends certain actions that are absolutely essential to the goal of ensuring effective competition on the ECS routes. Specifically, Mr. Gillan recommends that, should the Commission chose to implement Southern Bell's ECS proposal, it must require Southern Bell to introduce:

1. a wholesale ECS-like service that is designed to be resold, and

2. an interconnection rate to apply to the use of Southern Bell's local network for the origination and termination of ECS-like traffic.[37]

In fact, as pointed out by Mr. Gillan, the interconnection rate which he recommends is the only means by which Southern Bell's ECS plan could pass the statutory imputation test.[38] Therefore, should the Commission decide to adopt Southern Bell's ECS proposal, the appropriate interconnection rate (as proposed by Mr. Gillan) must be implemented concurrently with the implementation of ECS service. Otherwise, Southern Bell's ECS rates will be in violation of the provisions of Section 364.051(6)(c) as previously discussed in this brief.

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

Summary of AT&T's Position: If the Commission adopts AT&T's recommendations with respect to Issue 1, the tariffs should be filed as soon as possible with an effective date of October 1, 1995.

Argument: The terms of the settlement agreement require Southern Bell to reduce rates by October 1, 1995. If AT&T's recommendation with respect to Issue 1 is accepted by the

[37] Tr. Vol. 3, Gillan, p. 304.

[38] Tr. Vol. 3, Gillan, pp. 304-305.

Commission, tariffs can be developed and filed immediately, and the effective date of October 1, 1995, can be met. However, if the Commission determines that Southern Bell's ECS proposal should be adopted, then the ECS tariffs cannot lawfully be implemented until the conditions set forth in FIXCA's testimony (i.e., the implementation of an appropriate interconnection rate for ECS-like traffic) have been met. Consequently, under that scenario, Southern Bell's ECS tariff should be assigned an effective date that is concurrent with the effective date of the appropriate interconnection tariff. Should that process result in a delay beyond the October 1, 1995, date stipulated for rate reductions, Southern Bell should be required to return the excess revenues to its customers (in the form of a credit on the monthly bill) in accordance with the terms of the settlement agreement. Such credits should continue until the proper tariffs become effective.

Conclusion

Both the evidence of record and the applicable provisions of Florida law indicate that Southern Bell's proposed ECS plan should be rejected. The Commission's past policies and the recent revisions to Chapter 364 reflect a clear intent to encourage and foster the development of competition in the Florida intrastate telecommunications market. Southern Bell's proposal is destructive of those

goals and is contrary to the clear and explicit provisions of the applicable law.

AT&T's proposal, on the other hand, is designed to encourage, rather than frustrate, competition in Florida. It is consistent with the policies of this Commission and with the legislative goal of encouraging the development of effective competition. AT&T's recommendations should be adopted by the Commission.

Respectfully submitted this 17th day of August, 1995.

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CERTIFICATE OF SERVICE

DOCKET NO. 920260-TL

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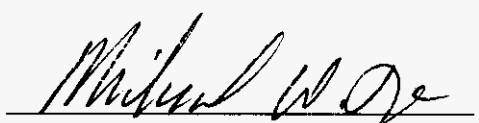

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