

W. J. WHITE

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Comprehensive review of the revenue requirements and rate stabilization plan of Southern Bell Telephone and Telegraph Company. (Deferred from the 9/12/95 Commission Conference)

DOCKET NO. 920260-TL

COPY

BEFORE: CHAIRMAN SUSAN F. CLARK
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER JULIA L. JOHNSON
 COMMISSIONER DIANE K. KIESLING
 COMMISSIONER JOE GARCIA

PROCEEDING: AGENDA CONFERENCE

ITEM NUMBER: 20

DATE: Tuesday, September 26, 1995

PLACE: The Betty Easley Conference Center
 Hearing Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: JANE FAUROT
 Notary Public in and for the State of Florida at Large

ACCURATE STENOGRAPHY REPORTERS, INC.
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STAFF RECOMMENDATIONS

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, F.S.?

Primary Recommendation: No. Since this proceeding did not progress to the stage of a hearing on July 1, 1995 and the parties did not consent to use the former version of Chapter 364, F.S., this proceeding should be controlled by the revised version of Chapter 364, F.S.

Alternative Recommendation: Yes. This proceeding (Docket No. 920260-TL) "progressed to the stage of hearing" in January 1994. A hearing was only avoided at that time because all parties agreed to, and the Commission approved, a stipulated resolution. Further, these proposals are being considered to implement one of the requirements of Order No. PSC-94-0172-FOF-TL. Order No. PSC-94-0172-FOF-TL is the express and only subject of Section 364.38593), F.S., a "savings" clause. Therefore, the unspecified \$25 million rate reduction scheduled for October 1, 1995 should be processed under the former version of Chapter 364, F.S.

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), F.S.?

Primary Recommendation: No. If the Commission decides in Issue No. 1 that the amended Chapter 364 applies and if the Commission approves Southern Bell's ECS proposal, then, based on the statutory definitions of basic and non-basic services in Section 364.02 and the savings clause in Section 364.385, Southern Bell's ECS plan should be considered non-basic service.

Alternative Recommendation: Yes.

Legal Issue 3: If it is not part of basis local telecommunications service, does Southern Bell's ECS plan violate the imputation requirement of Section 364.051(6)(c), F.S.?

Primary Recommendation: Before the Commission can determine whether Southern Bell's ECS plan does or does not violate the imputation requirement of Section 364.051(6)(c), F.S., it must determine what constitutes the "direct" cost of ECS as well as what is the appropriate "monopoly component." Staff has recommended in Issue No. 2 that development of a resale and/or interconnection rate, as specified in Section 364.162(4) and (5), will adequately address the concerns that the imputation requirement is designed to address, at

1 a minimum for purposes of this case.
2 Alternative Recommendation: Since alternative staff
3 believes the plan should be approved as part of basic local
4 telecommunications service under the authority of Section
5 364.3853), F.S., the imputation requirement of Section
6 364.05196)(c), F.S., does not apply.
7 Legal Issue 4: Does Southern Bell's ECS proposal violate
8 any other provision of the revised Chapter 364, F.S.,
9 excluding those previously identified in the positions on
10 the issues listed in the prehearing order?
11 Recommendation: No. Southern Bell's ECS proposal does not
12 appear to violate any other provisions of Chapter 364, F.S.
13 Legal Issue 5: Should Staff's motion to supplement the
14 record be granted?
15 Recommendation: Yes. No party filed a response to the
16 motion. Therefore, it may be assumed that no party opposes
17 the request.
18 Issue 1A: Should the following proposal to dispose of \$25
19 million for Southern Bell be approved?
20 a) SBT's proposal to implement the Extended Calling Service
21 (ECS) plan pursuant to the tariff filed on May 15, 1995.
22 (T-95-304)
23 Primary Recommendation: No. Southern Bell's proposal to
24 implement the Extended Calling Service (ECS) plan pursuant
25 to the tariff filed on May 15, 1995 (T-95-304) should be
denied. In addition, the supplemental routes filed by
Southern Bell on July 27, 1995 should also be denied.
Alternative Recommendation: Southern Bell's Extended
Calling Service (ECS) plan contained in its May 15, 1995
filing, as supplemented by the additional 36 one-way routes
in Exhibit 5, should be approved, effective January 1, 1996,
and considered basic service. Further, during the period
beginning October 1, 1995 through December 31, 1995,
Southern Bell should be required to make the appropriate
refund in compliance with the Stipulation (Order No. PSC-94-
0172-FOF-TL). The Commission should revisit its decision in
Docket No. 921193-TL and require implementation of the Palm
Beach County ECS routes on January 1, 1996. Pay telephone
providers shall charge end users \$.25 per message and pay
the standard interconnection charge. Interexchange carriers
(IXCs) may continue to carry the same types of traffic on
these routes that they are now authorized to carry.
Issue 1B: Should the following proposal to dispose of \$25
million for Southern Bell be approved?
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;

- 1 4. Basic telephone service of any public school, community
college and state university;
2 5. Basic telephone service of any qualified disabled
ratepayer.

3 Recommendation: No. The Commission should not adopt CWA's
proposal. The costs of setting up and administering the
4 rate categories that CWA proposes would outweigh the social
benefits. To apply small reductions to the basic rates of
5 selected residential and business customers in this way
would therefore be an inefficient use of the funds
6 available.

7 Issue 1C: Should the following proposal to dispose of \$25
million for Southern Bell be approved?

- 8 c) McCaw's and FMCA's proposal that a portion be used, if
necessary, to implement the decisions rendered in Docket
No. 940235-TL.

9 Recommendation: No. McCaw's concerns do not need to be
addressed in this case. First, to the extent that the new
10 statute prohibits implementation of any of the Commission's
decisions in Docket No. 940235-TL, that fact cannot be
11 overridden by any decision made in another proceeding.
Second, if the Commission determines that the flowthrough
12 should be continued, it can order SBT to do it without
requiring that the revenue reduction be offset in this case.

13 Issue 1D: Should the following proposal to dispose of \$25
million for Southern Bell be approved?

- 14 d) Any other plan deemed appropriate by the Commission.

15 Recommendation: The Commission should approve a plan which
implements only 70 of the 288 ECS routes proposed by
Southern Bell. Implementation of these 70 ECS routes would
16 represent \$10,013,005, including a stimulation factor of
50%, in revenue losses. These ECS routes are listed in
17 Table 1 of Staff's memorandum dated August 31, 1995. The
remaining \$14,986,995 from the \$25 million should be used to
18 reduce PBX trunk rates and DID rates. The recommended rate
reductions and new rates for PBX and DID are provided in
19 Table 2 of Staff's memorandum.

20 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,
21 should the Commission take?

22 Recommendation: Yes, competition should continue to be
allowed on any and all ECS routes approved in this docket.
When resale and interconnection rates are established,
23 either by negotiations among the parties or by this
Commission, this will resolve the imputation issue. If the
24 statute is interpreted as requiring imputation for non-basic
services, then a resale or interconnection rate, which is
25 required to cover the LEC's costs (see Section 364.162(4) &
(5), be below the retail rate, and not be so high as to

1 serve as a barrier to competition (see Section 364.162(5),
2 would adequately address all the concerns that imputation
3 requirements address. There is no further need to address
4 imputation in this docket. The Commission should take no
5 additional action.

6 Issue 3: When should tariffs be filed and what should be
7 the effective date?

8 Recommendation: Tariffs should be filed on November 1, 1995
9 to implement the Commission's decision in Issues Nos. 1 a),
10 b), c) or d) (including any combination thereof), and Issue
11 No. 2 to become effective on January 1, 1996. Refunds
12 should be made in accordance with the Settlement Agreement
13 from October 1, 1995 through December 31, 1995.

14 Issue 4: Should this docket be closed?

15 Recommendation: No. This docket should remain open to
16 continue to implement the agreement approved by the
17 Commission in Order No. PSC-94-0172-FOF-TL.
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P R O C E E D I N G S

1
2 CHAIRMAN CLARK: Item 20.

3 COMMISSION STAFF: Commissioners, in Item 20 you
4 have before Staff's recommendation in Docket 920260,
5 the Commission's review of Southern Bell's revenue
6 requirements.

7 As you are aware, the parties stipulated this
8 docket last year and provided for three phases of rate
9 reductions. The first occurring last July, which
10 included switched access reductions of \$50 million and
11 \$10 million which are specified as mobile
12 interconnection usage rate reductions, the elimination
13 of bill numbered screening charge and reduced DID trunk
14 termination rates.

15 You've just completed voting on the October 1st
16 switched access reductions for this year of 55 million,
17 and before you you have unspecified rate reductions of
18 25 million that are scheduled to be implemented this
19 October. And next October, again, you will have
20 switched access reductions of 35 million and
21 unspecified rate reductions of 48 million.

22 According to the terms of the stipulation,
23 Southern Bell was to file approximately four months
24 before the effective date of the rate reductions a
25 proposal on how to best address these rates being

1 reduced. Interested parties at that time could also
2 provide proposals, and what you have before you is
3 Southern Bell's proposal, which they filed on May 15th,
4 1995, to introduce extended calling service to satisfy
5 their outstanding 25 million revenue reduction. The
6 Commission held a hearing on July 31st of this year to
7 take evidence on how best to dispose of this
8 outstanding 25 million, and this recommendation
9 addresses the tariff proposal and the other proposals
10 to reduce Southern Bell's revenues by \$25 million. It
11 is scheduled to be implemented by October 1st.

12 We have provided you corrections that had some
13 basically housekeeping matters last Friday. It was
14 some flow-through changes in the money and some tables
15 were changed. In an effort to assist you, what we
16 would recommend is that the issues be reviewed in the
17 following order. There was a memo provided to you
18 yesterday on that. Legal Issue 5, which is generally a
19 housekeeping matter, should be first. Legal Issues 1
20 and 2, and Technical Issues 1A through 1D, then
21 Technical Issue 2, Legal Issues 3 and 4, and then,
22 finally, Technical Issues 3 and 4.

23 CHAIRMAN CLARK: Commissioners, I had asked the
24 Staff to circulate that memo to you all, so you would
25 have it in advance. And if there is no objection, or

1 if you have an even better suggestion as to how we
2 proceed, I'm willing to entertain that. But absent
3 that, we are going to follow the suggestion of the
4 Staff, okay? With that, let's go to Issue 5.

5 COMMISSION STAFF: Legal Issue 5, Commissioner, is
6 Staff's motion to supplement the record, and should it
7 be granted. Mr. Elias is presenting that item.

8 CHAIRMAN CLARK: Give me the page number on that.

9 MR. ELIAS: 33. Essentially, Commissioners, this
10 unopposed motion to supplement the record seeks to add
11 certain information related to the pricing of PBX and
12 DID trunk service offerings to have available to the
13 Commission certain information necessary to effect
14 those rate reductions if the Commission opts to
15 implement that proposal.

16 CHAIRMAN CLARK: Is there a motion?

17 COMMISSIONER JOHNSON: Move it.

18 CHAIRMAN CLARK: Without objection, Issue 5 is
19 approved.

20 Legal Issue Number 1.

21 COMMISSION STAFF: Commissioners, Legal Issue 1
22 is, since this docket was opened prior to the new law
23 becoming enacted, should the unspecified 25 million
24 rate reduction scheduled for October 1st, 1995, be
25 processed under the former version of Chapter 364,

1 Florida Statutes. Ms. Canzano will present the primary
2 recommendation and Mr. Elias will present the
3 alternative recommendation.

4 MS. CANZANO: Commissioners, in Legal Issue
5 Number 1, Staff's primary recommendation is that the
6 \$25 million rate reduction scheduled for October 1st
7 should be processed under the revised version of
8 Chapter 364. We believe that the only relevant portion
9 of the savings clause is Subsection 2. Since this
10 proceeding did not progress to the stage of a hearing
11 by July 1st, 1995, and the parties did not consent to
12 use the former version of Chapter 364, this proceeding
13 should be controlled by the revised version of Chapter
14 364.

15 MR. ELIAS: Alternative Staff advocates two bases
16 for its conclusion that this docket should be processed
17 under the former version of Chapter 364. We believe
18 that the proceeding at issue is Docket Number 920260,
19 the Southern Bell rate case, which in the definition of
20 the statute, progressed to the stage of hearing in
21 February of 1994, when the Commission determined to
22 approve the stipulated resolution that was agreed to by
23 all the parties.

24 Further, Section 364.385(3) of the new law
25 specifically provides that the order that was issued in

1 that docket shall continue in full force and effect.
2 And, therefore, on that basis, the docket should be
3 processed under the old law.

4 CHAIRMAN CLARK: Questions, Commissioners?

5 COMMISSIONER GARCIA: I will move just to get this
6 going, I guess, the alternative recommendation.

7 Commissioner DEASON: Second.

8 COMMISSIONER KIESLING: Second.

9 CHAIRMAN CLARK: All those in favor, say aye.

10 COMMISSIONER KIESLING: Aye.

11 COMMISSIONER JOHNSON: Aye.

12 CHAIRMAN CLARK: Aye.

13 COMMISSIONER GARCIA: Aye.

14 COMMISSIONER DEASON: Aye.

15 CHAIRMAN CLARK: Opposed, nay.

16 The alternative recommendation on Legal issue 1 is
17 approved.

18 Legal Issue 2.

19 COMMISSION STAFF: Legal Issue 2 is, if approved,
20 would Southern Bell's ECS plan become part of the basic
21 local telecommunication service as defined in Section
22 364.02, Paragraph 2, Florida Statutes. Ms. Canzano
23 will, again, present the primary recommendation and
24 Mr. Elias, the alternative.

25 MS. CANZANO: Commissioners, if you approve

1 Southern Bell's ECS proposal, then based on the
2 statutory definitions of basic and non-basic services
3 in Section 364.02, and the savings clause in Section
4 364.385, it is Staff's primary recommendation that
5 Southern Bell's ECS plan should be considered non-basic
6 service.

7 COMMISSIONER JOHNSON: How can it be considered
8 non-basic service under the old statute?

9 MS. CANZANO: I think that if you apply the old --
10 I mean, saying that the old statute applies, but you
11 still, under the new statute, need to say whether it's
12 basic or non-basic, in my opinion.

13 COMMISSIONER JOHNSON: So, we are applying the new
14 statute, even though we just stated the old statute
15 applies.

16 MS. CANZANO: We have to figure out what groups of
17 services are going to fall where.

18 COMMISSIONER JOHNSON: Would that be relevant
19 under the old statute? Wouldn't it necessarily be
20 basic service and the discretionary and
21 non-discretionary services wouldn't be an issue once we
22 determine that the new law applies?

23 MS. CANZANO: Not in my opinion.

24 COMMISSIONER JOHNSON: And explain why.

25 MS. CANZANO: Because I think that Southern Bell's

1 ECS plan, even though if you approve it under the --
2 under what basis are you approving it under the old
3 law? Let me back up a little bit.

4 COMMISSIONER JOHNSON: Well, we've just decided
5 that the old law applies.

6 MS. CANZANO: Okay. And if you base that on
7 Subsection 2 of the savings clause, I think that the
8 ECS plan wasn't proposed until after March 1st, so then
9 that wouldn't work to call it --

10 CHAIRMAN CLARK: I think there may be a
11 miscommunication. If we determine that it should be
12 processed under the old law, why is it important at
13 this point to determine that it is either basic or
14 non-basic service? I know it's relevant to what they
15 can do after 1996 if they elect price caps, right? But
16 why do we need to decide at this point? I mean, is
17 this informational for us?

18 MR. ELIAS: I don't believe so. I think the
19 problem that you have is the question of imputation in
20 364.051(6)(c), which was raised as an issue in this
21 proceeding.

22 CHAIRMAN CLARK: But imputation becomes relevant
23 if the new law applies.

24 Commissioner Kiesling, did you have a question?

25 COMMISSIONER KIESLING: Yes. I mean, part of my

1 problem still goes back to the savings clause. I guess
2 it's in Subsection 3 that essentially says that our
3 order that implemented this settlement is going to
4 continue in force despite the new law. And if that is
5 the case, then I'm trying to understand why deciding if
6 it is basic or non-basic matters. And am I correct
7 that it matters in your mind because of the possibility
8 that after January 1, '96, Southern Bell could raise
9 their rates on this service if we don't call it basic
10 service?

11 MR. ELIAS: That's correct.

12 COMMISSIONER KIESLING: Well, if we say that it's
13 neither basic nor non-basic because it is a rate that
14 is arising out of the settlement and not out of the
15 provisions of the new law, can't we avoid that?

16 MS. CANZANO: I think that at some point you will
17 have to address that question.

18 CHAIRMAN CLARK: I think the legislation is
19 drafted. It can't be in the netherland; it is either
20 basic or it is non-basic.

21 MS. CANZANO: Yes.

22 CHAIRMAN CLARK: Because non-basic is described as
23 everything that is not basic, basically.

24 MS. CANZANO: So, it's either going to be one or
25 the other.

1 CHAIRMAN CLARK: Yes.

2 COMMISSIONER KIESLING: Yes. But if we call it
3 non-basic, then come January 1, they can raise the
4 rates 20 percent.

5 MS. CANZANO: Yes, but that's an independent
6 question to me in terms of just deciding the issue of
7 whether it's basic or non-basic.

8 COMMISSIONER KIESLING: But if they can raise
9 those rates, then how does that impact the amount of
10 dollars that they are supposed to be refunding via this
11 mechanism? You know, I had a lot of problems with
12 Issues 2 and 3, because it seems like it's a Catch-22
13 that neither basic nor non-basic is really the right
14 place to put it.

15 MR. ELIAS: And my thought is that when the
16 Legislature changed the law, they defined certain
17 services as basic and everything else as non-basic. If
18 we don't make an affirmative determination at this
19 juncture that this service fits into one category or
20 the other, I think that leaves the door open for
21 somebody on January 2nd, or whenever Southern Bell opts
22 to elect price regulation, to come in here with a
23 complaint saying, "Commission, this is non-basic
24 service. It does not meet the imputation guidelines of
25 Section 364.051(6)(c)," and we'll hear the same

1 evidence and arguments that we have already heard.

2 CHAIRMAN CLARK: I'm still confused. I think I
3 understand that it's important, it will be important
4 after 1996.

5 MR. ELIAS: It will be important at the beginning
6 of 1996, or whenever Southern Bell --

7 CHAIRMAN CLARK: For two reasons: First, whether
8 or not they can raise the rates themselves.

9 MR. ELIAS: Yes. And, secondly, if it is
10 non-basic service, whether it violates the imputation
11 requirement of Section 364.051(6)(c).

12 CHAIRMAN CLARK: Which imputation requirement only
13 starts in 1996.

14 MR. ELIAS: Yes.

15 CHAIRMAN CLARK: Now, did I understand from your
16 recommendation that a way of solving the concern about
17 imputation is that this service can be set at its
18 wholesale level and resold?

19 MS. NORTON: Yes.

20 CHAIRMAN CLARK: That competitors will -- Southern
21 Bell, basically, will have to give them some sort of
22 wholesale rate that equates to this retail rate and
23 then that solves imputation problems?

24 MS. NORTON: It's a mechanism set up under the new
25 law to establish resale and/or local interconnection

1 rates by negotiation, the Commission resolving any
2 disputes. That applies to non-basic services, and that
3 mechanism itself is developed under the new law. Now,
4 under the old law, this Commission has existing
5 imputation policies.

6 CHAIRMAN CLARK: With respect to the 25 cent plan?

7 MS. NORTON: The Commission has not -- when it has
8 ruled whether these ECS plans are local or toll, when
9 it has made a determination, it has called them local.

10 CHAIRMAN CLARK: Which means imputation is not a
11 problem.

12 MS. NORTON: Imputation did not apply.

13 CHAIRMAN CLARK: Because it's a monopoly service.

14 MS. NORTON: Right.

15 CHAIRMAN CLARK: And you are suggesting we not
16 call it local in this case.

17 MS. NORTON: No, actually, in later decisions, the
18 Commission, in the Broward/Dade docket, they put in
19 ECS, did not make a determination and did say that
20 competition should continue. And so you have varying
21 implementations.

22 CHAIRMAN CLARK: Okay. Let me ask another
23 question. I think Commissioner Kiesling brought up a
24 point I had thought about, and that being if they raise
25 their rates early on, the refund may not be

1 accomplished or the rate reduction required may not be
2 accomplished. So, certainly, it seems to me that's a
3 constraint, number one. That since the law is specific
4 with respect to the implementation of that order by
5 suggesting ECS to us, there would be an additional
6 constraint on them raising those rates. They would
7 have to show us that they have, in fact, accomplished
8 the refund they agreed to by allowing these rates to be
9 in effect for the length of time to accomplish that
10 rate. Am I incorrect in that?

11 MR. ELIAS: I think that's a reasonable
12 interpretation of the statute and the framework that
13 this order was agreed, you know, that this resolution
14 was agreed to.

15 MS. CANZANO: Commissioners, may I offer a
16 suggestion, perhaps? If you decide it's non-basic
17 service, but you're still concerned about raising --
18 the ability of Southern Bell to raise it 20 percent
19 because it's a non-basic service, is it possible,
20 pursuant to the Commission order and Subsection 3, that
21 you bar them from raising the rates on this particular
22 non-basic service pursuant to Subsection 3 of the
23 savings clause?

24 COMMISSIONER KIESLING: Well, that's kind of what
25 I was talking about, because it seemed to me that --

1 you know, my gut reaction is this is not basic service
2 by the definitions in the new statute. But the only
3 way, you know, from first blush, that we could make
4 sure that Southern Bell does not, when they have the
5 opportunity next year, raise the rates and thereby
6 avoid the total amount of the refund, my thought was
7 that we could read those two sections together, so that
8 we say that it is non-basic service under the
9 definition, but that in order to effectuate
10 Subsection 3 of the savings clause and to fully comply
11 with the order, as that statute says, that we impose
12 some kind of restriction on Southern Bell to keep them
13 from being able to raise these rates until they have
14 effectuated the full amount of the refund. I mean,
15 otherwise, I'm afraid it could be defeated.

16 CHAIRMAN CLARK: And I think that is consistent
17 with -- that makes it also consistent with the language
18 in the other statute, which says that -- it describes
19 ECS service that will be considered basic service and
20 it's that which was in existence on March 1st, 1995.
21 So, it harmonizes the interpretations with that
22 provision.

23 COMMISSIONER KIESLING: I mean, I don't know. I
24 mean, I was in a quandary because if we simply answer
25 the question yes or no, without dealing with what could

1 happen in the future, then I'm afraid we are going to
2 in some way stymie the full requirements of the
3 settlement. Because when I looked at where the dollars
4 flow -- I mean, that is my way of approaching something
5 like this. We know that there is a requirement that
6 the dollars flow, and unless we can see how those
7 dollars in their full amount will flow to the right
8 customers, that's where I had the problem.

9 Anybody else got any thoughts on that? I mean --
10 CHAIRMAN CLARK: That's right. You can put it in
11 the form of a motion.

12 COMMISSIONER GARCIA: I don't see it that way. I
13 mean, at least the way I approached it is separate. At
14 least the way I read it, is that this is a settlement
15 offer that is directly dealing with providing a
16 service, and I defined it as basic service. And so I
17 didn't -- at least in my thinking, I didn't go into
18 Southern Bell changing this. What I looked at was
19 Southern Bell complying with the agreement. And we
20 are, basically, agreeing with that agreement, or we are
21 basically ratifying it. In other words, I don't see
22 how -- maybe you can explain it again, but I just
23 didn't see it that way; the way you're formulating it.
24 Maybe I'm missing something.

25 COMMISSIONER KIESLING: Well, I just need to

1 understand. You said you saw it as this is a basic
2 service?

3 COMMISSIONER GARCIA: Yes.

4 COMMISSIONER KIESLING: If it's implemented?

5 COMMISSIONER GARCIA: Yes.

6 COMMISSIONER KIESLING: Then under the new
7 statute, when others come in, are they going to have to
8 treat this as within that confine of basic service?

9 COMMISSIONER GARCIA: Yes. But, again, I saw this
10 as being -- and that's where, I guess, I agree with
11 what Julia was trying to get at at the beginning, which
12 was we shouldn't even get to that basic service. We
13 have to because of the other requirements and how the
14 statute looks at it in the future. But, at least
15 initially, it's not even defined. Does that mean we
16 have to? But, yes, I guess if someone got into it
17 later, that's how it would have to be defined.

18 COMMISSIONER JOHNSON: I think I was more aligned
19 with Commissioner Garcia in defining this as a part of
20 basic local telecommunications service. And I thought
21 that Ms. Norton had addressed -- don't you address that
22 somewhere if we determine that this is basic service,
23 the competition issue? And I was just looking through
24 here to try to find where you did address that.

25 MS. NORTON: Issue 2 addresses if you approve ECS,

1 what else do you have to do? Should it remain
2 competitive, and it addresses it both under a basic and
3 a non-basic scenario.

4 COMMISSIONER JOHNSON: And your analysis explains
5 it. What page was that on, where you explained it out
6 as to the market still. There was room for
7 competition, I think.

8 MS. NORTON: The part about basic?

9 COMMISSIONER JOHNSON: Yes.

10 MS. NORTON: I think that's at the end.

11 MS. CANZANO: That's on Page 84.

12 MS. NORTON: It was Staff's primary recommendation
13 that this be non-basic, but, essentially, we concluded
14 that whether or not you determine it is basic or
15 non-basic, we still believe that competition should
16 continue to exist on these routes. And I explained how
17 that should --

18 COMMISSIONER JOHNSON: How the competition could
19 occur. And I felt satisfied with that particular
20 explanation. I did share Commissioner Kiesling's
21 concern. If we called it non-basic and then in a year
22 they would have the ability under the nondiscretionary
23 to raise those rates, and then how would we ever really
24 recover what we had stated -- or how will they actually
25 have those rate reductions that we had required of

1 them? So, I had that initial problem with calling it
2 non-basic. And as I looked at the analysis, I felt
3 more comfortable, therefore, with the basic
4 telecommunications services definition and getting
5 there by applying the old law to the ECS provisions.

6 CHAIRMAN CLARK: The concern I have is that I
7 think we have to attempt to harmonize the various
8 provisions of the statute. And the statute is quite
9 clear in the indication that ECS service is included in
10 basic service, only if it was in effect March 1 of
11 1995. And it only becomes an issue in this case
12 because Southern Bell has suggested that this is one
13 method of accomplishing the rate reduction they
14 promised. So, it doesn't really directly conflict with
15 the provision of law that says we have to give effect
16 to that order. All that order says is that the refund
17 -- I mean, in effect, that the refunds will be -- or
18 rate reductions, will be effectuated. And we have to
19 -- so, I think the definition that talks about ECS
20 service is more specific and would be controlling. And
21 for that reason, I don't think we can term it non-basic
22 service. But I think in order to effectuate the order,
23 we can say, at least for this service, an added
24 constraint on your ability to change the rate is that
25 you must demonstrate to us that, in fact, you have

1 accomplished the refunds required by the order that was
2 preserved under the statute.

3 COMMISSIONER DEASON: I'm having some difficulty.
4 You're saying that the way you interpret the statute is
5 that we cannot declare the ECS routes -- if we approve
6 them, that we cannot declare them to be part of basic
7 service?

8 CHAIRMAN CLARK: Right. And that being because,
9 as I understand the statutory definition of basic
10 service, it's very specific as to what ECS routes can
11 be considered part of that definition, and they have to
12 be in effect as of March 1st, 1995. And, clearly,
13 these weren't in effect, assuming we vote that way.

14 COMMISSIONER DEASON: What about ECS/EAS proposals
15 that were pending at the Commission prior to March 1st,
16 but which had not yet been disposed of, what status do
17 they have under the new law?

18 MS. CANZANO: Upon approval, those would become
19 part of basic service, also. If it is pending before
20 the Commission on March 1st, 1995, and then upon
21 approval, then that becomes part of basic service.

22 CHAIRMAN CLARK: Well, then I'm in error. I mean,
23 if that's what the definition is, it seems to me that
24 this can be considered --

25 MS. CANZANO: But you still have the problem of

1 was this ECS proposal pending on March 1st? And I
2 would suggest that since it wasn't filed until May
3 15th, then I'm not real sure that you could put it in
4 under that part.

5 COMMISSIONER DEASON: Yes, but we all knew that
6 when the stipulation was approved there could be
7 numerous proposals to come forward at some future time,
8 a specific proposal. And everyone knew that ECS/EAS
9 was something that was on the table along with a whole
10 myriad of other possible reductions. And just because
11 there was not a specific proposal saying, "We want an
12 ECS from Point A to Point B," I'm not so sure that that
13 March date would apply to that. Because this was an
14 ongoing docket contemplating that ECS and EAS could be
15 a bargaining or a means of achieving the results of the
16 stipulation.

17 CHAIRMAN CLARK: If you have a copy of the
18 statute, I would like to see exactly what it says. Is
19 it in the recommendation?

20 MS. CANZANO: Yes, it is.

21 COMMISSIONER GARCIA: My question is why are we
22 going that far? I mean, if this is under the old
23 statute, why are we trying to apply both statutes here?
24 And that goes in line with what you were saying,
25 Commissioner. I mean, there are a series of things

1 that we have had come before us which will keep running
2 under the old rules and not the new rules. And I think
3 this clearly falls under the old rules. And under
4 those old rules, we're just agreeing to what we have
5 before us.

6 CHAIRMAN CLARK: Let me read you the statute.

7 MS. CANZANO: Which provision of the statute,
8 because there --

9 CHAIRMAN CLARK: The basic service.

10 MS. CANZANO: 02?

11 CHAIRMAN CLARK: Yes.

12 MS. CANZANO: In the last sentence.

13 CHAIRMAN CLARK: "For a local exchange
14 telecommunications company, such terms shall include
15 any extended area service route and extended calling
16 service in existence or ordered by the Commission on or
17 before July 1, 1995."

18 MS. CANZANO: And you must read that in
19 conjunction with Section 364.385, Subsection 2, and
20 that's also on Page 22 of the recommendation, that adds
21 that all applications for EAS or ECS pending before the
22 Commission on March 1st, shall be governed by the law
23 as it existed prior to July 1. Upon approval, those
24 routes shall be considered basic service. So that's
25 how you get the --

1 CHAIRMAN CLARK: What's the section again?

2 MS. CANZANO: Section 364.385, Subsection 2.

3 COMMISSIONER KIESLING: And where is that?

4 MS. CANZANO: And that's also on Page 22 of the
5 recommendation.

6 COMMISSIONER KIESLING: It's not on mine.

7 MS. CANZANO: Oh, I'm sorry. I'm sorry about
8 that.

9 COMMISSIONER DEASON: I believe it's contained in
10 the second full paragraph.

11 MS. CANZANO: No, it's on Page 21.

12 COMMISSIONER JOHNSON: And I agree that the
13 language that she stated is there, but I concur with
14 the alternative recommendation that the language in
15 364.385, Subsection 3, gives us the authority to
16 preserve EAS as it was under the old law.

17 COMMISSIONER GARCIA: Here's my question to you,
18 Bob. Why are we even looking at the new statute?

19 MR. ELIAS: Because if you don't deal with it now,
20 you will deal with it shortly after January 1st, if you
21 don't make a determination that this is basic service
22 at this proceeding.

23 COMMISSIONER GARCIA: All right. But if we did
24 that -- but if we follow the line of reasoning that we
25 did in approving Legal Issue 1, why is this analysis so

1 crucial under the old --

2 MR. ELIAS: Because the new law makes no
3 distinction for non-basic services that were ordered
4 before or after a particular date. If they have got
5 any non-basic service out there that some competitor
6 does not believe meets the imputation requirement, they
7 can bring that question to the Commission. That
8 question has been raised here. If you don't deal with
9 it now, I think there is a good chance that you will
10 deal with it in January.

11 COMMISSIONER JOHNSON: Bob, I understand your
12 argument or your analysis in the alternative here to
13 suggest that the language that Donna cited was correct;
14 however, that you would look to Section 364.385,
15 Subsection 3, to give us the authority to then apply
16 the old law.

17 MR. ELIAS: Well, there is a couple of reasons.
18 This is a non-optional service offering. If you have
19 basic local exchange telecommunications service from
20 Southern Bell, you get this as part of it. That, to
21 me, in and of itself suggests that it should be basic.

22 The second thing is, I think that the order, as
23 you've said, implementing the decision in this docket
24 is a more specific expression of legislative intent
25 that that found generally applicable to all ECS plans.

1 And then the third thing is, that it goes back to
2 the decision that you made in Legal Issue 1, which is
3 whether or not this proceeding had progressed to the
4 stage of hearing before July 1, 1995.

5 CHAIRMAN CLARK: Well, to me, the issue to be
6 resolved is the one Commissioner Deason brought up.
7 And could this be considered, this proceeding, be
8 considered to be included in the term and application
9 for extended area service routes or extended calling
10 service pending before the Commission on March 1st?

11 MR. ELIAS: I would answer that question in the
12 affirmative.

13 CHAIRMAN CLARK: That it be could be?

14 MR. ELIAS: Yes, under the authority of
15 364.385(3).

16 COMMISSIONER JOHNSON: And that this is just
17 implementing. The agreement that we are dealing with
18 here is implementation of a settlement.

19 MR. ELIAS: Yes.

20 COMMISSIONER JOHNSON: And this is just trying to
21 implement that order that was issued, whatever the
22 appropriate date --

23 MR. ELIAS: February of '94.

24 COMMISSIONER JOHNSON: February of '94.

25 MS. CANZANO: Commissioners, my concern with that

1 analysis is that you don't even know what routes you're
2 talking about, because you didn't even have anything
3 before you on March 1st.

4 CHAIRMAN CLARK: Well, I think the issue does turn
5 on whether it can fall within the definition of an
6 application for extended service routes or extended
7 calling service. And your argument being since it
8 wasn't specifically put out there for one method of
9 doing it, you can't include it. I think that the
10 legislature seemed to want to preserve ECS that was
11 ordered for any proceeding that was pending, and I'm
12 comfortable with saying it is a basic service at this
13 point.

14 COMMISSIONER KIESLING: You know, I agree with
15 you. But my problem was when I looked at the positions
16 of all the parties, including OPC, who, you know, has a
17 big interest in keeping this thing intact, OPC's
18 position was that it was non-basic service. And I
19 couldn't reconcile those two positions. You know,
20 other than --

21 COMMISSIONER JOHNSON: I must admit, I thought
22 that was a bit strange, the conclusion that they
23 reached. I think if they have an opportunity to
24 perhaps speak before us today they may change their
25 mind. But I think that the alternative was right on

1 point, and that we can, particularly based on the
2 statements made by Commissioner Deason with respect to
3 application for an extended area calling, looking at
4 the language in Section 364.385(3), that allows us to
5 implement this order and look at this as not an action
6 pending, but as an implementation of a settlement
7 agreement. And I have no problem reaching that
8 conclusion.

9 COMMISSIONER GARCIA: Are you making a motion?

10 CHAIRMAN CLARK: But I think it's also important
11 to characterize it as a pending application, because
12 there are a number of -- it's not really the issue. We
13 are not prevented from carrying out the requirements of
14 the order if we determine it's a non-basic service.
15 But I think -- it seems to me the legislative intent
16 was to preserve the ongoing proceedings and the ability
17 to order those routes when it appeared that it was in
18 the public interest to do so. What it wanted to
19 address was new applications or new proceedings that
20 were started after that date. And this is not a new
21 proceeding. I understand your point, that it wasn't a
22 clear -- that the notion of ECS wasn't clearly put
23 before the Commission, but it was a possibility.

24 COMMISSIONER DEASON: I move alternative
25 recommendation on Legal Issue Number 2.

1 COMMISSIONER JOHNSON: Second.

2 CHAIRMAN CLARK: All those in favor, say aye.

3 COMMISSIONER KIESLING: Aye.

4 COMMISSIONER JOHNSON: Aye.

5 CHAIRMAN CLARK: Aye.

6 COMMISSIONER DEASON: Aye.

7 COMMISSIONER GARCIA: Aye.

8 CHAIRMAN CLARK: Opposed, nay.

9 COMMISSION STAFF: Commissioners, what we'd like
10 to do now --

11 CHAIRMAN CLARK: Now we go to Technical Issues 1
12 through --

13 COMMISSION STAFF: 1A through 1D.

14 CHAIRMAN CLARK: Okay.

15 COMMISSION STAFF: And what we'll do is, basically
16 present all of these at one time, as far as all the
17 different proposals.

18 Issue 1A is should Southern Bell's proposal be
19 approved? Southern Bell is proposing to implement the
20 extended calling service plan pursuant to the tariff
21 filed on May 15th, 1995 as A.

22 B is CWA's proposal to reduce each of the
23 following by 5 million: The basic "Lifeline" senior
24 citizens telephone service; basic residential telephone
25 service; basic telephone service to any organization

1 that is non-profit; basic telephone service to any
2 public school, community college or state university;
3 and basic telephone service of any qualified disabled
4 ratepayer.

5 Issue C is McCaw's and FMCA's proposal that a
6 portion be used, if necessary, to implement the
7 decisions rendered in Docket 940235.

8 And Issue D is any other plan deemed appropriate
9 by the Commission.

10 In Issue 1A we have a primary and alternative.
11 Ms. Shelfer will present the primary and Mr. O'Pry will
12 present the alternative.

13 MS. SHELFER: Commissioners, Staff recommends that
14 Southern Bell's proposal to implement these 288 ECS
15 routes be denied as filed. Staff believes that
16 Southern Bell's guidelines are inappropriate. Southern
17 Bell's factors do not require any specific qualifying
18 criteria, rather they are merely subjective. However,
19 Staff believes that there are 36 routes that want toll
20 relief and should be considered for ECS. These routes
21 are listed in Table 1 on Pages 48 and 49. Staff
22 applied a calling rate of 4 MAMs or greater, which is
23 consistent with the Commission's action in the last few
24 rate cases that have gone to hearing. In addition,
25 Staff believes that the 38 existing 25-cent plan routes

1 listed in Southern Bell's proposal should be converted
2 to ECS. These proposals will be discussed further in
3 Issue 1B.

4 MR. O'PRY: Commissioners, the alternative Staff
5 recommendation is to approve as basic service all of
6 the proposed routes. Alternative Staff believes the
7 approval to be in the public interest, as it provides
8 reductions to both residential and business customers.
9 The primary reduction requires a calling rate of four
10 or more calls per access line per month. Alternative
11 Staff believes the Commission should consider other
12 factors in addition to the calling data: The
13 subscriber's place of employment, where they worship,
14 where they do their shopping, where the children go to
15 school, where they receive medical and emergency 911
16 service. The Commission in other proceedings has used
17 these criteria as well as the traffic data in providing
18 ECS. The recommendation further provides that refunds
19 would be made for that period of time between
20 October 1, the stipulated reduction date, and
21 January 1, '96, which is the recommendation that the
22 ECS routes be placed in effect.

23 COMMISSION STAFF: Commissioners, we can go ahead
24 and present you Issues 1B, 1C, and 1D, if you would
25 like, or you can go ahead and -- you know, what is your

1 pleasure here?

2 CHAIRMAN CLARK: Commissioners, would you like to
3 handle 1A and then move to B, C, and D, as necessary?

4 COMMISSIONER DEASON: I have no problem with that.
5 I have a question on the alternative recommendation on
6 Issue 1A, and that has to do with allowing
7 interexchange carriers to continue to carry the same
8 traffic on these routes that they are carrying now. Is
9 that what we have done standard in the past or is this
10 different treatment?

11 MR. O'PRY: Commissioners, you did it in the
12 Broward/Dade docket. You also approved it in the Palm
13 Beach docket that was approved a couple of agendas ago.
14 And in those proceedings, and it was done in the --
15 Broward/Dade was done in this docket as a part of the
16 settlement. The FIXCA objected to the traffic being
17 local, and this was a means to come up with some
18 agreement in order to settlement the matter in the 260
19 docket.

20 COMMISSIONER DEASON: Well, I guess the reasoning
21 for my question is that I don't want to do anything in
22 this issue which is going to jeopardize the decision
23 that we made in the prior issue, and that is that these
24 ECS routes, if approved, would become part of basic
25 service. And by allowing interexchange carriers to

1 provide this service, does that run contrary to the
2 prior decision that these routes would constitute basic
3 service?

4 MR. O'PRY: Commissioner, while we did not call it
5 basic service, it's seven-digit dialing; it's
6 mandatory. It was a means to come up with a way to get
7 a settlement in the 260 docket by not specifically
8 calling it basic service. The proviso went on to say
9 that it would remain in that status until such time as
10 the Commission made a decision in the EAS rules
11 investigation. That decision has not been made.
12 Another reason is come January 1 you will have an
13 opportunity for competition on these routes. You will
14 have ALECs being certificated, AAVs by notification
15 will become certificated ALECs. And this is the
16 reasoning behind the alternative Staff recommending the
17 January 1 effective date.

18 COMMISSIONER DEASON: Are you saying, then, that
19 there is no problem with approving your alternative
20 recommendation and that running contrary to the prior
21 decision to declare these services to be basic?

22 MR. ELIAS: I think that we made that policy
23 change when we approved the settlement in the
24 Dade/Broward docket. That order specifically --

25 CHAIRMAN CLARK: Let me ask a question, though.

1 It seems to be that we are assuming that the term
2 "local service" is equivalent to the new term "basic
3 service." And I'm not sure that's correct. I'm not
4 sure local versus toll has the significance it had
5 under the new statutes as it did over the old statutes.

6 COMMISSIONER DEASON: I agree with you, and I
7 think perhaps that's -- realizing that there is going
8 to be competition for what traditionally has been known
9 as local service. And if someone wants to come in and
10 be an ALEC and provide service between these routes at
11 20 cents a call, or 15 cents a call, or just include it
12 as part of a free basic calling area, that's entirely
13 up to their marketing strategy and their plans as to
14 how they are going to compete in the market.

15 MR. ELIAS: I think that's what the Legislature
16 envisioned, is the widest range of consumer choices
17 available. And I don't see anything in the new law
18 that would prohibit anyone from carrying this type of
19 traffic.

20 CHAIRMAN CLARK: And is it also true that calling
21 this a basic service won't undermine the decision --
22 isn't contradicted or otherwise undermining a decision
23 that people should still be able to compete on these
24 routes?

25 MR. ELIAS: That is true.

1 CHAIRMAN CLARK: And the significance of basic
2 really is with respect to how they can -- whether or
3 not they can increase rates and how much and the
4 imputation requirements, is that right?

5 MR. ELIAS: Yes.

6 COMMISSIONER GARCIA: Why do we get that far --

7 MR. ELIAS: I'm sorry?

8 COMMISSIONER GARCIA: -- in terms of increasing
9 the rates? If this is an agreement that we're
10 ratifying, why are we worried about that portion? I'm
11 sorry? You shook your head no.

12 COMMISSION STAFF: This is not an agreement that
13 we are ratifying. I'm not understanding what your
14 terminology is there.

15 COMMISSIONER GARCIA: Well, this is something that
16 the Company has proposed, the Public Counsel has agreed
17 to and they are bringing it before us.

18 COMMISSION STAFF: Yes, but you have other parties
19 that say, "No, that it shouldn't be implemented." So,
20 it's not an agreement. But what it is -- I think to
21 get past the concern of basic/non-basic is that you
22 also have the provision as far as access charges. And
23 in the provision of the statute, it says no alternative
24 LEC or LEC shall knowingly deliver traffic which
25 terminating access charges would apply. And if you

1 determine this is basic and convert it to ECS, the
2 access charges would not apply to it. So, I don't
3 think you jeopardize your decision and what you have
4 done in the recent ones based on that provision.

5 MS. SHELFER: Commissioners, my concern is this.
6 When the determination was made in the Broward/Dade
7 docket, we made no determination that it was local. By
8 making that determination, the long distance companies
9 could participate, and they participated, maybe not
10 effectively, which was the argument in this case,
11 because they paid access charges. If this is
12 determined to be basic, then if that precludes the IXCs
13 from participating, then they would, in order to
14 participate, would have to be ALECs and pay a different
15 charge, the interconnection rate, which has yet to be
16 established. But one of the arguments that the
17 interexchange carriers made in this docket was that
18 with the introduction of the 1+ docket and the
19 reduction of access rates, that they believe that they
20 could adequately compete; if competition were allowed
21 to be fostered, that they would come down, and that the
22 consumers would see the same result without precluding
23 them from the market. Now, granted they could become
24 ALECs, but then the decision is how is it going to be
25 priced. Right now. With access rates being set at

1 about approximately 7 cents a minute, it's very
2 difficult for them to compete effectively on ECS
3 routes. And so I guess my concern is if it is basic,
4 then what does that do to the Broward/Dade where we
5 said that IXCs can't compete? Can they no longer
6 compete as IXCs?

7 COMMISSIONER DEASON: I think we have got a
8 recommendation that allowing IXCs to compete is not
9 relevant to the determination of basic or non-basic.
10 They have had a determination as to the old
11 nomenclature of toll versus local, but it doesn't
12 really apply. And that by approving the alternative
13 recommendation, we're not jeopardizing the decision we
14 made in the prior issue that these routes, if approved,
15 would become part of basic service.

16 COMMISSIONER JOHNSON: And if I understood
17 Ms. Norton's analysis, she stated that if we call this
18 basic, and they must compete, they must apply for
19 certificates and compete as ALECs.

20 MS. NORTON: It's Staff's recommendation that
21 under either, if they are determined basic or
22 non-basic, it's still local, and they would still have
23 to get ALEC certificates.

24 COMMISSIONER JOHNSON: And then the issue will be
25 one of interconnection rates as opposed to the switched

1 access fees that --

2 MS. NORTON: That was our logic.

3 COMMISSIONER JOHNSON: Did you disagree with that,
4 Ann? Donna says, yes, you disagree with it.

5 MS. CANZANO: I don't want to answer for Ann, but
6 I think for what is before us today, we would agree
7 with that. I don't want to answer for Ann.

8 MS. SHELFER: Would you repeat that question
9 again, please.

10 COMMISSIONER JOHNSON: If I remember what it was.
11 I think that in part of Ms. Norton's example she stated
12 that if we treat this as basic service, then the ALECs
13 -- or the IXCs can compete, but they must apply to be
14 certified as ALECs, and they will be competing as
15 alternative LECs. And that as such, they will be
16 subject to the interconnection rates as opposed to the
17 switched access rates. And you seem to focus your
18 attention on there not being fair and open competition
19 because of the switched access rates. So, I was
20 getting a little confused there.

21 MS. SHELFER: I believe that they would have to
22 become ALECs. Yes, I do believe that. You know, I've
23 been in EAS for a long time, so I have trouble
24 separating that out. But I guess my feeling is that
25 the Commission has, in the past, required a qualifying

1 criteria for EAS or ECS in most recent years, I would
2 say since 1993, that required them to meet some kinds
3 of specific qualifying criteria in order to receive a
4 reduced toll rate, which, you know, is ECS. And in
5 this case, the issue is, is how to dispose of the
6 25 million, and is it appropriate to do it on routes
7 that we know have very little calling volumes on them,
8 you know, and is that appropriate? So, you know, when
9 you're looking at competition and you are removing
10 these routes from, in my opinion, a highly competitive
11 market and placing them in an almost non-existent
12 competitive market that probably will be very
13 competitive in five years, but isn't now, I have
14 problems --

15 COMMISSIONER JOHNSON: I'm sorry, what did you
16 say, "probably will be"?

17 MS. SHELFER: They should be within five years.
18 You know, with your new entrants, it may become
19 competitive. And I don't have a problem with that on
20 the routes that met some type of criteria. You know,
21 what I struggle with are those that didn't, you know.
22 And so you place them in an environment now where they
23 are getting something that, in my opinion, they do not
24 warrant.

25 COMMISSIONER JOHNSON: Who is getting something

1 that they don't want, the customers?

2 MS. SHELFER: They are getting reduced rates.

3 COMMISSIONER JOHNSON: And they don't want reduced
4 rates?

5 MS. SHELFER: Warrant. They do not warrant.

6 COMMISSIONER JOHNSON: Oh.

7 MS. SHELFER: Oh, I'm sure they want reduced
8 rates, yes. And the alternative -- well, my position,
9 like in 1D, is to do it on the routes that warrant
10 that, and that takes into effect 70 percent of Southern
11 Bell's customers, you know, that show that they did
12 have a significant calling, you know. So my only
13 concern is those that didn't, being placed in a
14 situation where they are getting something that they
15 possibly didn't deserve, and that maybe other customers
16 could benefit better from that that do warrant it.

17 CHAIRMAN CLARK: I want to make sure that I
18 understood your recommendation as opposed to
19 Mr. O'Pry's alternate recommendation. Your concern is
20 -- and I guess one of the things that jumped out at me
21 is the notion that we have already done this for
22 General Telephone of Florida. And to be consistent
23 with that we should implement it here. But your
24 position is that in the GTE case we went to hearing and
25 we had information that substantiated the claims that,

1 because of educational, governmental, and all other
2 requirements that bear on the notion of community
3 interest, there was evidence that those existed.

4 MS. SHELFER: Absolutely. I believe that GTE --

5 CHAIRMAN CLARK: And the evidence in this case was
6 not presented.

7 MS. SHELFER: No, ma'am.

8 CHAIRMAN CLARK: And your recommendation is
9 limited to implementing this ECS plan for those routes
10 that meet the same traffic requirements that we've
11 required on other 25-cent plans.

12 MS. SHELFER; Yes, ma'am. And I believe that if
13 Southern Bell had provided specific route evidence to
14 support, like GTE did, where it said you had empirical
15 evidence to support how many people work in this city,
16 you know, travel to that city and education, you know,
17 I just had nothing else to guage my decision on, other
18 than the calling rates based -- you know, other than
19 their blanket community of interest criteria. You
20 know, to me, there just wasn't anything to support that
21 statement, other than that the people wanted it.

22 CHAIRMAN CLARK: And you were concerned that this
23 would be inconsistent with what we have done in other
24 similar situations --

25 MS. SHELFER: Yes, where we did not have the

1 distribution --

2 CHAIRMAN CLARK: -- and that it has an adverse
3 impact on competition that we need to be careful of?

4 MS. SHELFER: Yes.

5 COMMISSIONER JOHNSON: In the alternative
6 analysis, as I understand, your main concern is the
7 community of interest and the criteria that we've
8 always used. And that's understandable because you
9 have been the community of interest goddess criteria
10 woman for years, and you have done a great job.

11 Whereas, Mr. O'Pry is stating that although it may
12 not meet the criteria that we have applied in the past,
13 there are other criteria that could serve as precedent.
14 And if I understood his analysis of GTE and the
15 Dade/Broward settlement, that the criteria were not
16 strictly followed. Is that your --

17 MR. O'PRY: Yes, as to GTE, not as to
18 Dade/Broward, because that was stipulated to between
19 the parties as a settlement in the Dade/Broward case.

20 COMMISSIONER JOHNSON: So, it would be your
21 position that we aren't bound by the criteria that
22 has been stated.

23 MR. O'PRY: I do not believe the Commission has,
24 because in other areas for countywide calling, the
25 Commission, in Escambia County used the similar

1 criteria that I referred to earlier in arriving at
2 community of interest in Escambia County. There have
3 been numerous cases that the Commission has used other
4 than traffic data in making a final determination of
5 whether or not an ECS or an EAS route should be
6 approved.

7 COMMISSIONER KIESLING: Let me see if I
8 understand. In those instances, we have had evidence
9 in the record that established what that other
10 community of interest was; that the schools were there,
11 some kind of information in the record that allowed us
12 to apply these other non-numeric community of interest
13 criteria and decide that there was that community of
14 interest. In this case, I don't recall anything in the
15 entire hearing that established that there was this
16 other indicia of a community of interest in the record.

17 MR. ELIAS: There was testimony from Mr. Stanley
18 (phonetic) that was very general in nature, that listed
19 out the criteria that they looked at.

20 COMMISSIONER KIESLING: Right.

21 MR. ELIAS: There was no detailed information nor,
22 to my recollection, did any party challenge the notion
23 that there was a community of interest as stated by
24 Southern Bell.

25 COMMISSIONER KIESLING: What is the significance

1 of that, that no one else challenged it? I mean,
2 wasn't the burden on Southern Bell to prove it?

3 MR. ELIAS: Certainly, there was, but just by
4 point of information, that there was no information in
5 the record to the contrary.

6 MS. SHELFER: Commissioner Kiesling, I would like
7 to add that in a majority of the cases that Mr. O'Pry
8 referred to happened prior to 1993, and most of them
9 were in the context of a rate case where we were
10 dealing with overearnings. There are at least two of
11 those dockets still pending that involved interLATA
12 routes that Judge Greene has either denied or -- there
13 is one still pending where he denied it stating that
14 these routes were implemented, in his opinion, without
15 specific enough community of interest criteria and that
16 they were discounted toll. And they are still pending,
17 which we will be resolving in other dockets.

18 The other issue I would like to bring up is that
19 the routes that Southern Bell proposed can be
20 re-proposed come January 1. There is nothing to say
21 that they can't come back in, file a tariff, and say,
22 "We want to put ECS on these routes." I believe the
23 issue here is whether or not the 25 million should be
24 used to offset the cost of moving them from a, in my
25 opinion, highly competitive toll market and placing

1 them in a much less competitive local market where
2 their costs have been reduced by 25 million. Now, I
3 understand they have got to reduce those somewhere, and
4 this could be the place to do it. But if the
5 Commission were to determine that this was not the
6 time, they could do it on their own come January 1.

7 I'd also like to state that of the 36 additional
8 routes that Southern Bell filed, their witness did
9 state that it did not meet even their criteria.

10 CHAIRMAN CLARK: Any more questions,
11 Commissioners?

12 COMMISSIONER GARCIA: Where are we at this point?

13 CHAIRMAN CLARK: Well, we're at one of two places.
14 I'll entertain a motion or we can take a break for ten
15 minutes. We have a long day today, and I'm committed
16 to taking reasonable breaks. And I'm willing -- if no
17 one wants to make a motion at this point, we will take
18 a ten-minute break and come back at five minutes after
19 11:00, and continue with this item.

20 (Brief recess.)

21 CHAIRMAN CLARK: We'll reconvene the agenda
22 conference.

23 Commissioners, Sally Simmons has something she
24 wanted to comment on with respect to the provision of
25 basic service by ALECs. And there is another provision

1 in the statute we might be well to be aware of.

2 MS. SIMMONS: Okay. Yes, thank you, Chairman
3 Clark. I just wanted to bring to your attention a
4 provision that I think is relevant here in the statute,
5 and that is there has been a lot of discussion of IXCs
6 being able to compete on these routes by obtaining ALEC
7 certificates. And I just wanted to make you aware that
8 the statute is pretty specific as to the basic service
9 that an ALEC is to provide. It includes such things as
10 operator services --

11 CHAIRMAN CLARK: Why don't you give us the section
12 number?

13 MS. SIMMONS: Okay. It's under 364.337(2), and
14 it's on Page 37 of the version of the statute I'm
15 looking at. This passage here is very specific in
16 terms of the types of offerings an ALEC is supposed to
17 provide as part of basic service. Now, it is possible
18 for an ALEC to request a waiver of this portion. And I
19 think that's important to mention here because if an
20 IXC, for instance, wants to compete on an ECS route,
21 they would go ahead and try to get an ALEC certificate.
22 And given that, there could still be some difficulty in
23 their minds because they would not necessarily want to
24 provide all these various offerings that are part of
25 basic service. And they would need a waiver, is my

1 understanding, a waiver in order to compete and
2 provide, for instance, just the ECS portion and not the
3 other portions of basic service. So, I just wanted to
4 make you aware of that just to try to solidify the
5 point about the IXCs being able to compete, and telling
6 tell you a little bit more about how they would have to
7 do that. So, that's all. Thank you.

8 CHAIRMAN CLARK: Thank you.

9 Any further questions, Commissioners?

10 COMMISSIONER GARCIA: I will move the Staff
11 alternative on the one we were -- what is it?

12 COMMISSIONER JOHNSON: Issue 1A.

13 COMMISSIONER GARCIA: 1A.

14 COMMISSIONER JOHNSON: Second.

15 CHAIRMAN CLARK: There's been a motion and second.

16 COMMISSIONER DEASON: Before we vote on that, I'm
17 this it's important -- I'm going to support the motion,
18 and let me tell you why, is that we are in a new era
19 here. And when we had EAS rules, those rules were in
20 an area where it was strict monopoly, and we were
21 looking at imposing costs on all ratepayers by going to
22 an EAS route. We don't have that here. We started
23 utilizing ECS proposals and 25-cent plans which were
24 more optional, and it did not impact the full body of
25 ratepayers. But we did have some minimum criteria,

1 even for those. And I think that was appropriate. But
2 I think it is obvious that we are going to competition,
3 and I don't want at this point to be handcuffed and
4 limit what I think we should be doing by trying to
5 apply what some could call antiquated EAS rules to this
6 new environment. And while those rules served a
7 legitimate purpose at a given time, I'm not so sure
8 that we need to be limited in what we consider to be an
9 appropriate action at this time in a very unique
10 docket, which is a docket in which we are trying to
11 return overearnings to the customers. And for those
12 reasons, I would -- the motion has already been
13 seconded, but I would support the motion.

14 CHAIRMAN CLARK: There has been a motion and a
15 second. All those in favor say aye.

16 COMMISSIONER GARCIA: Aye.

17 COMMISSIONER JOHNSON: Aye.

18 COMMISSIONER DEASON: Aye.

19 CHAIRMAN CLARK: Opposed, nay.

20 COMMISSIONER KIESLING: Nay.

21 CHAIRMAN CLARK: Nay.

22 Just by way of explanation, I think that this is
23 -- I'm very concerned that this is anticompetitive. I
24 think that we are best served if we stick by the rules
25 that we had in determining when ECS was appropriate,

1 and I think the Staff's primary recommendation
2 identifies those areas for which we should implement an
3 ECS plan, and that there is evidence to support such a
4 plan. I'm concerned that by voting for this plan on
5 routes that did not meet that criteria, we are
6 effectively taking these routes out of the competitive
7 market. And there would be, in my opinion, likely to
8 be greater benefits as a result. I'm concerned about
9 its impact on our decision with respect to 1+ dialing,
10 and I think it is too broad an implementation of ECS,
11 based on the facts in this case.

12 COMMISSIONER KIESLING: And just so that the
13 record is clear, those are essentially the same
14 thoughts that I had. My view is that this permits
15 Southern Bell to essentially have a lock on the market
16 that is going to result in a very anticompetitive
17 environment. And so that's my reason for also voting
18 against the alternative in Issue 1A.

19 COMMISSIONER JOHNSON: So that the record is
20 abundantly clear, I share the statements of
21 Commissioner Deason with respect to the rules that we
22 have applied. And to some degree, and in certain
23 instances, we've consistently applied those rules. But
24 I, too, am concerned that those rules may be a bit
25 antiquated. And as we look at this issue in the

1 context of a settlement agreement, and as we look at
2 the fact that we are entering into a more competitive
3 environment, I think that the benefits that are to be
4 gained from implementing this plan are greater than the
5 detriments to be lost. That to the extent that
6 Chairman Clark is correct, and that there are some
7 perceived anticompetitive aspects of this, I think the
8 benefits are greater than what we might lose in this
9 particular respect. And particularly since we've
10 defined the services here as basic services, and as
11 such they will be regulated and there will be a
12 five-year cap on the rates. Therefore, the rates for
13 this service will not be able to be increased. I feel
14 very comfortable that this will be the best way to
15 benefit the citizens of our state, and that we not tie
16 ourselves to old rules as we enter into a new world.

17 COMMISSIONER GARCIA: Since I made the motion, I
18 might as well state why. And, again, I am in agreement
19 with Commissioner Johnson and Commissioner Deason and
20 for the reasons they stated. But beyond that, what we
21 are looking at, basically, is a new atmosphere and is a
22 new climate. And I'm also gratified that Commissioner
23 Johnson used the word "agreement," as I termed it.
24 Because I think we have to philosophically step back
25 and look at the overall picture, and this is trying to

1 get money back in the hands of the ratepayers. And I
2 think that the Legislature did not go to a competitive
3 scheme, because the promotion of competition is
4 inherently good. Competition isn't the bottom line,
5 it's rates. And reduction of those rates is what
6 people want, and this is reducing rates. And it is
7 reducing rates in a new climate. And I think we are
8 establishing a good precedent here. And I think the
9 Office of Public Counsel has done a good job in trying
10 to accomplish that for the people of this area of the
11 state. So, with that --

12 COMMISSIONER DEASON: Well, let me also say that I
13 think that as to the question of it being
14 anticompetitive, I disagree that this action is
15 anticompetitive. We are entering an era where even
16 local service, which was the bastion of monopoly for
17 years, is going to become competitive. And these are
18 the type benefits that we are going to see from that
19 competition. If anything, by approving this action
20 today, we are hastening the competition, which the
21 Legislature wanted this Commission to promote. So, I
22 do not see that the action is anticompetitive.

23 CHAIRMAN CLARK: We voted on Issue 1A --

24 MR. O'PRY: Madam Chairman, could I take up one
25 housecleaning matter?

1 CHAIRMAN CLARK: Yes.

2 MR. O'PRY: Since you've approved 1A, just so the
3 record will be complete, two of the routes have been
4 approved for flat rate up here in a couple of agendas
5 back, Trenton/Newberry and Key West/Big Pine Key, so
6 they would come out of these 288 routes. Also, you
7 approved a DeBary/Orlando ECS rate. The approval
8 provided for -- the order was issued on 9-12-95, and
9 said implement it in six months. This should be
10 implemented January 1, '96.

11 CHAIRMAN CLARK: With that clarification, the
12 primary Staff recommendation on 1A is approved.

13 MR. ELIAS: Alternate.

14 CHAIRMAN CLARK: No, alternative.

15 Now, the recommendation on 1B through D, is there
16 a motion?

17 COMMISSIONER DEASON: I move approval of Staff on
18 1B, and approval of Staff on 1C, and denial of Staff on
19 1D.

20 COMMISSIONER JOHNSON: Second.

21 CHAIRMAN CLARK: Let me just check for a minute.

22 Okay. Let's split it up and take 1B and 1C.

23 Without objection, Staff recommendation on 1B and
24 1C is approved.

25 And there is a motion to deny Staff on Issue 1D.

1 Is there a second?

2 COMMISSIONER JOHNSON: Second.

3 CHAIRMAN CLARK: All those in favor, say aye.

4 COMMISSIONER DEASON: Aye.

5 COMMISSIONER GARCIA: Aye.

6 COMMISSIONER JOHNSON: Aye.

7 CHAIRMAN CLARK: All those opposed?

8 COMMISSIONER KIESLING: Nay.

9 CHAIRMAN CLARK: Nay.

10 Now we are on to Technical Issue 2.

11 COMMISSION STAFF: Commissioners, if Southern
12 Bell's proposal is approved, should the Commission
13 allow competition on the extended service calling
14 routes? If so, what additional action should the
15 Commission take? Ms. Norton will present this item.

16 MS. NORTON: Commissioners, Staff had contemplated
17 that -- well, we had analyzed this in the context of a
18 non-basic service, but either way we recommend it. And
19 given that you have approved these ECS routes that you
20 state affirmatively that competition is to continue on
21 these routes, we believe that the only way that the
22 statute can be implemented effectively to promote
23 competition is if you do not -- in order to do that, we
24 need to, I think, put in or establish that there will
25 be resale and/or local interconnection rates in place

1 on these routes. And if the parties cannot negotiate
2 those themselves under the terms of the new statute,
3 that you be aware that they may petition to you for a
4 resolution of any disputes. And if you're clear on
5 that, then I think that competition will be furthered
6 in Florida, even with the approval of these ECS routes.
7 The importance of this lies in the fact that the
8 current rates that the competitors pay are higher than
9 the ECS rates that you have just approved. And that's
10 why putting in the alternative rates, resale rates, and
11 interconnection rates are critical here.

12 COMMISSIONER GARCIA: I will move Staff on -- what
13 is it, Issue 2?

14 COMMISSIONER DEASON: Well, let me ask a question.
15 The interconnection rates are not being determined
16 here, obviously.

17 MS. NORTON: That's correct.

18 COMMISSIONER DEASON: You're just recommending
19 that these routes be eligible for whatever rates that
20 are determined in the future.

21 MS. NORTON: Yes, sir. What we are essentially
22 saying is to let the terms of the new statute go forth
23 here and that the mechanisms in place there, that you
24 be aware that those are ongoing and that you will be
25 ready to resolve any disputes should they be brought

1 before you, because this Commission does see the
2 benefits of competition continuing on these routes in
3 addition to the rates of ECS.

4 COMMISSIONER DEASON: Well, in reading the
5 recommendation, as I understand it, you're saying that
6 if the routes are determined to be non-basic, that's
7 your recommendation, but the Commission has already
8 determined these routes to be basic.

9 MS. NORTON: Yes, sir. And we had analyzed it in
10 terms of -- thinking in terms of the routes being
11 non-basic. Our recommendation, however, is that
12 whether you determined they were basic or non-basic,
13 this should still go forth as recommended.

14 COMMISSIONER DEASON: And that is permissible
15 under the new statute, as you interpret it?

16 MS. NORTON: Yes.

17 CHAIRMAN CLARK: I'm confused.

18 MS. CANZANO: I think Ms. Norton addresses that on
19 Page 84 of the recommendation, "ECS as a basic
20 service."

21 COMMISSIONER GARCIA: What page?

22 CHAIRMAN CLARK: Then we don't want to move
23 Staff's recommendation.

24 MS. NORTON: No, because the recommendation
25 statement addressed it in terms of non-basic. I think

1 the first sentence still applies, but the actual vote
2 here needs to be in terms of a basic service, given
3 your prior vote.

4 COMMISSIONER JOHNSON: Because on Page 84, that's
5 kind of like an alternative recommendation, that last
6 paragraph there, "ECS as a basic service."

7 MS. NORTON: I guess, yes, you could term it that.

8 COMMISSIONER DEASON: Given the prior vote on
9 basic versus non-basic, would your recommendation
10 basically be, what is found on Page 84, the last
11 paragraph under ECS as a basic service, would that
12 constitute your recommendation or is that insufficient?

13 MS. NORTON: That would constitute the vote. I
14 think it's also important to so state that we believe
15 that carriers would need to get ALEC certificates,
16 because that was not addressed in the case.

17 CHAIRMAN CLARK: I guess I'm looking at the last
18 sentence in that. I'm concerned because you
19 interchange -- you use non-basic service or basic
20 service, and then you change to local service, which I
21 don't think are equivalent. It says --

22 MS. NORTON: I agree.

23 CHAIRMAN CLARK: Your last sentence says, "Staff
24 believes with the exception of imputation, all other
25 aspects of competition, resale, interconnection and

1 negotiating rates, terms and conditions outlined in the
2 statute and discussed above would apply to the
3 provision of ECS, whether it was determined to be basic
4 service or non-basic." Is that what the recommendation
5 should be?

6 MS. NORTON: Yes. It was an evolution, and I'm
7 sorry if it was not clear. We had analyzed it really,
8 truly believing that this needed to be classified as
9 non-basic. But thinking it through, it didn't change
10 our recommendation, whether it was basic or non-basic.
11 We still believe that IXCs need to get ALEC
12 certificates. We still believe they need to get resale
13 and local interconnection rates. So that the end
14 result evolved to really be the same.

15 CHAIRMAN CLARK: I guess now I'm coming down to
16 why do we need to resolve this issue, anyway? It says,
17 "If Southern Bell's proposal is approved, could the
18 Commission allow competition on extended calling
19 service routes?" I don't think that's an option. I
20 mean, it's just a determination of who will provide it.

21 MS. NORTON: I think that the long distance
22 carriers requested that issue just for the reason they
23 wanted that to be clear. They were concerned that
24 because several times approval of ECS did serve to
25 foreclose competition, and they wanted an affirmative

1 vote by the Commission here. That was the original
2 basis for the issue.

3 CHAIRMAN CLARK: Is the only concern here that if
4 you called it basic service, in order to provide it
5 you're going to have to get an ALEC certificate? Is
6 that the only concern, or is the imputation also a
7 concern?

8 MS. NORTON: Can you repeat your question, please.

9 CHAIRMAN CLARK: Well, why is it necessary to make
10 an affirmative statement on competition on the extended
11 calling area routes?

12 MS. NORTON: I think because the current rates
13 that the long distance carriers pay are higher than the
14 ECS routes. And, therefore, if the Commission votes
15 that competition should be continued, they are, in
16 effect, saying that they will address the issue of the
17 access rates or the current rates paid by long distance
18 carriers are above the rates that the Commission has
19 approved for ECS. I believe that's very much the
20 concern.

21 MR. O'PRY: Commissioner, maybe I can help you
22 here. If you go back to Page 34 of the recommendation,
23 the alternative 1A, you have already voted that
24 interexchange carriers, IXCs, may continue to carry the
25 same type of traffic on these routes that they are not

1 now authorized to carry. So, I think you have already
2 voted on that issue.

3 COMMISSIONER DEASON: They would be authorized to
4 carry that traffic. Now, whether it's economic for
5 them to do it, and whether any customers knowing the
6 full ramifications, would want to subscribe to that is
7 different matter.

8 MS. NORTON: Correct. I mean, that's the
9 Dade/Broward situation today, as I understand it. The
10 Commission authorized competition in concept and was
11 going to deal with the problems with the access rates
12 versus the ECS rates in the context of the ECS rules.
13 That issue is still to be addressed. In order to not
14 have it be a new problem now, Staff has recommended
15 that parties go forward with negotiations for resale
16 and interconnection rates. And if you do that and you
17 approve that or acknowledge that that's what is needed
18 to be --

19 COMMISSIONER DEASON: Well, I'm having a problem
20 -- realizing there is going to be local competition
21 come January 1, why does there need to be negotiations
22 on interconnection? If somebody wants to, they can
23 start their own local company and they can define what
24 they can -- if they want to provide local service
25 between Key West and Pensacola, they can do that, if

1 they want to call it local service, can they not?

2 MS. NORTON: Yes, sir, but all parties are
3 instructed under the statute. They will still want
4 interconnection rates, because I may subscribe to an
5 alternative, but you may still have the local carrier
6 and they need to have agreements in place as to how
7 they are going to do that. So, that's why it's
8 important to have those interconnection rates.

9 COMMISSIONER DEASON: I understand it's important
10 to have interconnection rates, but not for purposes of
11 defining why it's going to constitute local in an
12 ALEC's definition of what they consider to be local, is
13 it?

14 MS. NORTON: I don't understand.

15 COMMISSIONER GARCIA: Are you talking basic or
16 local?

17 COMMISSIONER DEASON: Well, I guess, basic because
18 we have to start using the new terminology. An ALEC,
19 they are not confined by -- and maybe this is an issue
20 we are going to have to address in the future. But as
21 I understand it, or as I would envision it, an ALEC is
22 not -- they can define what they want to as
23 constituting what has generally been known as local
24 service. If they want to say, you know, for \$50 a
25 month this part of your local calling is anywhere in

1 the State of Florida, and that's what you pay. I mean,
2 if that's what they want to market, and that's what
3 they want to promote, and if they have got the
4 facilities to do it, I assume they would be allowed to
5 do that. The ALECs are not being limited to what they
6 can offer by what we have historically determined is
7 local and toll, are they?

8 MS. NORTON: I agree with that. I guess the way
9 that we were looking at it here, is we have defined --
10 you know, your vote today was to define these routes as
11 basic routes, basic service routes. Under the statute,
12 there are certain very particular criteria that apply
13 to basic service, including provision of 911 and
14 operator services. And I'm not sure that anybody
15 contemplated carriers doing all of that, when they have
16 traditionally been just providing long distance
17 transport is what they have been providing. And I
18 don't think that you were contemplating that they were
19 taking on a lot of necessarily -- or assuming that they
20 would be taking on all of these other things in order
21 to continue to be able to provide this transport. If a
22 carrier wants to continue to provide the transport
23 between, say, Miami and Key West, then I believe it was
24 your intention that they be allowed to continue to do
25 so. All that we were suggesting here was because the

1 LEC rates now for that are going to be 25 cents a call,
2 that we needed to re-look at the rates that the new
3 local competitors would have to pay for that.

4 COMMISSIONER DEASON: The rates they would have to
5 pay --

6 MS. NORTON: They would have to pay the LEC to
7 terminate those calls, because there would still be --
8 competition will go in for these -- these are
9 re-defined as local. Right now these are toll rates
10 and the system is well-established. Well, on
11 January 1st the rules change, but some of the
12 facilities and the activities of the carriers are not
13 going to change that quickly. Eventually, maybe some
14 of them will want to provide more basic local services,
15 but that won't happen January 1st. And was it your
16 intention that they have to be on board January 1st to
17 provide all local services, all basic local, all
18 aspects of basic local service?

19 COMMISSIONER DEASON: I guess I'm confused on the
20 issue. We are going to have to determine at some
21 future point what the interconnection is going to be
22 and what the rates are, okay? We are not doing that
23 today.

24 MS. NORTON: No, sir. And the statute provides
25 for actually the parties to negotiate that out. It's

1 not necessarily something that you, yourself, would
2 determine.

3 COMMISSIONER GARCIA: And there is a good chance
4 we won't get that, that they will come to an agreement
5 outside.

6 COMMISSION STAFF: Commissioners, you have got a
7 petition before us by TCG that you will be -- you have
8 got hearings on in the latter part of October to
9 address interconnection for TCG. There are other, you
10 know, parties that are negotiating with companies for
11 interconnection arrangements as we speak. They will
12 take probably what comes out of that hearing as kind of
13 an indication of where the Commission is directing, as
14 far as interconnection rates. You know, we don't have
15 to make that -- as you said, that decision is not
16 before us today. And, you know, come January 1, there
17 may be competition on these routes or there may not be
18 competition on these routes, but it's going to be up to
19 the competitors as to whether or not there is
20 competition on these routes or not.

21 COMMISSIONER GARCIA: Let me ask you a further
22 question, and maybe it goes in line with what
23 Commissioner Deason is talking about. Come January 1,
24 I'm an ALEC. I want to provide service. By our
25 defining this as a basic service, that doesn't

1 necessarily mean that they have to provide this
2 particular service, because that will be the choice of
3 the consumer. And I can offer a package like
4 Commissioner Deason said, 50 bucks, all of Florida, go
5 for it. Which is still higher than the basic service,
6 but that will be your choice, whether to stay with your
7 local carrier, in this case Southern Bell, or whether
8 to sign up with Joe Garcia Telephone Company.

9 COMMISSION STAFF: It would be my guess,
10 Commissioner, that many of the ALECs that come in may
11 not even be providing basic service. They are going to
12 more specialized aiming at particular markets and going
13 at niche markets to begin with. There is nothing that
14 requires them to provide basic service.

15 COMMISSIONER JOHNSON: Sally, what was the point
16 that you made about how basic service is defined very
17 broadly, and in order to not provide that broad list of
18 things that are included in that definition, an ALEC
19 would have to come before the Commission?

20 MS. SIMMONS: That's correct. The statute under
21 364.337(2) defines what all is supposed to be included
22 in the basic service that an ALEC provides. But it
23 also goes on in this passage to talk in terms of how
24 the ALEC could request a waiver of certain portions of
25 this statute. And I see nothing here that would

1 preclude an ALEC from requesting a waiver so that they
2 would only have to provide a portion of basic service
3 and not necessarily all of it.

4 COMMISSIONER DEASON: Let's look at the issue. We
5 are on Issue 2, is that right?

6 CHAIRMAN CLARK: Yes, we are.

7 MS. NORTON: Correct.

8 COMMISSIONER DEASON: Okay. The issue, I think,
9 is very clear.

10 MS. NORTON: I think this can be --

11 COMMISSIONER DEASON: And I think we are saying,
12 "Yes, we cannot allow other carriers to provide the
13 calling on these routes." And, obviously, regardless
14 of what we do today, come January 1, they can do it
15 under the title of an ALEC. The question is, do we
16 want to define this under the old terminology as a
17 local service and hence not open to IXCs for the period
18 of time until there becomes competition for local on
19 January 1. That's the way I read the issue. I think
20 that was the reason the issue was put in this
21 proceeding. Now, if I'm not interpreting the issue
22 right, tell me where I'm wrong.

23 COMMISSION STAFF: I believe you're interpreting
24 it correct. However, I think our recommendation could,
25 you know, be clarified to help, you know, reflect your

1 vote in previous issues. In that last paragraph in the
2 recommendation statement, instead of "local service,"
3 may need to just read "basic service," everywhere it
4 reads "local service."

5 MS. NORTON: And truly, Commissioner, you know,
6 the answer in the issue, "Yes, there shall be
7 competition." There is nothing else specific in this
8 case that you need to do.

9 CHAIRMAN CLARK: I think based on what we have
10 heard, the issue should be simply, "If the Southern
11 Bell proposal is approved, should the Commission allow
12 competition on the extended calling service routes."
13 If we limit it to that, why is it necessary to take up
14 additional action?

15 MS. NORTON: The reason that issue was put in
16 there, if you recall, was because of the problem with
17 the rate levels. And right now the wholesale rate is
18 higher than the ECS rate. And that was what the
19 carriers wanted you to understand and address.

20 CHAIRMAN CLARK: But we are not addressing it. I
21 mean, we are not fixing that problem. I guess there is
22 a difference between saying you can compete and setting
23 up things that will effectively preclude you from
24 competing.

25 MS. SIMMONS: I guess the difficulty is here in

1 this docket we are talking about how carriers can
2 compete, but the fact of the matter is that the
3 additional action is going to be taken elsewhere, not
4 in this docket.

5 COMMISSIONER GARCIA: So why are we addressing it?

6 MS. SIMMONS: The answer to the second portion of
7 Issue 2 can simply be, "No additional action needs to
8 be taken in this docket." And I think it can be solved
9 that simply.

10 COMMISSIONER GARCIA: Okay.

11 CHAIRMAN CLARK: Is there any concern with that?
12 Okay. Now, the issue will remain as phrased, but the
13 Staff's recommendation is now that we should say, "Yes,
14 the Commission should allow competition on the routes
15 and no additional action in this docket is required."
16 Is that your recommendation?

17 COMMISSION STAFF: Yes.

18 CHAIRMAN CLARK: All right. Commissioners, is
19 there a motion?

20 COMMISSIONER DEASON: I move approval of Staff's
21 modified recommendation.

22 COMMISSIONER GARCIA: And I withdraw my first one,
23 and I will go ahead and second that one.

24 CHAIRMAN CLARK: All right. There has been a
25 motion and a second.

1 I would like to say that I'm taking as a given the
2 Commission's decision in this. And that to the extent
3 I vote on that, it's the majority has spoken, and I
4 think this is consistent with what the majority has
5 spoken. And it's not what I would have -- well,
6 actually, it may be regardless of the fact that you
7 implement less routes, I think it's still appropriate
8 to vote that they should be allowed competition and
9 nothing further is allowed.

10 COMMISSIONER JOHNSON: Let me just get some
11 clarification from Ms. Norton. It appears that it is
12 Staff's concern that when we say competition is to
13 continue, but when you look at the fact that the
14 wholesale rates are higher than the ECS rates, it's
15 like, well, how is it really going to happen. And are
16 you stating that it's Staff's view that in the future
17 we probably will have another proceeding because we
18 have determined that we want competition?

19 MS. NORTON: No, we just wanted acknowledgement
20 that you recognized that the local interconnection and
21 resale negotiations will resolve this problem or ought
22 to resolve this problem.

23 COMMISSIONER JOHNSON: Okay. Got you.

24 MS. NORTON: And if they cannot resolve them, you
25 do expect them to come before you for resolution, and

1 that's what we were seeking.

2 CHAIRMAN CLARK: There has been a motion and
3 second. All in favor, say aye.

4 COMMISSIONER KIESLING: Aye.

5 COMMISSIONER DEASON: Aye.

6 COMMISSIONER GARCIA: Aye.

7 CHAIRMAN CLARK: Aye.

8 COMMISSIONER JOHNSON: Aye.

9 CHAIRMAN CLARK: Opposed, nay.

10 Legal Issue Number 3.

11 COMMISSION STAFF: Commissioners, you've basically
12 already answered -- Legal Issue Number 3 is if it is
13 not part of basic telecommunications service, does the
14 plan violate imputation requirements. The alternative
15 recommendation is apparently what you have already
16 approved by your previous votes. If you want to just
17 go ahead and --

18 CHAIRMAN CLARK: Is there a motion on the
19 alternative recommendation?

20 COMMISSIONER DEASON: Move Staff alternative on
21 Legal Issue 3.

22 COMMISSIONER JOHNSON: Second.

23 CHAIRMAN CLARK: Without objection? Without
24 objection.

25 COMMISSION STAFF: On Legal Issue 4, does the

1 proposal violate any other provisions of the revised
2 statute? Ms. Canzano will present the item.

3 MS. CANZANO: It is Staff's position that Southern
4 Bell's ECS proposal does not appear to violate any
5 other provisions of Chapter 364.

6 COMMISSIONER GARCIA: Move Staff.

7 COMMISSIONER KIESLING: Second.

8 CHAIRMAN CLARK: Without objection, Legal Issue 4
9 is approved.

10 Technical Issue 3.

11 COMMISSION STAFF: Issue 3 is when should tariffs
12 be filed and what should be the effective date. Ms.
13 Norton.

14 CHAIRMAN CLARK: Why is it December 1st?

15 MS. NORTON: As opposed to? Well, actually --

16 CHAIRMAN CLARK: Right away.

17 MS. NORTON: -- I think now since you have
18 approved the tariff as filed, they don't need to
19 refile. It was to cover all the various possibilities,
20 the CWA proposal, and those --

21 COMMISSION STAFF: Also the petitions for
22 reconsideration would have been expired by that time,
23 too. That's the reason we picked December 1st. We
24 would have everything settled out by that time,
25 hopefully.

1 COMMISSIONER GARCIA: But if we approve the tariff
2 that's filed, can't it begin and then we have the
3 motion after?

4 COMMISSION STAFF: Yes. That's just basically to
5 refile pages by that date. The tariff becomes
6 effective on January 1st by the vote. It was just, you
7 know, a ministerial type decision as far as what date
8 to have the tariffs refiled.

9 COMMISSIONER DEASON: Let's back up. The tariffs
10 were filed to become effective January 1st?

11 COMMISSION STAFF: No, the tariffs were filed to
12 become effective October 1st, with a phase-in schedule.
13 But with your approval of the recommendation in
14 Issue 1A, the alternative, you have approved it to be
15 effective January 1st, with the refund mechanism in
16 place from October 1st to January 1st. So, the tariff
17 pages are going to have to be refiled, anyway.

18 COMMISSIONER DEASON: Well, maybe we need to
19 reconsider that.

20 CHAIRMAN CLARK: Well, I'm not sure it wasn't --
21 it was at least not absolutely clear to me that we were
22 voting January 1st.

23 COMMISSIONER GARCIA: No, absolutely not.

24 CHAIRMAN CLARK: So, I think maybe in lieu of
25 revisiting it, we'll visit it here and make a

1 determination of when is appropriate.

2 COMMISSIONER DEASON: When I say, "reconsider,"
3 I'm talking about reconsider on our own motion.

4 COMMISSIONER GARCIA: Yes, to put the effective
5 date to what the tariff stated, which would be
6 October 1st, correct?

7 COMMISSIONER DEASON: And I want some input from
8 Staff as to what is the problem with that.

9 MS. NORTON: Actually, the voting part was to be
10 in this issue on the effective date. And we had
11 recommended January 1st, because that is when ALECs may
12 then actually begin to compete. And we thought that it
13 was more appropriate to allow them all to be effective
14 at the same time, and that would further the
15 competitive aspect of this. In between, the
16 stipulation calls for, or provides for any time an
17 effective date that is different from the one
18 prescribed in the stipulation, that that customer
19 credit -- which you should be familiar with, we have
20 done this before -- be implemented on customer bills on
21 a monthly basis until the permanent rates are put in
22 place.

23 COMMISSIONER DEASON: How would you calculate that
24 credit?

25 MS. NORTON: It's shown in the recommendation, the

1 specifics of that credit.

2 COMMISSIONER DEASON: Well, just explain it to me
3 briefly right here, right now.

4 MS. NORTON: Okay. \$25 million is at issue, one
5 fraction of the 25 million gets credited on the
6 customer bills, pro rata, according to rate levels on
7 basic local exchange service each month until the rates
8 go into effect.

9 CHAIRMAN CLARK: I guess we're changing a rate for
10 a long distance call. How are you going -- I don't
11 understand how you're going to credit the accounts.

12 MS. NORTON: Because of the dollar amounts.

13 CHAIRMAN CLARK: No, no, the mechanics of it; do
14 you have to have made a call that's covered on an ECS
15 route?

16 MS. NORTON: No, because until these go in, the
17 stipulation just calls for the dollar amounts to be
18 implemented according to the --

19 CHAIRMAN CLARK: Okay.

20 MS. NORTON: Okay.

21 COMMISSIONER GARCIA: Do we have to reconsider the
22 thing, or can't we just, on our own motion, just say
23 effective date October 1st?

24 COMMISSIONER DEASON: Well, that would be in
25 conflict with what you voted on in the previous issue.

1 CHAIRMAN CLARK: It's confusing to me as to why
2 the Staff put it in one issue and has a separate time
3 for making the tariffs effective.

4 COMMISSION STAFF: No, the tariffs are still
5 effective January 1st in both issues. That's not
6 inconsistent. We just had them filed December 1st, as
7 far as that is the date we wanted to see them.

8 COMMISSIONER DEASON: The tariffs as filed by
9 Southern Bell had an effective date of October the 1st
10 or January 1st?

11 COMMISSION STAFF: Had an effective date of October
12 the 1st. However, the implementation schedule was
13 60 days after the order for the first phase to be
14 implemented, and then another 60 days before the second
15 part was implemented.

16 CHAIRMAN CLARK: That's sort of beyond what my
17 concern is. This has happened in another case where we
18 inadvertently voted on a timing issue when it was a
19 separate issue, and it was sort of incorporated into
20 another recommendation. We voted on that
21 recommendation and then when we get to this one, it
22 seems that we have done something -- it shouldn't have
23 been broken out as an issue or it shouldn't have been
24 included in the previous issue.

25 MS. SIMMONS: Yes. Commissioners, I would grant

1 you we should not have it in both places. I apologize
2 for that confusion.

3 MS. NORTON: Our recommendation to have it
4 implemented January 1st goes to the fact that ALEC
5 certificates will not become effective by statute until
6 January 1st. And we thought it was appropriate to
7 defer implementation of any ECS routes until the
8 competitors have an opportunity to obtain their
9 certificates. And we believe that time should be
10 allowed for negotiations to get the resale and
11 interconnection rates in place prior to the ECS coming
12 in.

13 COMMISSIONER GARCIA: But negotiation may even be
14 better if this is already established and the companies
15 can look at the history and know exactly what they are
16 looking at, right?

17 COMMISSION STAFF: The Company can't --

18 MS. NORTON: The incentive is not for Southern
19 Bell --

20 COMMISSIONER GARCIA: I'm sorry?

21 COMMISSION STAFF: The Company cannot implement it
22 before then, anyway, before January 1st.

23 COMMISSIONER DEASON: When is the earliest the
24 Company can physically implement the ECS proposal?

25 COMMISSION STAFF: January 1st for the first phase

1 of it.

2 COMMISSIONER GARCIA: Is that what their tariff
3 says?

4 MR. ELIAS: I believe it says 60 days from the
5 Commission's vote or the order. And because you have
6 got the requirement pursuant to the stipulation to make
7 refunds effective October 1, 1995, or beginning
8 October 1, 1995, that's why the consideration of the
9 effective date and the Commission's decision on the
10 substance is not easily separated.

11 COMMISSIONER JOHNSON: Bob, in his analysis back
12 in Issue 1A, or whatever it was, or maybe it was
13 Julian, they did tie the issue of when this should be
14 effective to their whole argument of there being a
15 competitive market, and why this would be a fair thing
16 to do. Because as of June 1st, theoretically, there
17 will be ALECs in the market. And then, theoretically,
18 there will be that opportunity for real competition.
19 But since our settlement agreement says October 1 as
20 the date to which the reductions should occur, then for
21 those three months we give all the customers a general
22 reduction in rates. I do remember reading that in the
23 other section, although it might have been in the wrong
24 section. I agree with the analysis, and I would leave
25 it at the June 1 effective date.

1 COMMISSION STAFF: January 1.

2 COMMISSIONER JOHNSON: January 1 effective date.

3 CHAIRMAN CLARK: Are you moving Staff
4 recommendation on 3?

5 COMMISSIONER JOHNSON: Yes.

6 CHAIRMAN CLARK: Is there a second?

7 COMMISSIONER DEASON: Second. That's with the
8 understanding that January 1st is the earliest, anyway.
9 Regardless of when local service competition develops
10 or not develops, that's the earliest that Southern Bell
11 can implement the rates.

12 COMMISSIONER GARCIA: With that understanding.

13 CHAIRMAN CLARK: Without objection, Issue 3 is
14 approved.

15 Issue 4.

16 COMMISSIONER DEASON: I move Staff.

17 COMMISSIONER JOHNSON: Second.

18 CHAIRMAN CLARK: Without objection, Issue 4 is
19 approved.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEON)

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 1 through 79 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS _____ day of October, 1995.

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