BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Comprehensive review of the revenue requirements and rate stabilization plan of Southern Bell Telephone and Telegraph Company.	)	DOCKET NO. 920260-TL ORDER NO. PSC-95-1391-FOF-TL ISSUED: November 8, 1995

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

Pursuant to Notice, a hearing was held in this docket on July 31, 1995, at Tallahassee, Florida.

APPEARANCES:

Robert G. Beatty, Esquire, J. Phillip Carver, Esquire, c/o Nancy H. Sims, Suite 400, 150 South Monroe Street, Tallahassee, Florida 32301 and R. Douglas Lackey, Esquire, Nancy B. White, Esquire, 4300 - 675 W. Peachtree, St., NE, Atlanta, Georgia 30375
On behalf of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (SBT or Southern Bell).

Michael W. Tye, Esquire, AT&T Communications of the Southern States, Inc., 106 East College Avenue, Suite 1410, Tallahassee, Florida 32301
On behalf of AT&T Communications of the Southern States, Inc. (ATT).

Mark Richard, Esquire, Cindy B. Hallock, Esquire, 304 Palmero Avenue, Coral Gables, Florida 33134
On behalf of Communication Workers of America, Locals 3121, 3122, 3107 (CWA).

Benjamin H. Dickens, Esquire, Blooston, Mordkofsky, Jackson & Dickens, 2120 L. Street, N.W., Suite 300, Washington, DC 20037-1527
On behalf of Florida Ad Hoc Telecommunications Users Committee (Ad Hoc).

Laura L. Wilson, Regulatory Counsel, Florida Cable Telecommunications Association, Inc., 310 N. Monroe Street, Tallahassee, Florida 32301
On behalf of Florida Cable Telecommunications Association, Inc. (FCTA).

Vicki Gordon Kaufman, Esquire, McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, 117 S. Gadsden Street, Tallahassee, Florida 32301
On behalf of Florida Interexchange Carriers Association (FIXCA).

C. Everett Boyd, Jr., Esquire, Ervin, Varn, Jacobs, Odom & Ervin, Post Office Drawer 1170, Tallahassee, Florida 32302
On behalf of Florida Mobile Communication Association, Inc. and Sprint Communications Company Limited Partnership (FMCA, Sprint).

Richard D. Melson, Esquire, Post Office Box 6526, 123 South Calhoun Street, Tallahassee, Florida 32314 and Michael J. Henry, Esquire, MCI Telecommunications Corporation, Suite 700, 780 Johnson Ferry Road, Atlanta, Georgia 30346
On behalf of MCI Telecommunications Corporation (MCI).

Floyd R. Self, Esquire, Norman H. Horton, Jr., Esquire, Messer, Vickers, Caparello, Madsen, Goldman & Metz, P.A., Post Office Box 1876, Tallahassee, Florida 32302-1876
On behalf of McCaw Communications of Florida, Inc. (McCaw).

Jack Shreve, Public Council, Charles J. Beck, Deputy Public Counsel, Office of the Public Counsel, c/o The Florida Legislature, 111 Est Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

Robert V. Elias, Esquire, Donna L. Canzano, Esquire, Tracy W. Hatch, Esquire, Florida Public Service Commission, Gerald L. Gunter Building, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

ORDER APPROVING EXTENDED CALLING SERVICE PLAN

BY THE COMMISSION:

I. BACKGROUND

This docket was initiated pursuant to Order No. 25552 to conduct a full revenue requirements analysis and to evaluate the Rate Stabilization Plan under which BellSouth Communications, Inc. d/b/a Southern Bell Telephone and Telegraph (Southern Bell or the Company) had been operating since 1988. Hearings were rescheduled several times in an effort to address all the concerns and issues that arose with the five consolidated proceedings over the ensuing two and a half years.

On January 5, 1994, a Stipulation and Agreement Between Office of Public Council (OPC) and Southern Bell was submitted. On January 12, 1994, Southern Bell filed an Implementation Agreement for Portions of the Unspecified Rate Reductions in Stipulation and Agreement Between OPC and Southern Bell. Other parties filed motions in support of the Stipulation and Implementation Agreement. The Commission voted to approve the terms of the settlement at the January 18, 1994 agenda conference (Order No. PSC-94-0172-FOF-TL). The terms require, among other things, that rate reductions be made to certain Southern Bell's services. Some of the reductions have already been implemented. Other reductions are scheduled to occur according to the following time table:

7/1/94	*	Switched access reductions - $50 million,
(completed)	*	- $10 million (specified below)
		- Reduced mobile interconnection usage rates
		- Eliminated Billed Number Screening charge
		- Reduced DID trunk termination rates
10/1/95	*	Switched access reductions - $55 million
	*	Unspecified rate reductions - $25 million
10/1/96	*	Switched access reductions - $35 million
	*	Unspecified rate reductions - $48 million

According to the terms of the Stipulation and Implementation Agreement, approximately four months before the scheduled effective dates of the unspecified rate reductions, Southern Bell will file its proposals for the required revenue reductions. Interested parties may also file proposals at that time. Parties who have already received or are scheduled to receive rate reductions for

the services to which they subscribe, are generally precluded from taking positions that would benefit themselves.

On May 15, 1995, Southern Bell filed a tariff proposal to introduce Extended Calling Service (ECS) to satisfy the unspecified outstanding $25 million rate reduction in accordance with the Stipulation. CWA and McCaw also filed proposals.

A hearing was held on July 31, 1995 to consider how to implement the $25 million rate reduction. This order addresses the tariff filing and other proposals for the $25 million in unspecified rate reductions scheduled to be implemented October 1, 1995. During the hearing, several issues concerning the proper application of the revisions to Chapter 364, Florida Statutes, to this proceeding were identified. The parties filed briefs addressing these legal issues. Since the resolution of these issues is appropriate as a framework for consideration of the various proposals, the legal issues are addressed first.

II. SUMMARY OF DECISION

We approve Southern Bell's ECS tariff proposal to implement the $25 million rate reduction required by Order No. PSC-94-0172-FOF-TL. This plan is the best alternative of those offered for consideration. Interexchange carriers shall continue to be permitted to carry this traffic. By application of newly enacted Section 364.385(3), Florida Statutes, this proceeding is governed by the previous version of Chapter 364, Florida Statutes. When implemented, ECS on these routes shall be considered "basic local telecommunications service" pursuant to Section 364.02, Florida Statutes. Because ECS will be part of basic local telecommunications service, it does not violate the imputation requirement of Section 364.051(6)(c), Florida Statutes. Southern Bell shall file tariffs to be effective January 1, 1996 reflecting the decisions in this order. Southern Bell shall issue refunds in accord with the provisions of Order No. PSC-94-0172-FOF-TL for the period from October 1, 1995, through December 31, 1995.

III. STAFF'S MOTION TO SUPPLEMENT THE RECORD

On August 10, 1995, Commission staff filed a Motion to Supplement the Record of the Hearing held July 31, 1995, in this docket. The motion seeks to supplement the record with the late-filed deposition Exhibit of Joseph Stanley, which was attached to the motion.

This late-filed deposition exhibit was inadvertently omitted from staff's composite Exhibit number 7, which was admitted into evidence without objection. Several parties to this proceeding have proposed and/or endorsed reductions to the currently tariffed rates for private branch exchange (PBX) and direct inward dial (DID) trunk service offerings as the most appropriate method for implementing the $25 million rate reduction at issue in this proceeding.

This exhibit provides information necessary to analyze and calculate the impact of reductions to the rates charged for PBX and DID service offerings. No party filed a response to the motion. Therefore, it may be assumed that no party opposes the request. Thus, we find that the motion shall be granted.

IV. APPLICABLE LAW

Section 364.385(3), Florida Statutes, provides that:

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

Order No. PSC-94-0172-FOF-TL requires extensive rate reductions by Southern Bell, some of which are specifically identified and some of which are "unspecified." This proposal was submitted to satisfy the unspecified $25 million rate reduction required for October 1, 1995. Order No. PSC-94-0172-FOF-TL details a comprehensive framework, imposing numerous requirements on Southern Bell including the following: the reduction of certain rates, the capping of local rates, the sharing of earnings, mandating the recording of expenses, the establishment of certain reserves, the elimination of additional charges for touchtone service, and a requirement that the company absorb "up to $11 million in revenue losses and costs that are expected to result from the implementation of a Dade/Broward County extended area service plan." These proposals are being considered to implement one of the requirements of Order No. PSC-94-0172-FOF-TL.

Assuming that Southern Bell opts to be a price regulated local exchange company pursuant to Section 364.051, Florida Statutes, the Commission's regulatory oversight will be limited. A comprehensive framework, as is operative with respect to this Order, is fundamentally inconsistent with the Commission regulatory mission pursuant to the revised statute. Order No. PSC-94-0172-FOF-TL is

the express and only subject of Section 364.385(3), Florida Statutes, a "savings" clause.

In pertinent part, Section 364.385(2), Florida Statutes, as amended by the 1995 Florida Legislature provides:

> Proceedings including judicial review pending on July 1, 1995, shall be governed by the law as it existed prior to the date on which this section becomes a law. No new proceedings governed by the law as it existed prior to January 1, 1995, shall be initiated after July 1, 1995. Any administrative adjudicatory proceeding which has not progressed to the stage of a hearing by July 1, 1995, may, with the consent of all parties and the commission, be conducted in accordance with the law as it existed prior to January 1, 1996.

This 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. Thus, the "consent of all parties and the commission," is not required to conduct this proceeding "in accordance with the law as it existed prior to January 1, 1996."

Section 364.385(2), Florida Statutes, as amended by the 1995 Florida Legislature also provides: "All applications for extended area service, routes, or extended calling service pending before the commission on March 1, 1995, shall be governed by the law as it existed prior to July 1, 1995."

Some parties suggest that because the ECS proposal was filed after March 1, 1995, it cannot be considered by the Commission. But for the savings clause specifically applicable to this docket and the Order by which this rate reduction is required, we would agree. It appears that the Commission has no prospective authority to require ECS offerings by local exchange companies electing to be price regulated pursuant to Section 364.051, Florida Statutes.

Therefore, we find that the unspecified $25 million rate reduction scheduled for October 1, 1995, shall be processed under the former version of Chapter 364, Florida Statutes.

V. ECS AS BASIC LOCAL TELECOMMUNICATIONS SERVICE AS DEFINED IN SECTION 364.02(2) FLORIDA STATUTES

As stated above, this ECS proposal is being considered in this docket pursuant to a negotiated resolution of Southern Bell's most recent comprehensive earnings, revenue and rate proceeding.

By Order No. PSC-94-0572-FOF-TL, issued May 16, 1994, in Docket No. 911034-FOF-TL, the Commission approved the same type ECS plan as is pending in this docket for the Fort Lauderdale/Miami, Hollywood/Miami, and Fort Lauderdale/North Dade routes. The Commission stated:

> The hybrid $.25 plan is identical to GTE Florida Incorporated's ECS plan approved by the Commission in Docket No. 910179-TL. The plan provides for a $0.25 message rate for residence and a measured rate of $0.10 for the first minute and $.06 for additional minutes for business. The measured rate for business customers was determined to be appropriate because the calling characteristics, in terms of call durations and calling patterns, differed for business customers. (Order No. PSC-94-0572-FOF-TL at page 3)

This plan was proposed in an agreement between the Florida Interexchange Carriers Association (FIXCA) and Southern Bell. The agreement provides that "after implementation of the hybrid $.25 plan, interexchange carriers may continue to carry the same types of traffic on the toll routes that they are now or hereafter authorized to carry."

Order No. PSC-94-0572-FOF-TL explicitly recognized that this plan was being implemented to satisfy the requirements of the Settlement and Implementation Agreement in this docket:

> the revenue effects of the implementation of the settlement in this case shall be treated in accordance with Paragraph 8 of the settlement between the Office of Public Counsel and Southern Bell in Docket No. 920260. (Order No. PSC-94-0572-FOF-TL at page 5)

Thus, we have approved a similar proposal with the revenue reduction being applied to satisfy the requirements of Order No. PSC-94-0172-FOF-TL. Further, by the terms of that Order and the revisions to Chapter 364, Florida Statutes, the rates for ECS on the Fort Lauderdale/Miami, Hollywood/Miami, and Fort Lauderdale/North Dade routes are capped at the current price and

considered part of basic local service. We believe the same treatment is appropriate for this proposal.

We believe that Section 364.385(3), Florida Statutes, preserving the Commission's authority with respect to Order No. PSC-94-0172-FOF-TL, is a more specific expression of legislative intent than the provisions regarding ECS found in Section 364.385(2), Florida Statutes. The authority granted by the legislature with respect to this docket permits the Commission to approve this proposal in a similar framework. Therefore, we find that Southern Bell's ECS plan shall be considered part of basic local telecommunications service, for the purposes of Sections 364.02 and 364.051, Florida Statutes.

VI. IMPUTATION REQUIREMENT OF SECTION 364.051(6)(C), FLORIDA STATUTES

Section 364.051(6)(c), Florida Statutes, provides that

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

Since we have decided that the plan shall be considered basic local telecommunications service under the authority of Section 364.385(3), Florida Statutes, the imputation requirement of Section 364.051(6)(c), Florida Statutes, does not apply.

VII. CONSISTENCY WITH OTHER PROVISION OF THE REVISED CHAPTER 364, FLORIDA STATUTES

Southern Bell, CWA, FMCA, McCaw, OPC, and FCTA assert that Southern Bell's ECS proposal does not violate any other provision of the revised Chapter 364, Florida Statutes, excluding those identified in specific issues.

ATT, DOD, Ad Hoc, and Sprint assert that Southern Bell's ECS plan violates the spirit and intent of the revisions to Chapter 364, as provided in Section 364.01. ATT states that the revisions to Chapter 364 were premised upon a finding that the competitive provision of telecommunications service is in the public interest and will provide substantial benefits to consumers. ATT also

states that the Commission is directed to encourage competition through flexible regulatory treatment, and to promote competition by encouraging new entrants into telecommunications markets, while retaining the existing requirement that the Commission ensure that all providers of telecommunications services are treated fairly by preventing anticompetitive behavior.

Clearly, the intent of the legislation is to encourage and promote competition while preventing anticompetitive behavior; however, we do not think that if implemented, Southern Bell's ECS plan would violate the spirit and intent of Chapter 364. The implementation of the plan does not prevent others from carrying this type of traffic.

ATT also states that Southern Bell's proposal constitutes an anticompetitive act or practice in violation of Section 364.051(6)(a), Florida Statutes. There does not appear to be an anticompetitive act or practice, since competition will be permitted on these routes.

FIXCA argues that Section 364.051(6)(a)(2), Florida Statutes, would be violated if Southern Bell's ECS plan were implemented, because it violates the non-discrimination provision under Southern Bell's interpretation of "functionally equivalent" service. This section provides that the LECs shall not engage in any anticompetitive acts or practice, nor unreasonably discriminate among similarly situated customers. FIXCA asserts that if the Commission accepts Southern Bell's "functionally equivalent" argument then Southern Bell violates Section 364.051(6)(a)(2). FIXCA states that if ECS and intraLATA toll are the same for purposes of the imputation test, Southern Bell's pricing proposal discriminates against Southern Bell's intraLATA toll customers, because Southern Bell proposes to charge customers who are receiving essentially the same service different prices. As stated above, we have determined that the ECS plan shall be part of basic local telecommunications service. Thus, it is not "functionally equivalent" to intralata toll service. Therefore, the plan does not violate Section 364.051(6)(a)(2), Florida Statutes.

Accordingly, we find that Southern Bell's ECS proposal does not appear to violate any other provision of the revised Chapter 364, Florida Statutes.

VIII. SOUTHERN BELL'S PROPOSAL

A. Tariff filing T-95-304:

Southern Bell submitted this proposed tariff on May 15, 1995, to establish ECS as the standard offering for expanded local calling. With the exception of the Enhanced Optional Extended Area Service (EOEAS) residential flat-rate premium option, when ECS is implemented the Basic Optional Extended Area Service (BOEAS), EOEAS, Optional Calling Service (OCS/Toll-Pac), and Local Calling Plus (LCP) will all be discontinued. ECS is an enhancement to local service. Dialing is on a seven-digit basis, except when crossing area code boundaries. Residential customers are charged $.25 per message regardless of call duration. Business customers are charged on a per minute basis, $.10 for the first minute and $.06 for each additional minute.

This ECS proposal is being made to satisfy the outstanding revenue reductions commitment, in accordance with the Stipulation and Agreement between the Office of Public Counsel and Southern Bell, and with the Implementation Agreement between Southern Bell and all other parties to Dockets 900960-TL, 910163-TL, and 920260-TL. According to the Company, the estimated revenue effect without any stimulation would be a $43.5 million reduction. Southern Bell requested implementation of the Southeast LATA (local access and transport area) ECS routes 60 days after approval and the routes in the other LATAs 120 days after approval. These dates would have been July 14 and September 12, 1995, respectively, which would have been prior to the October 1, 1995 required rate reduction.

The proposed ECS tariff was considered at the June 15, 1995 agenda conference. The proposed tariff was suspended to consider the ECS proposal along with other parties' proposals at the hearing scheduled for July 31, 1995.

B. Exhibit 5 (Amendment to T-95-304):

Southern Bell amended its initial request on July 28, 1995 by including 34 additional routes in the Southeast LATA and 2 routes in the Pensacola LATA. Calling from Exchange A to Exchange B and from Exchange B to Exchange A constitutes two routes. According to Southern Bell, these additional routes were at the request and urging of the Public Counsel and customers. The unstimulated estimated revenue effect for the 36 routes would be $4.5 million. Therefore, the amended filing has 288 Bell-to-Bell routes throughout the state, with approximately a $48.0 million unstimulated revenue effect.

The Office of Public Counsel supports Southern Bell's ECS proposal as indicated in its basic position: "The Commission should use the upcoming rate reduction for expanded local calling." (Order PSC-95-0895-PHO-TL, p.11) All other intervenors would use the $25 million in other ways as discussed subsequently in this Order.

C. Proposed 288 One-Way Routes

An analysis of the routes shows 188 one-way routes in the Southeast LATA, with the remaining 100 one-way routes located in the Daytona Beach, Gainesville, Jacksonville, Orlando, Panama City, and Pensacola LATAs.

A county-by-county analysis of routes in the Southeast LATA indicates:

Monroe County - All Southern Bell exchanges in the Florida Keys, to the extent that local calling is not now available, will have ECS calling to Key West, the county seat, as well as calling between each other. ECS calling is also proposed between these exchanges and the Homestead, Perrine, and Miami exchanges.

Dade County - Dade County will have local or ECS calling between all exchanges in the county (countywide), with the addition of ECS between the Homestead and North Dade exchanges. The North Dade and Miami exchanges will have ECS calling to and from Boca Raton and intermediate exchanges.

Broward County - Broward County will have local or ECS calling between all exchanges (countywide) and ECS calling to and from the Boca Raton, Boynton Beach, and Delray Beach exchanges in Palm Beach County.

Palm Beach County - Palm Beach County will have local or ECS calling between all exchanges in the county (countywide).

Martin County - ECS is proposed between the Stuart exchange, the county seat, and the Jensen Beach, Jupiter and West Palm Beach exchanges.

St Lucie County - ECS is proposed between the Port St. Lucie exchange and the Vero Beach, Jupiter, and West Palm Beach exchanges.

Although this appears to be most of the Bell-to-Bell routes in the Southeast LATA, that is not the case. There are an additional 619 Bell routes, plus 21 routes from Bell exchanges to the Indiantown exchange.

The remaining 100 routes proposed for ECS are Bell-to-Bell routes in the Daytona Beach, Gainesville, Jacksonville, Orlando, Panama City, and Pensacola LATAs. Fifty-eight of the routes currently have some type of toll relief plan, such as LCP, BOEAS, OCS or EOEAS in effect. Implementing ECS on these routes will establish ECS as the standard offering for expanded local calling. Customers will have a better understanding of the one plan versus the several plans identified above. These routes account for approximately $5 million of the total reduction.

The 288 routes were selected for the October 1, 1995 $25 million reduction, because they provide customers with a seven-digit calling plan, except when crossing area code boundaries, beyond their current local calling area. ECS service has been well received since it provides a plan where only customers using the plan pay. Traditional flat-rate EAS requires an EAS additive, sometimes over $5, depending upon the routes involved. The proposed ECS routes were selected based upon subscribers' employment, where they worship, do their shopping, where children attend school, and where medical care is available. Southern Bell relied on these additional areas to support its request - 1) obvious community of interest, as was exhibited in the Dade/Broward metropolitan area, 2) traffic studies, 3) routes which have some type of toll relief plan currently in effect, 4) reciprocal routes, and 5) additional routes to eliminate any leap-frogging.

These are the same parameters used by GTE Florida Incorporated (GTEFL) in Docket 910179-TL, Order No. 25708 issued February 11, 1992. The Commission approved GTEFL's ECS local plan based on the existence of a sufficient community of interest when the following conditions were met: (1) usage studies partially or completely satisfy the requirements of Rule 25-4.060(3) F.A.C.; and (2) there is a demonstrated dependence between exchanges which may include educational, health, economic or governmental services, emergency (911) services, and social/recreational activities. Countywide calling is also a consideration. We believe all of these parameters should be considered, rather than relying only on the community of interest factor (CIF) which is the calling data. Further, the $.25 message plan was ordered in Holmes, Jackson, Okaloosa, and Walton Counties when the calling rates were lower than 1 call per access line, per month. (Docket No. 891246-TL, Order No. 24178) Also, we approved countywide calling in Escambia County by Order 21986 stating "...we believe there are mitigating

factors that justify implementation of countywide EAS... all are dependent upon Pensacola for employment, higher education, county offices, medical and emergency (911) services, and cultural and social events ... we do not believe nonqualifying intermediate routes to smaller communities should negate the request for countywide EAS...." (Docket No. 871268-TL)

Some of the intervenors express concerns that approval of the ECS plan will re-monopolize the provision of toll service throughout a significant portion of Southern Bell's operating territory. However, as discussed subsequently in this Order, interexchange companies (IXCs) may continue to carry the same types of traffic on these ECS routes that they are now authorized to carry. Additionally, under the revised telecommunications statutes, specifically Section 364.337, Florida Statutes, providing for alternative local exchange telecommunication companies (ALECs) on January 1, 1996, there could be additional competition for this traffic, as well as for other local services. In fact, the 17+ holders of Alternative Access Vendors' (AAVs) certificates as of July 1, 1995, upon notification to the Commission, are certificated as ALECs.

Intervenors also expressed concern that the ECS calls would be dialed on a seven-digit basis. Southern Bell's witness does not believe seven-digit dialing gives the Company an insurmountable competitive edge. While ECS offers a slightly more convenient dialing pattern, it does not offer customers the advantage of aggregating their usage for discount purposes. ECS calling between exchanges in the 407 area code would have ten-digit dialing to exchanges in the 305 area code. This will be true of calling to and from the new 954 area code, which will encompass all of Broward County. At that time, calling between exchanges in Broward County and exchanges in the 305 and 407 Area Codes will all be on a ten-digit basis.

D. Commission Precedent

Approval of Southern Bell's amended ECS plan is consistent with Commission precedent. The Commission approved a very similar plan for GTE Florida Incorporated, in February 1992. By Order No. 25708, issued February 11, 1992, in Docket No. 910179-TL, the Commission approved an ECS plan for the Tampa Bay area, including Tampa, St. Petersburg, Clearwater, Tarpon Springs and Plant City. The rates approved in that order for residential and business customers are identical to those proposed by Southern Bell. In that Order, the Commission found that:

> GTEFL has demonstrated that there is a sufficient community of interest to warrant some form of toll relief. The calling patterns on these routes partially satisfy the criteria for flat rate EAS and GTEFL has shown numerous examples of fundamental dependencies between the ECS exchanges. These fundamental dependencies involve the satisfaction of everyday needs such as jobs, health care, education, governmental services and recreation. For these reasons, we find that a modified version of the ECS plan shall be offered...

In the instant case, Southern Bell has alleged the same type of community of interest factors as found to be evident for Tampa Bay. Some of the routes do meet some of the requirements for EAS. No party challenged Southern Bell's filing on the basis that there was no "community of interest" involving these particular routes. Rather, the objections posited to the plan are based on concerns that the plan is an anti-competitive attempt to remonopolize the intraLATA toll market.

The Commission's Order approving a modified ECS plan for GTEFL also found that this action required that the approved routes be reclassified as "local" under the then applicable statutory scheme. This action precluded IXCs from carrying ECS traffic. The Commission's authority to do so was affirmed by the Florida Supreme Court in Florida Interexchange Carriers Association v. Beard, 624 So.2d 248 (Fla. 1993).

In contrast, all parties to this docket agree that IXCs should be permitted to continue to carry this traffic. Given our decision, discussed beginning on page 20 of this Order, that competition shall be allowed on these routes, there is no cognizable argument that this plan would, as a matter of law, remonopolize the intraLATA toll market.

E. Revisions to Chapter 364, Florida Statutes

The most significant provision of the revisions to Chapter 364, Florida Statutes, is found in Section 364.03, Florida Statutes:

> The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure. The

> Legislature further finds that the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition...

Encouraging the development of fair and effective competitive provision of telecommunications services, while exercising appropriate regulatory oversight to protect consumers, is the Commission's charge from the legislature. The right of others to compete with Southern Bell for this traffic is not in dispute.

We believe that Section 364.385(3), Florida Statutes, the savings clause, is a more specific expression of legislative intent than the provisions dealing with ECS found in Section 364.385(2), Florida Statutes. As discussed above, the Commission has previously approved an ECS proposal in this docket, giving credit to Southern Bell for rate reductions required by Order No. PSC-94-0172-FOF-TL. Those rates are now capped for five years. The authority granted by the legislature with respect to this docket permits the Commission to approve this proposal in a similar framework.

After January 1, 1996, the potential for the competitive provision of telecommunications services in Florida will be greatly expanded. ALECs, as well as IXCs, will be able to compete for this traffic. Section 364.161, Florida Statutes, requires Southern Bell to:

> unbundle all of its network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider requesting such features, functions or capabilities for resale to the extent technically and economically feasible.

Thus, the legislature provided telecommunications companies an opportunity to purchase, to the "extent technically and economically feasible" those services necessary to offer ECS to consumers. The legislature also provided telecommunications companies the opportunity to have the Commission establish the rates, terms and conditions for resale in the event that negotiations are not successful.

We believe it is in the public interest to approve Southern Bell's ECS plan. All residential and business customers making calls on the ECS routes will benefit by approximately $48 million annually (unstimulated) from the approval.

For these reasons, we find that Southern Bell's Extended Calling Service plan detailed in its May 15, 1995 filing, as supplemented by the additional 36 one-way routes, and modified below, shall be approved effective January 1, 1996, and considered basic service. Further, during the period beginning October 1, 1995 through December 31, 1995, Southern Bell shall be required to make the appropriate refund in compliance with the Stipulation approved in Order No. PSC-94-0172-FOF-TL. Pay telephone providers shall charge end users $.25 per message and pay the standard interconnection charge. IXCs may continue to carry the same types of traffic on these routes that they are now authorized to carry.

By Order No. PSC-95-1135-FOF-TL, issued September 12, 1995, in Docket No. 921193-TL, we approved a request for ECS on the following routes: Boca Raton/West Palm Beach; Delray Beach/West Palm Beach; Belle Glade/West Palm Beach; Pahokee/West Palm Beach; and Boynton Beach/Boca Raton.

Order No. PSC-95-1135-FOF-TL required that ECS be implemented as soon as possible, but not to exceed six months from the issuance of the order. These same routes are part of Southern Bell's ECS filing in this docket. To be consistent and avoid confusion, these five two-way routes shall be implemented January 1, 1996 and considered basic local service.

By Order No. PSC-95-1137-FOF-TL, issued September 12, 1995, in Docket No. 950221-TL, we approved a request for ECS on the DeBary/Orlando route.

Order No. PSC-95-1137-FOF-TL required that ECS be implemented as soon as possible, but not to exceed six months from the issuance of the order. These same routes are part of Southern Bell's ECS filing in this docket. To be consistent and avoid confusion, these two routes shall be implemented January 1, 1996 and considered basic local service.

By Order No. PSC-95-0646-FOF-TL, issued May 24, 1995, in Docket No. 930995-TL, we approved a request for flat rate EAS between Trenton and Newberry. By Order No. PSC-95-1219-FOF-TL, issued October 3, 1995, in Docket No. 941144-TL, we approved a request for flat rate EAS between Big Pine Key and Key West.

Accordingly, the Trenton/Newberry and Big Pine Key/Key West routes should not be included for ECS. Thus, we modify Southern Bell's ECS proposal to exclude these routes.

IX. CWA'S PROPOSAL

To satisfy the $25 million rate reduction required by Order No. PSC-94-0172-FOF-TL, CWA proposes to reduce each of the following by $5 million:

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

CWA has proposed that five customer classes or subsets of classes as identified above should receive decreases in their basic service rates. CWA's witness cited four "regulatory principles" that guided CWA in developing its proposal:

1. "Refunds" should be directed toward universal service.

They should be used to offset basic service only since it "underlies every other aspect of the system." According to CWA's witness, this "guarantees" that the greatest number receive the greatest breadth of a refund. It would also eliminate the possibility of discrimination against those who cannot afford extra features. CWA's witness states that long distance is a "budgeted luxury" for some, but that dial tone defines a way of life. Finally, according to the witness, the legislature and Governor have endorsed universal service, and universal service is a stated goal of the CWA International president.

2. The refund formulae should seek to assist those who need it the most.

According to CWA's witness, cross subsidies have always been accepted in the regulatory arena. CWA therefore identified four groups of ratepayers as having special needs: senior citizens, public educational institutions, disabled citizens, and 501(c) exempt non-profit institutions. These groups would benefit from and greatly appreciate the assistance.

3. Those who suffered from the alleged improprieties leading to the settlement should be directly compensated.

CWA's witness states that the settlement was reached in part because it ended allegations of improper sales tactics leveled against SBT. He asserts that the basic residential customer would have been the most frequent target of alleged sales actions. CWA asserts that since it is impossible to identify the victims, the basic rates of all residential customers should be reduced.

4. The refund should be singularly directed to assist consumers and not utilized to directly benefit the company.

CWA's witness states that its members are loyal employees who would like nothing better than to use the money to help provide SBT a competitive edge. But, he states, this would be disingenuous. Since SBT entered into the settlement to redress consumer issues, he believes that a refund plan should mirror that intent. He argues that the SBT plan benefits the company, which is unacceptable "given the need to compensate the public for the alleged wrongdoing," and does not meet the four regulatory principles which have been "long embraced by regulators."

No party endorsed CWA's proposal. SBT opposes it on the basis that it is "redundant." McCaw cites the availability of Lifeline Service as a reason to reject the proposal. SBT, Ad Hoc and DOD oppose it on the basis that it is of small benefit to only limited classes of customers. ATT, McCaw, Sprint and DOD argue that it reduces prices that are already at or below cost. Ad Hoc and MCI state that it does not enhance competition.

FCTA and FMCA oppose it but do not specify a reason. FIXCA and OPC did not address the CWA proposal or articulate a specific position. OPC did, however, endorse SBT's proposal as the "best use of the rate reduction." OPC, by statute, represents consumers whose interest CWA states it is representing in this case.

We decline to adopt CWA's proposal for several reasons. First, a $5 million annual reduction reduces an R-1 line by approximately $.10 monthly. There has been no evidence submitted in this case that customers believe that their basic rates are too high. SBT already has a Lifeline Service which reduces the basic rate by $3.50. (There is an additional reduction because of interstate matching of the $3.50 Subscriber Line charge.) The basic rate in the highest rate group in SBT's territory is $10.65. Thus, the lifeline rate in Miami is currently $7.15 per month. Moreover, Bell has just received approval to eliminate the

Secondary Service order charge associated with initiating Lifeline service. (See Order No. PSC-95-1139-FOF-TL, issued September 12, 1995, in Docket No. 950882-TL)

Second, the CWA proposal would be costly to implement and administer. It would require extensive resources that are not available internally to the Commission or to Southern Bell. For example, to identify and continue to monitor the eligible customers with disabilities, or those who are tax exempt, would, we believe, result in administrative costs out of proportion to the benefits of a $5 million reduction to that group. CWA appears to believe that this should not be a concern, but that any such costs should be borne by either Bell or its stockholders. We believe that the ECS proposal is a more efficient way to bring the benefits of rate reductions to the general body of ratepayers.

Third, CWA's proposal seems to be based on the redress of alleged SBT wrongdoing. Contrary to CWA's contention, it is not stated or in any way indicated in the Stipulation that the unspecified rate reductions should be used by SBT to compensate customers. (See Order No. PSC-94-0172-FOF-TL) Rather, the parties agreed in the stipulation to close the investigation dockets.

Therefore, we find that CWA's proposal shall not be approved. The costs of setting up and administering the rate categories that CWA proposes would, in our opinion, outweigh the social benefits. To apply small reductions to the basic rates of selected residential and business customers in this way would be an inefficient use of the funds available.

X. MCCAW'S PROPOSAL

McCaw Communications proposed, and the Florida Mobile Communications Association adopted, that a portion of the $25 million be used to offset, if necessary, rate reductions that the Commission might order in Docket No. 940235-TP, the Commission's most recent investigation into the interconnection rates of mobile service providers (MSPs). The Commission's actions in that docket are reflected in Order No. PSC-95-1247-FOF-TL, issued October 12, 1995. Docket No. 940235-TL was decided after the briefs were filed in this proceeding.

In that Order, we have decided that the link between mobile interconnection usage rates and access charges should be broken. Previously, whenever switched access charges were reduced, the mobile interconnection rates were reduced according to a formula.

We have decided to freeze or reduce certain usage rates unless the parties negotiate a different arrangement.

The main point at issue in this case, according to McCaw, is that under the new statute, mobile interconnection rates come under the definition of "network access" service. The statute requires that network access rates be capped at July 1, 1995 levels. McCaw is concerned that even if the Commission requires that the flow through of switched access reductions be continued in Docket No. 940235-TP, that given the "lack of clarity" in the new law, the LECs will not do so. McCaw is particularly concerned with SBT because of the scheduled October 1, 1995 $55 million switched access reduction.

Our decision in Docket No. 940235-TL to break the link between access charges and mobile interconnection usage rates obviates the need to use a portion of the $25 million at issue in this proceeding to implement the decision in Docket No. 940235-TL. The question of the appropriate mobile interconnection usage rates after Southern Bell's scheduled October 1, 1995 $55 million switched access reduction has been addressed in Order No. PSC-95-1295-FOF-TL, issued October 19, 1995 in this docket. In that Order, we decided that Southern Bell's scheduled October 1, 1995 $55 million switched access reduction should not be "flowed through" to mobile interconnection rates.

Therefore, we decline to adopt McCaw's proposal to apply a portion of the $25 million rate reduction to implement the decision in Docket No. 940235-TL.

XII. REDUCTIONS TO PBX AND DID TRUNK RATES

No party filed a proposal to reduce the rates for PBX trunks and DID service offerings. However, several parties suggested in testimony that reductions in the rates for these service offerings was more appropriate than any of the filed proposals. Given our decision to approve the ECS plan, we decline to reduce the rates for these services to implement the $25 million unspecified rate reduction.

XI. COMPETITION ON EXTENDED CALLING SERVICE ROUTES

In all prior cases involving ECS where the Commission has made a determination, ECS has been determined to be a local service. Under the previous version of Chapter 364, the provision of local service within a given geographic area was the exclusive

right and responsibility of the local exchange company. Such a finding would prohibit IXC's from carrying ECS traffic. The Commission's authority to do so was affirmed by the Florida Supreme Court in Florida Interexchange Carriers Association v. Beard, 624 So.2d 248 (Fla. 1993).

By Order No. PSC-94-0572-FOF-TL, issued May 16, 1994, in Docket No. 911034-FOF-TL, the Commission approved the same type ECS plan as is pending in this docket for the Fort Lauderdale/Miami, Hollywood/Miami, and Fort Lauderdale/North Dade routes. The plan was proposed in an agreement between the Florida Interexchange Carriers Association (FIXCA) and Southern Bell. The agreement provides that "after implementation... interexchange carriers may continue to carry the same types of traffic on the toll routes that they are now or hereafter authorized to carry."

The Commission recognized that this was a departure from previous policy.

> A significant affect of this agreement is that interexchange companies (IXCs) may continue to carry the same types of traffic on these routes that they are now or hereafter authorized to carry. We note that this is a change in our current policy. We currently have a proceeding to address revisions to our EAS rules. One issue to be considered is whether IXCs should be allowed to carry traffic on $.25 routes. Allowing IXCs to continue to carry this traffic will avoid the possible harm done by precluding IXCs from operating on a route on which they may have significant traffic volumes now, only to reopen that route to competition later. Whatever decision results from the EAS rule investigation can be applied prospectively to these routes.

The revisions to Chapter 364, Florida Statutes, enacted by the 1995 Florida Legislature, allow and encourage the provision of local exchange telecommunications service by competitive providers. Based on these revisions, the EAS rulemaking docket (Docket No. 930220-TL) has been closed. Thus, a finding that competition is not permitted on these ECS routes is not consistent with the revisions to Chapter 364, Florida Statutes. Therefore, we find that competition shall continue to be permitted on any and all ECS routes approved in this docket. No additional action is necessary.

XIII. EFFECTIVE DATE OF TARIFFS IMPLEMENTING DECISION

Given the lead time necessary for Southern Bell to implement its proposal, the possibility of greater competition after January 1, 1996, and future ability of telecommunications companies to purchase network features, functions, and capabilities where technically and economically feasible after January 1, 1996, we find that tariffs shall be filed on or before December 1, 1995, to be effective January 1, 1996. This is consistent with the legislative mandate to promote fair and effective competition.

The terms of the Stipulation provide that if any of the required unspecified rate reductions are not implemented on the effective date, pro rata refunds shall be made in accordance with the provisions of the Stipulation. Given the approved implementation date, refunds shall be made for the period from October 1, 1995, through December 31, 1995.

Paragraph 10 of the January 5, 1994 Stipulation between the parties to this docket provides for a refund or customer credit to be given to customers in the event there is a delay in the implementation date of the scheduled rate reductions. The Commission, in Order No. PSC-94-0172-FOF-TL, approved the Stipulation in general and did not have an objection to that provision. The purpose of the monthly credit is to prevent accumulation of non-recurring amounts that would then need to be refunded at a later time. Essentially, the monthly credit is a "refund" on a current basis. On that basis, we find that a customer credit shall be implemented as follows:

1) The credit should begin with the first billing cycle of the month following the month in which the order is issued, and continue until tariffs implementing the 1995 rate reductions at issue in this phase of the case become effective.

2) The credit shall be applied to customers' bills on a pro-rata basis according to rate level in the same fashion as has been done previously in Docket No. 880069-TL.

3) Subscribers who pay usage rates plus some percentage of the equivalent flat rate, shall receive refunds based on either the flat rate surrogate, if applicable, or, if no tariffed flat rate surrogate exists, the full equivalent flat rate.

4) Per the Stipulation, customers of record as of the last day of the month of the order requiring such a refund will be eligible to receive the customer credit.

5) Reports on the status of the implementation of the refund should be filed in accordance with Rule 25-4.114(7) F.A.C.

6) SBT shall provide staff with documentation supporting it's calculation of the specific refund amounts.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Commission staff's Motion to Supplement the Record is granted. It is further

ORDERED that the unspecified $25 million rate reduction scheduled for October 1, 1995, shall be processed under the former version of Chapter 364, Florida Statutes. It is further

ORDERED that Southern Bell's ECS plan shall be considered part of basic local telecommunications service, for the purposes of Sections 364.02 and 364.051, Florida Statutes. It is further

ORDERED that since Southern Bell's ECS plan shall be considered part of basic local telecommunications service, the imputation requirement of Section 364.051(6)(c) does not apply. It is further

ORDERED that Southern Bell's ECS proposal does not appear to violate any other provision of the revised Chapter 364, Florida Statutes. It is further

ORDERED that Southern Bell's Extended Calling Service plan detailed in its May 15, 1995 filing, as supplemented by the additional 36 one-way routes and modified herein, is approved, to be effective January 1, 1996. It is further

ORDERED that Order No. PSC-95-1135-FOF-TL is modified to require implementation on the routes approved for ECS in that Order to be effective January 1, 1996. It is further

ORDERED that Order No. PSC-95-1137-FOF-TL is modified to require implementation on the routes approved for ECS in that Order to be effective January 1, 1996. It is further

ORDERED that we decline to adopt CWA's proposal to implement the $25 million unspecified rate reduction. It is further

ORDERED that we decline to adopt McCaw's proposal to implement the $25 million unspecified rate reduction. It is further

ORDERED that we decline to reduce the rates for PBX trunks and DID service offerings to implement the $25 million unspecified rate reduction. It is further

ORDERED that competition shall continue to be permitted on all ECS routes approved in this docket. It is further

ORDERED that tariffs implementing the ECS plan approved in this Order shall be filed on or before December 1, 1995, to be effective January 1, 1996. It is further

ORDERED that Southern Bell shall issue refunds as detailed in this Order for the period from October 1, 1995, through December 31, 1995. It is further

ORDERED that this docket shall remain open to continue to implement the agreement approved in Order No. PSC-94-0172-FOF-TL.

By ORDER of the Florida Public Service Commission, this 8th day of November, 1995.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)
RVE

Chairman Clark dissents as follows:

I disagree with the Commission's decision to implement Extended Calling Service (ECS) on all 288 routes proposed by Southern Bell. The guidelines used by Southern Bell and the majority in determining whether ECS was warranted are inappropriate in that they do not outline specific criteria which establish a clear community of interest. They are, rather, a subjective belief that a "community of interest" exists. Based on the criteria this Commission used in two previous rate cases (United and GTE), only

70 of the 288 routes demonstrated sufficient community of interest to warrant toll relief. The majority's decision in this case is contrary to those two previous cases and to the Commission's prior decisions on extended area service requests, is inconsistent with our decision in the IntraLATA Presubscription Docket, and is anticompetitive. While the decision grants short-term toll relief to those customers served on the routes for which no community of interest was demonstrated, it will stifle vigorous competition which, in the long-term, is the best means of ensuring low rates and high quality service.

Of the 252 originally proposed routes, only 36 had calling rates of 3 Messages per Access Line per Month (M/A/Ms) or greater. The remainder of the routes were selected due to Southern Bell's "obvious community of interest" criterion (Broward and Dade Counties), elimination of leapfrogged routes, or a desire for reciprocal calling. Of the 36 which were added after the original petition, none had calling rates of 3 M/A/Ms or greater. All of these routes were added to the proposal to accomplish countywide calling within Palm Beach County, and calling from certain Palm Beach County exchanges into Broward County.

Requiring specific qualifying criteria is consistent with our previous decisions on extended area calling plans and the decision of Judge Greene of the U.S. District Court regarding the denial of Southern Bell's request for waiver of its Modified Final Judgement (MFJ) for an alternative toll plan on specific interLATA routes. Judge Greene denied Southern Bell's waiver request because it did not meet specific qualifying criteria. He considered the request nothing more than discounted toll and, therefore, anticompetitive.

Since Judge Greene's decision, this Commission has consistently required qualifying criteria before ordering ECS. In fact, many countywide EAS requests have been denied in whole or in part because the route(s) did not meet a minimum qualifying criteria (Alachua, Marion, Highlands, Nassau, Levy, Pasco, Lake, Sarasota, Santa Rosa, Palm Beach, Broward, Dade, Polk and Walton Counties). By granting ECS on routes that do not meet specific qualifying criteria, the Commission is setting a precedent for blanket approval of future ECS requests with similar calling patterns.

There is an immediate benefit to consumers in reduced rates by granting ECS on all the proposed routes; however, only time will tell if the local market will become sufficiently competitive to keep prices in check. Even though interexchange carriers are allowed to compete on ECS routes, they cannot effectively compete because they must pay access charges. It is difficult for IXCs to

compete against Southern Bell's ECS prices which are below the prices that IXCs must pay Southern Bell for access charges, except for short haul (0-10 miles) calls of one minute. If it is assumed that customers will make the rational choice of using the lowest cost provider, in order to determine whether it is cheaper to use Southern Bell's $.25 rate or toll service from an interexchange carrier, the customer must make a decision to dial the additional digits, must know in advance how long the call will last, the distance, and the time of day (discount period) the call will be made. It is unreasonable to assume that a customer will go through this kind of exercise and that competition will continue to exist on these routes, especially when ECS is bundled with local service. ECS will initially give Southern Bell the advantage of competing only against alternative local phone companies for these calls and may enable Southern Bell to further solidify their strong market position.

Furthermore, Southern Bell's proposal is contrary to the Commission's decision in the IntraLATA Presubscription Docket (Order No. PSC-95-0203-FOF-TP, Docket No. 930330-TL). The majority's decision essentially removes the Southeast LATA from the toll market and gives Southern Bell customers 7-digit dialing. By converting ECS calling to 7-digits only for Southern Bell, this will effectively nullify the Commission's 1+ decision. Customers seeking to use a competitive long distance carrier will be required to use 10-digit dialing, which will impose a barrier to the IXCs. The Commission's intent with granting intraLATA presubscription was to provide consumers the option of choosing a carrier other than the LEC, using the same dialing pattern for 1+ intraLATA calls.

The majority's decision is also contrary to the legislative mandate to this Commission to act as a catalyst for competition. If these routes had remained toll, active and significant competition already in place would continue. As the prices which the local telephone companies charge the long distance companies for connections continue to drop, as prescribed by statute, the prices for toll calls would continue to decrease. The majority's decision removes these routes from a very competitive toll market and places them in a less competitive local market. In addition, Southern Bell is gaining this competitive advantage without any financial penalty since this proposal is being funded through $25 million in required revenue reductions.

For these reasons, I dissent from the majority's decision.

Commissioner Kiesling joins in the dissent.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.