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December 4, 1995

**ORIGINAL  
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BY HAND DELIVERY

Ms. Blanca S. Bayó  
Director, Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 920260

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI Telecommunications Corporation in the above referenced docket are the original and 15 copies of MCI's Motion to Reopen Record and for Rehearing.

By copy of this letter this document has been provided to the parties on the attached service list.

Very truly yours,

*Richard D. Melson*

Richard D. Melson

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- CMU Nantz
- CTR \_\_\_\_\_
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cc: Parties of Record

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Comprehensive Review of )  
the Revenue Requirements and Rate ) Docket No. 920260-TL  
Stabilization Plan of Southern )  
Bell Telephone and Telegraph ) Filed: December 4, 1995  
Company. )  
\_\_\_\_\_ )

**MCI TELECOMMUNICATIONS CORPORATION'S  
MOTION TO REOPEN RECORD AND FOR REHEARING**

MCI TELECOMMUNICATIONS CORPORATION (MCI) hereby moves the Commission to reopen the record and to hold a rehearing on its decision in Order No. PSC-95-1391-FOF-TL (the "Order") to implement ECS calling on 288 routes. As grounds therefor, MCI states:

1. Based on information received by MCI and by the Commission staff subsequent to the date of the Order, it appears that the Commission was not informed of certain material facts regarding the technical features of Southern Bell's network that will create a dialing monopoly on the ECS routes, despite the fact that Southern Bell agreed, and the Commission ordered, that these routes should remain subject to competition. The Commission should reopen the record to hear and consider this highly relevant information.

2. The effect of the Order was to convert Southern Bell provided intraLATA toll calling on 288 routes into ECS service. This service is "automatic." That is, a Southern Bell customer is not required to subscribe to the service. Any time a Southern

Bell customer dials a call to an ECS area on a 7-digit or 10-digit basis, the call is automatically completed and billed as an ECS call. In effect, Southern Bell no longer provides an intraLATA toll service on these routes. (See, Stanley, Tr. 70)

3. Competitive intraLATA toll service is provided on a limited basis today. Customers in the Southeast LATA can access a competitive IXC via 10xxx, 950-xxxx, or 1-800 dialing. Under the terms of the Commission's earlier order on 1+ intraLATA presubscription, a customer who presubscribes to an intraLATA provider other than Southern Bell would also be able to complete calls to ECS locations via the competitor's intraLATA toll service using 1+10-digit dialing.

4. The preservation of competition on these routes was a key feature of Southern Bell's proposal. As Mr. Stanley testified:

- Q. If the Commission approves the Southern Bell ECS proposal, should the Commission allow competition on ECS routes?
- A. In the Stipulation and Agreement Between BellSouth Telecommunications, Inc. and the Florida Interexchange Carriers Association, dated March 31, 1994 (attached as JAS-2), the parties agreed that "interexchange carriers may continue to carry traffic on the routes in question that they are authorized to carry." **Southern Bell does not object to expanding this agreement to include the routes in this proposal, thereby allowing competition on these routes.** The Commission need not impose any additional conditions that were not included in the original Agreement.

Stanley, Tr. 55 (emphasis added)

5. In later testimony, Mr. Stanley testified that intra-NPA ECS calls dialed on a seven-digit basis, and inter-NPA ECS calls dialed on a ten-digit basis would be carried by Southern Bell. Calls dialed using the toll dialing pattern of 1+ seven digits (intra-NPA) or 1+ ten digits (inter-NPA) would be carried by the customer's presubscribed intraLATA carrier. (Stanley, Tr. 114) Mr. Stanley further testified that Southern Bell's ECS service would be unlikely to remonopolize the intraLATA market because customers might find it beneficial to dial certain calls of short duration and distance using their IXC, rather than Southern Bell's ECS service. (Stanley, Tr. 63)

6. This was the factual background against which the Commission made its decision that permitted ECS on these routes while at the same time ordering that competition would be permitted to continue on these routes:

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

(Order, page 24)

\* \* \*

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.

(Order, page 13)

\* \* \*

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.

(Order, page 21)

It is clear from the Order that the preservation of competition (or at least the possibility of competition) on the new ECS routes was a fundamental part of the Commission's decision.

7. MCI has learned that after the Order was issued, Southern Bell advised the Commission staff that technical issues will not permit all of the dialing options that were discussed by Southern Bell's witness at the hearing. Specifically, a customer who presubscribes his intraLATA traffic to Southern Bell will be able to make ECS calls on ECS routes, and intraLATA toll calls on non-ECS routes. However, MCI understands that a customer who presubscribes his intraLATA traffic to a competitive carrier is forced to give up the option to dial 10 digits to use Southern Bell's ECS service on ECS routes. Instead, the customer is required to use the IXC's intraLATA service for both ECS and non-ECS calls.

8. This is a material difference from the facts presented to the Commission at the hearings in this docket. It turns what the competitors feared would be an economic monopoly on ECS

traffic into a dialing monopoly. We now learn that in order for customers to get the full benefit of ECS calling, they must presubscribe to Southern Bell for all of their intraLATA 1+ calls. Customers give up the benefit of the ECS pricing if they choose to presubscribe to a competitive long distance carrier. This is blatantly anti-competitive.

9. While a Commission order is typically final once the time for reconsideration has passed, the Florida Supreme Court has recognized the rule that "[o]rders, decrees, or judgments, made through fraud, collusion, deceit, or mistake, may be opened, vacated, or modified at any time, on the proper showing made by the parties injured." Davis v. Combination Awning & Shutter Co., 62 So. 2d 742, 745 (Fla. 1953). The Court has acknowledged that the Commission has some inherent authority to modify its orders. Peoples Gas System v. Mason, 187 So. 2d 335, 339 (Fla. 1966). In particular, the Court held in Reedy Creek Utilities v. Florida Public Service Commission, 418 So.2d 249, 253-54 (Fla. 1982), that the Commission had the power to modify an order two and a half months after "administrative finality" had attached, when the utility had not yet relied to its detriment on the order and when the modification was necessary to protect the customer. See generally, In re: Implementation of Rules 25-17.080, etc., Order No. 25668 at pages 14-15, issued February 3, 1992.

10. It is unclear at this point whether the technical dialing issues that have recently come to MCI's attention were unknown to Southern Bell at the time of the hearing, or were

known but undisclosed. In either event, the Commission is justified in reopening the record to take evidence on the limited technical and competitive issues raised by this newly discovered information, and to make any modifications deemed necessary as a result of further hearing.

WHEREFORE, MCI requests that the Commission reopen the record in this docket and conduct a rehearing regarding the technical limitations on the simultaneous provision of ECS service by Southern Bell and competitive 1+ intraLATA toll service by a competitor of Southern Bell, and the implications that such technical limitations have on the ability of IXCs to compete on ECS routes as contemplated by the Order.

RESPECTFULLY SUBMITTED this 4th day of December, 1995.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing  
was sent by U.S. Mail this 4th day of December, 1995.

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