10 of 11

Legal Department

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January 31, 1996

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

RE: Docket No. 950985-TP

Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence (pages 6, 7, 19 and 20). These pages were inadvertently omitted from the brief when filed with the Commission. Please file these documents in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White (BR)

Nancy B. White

Enclosures

cc: All Parties of Record
A. M. Lombardo
R. G. Beatty
R. D. Lackey

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required by statute. The plan suggested by BellSouth should be adopted because it allows BellSouth to recover its costs; allows for more efficient functionality and is a comprehensive transitional structure to which all interconnection plans (local, toll, independent, cellular/wireless) could merge.

ISSUE NO. 1: What are the appropriate rate structures, interconnection rates or other compensation arrangements for the exchange of local and toll traffic between ALECs and BellSouth?

***POSITION: The local interconnection plan should include a compensation arrangement for terminating traffic on BellSouth and ALEC networks based on the switched access rate structure and rate levels; a default to the toll access model when local calls cannot be distinguished from toll; and eventual merger of toll interconnection arrangements.**

A. INTRODUCTION

Section 364.16(3), Florida Statutes, requires each local exchange telecommunications company to provide access to and interconnection with its facilities to alternate local exchange telecommunications companies requesting such access and interconnection. To that end, Section 364.162, Florida Statutes, requires companies to negotiate mutually acceptable rates, terms, and conditions. If the parties are unable to bring the negotiations to a successful conclusion, then the Commission is to establish the rates, terms, and conditions of interconnection. MFS and MCI have accused BellSouth of intransigence in the negotiation process. (Tr. pp. 119-120 and 300). Such an accusation is false.

BellSouth was able to negotiate a mutually acceptable interconnection agreement with the majority of the parties to this case. (Exhibit 15). The Stipulation and Agreement

C. BILL AND KEEP

MFS, MCI, and AT&T (at least initially) propose that the Commission adopt "bill and keep" as the appropriate local interconnection arrangement. (Tr. pp. 156, 395-396, and 429). Bill and keep (or mutual traffic exchange) is a mechanism by which each company terminates traffic for the other with no distinct and separate charge for such termination. (Tr. p. 370). While its proponents claim bill and keep is the best mechanism for local interconnection, BellSouth will demonstrate why that is simply not the case. Moreover, the adoption of bill and keep would constitute a violation of Florida law.

Section 364.162, Florida Statutes, is the section of revised Chapter 364 that deals with local interconnection. Throughout this section, the phrase "local interconnection charge" is used. More directly to the point, Section 364.162(4) specifically states:

> In setting the local interconnection charge, the commission shall determine that the charge is sufficient to cover the cost of furnishing interconnection.

The statute does not mention bill and keep, mutual exchange, trade or barter as a basis for exchanging traffic. It is clear that the legislature expected a monetary amount, to be arrived at either by negotiation or by the Commission, to be set to pay for the termination of calls between local telecommunications companies. The rules of statutory interpretation will not allow a different interpretation.

In order to determine the meaning of a statute, any tribunal, including an administrative agency, must consider all pertinent legal principles of statutory construction. The most simply applied of these principles is that no interpretation is appropriate when the statute is facially clear and totally lacking in ambiguity. In such an instance, the tribunal considering the statute does not so much interpret it as simply apply it in the manner that is dictated by its clear language. As the Supreme Court (was this the supreme court) stated in Streeter v. Sullivan, 509 So.2d 268, 271 (Fla. 1987):

> The first rule of statutory interpretation is that '[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning'. A.R. Douglass, Inc. v. McRainey, 102 Fla. 1141, 1144, 137 So.2d 157, 159 (Fla. 1931).[1]

Thus, when a statute's meaning is so obvious that there is essentially no room for interpretation, the tribunal considering the statute has nothing more to do than simply apply its plain language to reach an obvious result.

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[1] The same rule was expressed, albeit in somewhat different language, in Citizens v. Public Service Commission, 425 So.2d 534, 541-42 (Fla. 1982) as follows:

> The rule in Florida is that where the language of the statute is so plain and unambiguous as to fix the legislative intent and leave no room for construction, the Court should not depart from the plain language used by the legislature.

CERTIFICATE OF SERVICE
Docket No. 950985-TP

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