

SUPREME COURT OF FLORIDA

FLORIDA INTEREXCHANGE CARRIERS)
ASSOCIATION, INC.)
)
Appellant,)
)
-vs-)
)
FLORIDA PUBLIC SERVICE COMMISSION,)
)
Appellee.)

CASE NO. 86,957
FILED
SID J. WHITE
MAR 18 1996
CLERK SUPREME COURT
Chief Deputy Clerk

VOLUME 1

TRANSCRIPT OF RECORD

IN THE MATTER OF:

Comprehensive Review of the Revenue Requirement and
Rate Stabilization Plan of Southern Bell
Telephone and Telegraph Company

DOCKET NO. 920260-TL

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- . **Exhibit 11 from July 1995 hearing** (BellSouth Telecommunications, Inc.'s Response to Staff's Request for Production of Documents No. 1)
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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Comprehensive Review of the
Revenue Requirements and Rate
Stabilization Plan of the Southern Bell
Telephone and Telegraph Company

Docket No. 920260-TL

POSTHEARING STATEMENT

and

BRIEF

of

**THE UNITED STATES DEPARTMENT OF DEFENSE AND
ALL OTHER FEDERAL EXECUTIVE AGENCIES**

Introduction

In Order No. PSC-94-0172-FOF-TL, the Commission approved a Stipulation and Agreement requiring Southern Bell Telephone and Telegraph Co. ("Southern Bell") to implement specific rate reductions and other rate changes for its intrastate telecommunications services in Florida. The other rate changes included a \$25 million reduction in annual revenues for unspecified services to be effective on October 1, 1995.

The United States Department of Defense and All Other Federal Executive Agencies ("FEAs") submit statement to address various proposals to implement this \$25 million rate reduction.

This statement contains a Posthearing Statement of the FEAs' positions and a Brief on the issues addressed at the evidentiary hearings. The statement also

addresses the issues designated by the Commission at the conclusion of the evidentiary hearings.

Posthearing Statement

The FEAs submitted a Prehearing Statement in this proceeding on July 10, 1995. The FEAs do not wish to modify any of the positions described in that statement, but provide the following summaries required by the Commission's Order.

Q. Should the Commission accept the proposals by other parties to implement a \$25 million revenue reduction for Southern Bell?

A. The Commission should not accept the proposals by Southern Bell, McCaw Communications and the Communications Workers of America.

Q. How should the required revenue reduction be implemented if the Commission does not accept the proposals made by these parties?

A. The Commission should take steps which aid the development of competition in Florida. One possible step would be to address the disparity in the charges for PBX and ESSX services.

Brief on Refund Proposals at Hearings

On July 10, 1995, the FEAs submitted a Prehearing Statement describing their initial position on the \$25 million rate reduction scheduled for October of this year. In that statement, the FEAs explained that the proposals by Southern Bell, McCaw Communications, and the Communications Workers of America should be rejected because they will not aid the development of competition.

The Commission should take advantage of the unique opportunity afforded by a substantial rate reduction to promote more competition for telecommunications services in Florida. Competition benefits all individuals and firms participating in the telecommunications markets. The FEAs' experience in obtaining telecommunications services throughout the United States has shown that competition results in lower prices, better service, and more rapid deployment of new technologies.

Proposal by Southern Bell

Southern Bell proposes to implement the \$25 million rate reduction by initiating "Extended Calling Service" or "ECS". This new offering would provide subscribers in certain exchanges with the ability to place "local" calls over an expanded area for a charge of 25¢ per call for messages originating on residence telephones and a per-minute charge for messages originating on business telephones.

Southern Bell's proposal expands the boundaries of local exchange areas to include places previously reached only through intraLATA toll calls. The FEAs urge the Commission to reject this scheme because it is anti-competitive.

The Commission has not yet authorized competition for switched local exchanges services in Florida. In contrast, there is vigorous competition for intraLATA message toll services because 14 interexchange carriers and 207 resellers offer this service in Florida.¹ Southern Bell's proposal to establish ECS is an attempt to stake out a larger market for its monopoly service and reduce the opportunities for its competitors in the intraLATA message toll market.

Proposal by McCaw Communications

McCaw Communications is concerned with interconnection rates for mobile services. The company recommends that the interconnection rates be cut to mirror reductions in access charges, a proposal also being addressed in Docket No. 940235-TL.

McCaw offers cellular and paging services in many communities in Florida. The company's proposal in this case is clearly designed to obtain special benefits for cellular and paging activities. The FEAs urge the Commission to reject this proposal

¹ NARUC Compilation of Utility Regulatory Policy 1993-1994, Table 148.

because it is self-serving and also because it attempts to redress a matter before the Commission in another proceeding.

Proposal by Communications Workers of America

The Communications Workers of America ("CWA") proposes to implement the \$25 million change by reducing revenues about \$5 million for each of five local exchange services:

- "lifeline" service for senior citizens,
- service for any non-profit organization with tax exempt status,
- service for any public school, community college or state university,
- * service for any qualified disabled ratepayer, and
- basic residential telephone service.

While this plan may appear attractive in the short-term, it will not aid the development of competition in the long-run. Rate subsidies are not required to maintain ubiquitous telephone service in a competitive environment. Telephone service is continually becoming more valuable, as shown by the increasing number of persons with multiple telephone lines, fax terminals or modems in their homes, and cellular telephones in their cars. The quantity of assigned telephone numbers is increasing so rapidly that new "area codes" are required well ahead of original expectations.

Local telephone service is a bargain for most subscribers. There is no evidence that the price of telephone service is the primary factor in the decision by low income residents whether or not to have a telephone in their homes.

Florida participates in Federal "Link-up America" and "Lifeline" programs designed to reduce the initial and recurring costs of telephone service to subscribers meeting specified criteria. These programs are the appropriate vehicle for assuring that all households have the ability to obtain telephone service. The FEAs urge the

Commission to conclude that CWA's proposed rate subsidies are unnecessary and misdirected.

Recommended Plan for Revenue Reduction

The Commission should use this opportunity to adjust prices for telecommunications services to encourage the development of fair competition in Florida. Pricing of Southern Bell's services is particularly important because the company faces different degrees of competition for its many intrastate services.

Long-run incremental costs are the appropriate benchmark for pricing Southern Bell's competitive services. A service that is priced above its long-run incremental costs is making a contribution to the common costs of the firm. On the other hand, prices for competitive services below the corresponding long-run incremental costs may signal the presence of subsidies by Southern Bell's monopoly ratepayers. Furthermore, it is important to place maximum limits on the prices for services that end users or other carriers can obtain only from Southern Bell.

It is likely that the rates for many Southern Bell services do not meet these criteria. The Commission should use the \$25 million rate reduction to help remedy imbalances between rates and costs. It is particularly important for the Commission to address cases where Southern Bell is using its monopoly power over one service to provide the company with an unfair competitive advantage for other services. In their Prehearing Statement, the FEAs noted that Southern Bell has such an opportunity with respect to its ESSX service. The Florida Ad Hoc Telecommunications Users Committee ("Ad Hoc") addressed this matter in some detail through the direct testimony of its expert witness in this proceeding.²

As the FEAs and Ad Hoc pointed out, Private Branch Exchange ("PBX") and ESSX services compete directly with each other. Southern Bell provides some of the

² Direct Testimony of Douglas S. Metcalf, pages 4-6.

elements of PBX service, including PBX trunks and direct inward dialing ("DID"), while Southern Bell provides all of the elements of ESSX service. By maintaining unreasonably high rates for PBX trunks and DID service, Southern Bell tilts the competitive balance in its own favor. The FEAs urge the Commission to address this infirmity by applying the \$25 million to a reduction in the rates for PBX trunks and DID service.

Statement of Positions on Issues Designated at the Conclusion of Hearings

Pursuant to the Staff's memorandum to all parties of August 3, 1995, the FEAs hereby provide their positions on issues designated at the conclusion of the evidentiary hearings in this matter.

Q1. Since this docket was opened prior to the new law being enacted, should the unspecified \$25 million rate reduction scheduled for October 1, 1995 be processed under the former version of Chapter 364, Florida Statutes?

A. Matters concerning the \$25 million rate reduction should be controlled by the new provisions of Chapter 364, Florida Statutes. Although Docket No. 920260-TL was initiated when the prior version of Chapter 364 was effective, the rate reductions at issue here were set for hearing at a future time. Section 364.385(2), Florida Statutes, provides that any proceeding that has not progressed to the stage of hearing by July 1, 1995, may with the consent of all parties and the Commission, be conducted in accordance with the law as it existed prior to January 1, 1996. Clearly, the earlier rules control only with unanimous consent. The FEAs (and probably other parties) would prefer that the revised law obtain, so that unanimous consent is absent.

Q2. If approved, would Southern Bell's ECS plan become part of basic local telecommunications service as defined in Section 364.02(2) Florida Statutes?

A. Southern Bell's proposed service should not become part of basic local telecommunications service as defined in Section 364.02(2), Florida Statutes. The

revised Section 364.02(2) specifically includes only ECS in existence or ordered on or before July 1, 1995.

Q3. If it is not a part of basic telecommunications service, does Southern Bell's ECS plan violate the imputation requirement of Section 364.051(6)(c), Florida Statutes?

A. Southern Bell's plan violates the imputation requirement because the proposed rates fail to cover the direct costs of providing the service plus the imputed price of Southern Bell's switched access services which competitors would be required to pay. In an attempt to sidestep this infirmity, Southern Bell argues that ECS should be combined with intraLATA toll service.³ This attempt to dodge the rules, which only highlights the fact that Southern Bell is trying to enlarge its own share of the market as discussed *supra*, should be rejected by the Commission.

Q4. Does Southern Bell's ECS proposal violate any other provision of the revised Chapter 364, Florida Statutes, excluding those previously identified in the positions on the issues listed in the prehearing order?

A. Southern Bell's proposal violates the spirit of the changes, which are intended to reflect the consensus of the Legislature that "competitive provision of telecommunications service, including local exchange telecommunications service, is in the public interest . . ." ⁴ This consideration alone provides ample ground to reject Southern Bell's proposal.

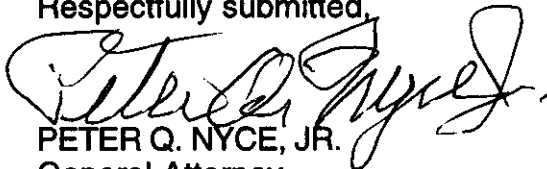
³ Tr. Vol. 3, pp. 365-66.

⁴ Section 364.01, Florida Statutes, "Powers of Commission, legislative intent."

Conclusion

WHEREFORE, the premises considered, the United States Department of Defense and All Other Federal Executive Agencies urge the Florida Public Service Commission to apply the scheduled \$25 million rate reduction to balance the rates for PBX and ESSX services.

Respectfully submitted,



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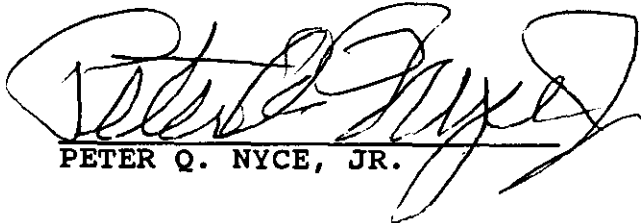
All Other Federal Executive Agencies

August 17, 1995

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by first-class U.S. Mail to all parties on the attached service list.

Dated at Arlington County, Virginia, this ¹⁶th day of August 1995.


PETER Q. NYCE, JR.

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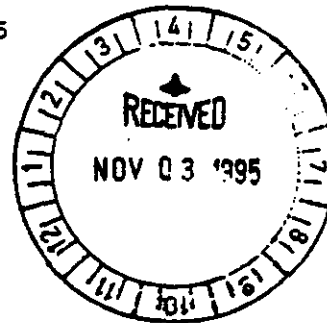
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A. M. Lombardo
Regulatory Vice President

November 1, 1995

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



950000


RE: Notice of Election of Price Regulation

Dear Ms. Bayo:

Pursuant to Section 364.051(a), Florida Statutes, this letter constitutes notice by BellSouth Telecommunications, Inc. of its election to be under price regulation effective January 1, 1996.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me.

Sincerely,


Anthony M. Lombardo

Enclosures

cc: R. G. Beatty
R. D. Lackey

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FIXCA's Motion to Stay
Docket No. 920260-TL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by Broward Board of) Docket No. 911034-TL
County Commissioners for extended area)
service between Fort Lauderdale,)
Hollywood, North Dade and Miami) Filed: March 31, 1994

**STIPULATION AND AGREEMENT BETWEEN
BELLSOUTH TELECOMMUNICATIONS, INC. AND
THE FLORIDA INTEREXCHANGE CARRIERS ASSOCIATION**

COME NOW BellSouth Telecommunications, Inc. d/b/a/ Southern Bell Telephone and Telegraph Company ("Southern Bell") and the Florida Interexchange Carriers Association ("FIXCA") (Southern Bell and FIXCA hereinafter sometimes collectively referred to as the "Parties") and agree and covenant as follows:

WHEREAS, there has been considerable demand for some form of toll relief between the following exchanges: Fort Lauderdale and Miami, Hollywood and Miami, and Ft. Lauderdale and North Dade (the "Toll Routes"); and

WHEREAS, on June 7, 1993, the Florida Public Service Commission (the "Commission") issued its Order No. PSC-93-0842-FOF-TL (the "Order") in the above captioned docket, wherein the Commission ordered toll relief in both directions of the Toll Routes in the form of a hybrid \$.25 plan; and

WHEREAS, on June 25, 1993, FIXCA filed its Petition on Proposed Agency Action Order No. PSC-93-0842-FOF-TL and Request for Evidentiary Hearing, wherein FIXCA protested the Commission's decision to implement the hybrid \$.25 plan on the Toll Routes and requested a hearing so that the "Commission can comprehensively

FIXCA's Motion to Stay
Docket No. 920260-TL
Attachment 2

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evaluate the ramifications of the proposed \$.25 plan." Id. at p.
4; and

WHEREAS, the Commission has scheduled hearings in the above captioned docket on May 11 and 12, 1994; and

WHEREAS, the Commission has indicated its intent to review in a generic docket the various issues inherent in toll relief being provided in the form of extended area service; and

WHEREAS, the Parties believe that settlement of the issues in dispute in the above-captioned docket without the expenditure of any further time, money and other resources in litigating these issues before the Commission in this docket is desirable;

NOW, THEREFORE, the Parties do hereby agree and covenant as follows:

1. The Parties agree that a hybrid \$.25 plan shall be implemented on the Toll Routes in the same fashion as ordered by the Commission in Order No. PSC-93-0842-FOF-TL. Under such hybrid \$.25 plan, residential calls shall be rated at \$.25 per call in both directions regardless of the call duration, while calls made by business customers in either direction shall be rated at a per minute rate of \$.10 for the initial minute and \$.06 for each additional minute. Calls made over the Toll Routes and carried by Southern Bell shall be made on a seven digit basis and revenues received by Southern Bell for such calls shall be booked by Southern Bell as local revenues. Pay telephone providers shall charge end users who make calls on the Toll Routes on a local call basis and shall pay the standard measured

usage rate to Southern Bell. Calls on the Toll Routes made on a 1+ basis reaching Southern Bell's switch shall be blocked by Southern Bell and the caller shall receive a message stating that the call should be made on a seven digit basis. Except for the premium flat rate option, the EOEAS plan presently in place in the North Dade to Ft. Lauderdale and the Hollywood to Miami routes shall be cancelled. The point to point plan presently offered on the Miami to Hollywood route shall also be cancelled. Except for current customers who subscribe to the unlimited unmeasured option of the Pembroke Pines Pilot local measured service plan (the "Pilot Plan") as of January 23, 1995, the Pilot Plan shall also be cancelled.

2. The Parties agree that because of the time that it will take Southern Bell to prepare for the initiation of the hybrid \$.25 plan on the Toll Routes, which preparation includes identification and resolution of programming, trunking and billing issues, among others, the hybrid \$.25 plan shall be implemented beginning on January 23, 1995.

3. The Parties agree that, after implementation of the hybrid \$.25 plan, interexchange carriers ("IXCs") may continue to carry the same types of traffic on the Toll Routes that they are now or hereafter authorized to carry.

4. The Parties agree that Southern Bell shall recover the revenue losses and costs resulting from implementation of the hybrid \$.25 plan on the Toll Routes as outlined in Paragraphs 1 and 3 of this Stipulation and Agreement, in the manner set forth

ATTACHMENT 1
in Paragraph 8 of the Stipulation and Agreement between the Office of Public Counsel and Southern Bell Telephone and Telegraph Company, dated January 5, 1994 (attached hereto as Exhibit "A") as approved by the Commission in its Order No. PSC-94-0172-FOF-TL, dated February 11, 1994 in Docket Nos. 920260-TL, 910727-TL, 910163-TL, 900960-TL and 911034-TL. It is anticipated by Southern Bell that the revenue losses and costs will be approximately \$11,800,00.

5. The Parties agree that they may each present their respective positions regarding the form in which future toll relief should be granted in Florida in the Commission's planned generic investigation into extended area service ("EAS") issues. By entering into this Stipulation and Agreement, the parties do not waive their rights to seek reconsideration of or appeal any order that the Commission may enter in such generic investigation into EAS issues.

6. The Parties agree that the final order of the Commission in its generic investigation into EAS issues, following any requests for reconsideration or appeals, shall be applied on a prospective basis to the Toll Routes. If such final order is different from the hybrid \$.25 plan as set forth in Paragraph 1 of this Stipulation and Agreement, Southern Bell may seek authority from the Commission to recover its additional lost revenues and costs, if any, resulting from implementation of such alternative toll relief plan.

7. FIXCA and Southern Bell further agree that any dispute as to the meaning of any portion of this Stipulation and Agreement shall be addressed to the Commission in the first instance, but that each party reserves any rights it may have to seek judicial review of any ruling concerning this Stipulation and Agreement made by the Commission.

8. Any failure by FIXCA or Southern Bell to insist upon the strict performance by the other of any of the provisions of this Stipulation and Agreement shall not be deemed a waiver of any of the provisions of this Stipulation and Agreement, and FIXCA or Southern Bell, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Stipulation and Agreement.

9. The Parties agree that in the event the Commission does not adopt this Stipulation and Agreement in its entirety, the Stipulation and Agreement shall become null and void and be of no effect.

10. This Stipulation and Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Florida, without regard to its conflict of laws principles.

11. This Stipulation and Agreement was executed after arm's length negotiations between the Parties and reflects the conclusion of the Parties that this Stipulation and Agreement is preferable to litigating the disputed issues in this docket.

12. The Parties participated jointly in the drafting of this Stipulation and Agreement, and therefore the terms of this Stipulation and Agreement are not intended to be construed against either Party by virtue of draftsmanship.

13. This Stipulation and Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Stipulation and Agreement has been executed as of the 31 day of March, 1994, by the undersigned counsel of record for the Parties hereto and/or by the Parties themselves.

FLORIDA INTEREXCHANGE CARRIERS
ASSOCIATION

By Vicki Gordon Kaufman
Vicki Gordon Kaufman, Esq.

BELLSOUTH TELECOMMUNICATIONS,
INC. D/B/A SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY

By Harris R. Anthony
Harris R. Anthony, Esq.

FIXCA's Motion to Stay
Docket No. 920260-TL
Attachment 2
Page 7 of 7

CERTIFICATE OF SERVICE
Docket No. 911034-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this 31 day of MARCH, 1994

to:

Tracy Hatch
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Tallahassee, FL 32301

Joseph P. Gillan
J.P. Gillan and Associates
Post Office Box 541038
Orlando, FL 32854-1038



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Florida Interexchange Carriers Association's Motion to Stay has been furnished by hand delivery* or by U.S. Mail to the following parties of record, this 28th day of November, 1995:

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Donna Canzano*
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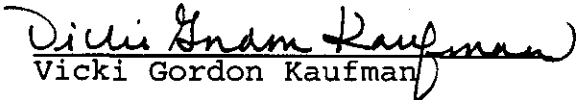
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Vicki Gordon Kaufman

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