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August 17, 1995

HAND DELIVERY

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Re: Docket No. 920260-TL

Dear Ms. Bayo:

Enclosed for filing on behalf of McCaw Communications of Florida, Inc. is an original and 15 copies of McCaw's Communications of Florida, Inc.'s Posthearing Brief in the above-referenced docket. Also enclosed is a 3 1/2" diskette in WordPerfect 6.1 format with the document on it called "MCCAWPHG.BRF."

Please indicate receipt of this document by stamping the enclosed extra copy of this letter.

Your attention to this filing is appreciated.

Sincerely,

Floyd R. Self

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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 Filed: August 17, 1995

POSTHEARING BRIEF OF
MCCAW COMMUNICATIONS OF FLORIDA, INC.

McCaw Communications of Florida, Inc. for itself and its Florida regional affiliates ("McCaw"), pursuant to Rule 25-22.056, Florida Administrative Code, Order No. PSC-95-0895-PHO-TL, and the Commission's August 3, 1995 memorandum on legal issues, respectfully submits this Posthearing Brief to the Florida Public Service Commission ("Commission") in the above captioned docket.

I. BASIC POSITION

McCaw's proposal to implement the decision in Docket No. 940235-TL should be approved and the proposals of Southern Bell and CWA should be rejected.

II. ISSUES AND POSITIONS

ISSUE 1: Which of the following proposals to dispose of $25 million for Southern Bell should be approved?

ISSUE 1a: SBT's proposal to implement the Extended Calling Service (ECS) plan pursuant to the tariff filed on May 15, 1995. (T-93-304)

ISSUE 1b: CWA's proposal to reduce each of the following by $5 million:

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

ISSUE 1c: McCaw's and FMCA's proposal that a portion be used, if necessary, to implement the decisions rendered in DN 940235-TL.

ISSUE 1d: Any other plan deemed appropriate by the Commission?

SUMMARY OF POSITION ON ISSUE 1a: *Southern Bell's proposal should be rejected as it would give Southern Bell an unfair competitive advantage in the intraLATA toll market.

SUMMARY OF POSITION ON ISSUE 1b: *CWA's proposal should be rejected given the present price levels of the targeted services and the availability of lifeline in Florida.*

SUMMARY OF POSITION ON ISSUE 1c: *McCaw's proposal to implement the decisions in Docket No. 940235-TL should be approved. The October 1995 access charge reductions should be flowed through

to the mobile interconnection rates and the $1.7 million should be accounted for within the unallocated $25 million.*

SUMMARY OF POSITION ON ISSUE 1d: *After reducing mobile interconnection rates, any remaining funds should be used to reduce monopoly services where the rate levels are greatly in excess of cost or those services where there are competitive inequalities between classes of customers, for example as between Southern Bell retail and wholesale services.*

ANALYSIS AND ARGUMENT:

Issue 1(a): The Southern Bell Proposal.

Southern Bell's proposed ECS plan should be rejected as it would give Southern Bell an unfair competitive advantage in the intraLATA toll market. The proposal has many failings:

1. Southern Bell has not demonstrated on the record any need for the service nor how it benefits any important or relevant policy objective. Hearing Tr. 85-88. To the extent there are communities of interest that extend beyond existing local exchanges, Southern Bell already has in place extended area service and extended calling plans, otherwise such requests have been rejected. Hearing Tr. 150-54. This proposal represents the transformation of most Southern Bell intraLATA toll routes into local calls for the purpose of retaining its monopoly position,

violating the Commission's competition policy decision. Hearing Tr. 112-114, 301-302, 317-18. This proposal boarders on the absurd given the extensive distances involved for some of the routes, such as Key West to Miami, a distance of 135 miles. Hearing Tr. 120-24; Hearing Ex. 14.

2. The price for ECS calls violates the imputation standards of new section 364.051(6)(c), as is more fully discussed at Legal Issue 3 below.

3. The use of 7 digit dialing for ECS calls would be anticompetitive and effectively nullify the Commission's recent decision for 1+ intraLATA competition. As proposed, ECS calls would be a mandatory program with 7 digit dialing, whereas 10 digit dialing would be required for a customer seeking to use a competitive carrier. This is patently unfair. Hearing Tr. 95-99, 114-15, 300-301.

4. The proposal does not make any provisions for resale and interconnection, in violation of the requirements of revised chapter 364. Hearing Tr. 304-309, 313-14.

Accordingly, the ECS proposal should be denied as anticompetitive and for lacking in competent and substantial evidence of record.

Issue 1(b): The CWA Proposal.

The CWA was the only party to offer any testimony in support of its proposal. The cross-examination of Mr. Knowles and the testimony of the other witnesses demonstrate that CWA's proposal is unnecessary given the present pricing levels of the targeted services, the availability of programs such as lifeline to help those in need, and the absence of any evidence as to how the proposal would be implemented in any meaningful manner. Hearing Tr. 195, 216. Accordingly, there is no competent and substantial evidence supporting this proposal, and it should be denied.

Issue 1(c): The McCaw Proposal.

McCaw's rationale for making a proposal in this proceeding was premised upon the possibility that the 1995 revisions to chapter 364 might have broken the link between mobile interconnection rates and access charges, or the Commission, in Docket No. 940235-TL, might vote to break the link. In its briefs in Docket No. 940235-TL, McCaw has demonstrated that the new Act does not break the link with access charges and that the Commission should not break the link in that proceeding. By proposing that $1.7 million of the $25 million available in this docket be used to account for the flow through effect of the October 1, 1995 access charge reduction, McCaw is seeking to ensure that the objectives of the Commission's

long standing mobile interconnection policy are carried forward so as to benefit the LECs, the mobile carriers, and their respective customers. Hearing Ex. 6.

At the outset, it should be recognized that to the extent the Commission does not have a final order and tariffs in effect by October 1, 1995, then under the currently effective policy of Order No. 20475 as implemented by each of the LEC tariffs, including Southern Bell, Southern Bell will be required to flow through the October 1, 1995 access charge reductions to the mobile interconnection rates. For accounting purposes, the estimated $1.7 million effect of such a flow through may be addressed within the unallocated $25 million in this docket or else it will be charged to Southern Bell's overall earnings. But in either case, the access charge flow through must be made if there is no legally effective order and tariff by October first.

In the event the Commission has in effect a final order in Docket No. 940235-TL before October 1, 1995 and such order does not break the link with access charges, again, the Commission may account for such a revenue reduction within this docket or it will be charged to overall earnings.

If the Commission determines that the new Act breaks the link with access charges, the Commission should approve the use of $1.7

million in this docket to make the corresponding flow through. Quite simply, the new Act should not be a basis for defeating the original policy objectives of Order No. 20475. Hearing Tr. 192-93.

Finally, if the Commission votes to break the link with access charges and not order cost-based interconnection rates, the Commission should still vote in this docket to use $1.7 million to make the corresponding access charge flow through. Absent a decision to implement cost-based rates for all mobile interconnection services, flowing through the October 1, 1995 access charge reductions to the mobile interconnection rates is appropriate to bring mobile interconnection rates closer to cost, since they are currently priced significantly above cost. Hearing Tr. 207. Failing to make the October first access charge flow through would result in excessive mobile interconnection rates which is inconsistent with the pro-competition purposes of the Act. Hearing Tr. 190-95.

As Mr. Metcalf testified, given the Legislature's directive to the Commission to encourage competition and to provide for fair and effective competition, the Commission should utilize the $25 million to meet these objectives. Hearing Tr. 260-261. Of the three proposals, only McCaw's meets these objectives by reducing monopoly rate components close to cost -- in essence, maintaining

the link between mobile interconnection rates and access charges acts as a surrogate for competition. By breaking the link and not flowing through access charge reductions to mobile interconnection rates, mobile interconnection might remain well above cost, acting as a barrier to potential future competition in some markets, contrary to the Legislature's intent. Accordingly, the October 1995 access charge reductions should be flowed through and accounted for in this proceeding.

Issue 1(d): Handling the Remaining Funds.

As discussed above, of the three proposals submitted for consideration, only the McCaw proposal to utilize approximately $1.7 million should be approved. To the extent all of the $25 million is not disposed of, the balance should be used to reduce PBX and DID charges.

Using the balance of the $25 million for PBX and DID services is the best use of the remaining funds and consistent with the original objectives for the unallocated Southern Bell rate reductions as well as the new legislative mandate to promote fair competition. Hearing Tr. 195-96, 260-61. Southern Bell's objection to use of the balance to reduce PBX and DID rates was based upon the position that there were reductions in these services last year. Hearing Tr. 64-65. While there were

reductions last year, the fact remains that even after those reductions these services remain priced significantly above cost. Given the configuration and costs associated with ESSX versus PBX services, the pricing of PBX and DID services at their current levels is discriminatory and anticompetitive. Hearing Tr. 208-13, 217-18, 236-240, 241-42, 251-55, 267, 274-77, 281-82; Hearing Ex. 17. By applying the balance of the $25 million to these services the Commission can better promote competition by bringing the price of these services closer to cost and reducing the disparity between the monopoly components of PBX service and Southern Bell's retail ESSX service. Accordingly, the balance of the $25 million should be used for PBX and DID services.

ISSUE 2: If the Southern Bell proposal is approved, should the Commission allow competition on the Extended Service Calling routes? If so, what additional actions, if any, should the Commission take?

SUMMARY OF POSITION: *Yes, competition should be allowed on the ECS routes subject to the conditions identified by the IXCs.*

ANALYSIS AND ARGUMENT: The Legislature has made the fundamental and primary policy decision that competition in all market segments of the telecommunications industry is in the public's best interest and that this Commission is to promote fair

competition. If the Commission approves Southern Bell's ECS proposal, then the Commission must establish policies that will provide competitors with the opportunity to meaningfully compete on these toll routes. As detailed in the record, these policies include compliance with the pricing guidelines in the new statute and dialing equality as between Southern Bell and the competitors' services. Hearing Tr. 304-309. The various specific proposals of the IXCs should be approved.

ISSUE 3: When should tariffs be filed and what should be the effective date?

SUMMARY OF POSITION: *The tariffs should be filed in time to be effective October 1, 1995.*

ANALYSIS AND ARGUMENT: No party disagrees with the requirement that the tariffs be filed soon enough after the Commission's decision so as to permit timely implementation by October 1, 1995.

III. LEGAL ISSUES AND POSITIONS

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

SUMMARY OF POSITION: *This proceeding should be conducted on the basis of the new law since a hearing was not held prior to July 1, 1995.*

ANALYSIS AND ARGUMENT: Ordinarily, acts of the legislature operate prospectively unless the legislature clearly and expressly manifests an intent for the legislation to have retroactive effect. United States v. Security Indus. Bank, 459 U.S. 70, 79, 103 S. Ct. 407, 74 L. Ed. 2d 235 (1982); Foley v. Morris, M.D., 339 So. 2d 215, 216 (Fla. 1976); Larson v. Independent Life & Accident Ins. Co., 29 So. 2d 448, 448 (Fla. 1947) (Special Division A); Lewis v. Creative Developers, Ltd., 350 So. 2d 828, 829 (Fla. 1st DCA 1977). In the present situation, revised section 364.385(2) expressly provides that only if a hearing has not been held may the proceeding be conducted on the basis of the old law. Since a hearing was held in this case after July 1, 1995, the new law must govern the Commission's allocation of the $25 million. Note that the provisions of section 364.385(3) act only to preserve the Commission's authority to require Southern Bell to fully comply with Order No. PSC-94-0172-FOF-TL. Thus, the Commission must conduct the proceedings required by Order No. PSC 94-0172-FOF-TL under the new law, and Southern Bell is required to comply with

Order No. PSC 94-0172-FOF-TL and any such subsequent orders that are entered to implement the terms of Order No. PSC 94-0172-FOF-TL.

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

SUMMARY OF POSITION: *No. The new statute specifically provides that basic local telecommunications service includes only those extended area service routes and extended calling plans in existence or ordered by the Commission on or before July 1, 1995. Any approval of Southern Bell's proposed ECS plan would occur after July 1, 1995.*

ANALYSIS AND ARGUMENT: The resolution of this issue is expressly resolved by the plain language of the new statute. Revised section 364.02(2) states that "basic local telecommunications service" includes "local usage necessary to place unlimited calls within a local exchange area" and "any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995."

The proposed ECS routes now at issue would not be in effect or ordered until after July 1, 1995, so on its face the definition would exclude the proposed routes. Thus, there is no basis under the statute to conclude that if the Commission approves the

proposed ECS routes, such newly ordered routes would be a part of basic local telecommunications service.

LEGAL ISSUE 3: If it is not a part of basic local telecommunications service, does Southern Bell's ECS plan violate the imputation requirement of Section 364.051(6)(c), Florida Statutes?

SUMMARY OF POSITION: *Yes, Southern Bell's proposed ECS service violates the imputation requirements of section 364.051(6)(c). The proposed ECS rates do not exceed all of the direct costs (e.g., billing and collection, marketing, and equipment) and the imputation of the corresponding monopoly services rates (i.e., access charges).*

ANALYSIS AND ARGUMENT:

A. The Legislative Standard.

At the outset, it must be noted that the provisions of new section 364.051 only apply to price regulated LECs, which are those LECs that make the election for price regulation pursuant to section 364.051(1). The opening sentence of section 3764.051(6) provides that "[p]rice regulation of non-basic services shall consist of the following: . . .", which clearly manifests the intent to require any price regulated LEC to comply with the terms of this subsection with respect to non-basic service.

As to the pricing of non-basic services, new section 364.051(6)(c) provides as follows:

> 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.

This price standard requires a three step approach to determining whether the prices of a price regulated LEC's nonbasic services comply with the Act.

First, all of the direct costs associated with the service must be identified. Second, the monopoly components used by competitors for the same or functionally equivalent service must be identified. Third, the Commission shall impute as a direct cost those monopoly component costs for which there is not a corresponding direct cost and, to the extent a cost appears in both the direct and monopoly component columns, the Commission shall impute the monopoly component if it is higher than the direct cost. The requirement to substitute the higher of the tariffed monopoly component charge or the direct cost is consistent with prior Commission practice to "level the playing field" in those areas

where the LEC provides monopoly components and competes on a retail basis. See, e.g., Order No. PSC-93-0289-FOF-TL, at 29-33.

This approach is consistent with the plain language of the statute. This construction of the statute also is consistent with the overall intent of the statute and makes the most reasonable sense of the intent. First, the statute includes a price requirement to ensure that the incumbent LECs do not use their historic market position and power to unfairly compete. New section 364.01(3) states the Legislature's unambiguous intent to promote fair and effective competition for telecommunications services. Second, a requirement to at least cover the LEC's direct costs is consistent with the provisions of sections 364051(6)(b) and 364.3381, which prohibit cross-subsidization and require total long run incremental costs as the cost standard for determining cross-subsidization. Third, the statute includes an imputation requirement since the price imposed on competitors for monopoly elements is rarely, if ever, set at incremental cost, whereas the costing standard for a LEC service is incremental cost. Indeed, for many nonbasic services the price charged for monopoly components can be many times in excess of long run incremental cost. Thus, the imputation standard as described above helps to ensure fair competition.

B. Southern Bell's ECS Plan Violates the Imputation Standard.

Southern Bell agrees that its ECS plan must comply with the imputation standard in section 364.051(6)(c). Hearing Tr. 376. However, its proposal does not meet the statutory requirements.

First, Southern Bell has not performed any cost study for ECS, so the service fails the statutory standard since there is no basis for analyzing whether the price exceeds its direct and imputed monopoly components. Hearing Tr. 399-400.

Second, Southern Bell has not included any local transport in its calculation. Hearing Tr. 379. Southern Bell offered no evidence as to whether any routes provided alternative transport services. Hearing Tr. 382. Indeed, the mere presence of alternative access providers does not mean that transport is available on any, let alone all, of the 200+ proposed ECS routes. And even if there were alternatives, Southern Bell failed to include its "residual interconnection charge" that would apply if alternative transport was used. Hearing Tr. 408-12. Southern Bell failed its burden of proof that such alternatives exist, and it has failed to include all monopoly components.

Third, Southern Bell has improperly averaged ECS with its toll services. Hearing Tr. 365, 379. This averaging is not permitted

by the statute, which as discussed above requires a comparison of each direct cost to the corresponding monopoly cost.

Mr. Gillan properly calculated the imputation test that should be used to evaluate Southern Bell's proposal since he included each of the relevant components. Hearing Tr. 298-299. And as his testimony and exhibits demonstrate, Southern Bell's proposal fails the new statutory standard. On the basis of the evidence of record, the Commission should approve Mr. Gillan's calculations and reject the Southern Bell proposal as failing the requirements of section 364.051(6)(c).

LEGAL ISSUE 4: 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?

SUMMARY OF POSITION: *It does not appear at this time that Southern Bell's ECS proposal violates any other requirement of revised chapter 364 other than those described herein.*

ANALYSIS AND ARGUMENT: It does not appear at this time that Southern Bell's ECS proposal violates any other requirement of revised chapter 364 other than those described herein.

IV. CONCLUSION

On the basis of the foregoing, the Southern Bell and CWA proposals should be rejected, the McCaw proposal for $1.7 million should be approved, and the balance of the $25 million used to reduce PBX and DID charges.

Dated this 17th day of August, 1995.

Respectfully submitted,
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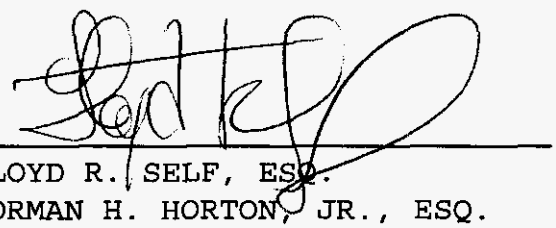

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of McCaw Communications of Florida, Inc.'s Posthearing Brief Docket No. 920260-TL has been sent by Hand Delivery (*) and/or U.S. Mail on this 17th day of August, 1995 to the following parties of record:

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