FLORIDA PUBLIC SERVICE COMMISSION
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# M E M O R A N D U M

August 31, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (SHELFER, CHASE, NORTON, O'PRY)

DIVISION OF LEGAL SERVICES (CANZANO, ELIAS)

RE: DOCKET NO. 920260-TL - COMPREHENSIVE REVIEW OF REVENUE REQUIREMENTS AND RATE STABILIZATION PLAN OF SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY (T-95-034, FILED 5/15/95)

AGENDA: SEPTEMBER 12, 1995 - REGULAR AGENDA - POST HEARING DECISION - PARTIES MAY NOT PARTICIPATE

CRITICAL DATES: STIPULATION AGREEMENT STATES DISPOSITION SHOULD BECOME EFFECTIVE ON OCTOBER 1, 1995

SPECIAL INSTRUCTIONS: I:\PSC\CMU\WP\920260TL.RCM

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## TABLE OF CONTENTS

## LIST OF ACRONYMS USED IN RECOMMENDATION

| | |
|---|---|
| AT&T Communications of the Southern States, Inc. | ATT |
| Communications Workers of America | CWA |
| Florida Ad Hoc Telecommunications Users Committee | Ad Hoc |
| Florida Cable Telecommunications Association, Inc. | FCTA |
| Florida Interexchange Carriers Association | FIXCA |
| Florida Mobile Communication Association | FMCA |
| McCaw Communications of Florida, Inc. | McCaw |
| MCI Telecommunications Corporation | MCI |
| BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company | SBT or Southern Bell |
| Sprint Communications Company Limited Partnership | Sprint |
| Office of Public Counsel | OPC |
| Staff | staff |
| Interexchange carrier(s) | IXC(s) |
| Expanded Calling Service | ECS |
| Direct-In-Dialing Service | DID Service |
| Local Exchange Company | LEC |
| Alternative Local Exchange Carrier | ALEC |

**CASE 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 (completed) | * | Switched access reductions - $50 million, |
| | * | - $10 million (specified below)<br>- Reduced mobile interconnection usage rates<br>- Eliminated Billed Number Screening charge<br>- 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 (Attachment) to introduce Extended Calling Service (ECS) to satisfy the unspecified outstanding $25 million revenue reduction in accordance with the Stipulation.

- The Commission held a hearing on July 31, 1995 to take evidence on how best to dispose of the outstanding $25 million revenue reduction. This recommendation addresses the tariff proposal and other proposals for the $25 million in unspecified rate reductions scheduled to be implemented October 1, 1995.

## EXECUTIVE SUMMARY

This recommendation is separated into two sections. The first section will address legal issues that were added at the hearing. The second section will address the remaining issues on how to dispose of the $25 million. A summary of the issues and staff's recommendation on each follows.

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?

Primary Recommendation: No. Since this proceeding did not progress to the stage of a hearing on July 1, 1995 and the parties did not consent to use the former version of Chapter 364, Florida Statutes, this proceeding should be controlled by the revised version of Chapter 364, Florida Statutes.

Alternative Recommendation: Yes. 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. Further, these proposals are being considered to implement one of the requirements of Order No. PSC-94-0172-FOF-TL. Order No. PSC-94-0172-FOF-TL is the express and only subject of Section 364.385(3), Florida Statutes, a "savings" clause. Therefore, alternative staff recommends that the unspecified $25 million rate reduction scheduled for October 1, 1995, should be processed under the former version of Chapter 364, Florida Statutes.

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

Primary Recommendation: No. If the Commission decides in Issue 1 that the amended Chapter 364 applies and if the Commission approves Southern Bell's ECS proposal, then, based on the statutory definitions of basic and non-basic services in Section 364.02 and the savings clause in Section 364.385, Southern Bell's ECS plan should be considered non-basic service.

Alternative Recommendation: Yes.

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

Primary Recommendation: Before the Commission can determine whether Southern Bell's ECS plan does or does not violate the imputation requirement of Section 364.051(6)(c), Florida Statutes, it must determine what constitutes the "direct" cost of ECS as well as what is the appropriate "monopoly component." Staff has recommended in Issue 2 that development of a resale and/or interconnection rate, as specified in Section 364.162(4) and (5), will adequately address the concerns that the imputation requirement is designed to address, at a minimum, for purposes of this case.

Alternative Recommendation: Since alternative staff believes the plan should be approved as part of 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.

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?

Recommendation: No, Southern Bell's ECS proposal does not appear to violate any other provisions of Chapter 364, Florida Statutes.

Legal Issue 5: Should Staff's Motion to Supplement the Record be granted?

Recommendation: Yes. No party filed a response to the motion. Therefore, it may be assumed that no party opposes the request.

Issue 1 A: Should the following proposal to dispose of $25 million for Southern Bell be approved?

a) SBT's proposal to implement the Extended Calling Service (ECS) plan pursuant to the tariff filed on May 15, 1995. (T-95-304)

Primary Staff Recommendation: No. Southern Bell's proposal to implement the Extended Calling Service (ECS) plan pursuant to the tariff filed on May 15, 1995 (T-95-304) should be denied. In

addition, the supplemental routes filed by Southern Bell on July 27, 1995 should also be denied.

Alternative Recommendation: Southern Bell's Extended Calling Service (ECS) plan contained in its May 15, 1995 filing, as supplemented by the additional 36 one-way routes in Exhibit 5, should be approved effective January 1, 1996, and considered basic service. Further, during the period beginning October 1, 1995 through December 31, 1995, Southern Bell should be required to make the appropriate refund in compliance with the Stipulation (Order No. PSC-94-0172-FOF-TL). The Commission should revisit its decision in Docket No. 921193-TL and require implementation of the Palm Beach County ECS routes on January 1, 1996. Pay telephone providers shall charge end users $.25 per message and pay the standard interconnection charge. Interexchange carriers (IXCs) may continue to carry the same types of traffic on these routes that they are now authorized to carry.

Issue 1 B: Should the following proposal to dispose of $25 million for Southern Bell be approved?

b) 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;

Recommendation: No, staff recommends that the Commission not adopt CWA's proposal. The costs of setting up and administering the rate categories that CWA proposes would, in staff's opinion, outweigh the social benefits. To apply small reductions to the basic rates of selected residential and business customers in this way would therefore be an inefficient use of the funds available.

Issue 1 C: Should the following proposal to dispose of $25 million for Southern Bell be approved?

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

Recommendation: No. Staff recommends that McCaw's concerns do not need to be addressed in this case. First, to the extent that the new statute prohibits implementation of any of the Commission's decisions in DN 940235-TP, staff does not believe that fact can be overridden by any decision it might make in another proceeding. Second, if the Commission determines that the flow through should be continued, it can order SBT do it without requiring that the revenue reduction be offset in this case.

Issue 1 D: Should the following proposal to dispose of $25 million for Southern Bell be approved?

d) Any other plan deemed appropriate by the Commission.

Recommendation: The Commission should approve a plan which implements only 70 of the 288 ECS routes proposed by Southern Bell. Implementation of these 70 ECS routes would represent $10,013,005, including a stimulation factor of 50%, in revenue losses. These ECS routes are listed in Table 1. The remaining $14,986,995 from the $25 million should be used to reduce PBX trunk rates and DID rates. Staff's recommended rate reductions and new rates for PBX and DID are provided in Table 2.

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?

Recommendation: Yes, competition should continue to be allowed on any and all ECS routes approved in this docket. Staff recommends that when resale and interconnection rates are established, either by negotiations among the parties or by this Commission, this will resolve the imputation issue. If the statute is interpreted as requiring imputation for non-basic services, then a resale or interconnection rate, which is required to cover the LEC's costs (see Section 364.162(4) & (5)), be below the retail rate, and not be so high as to serve as a barrier to competition (see Section 364.162(5)), would adequately address all the concerns that imputation requirements address. There is no further need to address imputation in this docket. The Commission should take no additional action.

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

Recommendation: Tariffs should be filed on November 1, 1995 to implement the Commission's decision in Issues 1 a), b), c) or d) (including any combination thereof), and Issue 2 to become effective on January 1, 1996. Refunds should be made in accordance with the Settlement Agreement from October 1, 1995 through December 31, 1995.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open to continue to implement the agreement approved by the Commission in Order No. PSC-94-0172-FOF-TL.

## DISCUSSION OF ISSUES

**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?

**PRIMARY RECOMMENDATION:** No. Since this proceeding did not progress to the stage of a hearing by July 1, 1995 and the parties did not consent to use the former version of Chapter 364, Florida Statutes, this proceeding should be controlled by the revised version of Chapter 364, Florida Statutes. **[CANZANO]**

**ALTERNATIVE RECOMMENDATION:** Yes. 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. Further, these proposals are being considered to implement one of the requirements of Order No. PSC-94-0172-FOF-TL. Order No. PSC-94-0172-FOF-TL is the express and only subject of Section 364.385(3), Florida Statutes, a "savings" clause. Therefore, alternative staff recommends that the unspecified $25 million rate reduction scheduled for October 1, 1995, should be processed under the former version of Chapter 364, Florida Statutes. **[ELIAS]**

## POSITIONS OF PARTIES

**SOUTHERN BELL:** Yes. The unspecified $25 million rate reduction should be processed under the former version of Chapter 364, Florida Statutes.

**ATT:** ATT believes that, while the designated rate reductions incorporated in the Southern Bell settlement agreement and approved by the Commission in Order No. PSC-94-0172-FOF-TL are covered under the former version of Chapter 364, this phase of Docket No. 920260-TL is controlled by the current (revised) provisions of Chapter 364, Florida Statutes.

**CWA:** CWA believes this docket should be decided under the former version of Chapter 364.

**DOD/FEA:** 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.

**AD HOC:** Ad Hoc agrees with the position of ATT as set forth in its brief and incorporates by reference and adopts ATT's position and argument on this issue.

**FCTA:** No, it should be processed under the new law.

**FIXCA:** No. For both legal and practical reasons, this proceeding should be governed by the new statute. However, even if ECS is processed under the old law, ECS would violate the new statute immediately upon price cap election.

**FMCA:** FMCA adopts the positions of McCaw on the legal issues identified by Staff.

**MCI:** This question does not need to be answered in order to dispose of the issues before the Commission, which can be resolved by the Commission's decision on Legal Issues 2 and 3. If the Commission determines this question must be resolved, the answer is "no," the date the docket was opened is not the decisive factor in deciding whether this phase of the proceeding is governed by the former version of Chapter 364.

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

**SPRINT:** Sprint adopts the positions of ATT on the legal issues identified by Staff.

**OPC:** This proceeding is governed by the law as it existed prior to the 1995 revisions to Chapter 364, Florida Statutes.

**PRIMARY STAFF ANALYSIS:** ATT, DOD, Ad Hoc, FCTA, FIXCA, FMCA, McCaw, and Sprint argue that Chapter 364 as revised should apply to this proceeding. Southern Bell, CWA and OPC believe that the former version of Chapter 364 should apply.

Southern Bell states that the general rule under Florida law is that a new statute will apply to a pending action, or not, depending on the nature of the matters at issue in the action. Southern Bell asserts that under the general principles, a new

statute would apply to an action pending on the effective date of the statute, unless this application would alter vested rights. Alternatively, Southern Bell argues that a saving clause can cause the prior version of the statute to apply, even though absent the saving clause, the new statute would apply. Southern Bell argues that the general rules in this instance, would likely apply, absent a saving clause, and that the revised Chapter 364 would apply because this proceeding is not to adjudicate a party's vested interest or entitlement. Instead, Southern Bell argues that this proceeding is to determine the appropriate way to allocate a rate reduction that will begin to take effect later this year. At the same time, there is a saving clause in Section 364.385. The question is whether the saving clause covers the instant case.

Southern Bell asserts that only Subsection 2 of Section 364.385 applies to this situation. Southern Bell notes that Subsection 1 applies to certificates previously issued and rates previously approved by the Commission. Southern Bell states that Subsection 3 might apply if the matter at issue were some vested right arising from Order No. PSC-94-0172-FOF-TL but concedes that this is not the case.

Section 364.385(3) provides that Order No. PSC-94-0172-FOF-TL shall remain in effect, and Southern Bell shall fully comply with that order unless the Commission modifies it. Staff agrees with McCaw's analysis that this section acts only to preserve the Commission's authority to require Southern Bell to fully comply with that Order. Thus, the Commission should conduct proceedings required by that Order under the new law, and Southern Bell is required to comply with Order No. PSC-94-0172-FOF-TL and subsequent orders that implement its terms.

Subsection 2 of the saving clause in Section 364.385, Florida Statutes, states that

> (2) 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. Upon the approval of the application, the extended area service, routes, or extended calling service shall be considered basic services and shall be regulated as provided in s. 364.051 for a company that has elected price regulation. 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. (emphasis added)

Southern Bell agrees that the relevant portion of Subsection 2 are the two sentences that appear to be in conflict, which are underlined in the section quoted above. Southern Bell asserts that under the previous version of the statute, the meaning was clear because proceedings that were pending at the time that the statute became effective were governed by the older version of the statute, unless the parties agreed to be governed by the new. Southern Bell states that the difficulty in interpreting the current version of the statute arises from the fact that the legislature has effectively reversed the meaning of the last sentence of the savings clause.

Southern Bell argues that it would be unreasonable to use the last sentence in the saving clause to assume that the legislature meant to change the meaning of the first sentence, without actually making any changes to it. Southern Bell asserts that if the legislature had intended to do away with the saving clause for pending proceedings, then it would have simply deleted the clause. Thus, Southern Bell's position is that although the current version of the statute contains some ambiguity, Subsection 2 provides that the old law applies to actions pending on July 1, 1995. Thus, Southern Bell states that the Commission should apply the prior version of Chapter 364 for all pertinent issues in this docket.

OPC also believes that the prior version of Chapter 364 should apply to this proceeding since it was pending on July 1, 1995. OPC also states that the second sentence does not apply to this proceeding because it is merely permissive, not mandatory and none of the parties either consented or failed to consent to that provision. Further, OPC suggests that this portion of the statute does not apply because this proceeding is not an "administrative adjudicatory proceeding." OPC argues that while this term is not defined in the statute, it appears that this phrase distinguishes between the quasi-judicial and quasi-legislative functions of the Commission. OPC states that an administrative adjudicatory proceeding might be to impose a fine or to determine the amount of money owed by a customer to a LEC. OPC also states that this proceeding is a rate-setting proceeding so that the Commission is acting in its legislative role.

Although the phrase is not defined in the statute, staff believes that administrative adjudication is the process by which

an administrative agency issues an order or makes a determination. Thus, staff believes that the Commission is not limited solely to its quasi-judicial role.

At first glance, it appears that perhaps this proceeding could be governed by the former version of Chapter 364 because "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 law." (emphasis added) Indeed, OPC, Southern Bell, and CWA hold tightly to this provision because this matter was pending judicial review on July 1, 1995. However, when read in context, the later sentence is extremely important. "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." (emphasis added)

McCaw notes that ordinarily, acts of the legislature operate prospectively unless the legislature 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) and Foley v Morris, M.D., 339 So. 2d 215, 216 (Fla. 1976). This part of the saving clause expressly provides that only if a hearing had been held may the proceeding be conducted based on the old law. McCaw asserts that since this hearing was after July 1, 1995, the new law must govern.

A general principle of statutory construction is that when the same statute contains general and specific provisions on the same subject matter, each must be given its legitimate scope of operation. The general provision must be construed to affect only such cases that are not within the terms of the more specific provision. 49 Fla. Jur. 2d Statutes Section 182.

MCI asserts, based on this principle of statutory construction, that where the matter is one that requires an adjudicatory hearing which has not yet occurred, that general rule is superseded by the specific rule which permits pre-January 1, 1996 law to be applied only "with the consent of all parties and the commission."

Staff believes that the appropriate way to harmonize these two sentences is that unfinished dockets consisting of pending matters that do not require a hearing, or pending matters that have been to hearing are governed by the old law. Also, matters that require a hearing but have not yet progressed to the hearing stage, are governed by the new law.

ATT notes that while Docket No. 920260-TL was initiated under the prior version of Chapter 364, Florida Statutes, the rate revisions at issue here were not designated and were set for hearing at a future time. ATT also notes that the designated future rate reductions were agreed to and approved as part of the Southern Bell settlement in Order No. PSC-94-0172-FOF-TL, and are covered under the former version of Chapter 364. ATT distinguishes the two by noting that unlike the rate reductions at issue in this proceeding, the designated rate reductions have already passed the hearing phase and have been approved by the Commission, even though some of those reductions will not be implemented until future years. Staff agrees with this analysis.

Since the issue in this docket, the disposition of the $25 million refund, required an adjudicatory proceeding which had not progressed to the hearing stage by July 1, 1995, and since the parties did not consent to proceed under the pre-January 1, 1996 law, staff and the majority of the parties believe this proceeding should be governed under the new statute.

Accordingly, staff recommends that since this proceeding did not progress to the stage of a hearing on July 1, 1995 and the parties did not consent to use the former version of Chapter 364, Florida Statutes, this proceeding should be controlled by the revised version of Chapter 364.

**ALTERNATIVE STAFF ANALYSIS:** This proceeding (Docket No. 920260-TL) was pending before July 1, 1995, and thus should be governed by the law as it existed prior to January 1, 1995. Further, this proceeding (Docket No. 920260-TL) "progressed to the stage of hearing" in January 1994. A hearing was only avoided when all parties agreed to the stipulated resolution of all issues. 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(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 required extensive rate reductions by Southern Bell, some of which were specifically identified and some of which were "unspecified." This proposal was submitted to satisfy the unspecified $25 million rate reduction

required for October 1, 1995. The Settlement Agreement was a comprehensive scheme, imposing numerous requirements on Southern Bell including 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." 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 scheme, as is operative with respect to this Order, is fundamentally inconsistent with the Commission regulatory mission pursuant to the revised statute. Therefore, alternative staff recommends that the unspecified $25 million rate reduction scheduled for October 1, 1995, should be processed under the former version of Chapter 364, Florida Statutes.

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

**PRIMARY RECOMMENDATION:** No. If the Commission decides in Issue 1 that the amended Chapter 364 applies and if the Commission approves Southern Bell's ECS proposal, then, based on the statutory definitions of basic and non-basic services in Section 364.02 and the saving clause in Section 364.385, Southern Bell's ECS plan should be considered non-basic service. **[CANZANO]**

**ALTERNATIVE RECOMMENDATION:** Yes. **[ELIAS]**

**POSITIONS OF PARTIES**

**SOUTHERN BELL:** No. Since Southern Bell's ECS plan is governed by the previous version of Chapter 364, it is not necessary to categorize this plan as either basic or non-basic service. If the new version of Chapter 364 did apply, however, Southern Bell's ECS plan would be a non-basic service.

**ATT:** No. "Basic local telecommunications service" is specifically defined in Section 364.02(2), Florida Statutes, to include only that "extended calling service in existence or ordered by the commission on or before July 1, 1995."

**CWA:** CWA adopts the position of OPC.

**DOD/FEA:** 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.

**AD HOC:** Ad Hoc agrees with the position of ATT as set forth in its brief and incorporates by reference and adopts ATT's position and argument on this issue.

**FCTA:** No, it would become a non-basic local service.

**FIXCA:** No. The definition of basic local telecommunications service does not include extended calling service plans approved by the Commission on or after July 1, 1995.

**FMCA:** FMCA adopts the positions of McCaw on the legal issues identified by Staff.

**MCI:** No. An ECS route is part of basic local telecommunications service only if (a) under section 364.02(2), the specific ECS route was in existence or ordered by the Commission on or before July 1, 1995; or (b) under section 364.385(2), there was an application for the specific route pending before the Commission on March 1, 1995 which is subsequently approved by the Commission.

**MCCAW:** 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.

**SPRINT:** Sprint adopts the positions of ATT on the legal issues identified by Staff.

**OPC:** Southern Bell's proposed extended calling service tariff would be a non-basic service.

**PRIMARY STAFF ANALYSIS:** All of the parties except Southern Bell agree that if Southern Bell's ECS plan is approved, the ECS service should be classified as a non-basic service rather than basic local telecommunications service. Southern Bell asserts that since the prior version of Chapter 364 applies to all aspects of this proceeding, then the concept of basic and non-basic services is not applicable since it appears for the first time in the new legislation. However, Southern Bell concedes that if the new version of Chapter 364 applies, then its ECS proposal should be considered a non-basic service.

Staff believes that if the Commission decides to apply the new version of Chapter 364 in Legal Issue 1 to Southern Bell's ECS proposal, the ECS service, if approved, should be considered non-basic service. Under the provisions of the amended Chapter 364, ECS is considered basic local telecommunications service if, pursuant to Section 364.02(2), the specific ECS route was in existence or ordered by the Commission on or before July 1, 1995 or pursuant to Section 364.385(2), there was an application for the specific route pending before the Commission on March 1, 1995 which was subsequently approved by the Commission.

Section 364.02(2) states that

> (2) "Basic local telecommunications service" means voice-grade, flat-rate residential and flat-rate single line business local exchange services which provide dial tone, local usage necessary to place unlimited calls

> within a local exchange area, dual tone multi-frequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, such term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.
>
> Section 364.02(8) states that
>
> (8) "Non-basic service" means any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement described in s. 364.16, or a network access service described in s. 364.163.

Based on the definitions of basic and non-basic telecommunications service in Section 364.02, staff believes that Southern Bell's ECS proposal should not be considered basic local telecommunications service. Southern Bell's proposal is not a flat-rate residential or flat-rate single line business service. Further, based on Section 364.02(2), its ECS service was not in service or ordered by the Commission prior to July 1, 1995.

Section 364.385(2) provides that all applications for EAS or ECS pending before the Commission on March 1, 1995 shall be governed by the law as it existed prior to July 1, 1995. If approved, the EAS or ECS routes would be considered basic services. Southern Bell filed its ECS proposal May 15, 1995 and added 36 routes on July 28, 1995. Staff believes that based on Section 364.385(2), Southern Bell's ECS proposal, if approved, should not be considered part of basic local telecommunications service because it was not a pending request on March 1, 1995.

Accordingly, if the Commission decides in Issue 1 that the amended Chapter 364 applies and if the Commission decides to approve Southern Bell's ECS proposal, then, based on the statutory definitions of basic and non-basic service in Section 364.02 and the saving clause in Section 364.385, staff recommends that Southern Bell's ECS plan should be considered non-basic service.

**ALTERNATIVE STAFF ANALYSIS:** 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. Order No. PSC-94-0172-FOF-TL required extensive rate reductions by Southern Bell, some of which were specifically identified and some of which were "unspecified." This proposal was submitted to satisfy the unspecified $25 million rate reduction required for October 1, 1995. The Settlement Agreement was a comprehensive scheme, imposing numerous requirements on Southern Bell including 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."

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.

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-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.

Thus, the Commission has 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 Order 94-0172 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. Alternative staff believes the same treatment should be ordered for this proposal.

Alternative staff believes 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 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 until the year 2001. The authority granted by the legislature with respect to this docket permits the Commission to approve this proposal in a similar framework. Therefore, alternative staff recommends that if Southern Bell's ECS plan is approved, it should be considered part of basic local telecommunications service, for the purposes of Section 364.051, Florida Statutes.

**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?

**PRIMARY RECOMMENDATION:** Before the Commission can determine whether Southern Bell's ECS plan does or does not violate the imputation requirement of Section 364.051(6)(c), Florida Statutes, it must determine what constitutes the "direct" cost of ECS as well as what is the appropriate "monopoly component." Staff has recommended in Issue 2 that development of a resale and/or interconnection rate, as specified in Section 364.162(4) and (5), will adequately address the concerns that the imputation requirement is designed to address, at a minimum, for purposes of this case. **[CANZANO]**

**ALTERNATIVE RECOMMENDATION** Since alternative staff believes the plan should be approved as part of 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. **[ELIAS]**

**POSITIONS OF PARTIES**

**SOUTHERN BELL:** No. Southern Bell's ECS plan is not subject to the imputation requirement of Section 364.051(6)(c) because it is controlled by the former version of Chapter 364. The ECS service, however, would satisfy the imputation requirement of Section 364.051(6)(c) if it did apply.

**ATT:** Yes. Southern Bell's proposed ECS rates fail to cover the direct costs of providing the service plus the imputed price of Southern Bell's intrastate switched access services which Southern Bell's competitors would have to buy in order to compete with Southern Bell on the proposed routes.

**CWA:** CWA adopts the position of OPC.

**DOD/FEA:** 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. 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.

**AD HOC:** Ad Hoc agrees with the position of ATT as set forth in its brief and incorporates by reference and adopts ATT's position and argument on this issue.

**FCTA:** Yes, the plan appears to violate the imputation requirements of the new law.

**FIXCA:** Yes. Each non-basic service must meet the imputation requirements. Southern Bell averaged multiple services together in contravention of the statute and has not included all monopoly components in its imputation calculation; nor has Southern Bell shown that the service covers its direct costs for the non-monopoly components of the service.

**FMCA:** FMCA adopts the positions of McCaw on the legal issues identified by Staff.

**MCI:** Yes. As a non-basic service, ECS must cover the direct costs of its non-monopoly components and the imputed cost of its monopoly components. Even if a lower rate could be charged up until the effective date of price regulation, that rate is not protected, since section 364.385(1) grandfathers only rates which were in effect prior to July 1, 1995.

**MCCAW:** 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).

**SPRINT:** Sprint adopts the positions of ATT on the legal issues identified by Staff.

**OPC:** No.

**PRIMARY STAFF ANALYSIS:** Southern Bell, CWA, and OPC assert that if the Commission finds that Southern Bell's ECS plan is not a part of basic local telecommunications service, the ECS plan does not violate the imputation requirement of Section 364.051(6)(c), Florida Statutes.

ATT, DOD, Ad Hoc, FCTA, FIXCA, MCI, McCaw, and Sprint believe that Southern Bell's ECS plan would violate the imputation requirement of Section 364.051(6)(c), Florida Statutes.

Southern Bell's position regarding imputation calculations for its ECS plan is set forth in Issue 2. OPC states that no party has

challenged whether the proposed ECS service covers its direct costs. OPC asserts that if the imputation requirements applied, the cost that would be imputed would be interconnection rates and not access charges. OPC notes that Southern Bell and the IXCs litigated the issue of whether ECS would pass an access charge imputation test rather than litigating the proper issue: to the extent imputation is an issue at all, the issue is whether ECS would pass an interconnection charge imputation test.

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.

ATT argues that the effect of Section 364.051(6)(c) is to codify the Commission's existing access imputation standards. Specifically, ATT interprets the statute to mean that in the provision of intraLATA toll services, the LEC must recover its direct costs and must impute the prices which a competitor pays the LEC for the intrastate switched access services that the competitor must use to provide the same or functionally equivalent service in competition with the LEC, to the extent that those prices are in excess of the LEC's actual costs of providing those intrastate switched access services to itself.

ATT states that the premise behind the statute and the imputation guidelines set in Docket No. 900708-TL is that competition can only be fostered and protected by requiring the LECs to include the prices of monopoly services in the prices that they charge for services that they provide in a competitive market. ATT asserts that the goal of the statute and the guidelines is to place the LEC and its competitors on equal footing with respect to the pricing of competitive services.

ATT, McCaw and MCI assert that Southern Bell's ECS proposal does not meet the statutory requirements of Section 364.051(6)(c). First, they state that Southern Bell has not performed any cost study for ECS. Second, ATT, FIXCA, McCaw, and MCI assert that Southern Bell has not included any local transport in its calculation. Third, they argue that Southern Bell has improperly averaged ECS toll with its toll services. The parties assert that correct statutory language is singular: ". . .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) FIXCA also adds that the term "functionally equivalent" applies to the services of competitors, not the services of Southern Bell.

Some of the parties, in particular the IXCs, argue that Southern Bell has violated Section 364.051(6)(c) because Southern Bell has failed to impute the cost of switched access. Witnesses Gillan and Hendrix address imputation but assume that the monopoly component is switched access. Thus, their testimony and calculations are based on some form of the access imputation guidelines currently in place for toll. Staff believes that it is inappropriate to assume that the monopoly component is switched access. For example, it is possible that it may be determined that ALECs can provide this service without being charged access.

Staff does not believe that it can be adequately determined whether, if approved, Southern Bell's ECS plan would violate Section 364.051(6)(c). Southern Bell provided no direct cost data in support of its ECS rates. In addition, the Commission has yet to determine what constitutes a "direct cost." Finally, the Commission must determine what is the appropriate "monopoly component."

Although staff does not have enough information available to determine whether Southern Bell's proposed ECS plan meets the requirements of Section 364.051(6)(c), staff believes that Southern Bell's ECS plan, if approved, could still be implemented after January 1, 1996. The purpose of Section 364.051(6)(c) is to avoid anticompetitive behavior on the part of the LEC. If Southern Bell's ECS service can be resold because it is a non-basic service, then we believe that there would be no competitive harm once resale and interconnection rates have been negotiated or established by the Commission. (For a more detailed discussion, see Issue 2). Although it is premature to determine whether Southern Bell meets the imputation requirements of Section 364.051(6)(c), competitors could still carry this ECS traffic once nondiscriminatory resale and interconnection rates, terms and conditions have been established. Thus, there would be no competitive harm because the resale and interconnection rates are required to cover the LEC's costs, which would be below the retail rate and not be so high as to serve as a barrier to competition.

Accordingly, before the Commission can determine whether Southern Bell's ECS plan does or does not violate the imputation requirement of Section 364.051(6)(c), Florida Statutes, it must determine what constitutes the "direct" cost of ECS as well as what is the appropriate "monopoly component." Staff has recommended in

Issue 2 that development of a resale and/or interconnection rate, as specified in Section 364.162(4) and (5), will adequately address the concerns that the imputation requirement is designed to address, at a minimum, for purposes of this case.

**ALTERNATIVE STAFF ANALYSIS:** 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 alternative staff believes the plan should be approved as part of 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.

**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?

**RECOMMENDATION:** No, Southern Bell's ECS proposal does not appear to violate any other provisions of Chapter 364, Florida Statutes. **[CANZANO, ELIAS]**

**POSITIONS OF PARTIES**

**SOUTHERN BELL:** No. Southern Bell has not violated any portion of the revised Chapter 364.

**ATT:** Yes. Southern Bell's proposal violates both the spirit and intent of the recent revisions to Chapter 364 as discussed in the other portions of this brief. Moreover, Southern Bell's proposal constitutes an anticompetitive act or practice in violation of Section 364.051(6)(a), Florida Statutes.

**CWA:** CWA adopts the position of OPC.

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

**AD HOC:** Ad Hoc believes that Southern Bell's ECS plan at a minimum violates the purpose of revised Chapter 364, such as the pro-competitive purpose set out in Section 364.01(3). The plan also violates substantive provisions of the statutes, such as Section 364.051(6), requiring the imputation of monopoly components.

**FCTA:** FCTA has identified relevant statutory provisions in its position on the issues listed in the prehearing order.

**FIXCA:** Yes. Under Southern Bell's reading of "functionally equivalent" in section 364.051(6)(c), the ECS plan violates the non-discrimination provision of the statute.

**FMCA:** FMCA adopts the positions of McCaw on the legal issues identified by Staff.

**MCI:** In order to comply with revised Chapter 364, any residential ECS approved in this docket would have to be made available for

resale to residential customers and any business ECS approved would have to be made available for resale to business customers.

**MCCAW:** 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.

**SPRINT:** Sprint adopts the positions of ATT on the legal issues identified by Staff.

**OPC:** No.

**STAFF ANALYSIS:** 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 previously identified in the positions on the issues listed in the prehearing order.

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.

Staff agrees that 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 other entities such as ALECs from carrying this type of traffic. Assuming that imputation concerns are addressed through staff's recommendation in Legal Issue 3 and technical Issue 2, then there is no reason that ALECs are prevented from carrying this traffic and becoming competitors for the traffic on these routes.

ATT also states that Southern Bell's proposal constitutes an anticompetitive act or practice in violation of Section 364.051(6)(a), Florida Statutes. Staff believes that there does not appear to be an anticompetitive act or practice, since competition will be available on these routes if they are approved.

FIXCA argues that Section 364.051(6)(a)(2) would be violated if Southern Bell's ECS plan were implemented, because it violates the non-discrimination provision under Southern Bell's reading 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.

Staff addresses Southern Bell's "functionally equivalent" argument in Legal Issue 3 and Issue 2. Accordingly, FIXCA's concern should be alleviated.

Likewise, MCI is concerned that to comply with Chapter 364, any residential ECS approved in this docket would have to be made available for resale to residential customers, and any business ECS would have to be made available for resale to business customers. As discussed in Issue 2, MCI's concern should be alleviated.

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

**LEGAL ISSUE 5:** Should Staff's Motion to Supplement the Record be granted?

**RECOMMENDATION:** Yes. No party filed a response to the motion. Therefore, it may be assumed that no party opposes the request. **[ELIAS, CANZANO]**

**STAFF ANALYSIS:** 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. Therefore, staff recommends that the motion be granted.

**ISSUE 1 A:** Should the following proposal to dispose of $25 million for Southern Bell be approved?

a) SBT's proposal to implement the Extended Calling Service (ECS) plan pursuant to the tariff filed on May 15, 1995. (T-95-304)

**PRIMARY RECOMMENDATION:** No. Southern Bell's proposal to implement the Extended Calling Service (ECS) plan pursuant to the tariff filed on May 15, 1995 (T-95-304) should be denied. In addition, the supplemental routes filed by Southern Bell on July 27, 1995 should also be denied. **[SHELFER]**

**ALTERNATIVE RECOMMENDATION:** Southern Bell's Extended Calling Service (ECS) plan contained in its May 15, 1995 filing, as supplemented by the additional 36 one-way routes in Exhibit 5, should be approved effective January 1, 1996, and considered basic service. Further, during the period beginning October 1, 1995 through December 31, 1995, Southern Bell should be required to make the appropriate refund in compliance with the Stipulation (Order No. PSC-94-0172-FOF-TL). The Commission should revisit its decision in Docket No. 921193-TL and require implementation on the Palm Beach County ECS routes on January 1, 1996. Pay telephone providers should charge end users $.25 per message and pay the standard interconnection charge. Interexchange carriers (IXCs) may continue to carry the same types of traffic on these routes that they are now authorized to carry. **[O'PRY]**

**POSITION OF PARTIES:**

**SOUTHERN BELL:** Southern Bell's proposal to implement Extended Calling Service pursuant to the tariff filed on May 15, 1995, should be approved because it benefits almost all of Southern Bell's Florida customers.

**ATT:** Southern Bell's proposal should be rejected.

**CWA:** No. However, if the Commission does not approve the CWA proposal, then CWA takes the position that SBT's proposal should be approved.

**DOD/FEA:** The Commission should reject Southern Bell's proposal. The proposal represents an attempt by Southern Bell to "remonopolize" a market that this Commission has previously deemed to be competitive.

**AD HOC:** SBT's ECS proposal should be rejected as a predatory attempt to lock up the Florida toll market at the same time at which Southern Bell becomes deregulated.

**FCTA:** The Commission should not adopt any plan that is geared toward remonopolizing markets and stifling the provision of the widest possible array of consumer choice among competing telecommunications services.

**FIXCA:** The Commission must reject Southern Bell's proposal because it fails to pass the required imputation standard and because it would remonopolize a significant portion of the intraLATA toll market in the Southeast LATA in direct contravention of the intent of the new telecommunications legislation, unless FIXCA's recommendations are adopted.

**FMCA:** The Southern Bell proposal should be denied. It is an attempt to monopolize the intra-LATA toll routes prior to 1+ intra-LATA competition.

**MCI:** The Commission should reject Southern Bell's ECS plan as anti-competitive in that it would effectively remonopolize a substantial portion of the intraLATA toll market and, as structured, would violate the recently enacted imputation requirements of Chapter 364.

**MCCAW:** Southern Bell's proposal should be rejected as it would give Southern Bell an unfair competitive advantage in the intraLATA toll market.

**SPRINT:** Sprint is opposed to SBT's proposal because it does not appear to be based on true community of interest factors. Further, the impact of this plan is clearly to remonopolize the intraLATA toll market in the face of 1+ intraLATA toll competition being implemented.

**OPC:** The Commission should approve SBT's proposed ECS plan.

**PRIMARY STAFF ANALYSIS:** On May 15, 1995, Southern Bell submitted a tariff proposal to implement extended calling service (ECS) on 252 intraLATA, intra-company routes. (EXH 1) On July 28, 1995, Southern Bell filed a request to add 36 additional routes to its original ECS proposal (total 288 routes) as part of a settlement agreement reached with the Office of Public Counsel. (TR 42-43, EXH 5) This proposal would convert 248 intraLATA toll routes and forty $.25 plan routes, on which residential and business customers currently pay $.25 per call regardless of duration, to ECS.

(Please note that calling from Exchange A to Exchange B and from Exchange B to Exchange A constitutes two routes.)

Southern Bell's Rationale and Support

Southern Bell's Witness Stanley states that ECS is an enhancement to existing local exchange service offerings. It provides expanded area calling for customers whose community of interest needs extend beyond current local calling areas. ECS provides seven-digit dialing capability to selected exchanges at rates which are significantly less than Southern Bell's basic toll rates. Calls to ECS exchanges are billed at $.25 per message for residence customers. For business customers, each call is billed at $.10 for the initial minute and $.06 for each additional minute. There is no change in the monthly recurring access line rate for existing local exchange service if ECS is implemented. (Stanley TR 47-48)

Witness Stanley contends that ECS is an appropriate service for disposition of the rate reduction because it is extremely responsive to customer desires and to the economic development of the state. (TR 48) The witness states that this is readily apparent from the number of extended area service (EAS) requests which come before the Commission. During the last three years 40 requests have been considered. Currently, there are 21 EAS requests pending. (TR 49-50)

Southern Bell contends that the particular ECS routes included in the plan were selected to satisfy customers' community of interest calling needs. He explains that these needs are created by such things as where customers work, where they worship, where they shop, where they attend school, and where they receive medical care. These needs differ for different people and for different communities. The witness provided the following guidelines which were used in selecting the routes: (TR 50-51)

1) There was an obvious community of interest, as in the case of the Dade-Broward metropolitan area;

2) Traffic studies revealed a significant community of interest;

3) The existence of local optional calling plans demonstrated a community of interest;

4) The inclusion of an exchange was necessary to eliminate leapfrog local calling situations caused by community of interest considerations listed above; and

5) Reciprocal routes eliminated the confusion associated with one-way local service.

In addition, with the exception of the Enhanced Optional Extended Area Service (EOEAS) residential premium rate, this proposal will eliminate Basic Optional Extended Area Service, Optional Calling Service, and flat-rated $.25 plans on routes where ECS is implemented. (EXH 1, p 2)

Witness Stanley states that by introducing ECS on these routes and routes to intermediate locations, it can standardize statewide the expanded local service that it offers to its customers. (EXH 1, p 2) The Company states that this should reduce customer confusion regarding the number of different offerings currently available and provide customers with a better understanding of the services available to them throughout the state. (TR 52)

The witness contends that the ECS proposal meets customer and economic development needs for expanded local calling areas that have been expressed in petitions to this Commission, in bills before the Florida Legislature, and in customer contacts with Southern Bell employees throughout the state. The plan, as amended, provides reduced usage rates to customers in each of the areas currently requesting EAS service. Witness Stanley states that ECS offers customers a larger 7-digit calling area, as well as significant reductions in the usage rate for the expanded service area. In addition, ECS will provide benefits to a great number of Florida subscribers, and at the same time enhance the economic development of the more rural communities. (TR 53)

Southern Bell suggests that there is an alternative to ECS called competition. Southern Bell contends that IXCs can aggregate their usage and take advantage of the resulting discounts and convenience. The IXCs can also utilize sources other than Southern Bell for access. While Southern Bell acknowledges that 7-digit dialing gives them a slight advantage, it does not believe that it has the insurmountable competitive edge that intervenor witnesses suggest. (TR 71) (Staff would note that the end user's choice of local carrier dictates the access charges which IXCs pay on the originating and terminating end of the call.)

Southern Bell further argues that ECS is not a remonopolization of the intraLATA market. It contends that with the ability to serve in the intraLATA market only, it simply cannot

exert that kind of market power. Southern Bell states that the flexibility that will be available to IXCs due to the new legislation will allow IXCs to fully compete with Southern Bell. (TR 72)

Other Parties' Positions:

All parties oppose Southern Bell's ECS proposal with the exception of OPC. In its brief, ATT states that Southern Bell's proposal is blatantly anti-competitive. It contends that this proposal violates the letter and intent of the law, and it is simply an attempt to remonopolize markets that this Commission has previously sought to open to competition. ATT further states that approval of Southern Bell's proposal would render the benefits of intraLATA presubscription (which the Commission recently found to be in the public interest) a nullity in large portions of Southern Bell's service territory. ATT states that intraLATA presubscription is intended to give consumers the option of choosing a carrier other than the LEC for 1+ intraLATA calling. In its brief, ATT argues that when faced with the prospect of losing its monopoly with respect to 1+ intraLATA toll traffic, Southern Bell chooses merely to convert that traffic to 7-digit dialing at prices less than the access charges that its competitors must pay to carry the same calls.

ATT also contends that Southern Bell uses "community of interest" considerations to justify the remonopolization of the affected routes. ATT offers support of its position by stating that one of the routes in question (Miami/Key West) is approximately 135 miles long. (TR 121) It further argues that the 36 additional routes, which were included in the proposal at the hearing, did not even meet Southern Bell's own limited standards. (TR 118-119)

In addition, ATT argues that the purported "benefits" Southern Bell contends will exist will be short-lived, if they exist at all. ATT contends that Southern Bell can and probably will raise the rates on the affected ECS routes under the "non-basic" service provisions of Section 364.051(6), Florida Statutes. Southern Bell's own witness stated that it would be possible for Southern Bell to raise the rates on the affected routes when it becomes subject to price regulation. (Hendrix TR 414) ATT argues in its brief that there will be little or nothing that the Commission can do if Southern Bell elects to raise the rates.

CWA is opposed to Southern Bell's proposal. However, CWA states in its brief that if the Commission does not approve the CWA

proposal, it takes the position that Southern Bell's proposal should be approved.

In its brief, DOD/FEA urges the Commission to reject Southern Bell's proposal because it is anti-competitive. This proposal expands the boundaries of local exchange areas to include places previously reached only through intraLATA toll calls. FEA states in its brief that the Commission has not yet authorized competition for switched local 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. DOD/FEA contends that 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.

Ad Hoc also states that Southern Bell's proposal should be rejected. In its brief, Ad Hoc argues that the plan is predatory in its effect on toll competition, which features retail ECS rates below Southern Bell's wholesale access rates, and dialing patterns which discriminate in favor of Southern Bell and against its competitors. Coupled with the recently passed telecommunication statute, Ad Hoc contends that these changes will give Southern Bell the option of raising ECS rates up to 20% a year.

Ad Hoc disagrees with Southern Bell's statement that the ECS proposal is in response to EAS desires. There are only 24 EAS requests pending and Southern Bell has proposed 288 ECS routes. (TR 74) Ad Hoc contends that Southern Bell's own witness stated that the new routes added at the hearing did not even satisfy Southern Bell's own criteria for ECS. (TR 119)

Ad Hoc disagrees with Southern Bell that ECS poses no threat to IXCs because Southern Bell can only compete within the LATAs, and because IXCs can combine their interLATA, interstate and international usage. (TR 76-77) Ad Hoc contends that Southern Bell's witness admitted that IXCs could not in fact use interstate access rates to somehow reduce their costs on the ECS routes. (TR 130-131) Ad Hoc also states that IXCs would be required to force their customers to dial ECS calls on a 1+ basis (a dialing pattern customarily used for toll calls), while Southern Bell is allowed to carry the same call using 7-digit dialing. (TR 96-97)

In its brief FCTA states that proposals geared toward protecting the incumbent LEC by remonopolizing markets, raising rates and stifling competition, must be rejected. FCTA contends that Southern Bell's proposal, which perhaps offers a couple of months of immediate lower rates to certain consumers, would have a

long term negative effect on consumer choices. FCTA maintains that Southern Bell's plan will impede the development of consumer choice by: (a) the change to 7-digit dialing; (b) the mandatory nature of the service; and (c) the preclusion of a wholesale ECS service by the dominant LEC. (TR 299-309) In addition, FCTA states that as a "non-basic service" under the new law, Southern Bell will be able to annually raise its proposed ECS rates.

FIXCA agrees with ATT, DOD/FEA and Ad Hoc that Southern Bell's ECS proposal should be rejected. In its brief, FIXCA contends that Southern Bell's proposal will end competition on most South Florida toll routes and will violate the spirit and the letter of the recently passed telecommunications statute. FIXCA argues that ECS would take some 150 competitive toll routes (in just Phase 1 of the plan) and convert them to ECS. The majority of the proposed ECS routes are in the Southeast LATA. If ECS is implemented, about $100 million of that revenue will be diverted out of the competitive market to ECS. The Southeast LATA will be gutted insofar as toll traffic competition is concerned. After ECS, there will be no more competition on these routes. (Gillan TR 317-318)

FIXCA further argues that if the Commission approves ECS as proposed, Southern Bell will convert the dialing pattern on these routes from their current 1+ dialing pattern to a 7-digit pattern for calls Southern Bell carries. (Stanley TR 84, 96-99, 113) Competitors of Southern Bell will be able to carry these calls only on a 1+ (1 plus 10 digit) basis. FIXCA states that the Commission has ordered the implementation of 1+ dialing for all intraLATA traffic (Order No. PSC-95-0203-FOF-TP, Docket No. 930330-TL). By converting ECS calling (which prior to ECS would be carried by all providers on a 1+ basis) to 7 digits for Southern Bell only, FIXCA contends in its brief that Southern Bell will effectively remove this traffic from the competitive pressures and the consumer benefits associated with intraLATA presubscription which the Commission articulated in its 1+ order.

FIXCA disagrees with Southern Bell that competition will continue in the face of ECS. Southern Bell's witness Stanley argued that because some short duration, short haul calls at IXC rates might be cheaper than the ECS rate, remonopolization would not occur. FIXCA argues that a consumer would have to know (in advance of placing the call) how far away the called party was (mileage band), how long the call would last (call duration) and what time period the call was in (day, night, weekend). (TR 104) If the consumer knew all this information before placing each call, the consumer would save under $.06 for such calls. (TR 107) FIXCA contends that it is unreasonable to assume that a consumer will go through this kind of exercise and therefore that competition will

not continue to exist on these routes, especially when ECS is bundled with local service. Southern Bell's witness Stanley stated than an IXC would never be cheaper on a route longer than 11 miles. (TR 125)

FIXCA disagrees with Southern Bell's argument that IXCs can use "melded" access rates to try to beat Southern Bell's high cost of intrastate access. In fact, Southern Bell's witness Stanley admitted that this is not the case: when an IXC purchases a minute of intrastate access, it pays Southern Bell for a minute of intrastate access. (TR 117) IXCs cannot lower their intrastate access costs on ECS calls by using interstate rates. (TR 130, 240) FIXCA's witness Gillan stated that it simply does not make sense for an IXC to charge $.06 a minute to carry a call and then turn around and pay Southern Bell $.075 a minute for the same call. (Gillian TR 316)

MCI states that Southern Bell's proposal should be rejected as anti-competitive. MCI contends that the proposal would remonopolize a substantial portion of the intraLATA toll market on the eve of 1+ intraLATA presubscription. (TR 203-205, 250, 296, 317-318, 348) These are routes for which long distance competition exists today and for which competition should exist tomorrow. (TR 55, 96, 298) The 288 routes in Southern Bell's plan include routes that are much longer than any ECS routes approved to date (up to 135 miles); routes that do not meet the Commission's traditional community of interest standards; and 36 routes added at the hearing which do not meet even Southern Bell's relaxed criteria. (Stanley TR 118-121)

MCI further argues in its brief that Southern Bell's proposal is fundamentally different from past cases where ECS was ordered. Southern Bell has made no showing that the routes proposed meet traditional community of interest standards. Instead Southern Bell has created five new criteria to identify its proposed ECS routes - one of which is a novel definition of community of interest that includes all routes in Dade and Broward counties. MCI states that Southern Bell's ECS proposal is not for routes where customer usage and demand support toll relief; it is for routes that Southern Bell seeks to remonopolize on the eve of 1+ intraLATA presubscription. In its brief MCI contends that since the routes proposed for ECS do not meet traditional community of interest standards, Southern Bell's proposal amounts to nothing more than a discounted toll plan.

MCI states that it is simply impossible for a long distance carrier to compete against Southern Bell's retail prices which are below the wholesale prices it must pay Southern Bell for monopoly

access service. This is particularly true where the residential ECS rate is a flat $.25 per message, while access charges to a competitor are on a per minute of use basis. This means that Southern Bell's retail price to a residential customer for any call of four minute or more ($.25 / 4 = $.0625) is lower than the "wholesale" price ($.0642) paid by its competitors for access charges alone. (TR 110-112)

Like ATT and FIXCA, MCI also contends that any daytime calls over 10 miles are cheaper using ECS rather than an IXC. Also, with the exception of evening and night/weekend calls in the shortest mileage bands, all calls over one minute are cheaper using ECS. (EXH 3) In its brief MCI argues that while there is nothing wrong with low prices in a competitive marketplace, there is something wrong with low prices for a toll substitute that do not cover imputed charges for monopoly access service.

MCI agrees with ATT, Ad Hoc and FIXCA that the anti-competitive effect of these unreasonably low prices is compounded by the fact that Southern Bell proposes to offer ECS on a 7-digit dialed basis. (Stanely TR 97) Thus even in those few situations in which a customer could save money by using his or her presubscribed IXC for a particular call, the customer must make a conscious decision to incur the inconvenience of dialing additional digits. Moreover, in its brief MCI argues that to make an intelligent choice, the customer would have to know in advance how long the call is going to last as well as the distance of the call. (TR 104) MCI concludes in its brief that unless the price for ECS is raised, the price for switched access is lowered, or a new interconnection rate for ECS-like calls is established, Southern Bell's plan is patently anti-competitive.

McCaw agrees with the other parties that Southern Bell's proposal should be rejected because it would give Southern Bell an unfair competitive advantage in the intraLATA toll market. McCaw contends that Southern Bell has not demonstrated any need for the service, nor how it benefits any important or relevant policy objective. (TR 85-88) To the extent there are communities of interest that extend beyond existing local exchanges, Southern Bell already has in place EAS and ECS; otherwise, such requests have been rejected. (TR 150-154) McCaw argues that 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. (Stanely TR 112, 114, 301-302, Gillan 317-318) McCaw also points out the extensive distances involved for some of the routes, such as 135 miles from Key West to Miami. (Stanley TR 120-124)

McCaw agrees with ATT, Ad Hoc, FIXCA and MCI that the use of 7-digit dialing for ECS calls would be anti-competitive and effectively nullify the Commission's recent decision for 1+ intraLATA competition. As proposed, ECS calls would be mandatory 7-digit dialing for Southern Bell's customers, where 10-digit dialing would be required for customers seeking to use a competitive carrier. McCaw believes this is patently unfair. (Stanley TR 95-99, 114-115, 300-301)

Sprint also states that Southern Bell's proposal should be rejected. Sprint contends in its brief that although perhaps a "masterful marketing plan," Southern Bell should not be permitted to implement a portion of the rate reductions to put in place an anti-competitive ECS calling plan. (Key TR 346)

Sprint argues that the ECS plan is an outrageous, thinly veiled attempt to capture the intraLATA toll calling routes - 20% of the total Florida toll market - prior to the start of 1+ intraLATA competition. (TR 134) Sprint maintains that the rate reduction should not be implemented in a manner totally self-serving to Southern Bell - to "establish a competitive edge" for Southern Bell. (TR 175)

Like ATT, FIXCA and MCI, Sprint also contends that from the ratepayer's perspective, the captive customer who, without analyzing the maze of various toll options and rates, dials the 7-digit ECS call will pay a higher rate for a one minute call than if placed by ATT, Sprint or MCI. (EXH 3) In addition, for calls three minutes or less in duration, residential customers will pay a higher rate than business customers. (Stanley TR 80)

Unlike the other parties, OPC states that the Commission should accept Southern Bell's proposal to dispose of the $25 million by approving ECS on all of the routes proposed by Southern Bell, including those additional routes that were proposed by letter to the Commission dated August 3, 1995. OPC states in its brief that the plan proposed by Southern Bell provides approximately $50 million in annual savings to its customers for calling on the 288 routes included in the proposal.

OPC contends that ECS was designed by this Commission. The Commission initially implemented ECS between the Tampa and St Petersburg areas. The Commission - not GTEFL - developed the rate of $.25 per call for residential customers and the $.10/$.06 rate per minute rates for business customers. Subsequently the Commission ordered ECS on a number of other routes, including a number of routes (but not all routes) between Dade and Broward counties. OPC offers that many other routes still deserve ECS, and

that Southern Bell's ECS proposal provides a rare opportunity to the Commission to address those needs.

OPC argues in its brief that the ECS proposal would provide much needed relief to customers throughout Southern Bell's territory. Many of these routes qualify for flat rate EAS due to their calling rates. Among the benefits of Southern Bell's proposal is that it will give countywide calling in Palm Beach County (Stanley TR 90) and local calling between all of Dade and all of Broward County. (TR 93)

OPC maintains that ECS will have a positive economic benefit along the affected routes. (TR 53, 94-95) There is much demand for this offering, and customers have reacted positively to Southern Bell's proposal. (TR 48, 94-95) OPC contends that customers with a need for ECS can take advantage of it without imposing higher local rates on all customers. (TR 95)

OPC concludes in its brief that due to the recent change to chapter 364, Florida Statutes, it is unlikely that this Commission will be in a position in the future to grant expanded local calling areas. Therefore, Southern Bell's proposal represents the last chance for local calling between communities whose social and commercial fabrics are merging.

Staff's Review:

Staff does not believe that the guidelines used by Southern Bell to determine whether a route warranted ECS are appropriate. The five factors that Southern Bell proposed do not require any specific qualifying criteria; rather, they are merely subjective criteria. Of the 252 originally proposed routes only 36 routes had calling rates of 3 M/A/Ms or greater. The remainder of the routes were selected due to Southern Bell's "obvious community of interest" criteria (Broward and Dade counties), elimination of leapfrogged routes, or a desire for reciprocal calling. Of the 36 added routes, none had calling rates of 3 M/A/Ms or greater. Many 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.

Prior to 1992, the Commission granted several requests for countywide calling (Franklin, Gulf, Jackson, Holmes, Okaloosa, and Walton counties). Some of these countywide requests were granted because the LEC involved was before the Commission due to a rate case and was in an overearnings situation. However, because some of the countywide $.25 plan routes were interLATA and involved Southern Bell, Southern Bell was required to request a waiver of

the Modified Final Judgement (MFJ) to carry traffic over the LATA boundary. Judge Greene of the United States District Court denied Southern Bell's request on seven dockets (20 routes). One of the Judge's concerns was that the Commission had not required specific community of interest criteria prior to granting the $.25 plan. He considered the $.25 plan nothing more than discounted toll and therefore anti-competitive.

Since Judge Greene's decision, the Commission has not ordered an alternative toll plan ($.25 plan or ECS) without a route meeting some type of criteria. 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).

Further, staff would note that by Order No. 25708, in Docket No. 910179-TL (Tariff filing to introduce ECS by GTEFL), issued February 11, 1992, the Commission granted ECS only on the routes found to have a sufficient community of interest (EXH 7). This decision was upheld by the Supreme Court.

By Order No. PSC-93-1177-FOF-TL in Docket No. 911065-TL (Proposed Rule 25-4.065, F.A.C. Countywide Calling), issued August 10, 1993, the Commission closed the rule docket for countywide calling. The Order states that even though countywide calling has been implemented in several dockets, countywide calling should be handled on a case-by-case basis, rather than a blanket approval. The Order further states that if the countywide rule were approved, any intracounty call would be priced at $.25 per call or some form of per minute pricing (such as ECS), whether or not there was sufficient need. The Order also referenced Judge Greene's decision to deny Southern Bell's request for waiver of the MFJ, and noted that other alternatives for interLATA routes were being considered. The Order concludes that handling the countywide EAS situation on a case-by-case basis will result in those counties with a true need for countywide calling filing requests and receiving toll relief.

Staff disagrees with Southern Bell that these particular ECS routes were included to satisfy customers' community of interest calling needs. Staff would argue that these routes may be the result of some customers' desires, which may be significantly different from the need of the majority. Staff would use the same argument relating to the purported need for ECS created by such things as where customers work, where they worship, where they shop, where they attend school, and where they receive medical care. Staff does not dispute that the routes with high calling rates have some level of community of interest, since this has been

exhibited through their calling patterns. However, no specific community of interest criteria (other than M/A/M data) were provided by Southern Bell for any of the routes. Southern Bell referenced community of interest needs such as where customers work, where they worship, where they shop, where they attend school, and where they receive medical care as considerations when selecting the proposed ECS routes; however, none of this information was provided on a route-by-route basis.

Southern Bell and OPC contend that ECS is an appropriate service for disposition of the rate reduction because it is extremely responsive to customer desires and to the economic development of the state. Staff believes that ECS should be used only to grant rate reductions on routes that have met some specific qualifying criteria.

ATT and FIXCA raised concerns that Southern Bell's proposal violates the letter and intent of the recently passed legislation. These concerns were discussed in Legal Issues 3 and 4.

Staff agrees with ATT, DOD/FEA, Ad Hoc, FCTA, FIXCA, MCI, McCaw and Sprint that Southern Bell's proposal could be perceived as anti-competitive. If Southern Bell's proposal is approved, the Southeast LATA essentially will be removed from the toll market and become 7-digit dialing for Southern Bell customers. Staff also agrees with ATT, DOD/FEA, FIXCA, MCI, McCaw, and Sprint's argument that 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). 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 carrier would be required to use 10-digit dialing, which staff believes imposes a barrier to the IXC. By its own order, the Commission granted intraLATA presubscription. Its intent was to provide consumers the option of choosing a carrier other than the LEC, using the same dialing pattern for 1+ intraLATA calls.

Staff agrees with FIXCA, MCI and Sprint that 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. Even assuming customers have a choice to use a competitor, the customer must make a conscious decision if he/she wants to dial the additional digits, must know in advance how long the call would last, the distance, and what time of day (discount period) the call would be made. (Stanley TR 104) Staff agrees with FIXCA that it is unreasonable to assume that a customer will go through this kind

of exercise and that competition will not continue to exist on these routes, especially when ECS is bundled with local service.

Southern Bell offered that customers have an alternative to ECS - competition. (TR 71) IXCs could continue to compete on ECS routes because IXCs could "meld" access rates (intrastate, interstate and international). (TR 117) Ad Hoc, FIXCA, MCI and Sprint argue that IXCs cannot lower their intrastate access costs by using interstate rates. (TR 130, Guedel 240)

Since the majority of the proposed routes did not meet any specific community of interest criteria, as pointed out by ATT, Ad Hoc, MCI, and McCaw, these parties argue that Southern Bell's proposal is an attempt to remonopolize the affected routes. On the eve of 1+ intraLATA presubscription, the parties' concerns have merit.

Based on the information provided by the parties in this record, staff recommends that Southern Bell's proposal be denied as filed. There are some routes, however, that staff believes warrant toll relief and should therefore be considered for ECS. These routes, which are identified below in Table 1, will be addressed in Issue 1(d).

Historically, the Commission has considered alternative toll plans, such as ECS, on routes that met the calling rate threshold of 3 M/A/Ms and exhibited a substantial showing on the distribution requirement. In this instance, Southern Bell has not provided the distribution criteria for any of the proposed ECS routes; therefore, staff cannot determine the distribution level.

In the last two rate cases that have gone to hearing (United Rate Case - 910529-TL and GTEFL Rate Case - 920188-TL), M/A/M data was available but there was no distribution data. In these cases, the Commission used a M/A/M factor of 4 or greater for a route to qualify for an alternative toll plan. In the current docket, Southern Bell has provided M/A/M data but no distribution factors. Therefore, staff believes it is appropriate to apply the same criterion that was used in these previous rate cases to the routes proposed by Southern Bell in this case.

Based on the 4 M/A/M criterion staff recommends that the following proposed ECS routes be implemented including the reverse directions:

**TABLE 1**

| Routes* | 4 M/A/M or Greater |
|---|---|
| Boca Raton/Ft. Lauderdale | Yes |
| Coral Springs/Hollywood | Leapfrog result of Coral Sprg/Miami |
| Coral Springs/Miami | Yes |
| Coral Springs/North Dade | Leapfrog result of Coral Sprg/Miami |
| Fort Pierce/Vero Beach | Both directions met 4 M/A/M |
| Hobe Sound/West Palm Bch | Yes |
| Homestead/Islamorada | Leapfrog result of Islamorada/Miami |
| Homestead/Key Largo | Leapfrog result of Key Largo/Miami |
| Homestead/North Key Largo | Leapfrog result of N. Key Largo/Miami |
| Islamorada/Miami | Yes |
| Islamorada/N. Key Largo | Leapfrog result of Key Largo/Miami |
| Islamorada/Perrine | Leapfrog result of Islamorada/Miami |
| Jupiter/Stuart | Yes |
| Key Largo/Homestead | Leapfrog result of Key Largo/Miami |
| Key Largo/Miami | Leapfrog result of Key Largo/Miami |
| Key Largo/Perrine | Leapfrog result of Key Largo/Miami |
| North Key Largo/Homestead | Leapfrog result of N. Key Largo/Miami |
| North Key Largo/Islamorada | Leapfrog result of Islamorada/Miami |
| North Key Largo/Miami | Yes |
| North Key Largo/Perrine | Leapfrog result of N. Key Largo/Miami |
| Stuart/West Palm Bch | Yes |
| Archer/Cedar Key | Leapfrog result of Cedar Key/Gainesville |
| Archer/Chiefland | Leapfrog result of Chiefland/Gainesville |
| Bunnell/Daytona Beach | Yes |
| Cedar Key/Gainesville | Yes |
| Chiefland/Gainesville | Yes |
| Chiefland/Newberry | Leapfrog result of Chiefland/Gainesville |
| Fernandina Beach/Fort George | Leapfrog result of Fernandina Bch/ Jacksonville |
| Fernandina Beach/Jacksonville | Yes |

| | |
|---|---|
| Flagler Beach/Daytona Beach | Yes |
| Fort George/Jacksonville Bch | Yes<br>(DN 940337-TL - set for hearing) |
| Lynn Haven/Vernon | Leapfrog result of Vernon/Panama City |
| Palm Coast/Daytona Beach | Yes |
| St. Augustine/Jacksonville | Yes |
| Vernon/Panama City | Yes |

***(Includes both directions)**

NOTE: Some of Southern Bell's proposed ECS routes are being resolved in other dockets. The revenue losses for these ECS routes will be included as part of the revenue loss in this docket (EAS revenue loss will not be included). These ECS routes are:

1) Docket No. 921195-TL, the Commission approved ECS on the Belle Glade/West Palm Bch, Boca Raton/West Palm Bch, Delray Bch/West Palm Beach, Pahokee/West Palm Beach routes and converted the Boynton Bch/Boca Raton route from $.25 per call to ECS.

2) Docket No. 941144-TL, the Commission will decide at the 9/12 agenda whether to approve EAS on the Big Pine Key/ Key West route (ballot passed EAS requirements)

3) Docket No. 950221-TL, the Commission approved EAS on the DeBary/ Orlando route.

Staff also believes it is appropriate to convert the 40 existing $.25 plans to ECS as proposed by Southern Bell. If the $.25 plans are not converted to ECS, there will be exchanges that have both $.25 plans and ECS plans. Converting all of Southern Bell's existing $.25 plan routes to ECS should reduce consumer confusion.

In computing revenue impact, staff used a 50% stimulation factor for routes being converted from toll to ECS. This is consistent with the stimulation factor Southern Bell's witness stated he used in his calculations. (TR 158) With stimulation, staff estimates an annual revenue loss of $9,080,521. Including the conversion of the $.25 plans to ECS, staff estimates an annual revenue loss for Southern Bell of $10,013,005. Unstimulated, staff estimates an overall annual revenue loss, including the conversion of the $.25 plan routes to ECS, of $19,822,176.

Staff recommends that the routes listed in Table 1 be considered for ECS in Issue 1 (d). In addition, staff recommends that the 40 existing $.25 plan routes listed in Southern Bell's proposal be converted to ECS.

**ALTERNATIVE STAFF ANALYSIS:** Staff believes that approval of Southern Bell's amended ECS plan as basic local telecommunications service is in the public interest, consistent with Commission precedent, consistent with Order No. PSC-94-0172-FOF-TL, and consistent with the legislative intent and substantive requirements of the revised Chapter 364, Florida Statutes.

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 staff's recommendation in Issue 2 that IXCs should be permitted to continue to carry this traffic, there is no cognizable argument that this plan would, as a matter of law, remonopolize the intraLATA toll market.

Order No. PSC-94-0172-FOF-TL

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. Order No. PSC-94-0172-FOF-TL required extensive rate reductions by Southern Bell, some of which were specifically identified and some of which were "unspecified." This proposal was submitted to satisfy the unspecified $25 million rate reduction required for October 1, 1995. The Settlement Agreement was a comprehensive scheme, imposing numerous requirements on Southern Bell including 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."

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.

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-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.

Thus, the Commission has approved a similar proposal in this docket with the revenue reduction being applied to satisfy the requirements of Order No. PSC-94-0172-FOF-TL. Further, by the terms of Order 94-0172 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. For the reasons discussed below, staff believes the same treatment should be ordered for this proposal.

Revisions to Chapter 364, Florida Statutes

A. Legislative Intent

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

B. Savings Clauses

Section 364.385(2), Florida Statutes, as amended by the 1995 Florida Legislature 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. Upon the approval of the application, the extended area service, routes, or extended calling service shall be considered basic services and shall be regulated as provided in s. 364.051 for a company that has elected price regulation. 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.

Several of the parties to this proceeding suggest that because Section 364.02, Florida Statutes, includes as basic local telecommunications service "any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995," Southern Bell's ECS plan cannot be considered part of basic local telecommunications service. If Southern Bell opts to be a price regulated utility pursuant to Section 364.051, Florida Statutes, the implications of this determination are twofold: 1) Southern Bell may be able to raise the price of this service up to twenty percent per year pursuant to Section 364.051 (6)(a); and 2) the price charged to consumers may need to meet the imputation requirement under Section 364.051(6)(c), Florida Statutes.

Clearly, this proceeding (Docket No. 920260-TL) was pending before July 1, 1995, and thus should be governed by the law as it existed prior to January 1, 1995. Further, this proceeding (Docket No. 920260-TL) "progressed to the stage of hearing" in January 1994. A hearing was only avoided when all parties agreed to the stipulated resolution of all issues. 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."

Some parties suggest that because the ECS proposal was filed after March 1, 1995, it cannot be approved as basic local telecommunications service. But for the savings clause specifically applicable to this docket and the Order by which this proposal is required, staff agrees. It appears that the Commission has no prospective authority to require ECS offerings by price-capped local exchange companies.

> 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.

As discussed above, Order No. PSC 94-0172-FOF-TL, imposes numerous requirements on Southern Bell including 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 other requirements. Extensive Commission oversight and discretion with respect to the unspecified rate reductions required by paragraph 5 of the Settlement Agreement survive the adoption of the revisions to Chapter 364. If the Commission determines that these ECS routes are non-basic service, it is not consistent with this oversight and discretion to approve a "permanent rate reduction" for a non-optional service which is subject to presumptively valid price increases of up to twenty per cent per year.

Staff believes that Section 364.385(3), Florida Statutes 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 until the year 2001. The authority granted by the legislature with respect to this docket permits the Commission to approve this proposal in a similar framework. Therefore, staff recommends that Southern Bell's ECS plan should be approved, and considered part of basic local telecommunications service, for the purposes of Section 364.051, Florida Statutes.

C. 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)

Because staff believes Southern Bell's amended ECS plan should be approved as basic local telecommunications service, the imputation requirement of this provision is not applicable.

While there can be no price-capped local exchange companies until January 1, 1996, thus perhaps suggesting that the imputation requirement is not yet applicable, a discussion of how potential competitors could possibly compete is appropriate.

After January 1, 1996, the potential for the competitive provision of telecommunications services in Florida will be greatly expanded. Alternative Local Exchange Companies, 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. For eligible telecommunications companies requesting a commission determination on September 1, 1995, the Commission's determination must be made prior to January 1, 1996.

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, staff believes this proposal should be implemented 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. Staff recommends that, given the recommended implementation date, refunds should be made for the period from October 1, 1995, through December 31, 1995.

SOUTHERN BELL'S PROPOSAL

Tariff filing T-95-304: Southern Bell submitted this tariff filing on May 15, 1995, to establish Extended Calling Service (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 filing is being made to satisfy the outstanding revenue reductions commitment, in accordance with the Stipulation and Agreement between the Office of Public Counsel (OPC) 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 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, both dates being prior to the October 1, 1995 required rate reduction. (TR 47)

The tariff filing was considered by the Commission at the June 15, 1995 Agenda Conference. The filing was suspended, in order for the ECS proposal to be considered with other parties' proposals at the hearing scheduled for July 31, 1995.

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. (Please note that calling from Exchange A to Exchange B and from Exchange B to Exchange A constitutes two routes, unless specified otherwise.) According to the Company, 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. (EXH 16) 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 filing as indicated in their 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 various other ways as discussed in Issue 1 (b) through (d).

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 being in the Daytona Beach, Gainesville, Jacksonville, Orlando, Panama City, and Pensacola LATAs. (EXH 1, pp. 3-12; EXH 5, pp. 2-3) A county-by-county analysis of routes in the Southeast LATA reflects:

**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). **If this alternative recommendation on Issue 1(a) is approved, the Commission should now revisit its decision in Docket No. 921193-TL considered at the August 15, 1995 Agenda Conference. ECS was approved on the following routes, with implementation to be as soon as possible, but not to exceed six months from the issuance of the order:**

**Boca Raton/West Palm Beach**
**Delray Beach/West Palm Beach**
**Belle Glade/West Palm Beach**
**Pahokee/West Palm Beach**
**Boynton Beach/Boca Raton**

**These six two-way routes should be implemented January 1, 1996 and considered to be basic local service.**

**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. (EXH 7, pp. 35-41)

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 (i.e., 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. (EXH 1, p. 5)

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. (Stanley TR 48-49) 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. (Stanely TR 50) 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, and 4) additional routes to eliminate any leap-frogging. (Stanley TR 50-51)

These are the same parameters used by GTE Florida Incorporated (GTEFL) in Docket 910179-TL, Order No. 25708 issued February 11, 1992. (EXH 8; pp. 4-5) 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. (EXH 8, pp. 6-7; 11; 15) Staff believes **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, the Commission 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)

Staff believes Southern Bell's amended ECS plan should be implemented, effective January 1, 1996 as basic service, and become part of the local calling scope. Refunds as outlined in the Stipulation should be made for the period beginning October 1, 1995 and continuing through December 31, 1995.

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. (TR 194,204,250,295) However, interexchange companies (IXCs) may continue to carry the same types of traffic on these ECS routes that they are now authorized to carry. (TR 55) Additionally, staff believes that under the revised telecommunications statutes, namely Chapter 364.337 F.S., providing

for Alternative Local Exchange Telecommunication Companies (ALECs) on January 1, 1996, there will be additional competition for this traffic, as well as for other local services. In fact, the 17+ holders of Alternative Access Vendors' (AAVs) certificates, upon notification to the Commission, are certificated as ALECs. (Chapter 364.337(6)(b), F.S.)

Intervenors also expressed concern that the ECS calls would be dialed on a seven-digit basis. (TR 256,300) 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. (Stanley TR 70-71). Staff would point out that 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 (per the Commission's decision to geographically split the 305 area code). 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. (EXH 7, p. 6)

In summary, staff believes it is in the public interest to approve Southern Bell's ECS plan effective January 1, 1996 as basic local service. All residential and business customers making calls on the ECS routes will benefit by approximately $48 million annually (unstimulated) from the approval. Prior to the January 1, 1996 effective date, refunds should be made for the period from October 1, 1995 until December 31, 1995, in accordance with the Stipulation. Interexchange companies (IXCs) may continue to carry traffic on the routes that they are presently authorized to carry. Pay telephone providers should charge end users $.25 per message and pay the standard interconnection charge.

**ISSUE 1 B:** Should the following proposal to dispose of $25 million for Southern Bell be approved?

b) 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;

**RECOMMENDATION:** No, staff recommends that the Commission not adopt CWA's proposal. The costs of setting up and administering the rate categories that CWA proposes would, in staff's opinion, outweigh the social benefits. To apply small reductions to the basic rates of selected residential and business customers in this way would, therefore, be an inefficient use of the funds available. **[NORTON]**

**POSITIONS OF PARTIES:**

**SOUTHERN BELL:** 1(b) CWA's proposal should not be approved because it is redundant and conveys only a small benefit to a select few special interest groups.

**ATT:** The Commission should reject CWA's proposal. This proposal includes reductions in the prices of services that are already affordably priced today. In fact, local residential service is currently priced below the cost that Southern Bell incurs in providing the service.

**CWA:** 1(b) Yes.

**DOD/FEA:** 1(b) The Commission should reject CWA's proposal since it lowers rates which are already close to or below costs and apply only to limited classes of customers.

**AD HOC:** 1(b) CWA's proposal will lower rates for certain groups of subscribers, but does not enhance competition for any services or markets and provides few benefits to the majority of users in Florida.

**FCTA:** 1(b) No.

**FIXCA:** 1(b) No.

**FMCA:** The CWA proposals should be denied.

**MCI:** The Commission should reject the CWA proposal and should dispose of the funds in a way that will encourage competition in the telecommunications markets. CWA's proposal should be rejected because it proposes reductions in rates which are generally believed already to be priced below cost.

**MCCAW:** 1(b) CWA's proposal should be rejected given the present price levels of the targeted services and the availability of lifeline in Florida.

**SPRINT:** 1(b) Generally it is not good public policy to reduce rates for services that are already being provided below cost. Providing service below cost requires some other service to subsidize the below cost service. This creates distortions in the marketplace that are very difficult to correct.

**OPC:** 1(b) No.

**STAFF ANALYSIS:**

Description of Proposal

CWA has proposed that five customer classes or subsets of classes as identified above should receive decreases in their basic service rates. CWA witness Knowles 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 witness Knowles, 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. Witness Knowles believes 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. (Knowles TR 172)

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

According to witness Knowles, 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. (TR 173-174)

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

Witness Knowles 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. Since it is impossible to identify the victims, CWA has proposed to reduce the basic rates of all residential customers. (TR 174-175)

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

Witness Knowles states that CWA 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." (Knowles TR 175)

Positions of Parties

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 on it. 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. Staff notes that OPC and CWA have taken different positions in this case.

Staff Analysis and Recommendation

Staff does not recommend that the Commission 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 DN 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 the Company. For example, to identify and continue to monitor the eligible customers with disabilities, or those who are tax exempt, would, staff believes, 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 of concern, but that any such costs should be borne by either Bell or its stockholders. (EXH 7, pp. 151-154) Staff believes that there are more efficient ways 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, Stipulation and Implementation Agreement attached) Rather, the parties agreed in the stipulation to close the investigation dockets. CWA did not begin its participation in this case until after completion of that phase of the case. Staff does not believe it is appropriate for CWA to attempt to obtain concessions based on allegations of wrongdoing that were made in the investigation dockets.

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

**ISSUE 1 C:** Should the following proposal to dispose of $25 million for Southern Bell be approved?

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

**RECOMMENDATION:** No, staff recommends that McCaw's concerns do not need to be addressed in this case. First, to the extent that the new statute prohibits implementation of any of the Commission's decisions in DN 940235-TP, staff does not believe that fact can be overridden by any decision it might make in another proceeding. Second, if the Commission determines that the flow through should be continued, it can order SBT to do it without requiring that the revenue reduction be offset in this case. **[NORTON]**

**POSITIONS OF PARTIES:**

**SOUTHERN BELL:** 1(c) The proposal of McCaw and FIXCA should not be approved because it is speculative, dependent upon a decision not yet made by this Commission and benefits only a small number of consumers.

**ATT:** 1 (c) The Commission should consider using some of the available revenues to reduce the charges associated with cellular interconnection.

**CWA:** 1(c) No.

**DOD/FEA:** 1(c) The Commission should reject McCaw's proposal as being speculative and properly resolved in another docket.

**AD HOC:** 1(c) McCaw's proposal is speculative and should not be resolved in this docket.

**FCTA:** 1(c) If adopted, the Commission should not limit itself to this proposal.

**FIXCA:** 1(c) No.

**FMCA:** The McCaw-FMCA proposal should be approved, as the Commission's decision in Docket No. 940235-TL will implement important policy decisions governing mobile carrier wireless interconnection.

**MCI:** MCI takes no position on the McCaw/FMCA proposal, which would not dispose of the entire $25 million at issue in any event.

**MCCAW:** 1(c) McCaw's proposal to implement the decisions in Docket No. 940235-TL should be approved. If there is any possibility that the new telecommunications law would operate to defeat implementation of the policies rendered in Docket No. 940235-TL, then it is appropriate to implement such policies in this docket.

**SPRINT:** 1(c) Sprint takes no position on this issue at this time.

**OPC:** 1(c) No.

**STAFF ANALYSIS:** McCaw Communications proposed that a portion of the $25 million be used to offset, if necessary, rate reductions that the Commission might order in DN 940235-TP, the Commission's most recent investigation into the interconnection rates of mobile service providers (MSPs). The Commission is currently scheduled to rule on the issues in that case at the same agenda as this one.

Staff has recommended in the MSP case that the link between mobile interconnection usage rates and access charges be broken. Presently, whenever switched access charges are reduced, the mobile interconnection rates are reduced according to a formula previously approved by the Commission. Staff's recommendation is to freeze or reduce certain usage rates until parties have negotiated different ones. We have recommended specific guidelines, timeframes and other implementation procedures.

The main point at issue in this case, according to McCaw witness Maass, 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 DN 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 switched access reduction. (Maass TR 191)

Witness Maass specifically proposes that if the Commission decides to require the flow through to continue, that at SBT's next access reduction, the mobile interconnection flow through be funded by part of the money available in this docket. (TR 192) He notes that the Commission used part of the funds available last year to do exactly that. (TR 193) Witness Maass states in his testimony that the revenue impact to Bell if the Commission orders that the flow through requirement be retained, (and presuming no change to the formula), is approximately $1.7 million. (TR 194)

Staff does not believe that McCaw's concerns need be addressed in this case. First, to the extent that the new statute prohibits implementation of any of the Commission's decisions in DN 940235-TP, staff does not believe that fact can be overridden by any decision it might make in another proceeding. Second, if the Commission determines that the flow through should be continued, it can order SBT to do it without requiring that the revenue reduction be offset in this case. There is existing policy requiring that SBT flow through switched access reductions. The decision to offset the reduction last year stemmed from its size (about $7 million) in conjunction with other major rate reductions agreed to in the stipulation. This year, according to McCaw, the MSP reduction would only be $1.7 million, substantially less than the approximately $7 million last year. The Commission is not precluded from using some of the money available this year for this purpose if it wishes to do so, but we do not recommend that this be a priority. It is simply unnecessary in staff's opinion.

**ISSUE 1 D:** Should the following proposal to dispose of $25 million for Southern Bell be approved?

d) Any other plan deemed appropriate by the Commission.

**RECOMMENDATION:** The Commission should approve a plan which implements only 70 of the 288 ECS routes proposed by Southern Bell. Implementation of these 70 ECS routes would represent $10,013,005, including stimulation factor of 50%, in revenue losses. These ECS routes are listed in Table 1 below. The remaining $14,986,995 from the $25 million should be used to reduce the PBX trunk rates and DID Service rates. Staff's recommended rate reductions and new rates for PBX and DID are provided in Table 2. **[CHASE, SHELFER]**

**POSITIONS OF PARTIES:**

**SOUTHERN BELL:** The suggestion by Ad Hoc and ATT that PBX and DID services be repriced should be rejected because it benefits only business customers and because there has already been a recent rate reduction for these services.

**ATT:** Both Southern Bell's proposal and CWA's proposal should be rejected. The Commission should utilize the available funds to implement the proposal of McCaw and FMCA, and should use the remaining funds to reduce the charges for Direct Inward Dialing ("DID") and PBX trunks.

**CWA:** No.

**DOD/FEA:** The Commission should adopt the alternative recommended in the Basic Position of the DOD/FEA, applying the $25 million to reprice PBX trunks and DID services toward costs.

**AD HOC:** Southern Bell's ECS proposal should be rejected as a predatory attempt to lock up the Florida toll market at the same time at which Southern Bell becomes deregulated. The only realistic alternative that will foster competition is to apply the reduction to PBX/DID services as proposed by Ad Hoc.

**FCTA:** The Commission should not adopt any plan that is geared toward remonopolizing markets and stifling the provision of the widest possible array of consumer choice among telecommunications services.

**FIXCA:** The Commission must reject Southern Bell's proposal because it fails to pass the required imputation standard and because it

would remonopolize a significant portion of the intraLATA toll market in the Southeast LATA in direct contravention of the intent of the new telecommunications legislation, unless FIXCA's recommendations are adopted.

**FMCA:** No position.

**MCI:** The Commission should dispose of the funds in a way that will encourage competition in the telecommunications markets. The Commission should fashion a plan which reduces the non-cost based disparity between PBX trunk/DID rates and ESSX rates in order to remove an artificial barrier to competition in this segment of the business telecommunications market.

**MCCAW:** 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.

**SPRINT:** No position.

**OPC:** The Commission should approve the Southern Bell ECS plan.

**STAFF ANALYSIS:** Several parties are opposed to Southern Bell's Extended Calling Service (ECS) plan in Issue 1(a) and the other plans outlined in Issues 1(b) and 1(c). These parties have proposed an alternative means for disposing of the $25 million. ATT Communications of the Southern States, Inc. (ATT), United States Department of Defense and all other Federal Executive Agencies (DOD/FEA), The Florida Ad Hoc Telecommunications Users Committee (Ad Hoc), and MCI Telecommunications Corporation (MCI) argue that the $25 million should be used to reduce PBX and DID rates and not to implement the ECS routes.

Southern Bell states that the suggestion by Ad Hoc and ATT that PBX and DID services be repriced should be rejected because it benefits only business customers and because there has already been a recent rate reduction for these services.

ATT and Ad Hoc argue that the Commission should use the available funds for some purpose that encourages direct competition between Southern Bell and existing or emerging players in the telecommunications marketplace. They contend that this can be best done by lowering the price of all Southern Bell PBX trunks to an amount which provides the same level of contribution for those loop facilities as for Southern Bell's proprietary ESSX product. Both

assert that DID is similarly overpriced and should also be adjusted. (TR 201, 257-258).

Like ATT and Ad Hoc, MCI's and DOD/FEA's position is that the Commission should fashion a plan which reduces the non-cost based disparity between PBX trunk/DID rates and ESSX rates in order to remove an artificial barrier to competition in this segment of the business telecommunications market.

The Florida Interexchange Carriers Association's (FIXCA) position is that the interim refund methodology outlined in the Settlement Agreement should be used for the $25 million, or PBX and DID rates should be repriced to create a more competitive market as suggested by Ad Hoc. (FIXCA BR, pp. 3, 21)

McCaw Communications of Florida, Inc. (McCaw) states in its post-hearing brief that after reducing mobile interconnection rates, any remaining funds should be used to reduce PBX and DID charges. (McCaw BR, p. 8)

The Office of the Public Counsel (OPC) argues that it is unnecessary and unwise to apply the $25 million to reduce PBX and DID rates because these services will be first to receive the benefit of competition. (OPC BR, p. 9)

The Communication Workers of America's (CWA) asserts that the reduction of PBX trunks and DID service rates is the most narrow and offensive plan offered to the Commission. (CWA BR, p. 6)

Sprint Communications Company Limited Partnership (Sprint), Florida Cable Telecommunications Association (FCTA), and Florida Mobile Communications Association, Inc. (FMCA), take no direct position regarding this issue.

Southern Bell asserts that the ECS plan is a better choice than PBX trunk reductions for several reasons. First, Southern Bell disagrees with ATT and Ad Hoc that pricing differences cause PBX service to have a competitive disadvantage relative to ESSX service. Witness Stanley argues that the relative market share of Southern Bell's ESSX service has increased no more than 1% in the past three years. (TR 66,78)

Second, Southern Bell asserts that a reduction in PBX and DID rates is not appropriate because it reduced the price of PBX trunks and DID by $35 million in 1994. The reductions disaggregated hunting from PBX trunk rates, which meant customers could purchase a lower priced trunk for outgoing traffic. Hunting was also disaggregated from Network Access Register (NARs), which are used

to provision ESSX Service. However, the reductions to the PBX trunks were greater than those to NARs, thus to the advantage of PBX. (Stanley TR 65)

Third, Southern Bell argues that it offers MegaLink as an alternative to PBX trunks. Witness Stanley states that:

> MegaLink Service consists of a 'pipe' that contains the equivalent of 24 trunks. A customer can buy the pipe and then pay to activate the individual trunks as they are needed. The pricing advantage relative to PBX trunks can be significant for a customer with higher traffic volumes. Overall demand for MegaLink Service has been strong in Florida with sufficient units sold to handle over 53,000 PBX trunks. (TR 65-66)

Fourth, Southern Bell disagrees with Ad Hoc that reducing the PBX trunk rates will result in a more active and competitive market because Southern Bell states that "this is already one of the most competitive markets in the telecommunications industry." (Stanley TR 66) Southern Bell argues that with a market share of less than 12%, ESSX Service cannot possibly be considered the leader in this market, and that it is not reasonable to expect that changing the pricing relationship would have a major effect. (Stanley TR 66)

Fifth, Southern Bell asserts that if the PBX and DID reductions were implemented, the main benefit would be to large customers. (Stanley TR 68) In addition, Southern Bell asked ATT witness Guedel and Ad Hoc witness Metcalf at the hearing if PBX was commonly used by residential customers. Both witnesses stated that residential customers would probably not use PBX service and thus would not benefit from the reductions. (Guedel TR 226-227; Metcalf TR 268-269)

Sixth, Southern Bell asserts that both witness Guedel for ATT and witness Metcalf for Ad Hoc acknowledged that ESSX loops and PBX trunks are not technically provisioned in the same manner, particularly when DID capability is provided. In addition, witnesses Guedel and Metcalf agreed that additional hardware and software are required for PBX systems that are not required for ESSX loops, and therefore additional costs to the LEC are incurred in the provision of PBX trunks and DID that are not present with ESSX. (TR 227-228; 273-275)

ATT witness Guedel argues that the available revenues should be used to reduce the level of discriminatory pricing which exists in Southern Bell's provision of certain local exchange facilities and services.

> Currently, the price a customer pays to Southern Bell for a local loop depends upon that customer's selection of a vendor for PBX/PBX-like features and functions. If a customer selects Southern Bell ESSX Service, she/he pays less for the loop than if that same customer had selected a PBX from a competitive vendor. This situation tends to artificially distort the related competitive market for PBX/PBX-like features and functionality and needs to be remedied. (Guedel TR 208)

Witness Guedel testifies that a PBX customer is charged $38.21 for a local loop including the applicable subscriber line charge, while an ESSX customer who is within 2.5 miles of the central office pays only $6.30. (TR, 210-211; EXH 17)

Southern Bell asked witness Guedel at the hearing if there are differences in the technical provisioning of PBX and ESSX services which could contribute to the cost differences between the two services. (TR 229) Witness Guedel agreed that there were; however, he also stated that:

> ...I will concede there are some differences in the loops...7,000 or 8,000 feet they probably are identical. If you get much farther out than that they are going to differ a little bit.
>
> ...The difference is in the trunking. I think PBX takes a little bit different electrical integrity when it get farther out. The electrical diminishes. So when you go out 10 or 12,000 feet, you have to have an extra coil or something in the PBX trunk if you are running an analog trunk to keep that gain up. The staff did an interesting analysis back in 1990 on ESSX/PBX trunk differences, and they itemized several of the differences that could exist, that being one of them. And they basically came to the conclusion that although there were some cost differences with respect to ESSX and PBX trunks, on average those cost differences were in the $3 to $5 range. And that's across all mileages, okay. So, we are talking about a rate difference of maybe $30, and that is where the significant discrimination lies. (EXH 7, 176-177)

Southern Bell witness Stanley states that "(Guedel) is attempting to compare one trunk, if you will, which may have multiple stations associated with it, to one ESSX station. I mean, that's not an appropriate comparison. The real issue here in my mind is, yes, ESSX competes with PBX, and it competes with Key, and

you look at the total service." (EXH 7, 80-81) However, witness Guedel disagrees with Southern Bell witness Stanley when he states that "a local loop has one basic function. [It] connects a piece of customer-provided equipment to a point on a main frame in a Southern Bell central office. That's the function of a loop, and they're all fairly comparable." (TR 234)

Ad Hoc witness Metcalf also argues that PBX trunk rates are priced higher than comparable facilities for ESSX. This is because customers who purchase PBX equipment must purchase PBX trunks from Southern Bell and are charged a higher rate than for ESSX. The substantial pricing difference between PBX trunks and ESSX service has severely diminished competition in the PBX market. (TR 251-253) In addition witness Metcalf states:

> For the last seven years, this Commission and its staff have expressed concern that business services, which seem to compete with each other, had very different rates even though they were composed of very similar elements. For instance, you have expressed concern in the past that PBX, which seems to users to be an alternative to ESSX, was priced several times higher even though the underlying facilities that make up the service are similar...[and] that sophisticated users who understand and can use many of the new offerings should be able to look at a service, whether ESSX, PBX, B1 or private line, and should purchase the service for the features and benefits of the service, not because of artificial disparities in the prices of some services. (TR 261-262)

Ad Hoc argues that PBX service is based on an index of its perceived value of service relative to a B-1 line, while ESSX is priced based on the additional incremental cost of providing service. (Metcalf TR 252) Southern Bell agrees with witness Metcalf that PBX is based on an index of its perceived value of service; however, Southern Bell argues that ESSX is not just priced to cover incremental cost, it is also priced to be responsive to the market needs. (Stanley TR 77-78)

ATT asserts that in addition to the discrimination that exists with respect to Southern Bell's pricing of PBX trunks, there are other examples of discriminatory pricing in regard to direct inward dialing (DID) and telephone number assignments. Witness Guedel states:

> if a customer who has selected a PBX desires to use Southern Bell's DID and telephone number assignment services, Southern Bell will charge that customer $21.80

> per month for each DID trunk and $4.00 per month for each group of 20 numbers. If the customer had purchased Southern Bell's ESSX service (which competes with providers of PBX systems), Southern Bell would have provided those monopoly services to the customer at no charge. (TR 212)

Staff recognizes that reductions in PBX and DID will primarily affect large business customers; however, we believe that the record in this case demonstrates that PBX trunks are not priced correctly compared to ESSX loop rates, and should be therefore be reduced. In addition, the charges for DID trunk terminations are higher than the level the Company has stated it needs them to be in order to remain competitive in this market, and DID numbers for PBX Service are higher than those for other services such as mobile interconnection. (TR 208, 212, 251; EXH 7, 176-177) Based on the record, staff believes that some rate reductions to PBX and DID services are appropriate. Therefore some of the $25 million should be used to reduce the difference in pricing between ESSX loops, and PBX trunks and DID Service rates.

As stated in Issue 1(a), staff has recommended to deny Southern Bell's ECS plan because all 288 routes do not truly reflect a community of interest. However, as discussed in the primary analysis of Issue 1(a), staff believes that there are some routes that warrant toll relief and should be considered for ECS. Staff therefore recommends that a portion of the $25 million be used to offset the revenue reductions associated with only those ECS routes with a demonstrated community of interest. The balance of the available funds should be used to reduce SBT's PBX trunk and DID Service rates in order to make them more competitively in line with the company's ESSX Service.

To determine which routes should be considered for ECS, staff applied the same criteria that was used in the last two rate cases that have gone to hearing. In both of these cases, where M/A/M data was available but there was no distribution data provided, the Commission used a M/A/M factor of 4 or greater to qualify routes for an alternative toll plan.

Based on the 4 M/A/M criterion, staff believes the following routes should be considered for ECS, including leapfrogged routes and the reverse direction of the proposed ECS routes:

Table 1

| Routes* | 4 M/A/M or Greater |
|---|---|
| Boca Raton/Ft. Lauderdale | Yes |
| Coral Springs/Hollywood | Leapfrog result of Coral Springs/Miami |
| Coral Springs/Miami | Yes |
| Coral Springs/North Dade | Leapfrog result of Coral Springs/Miami |
| Fort Pierce/Vero Beach | Both directions met 4 M/A/M |
| Hobe Sound/West Palm Bch | Yes |
| Homestead/Islamorada | Leapfrog result of Islamorada/Miami |
| Homestead/Key Largo | Leapfrog result of Key Largo/Miami |
| Homestead/North Key Largo | Leapfrog result of N. Key Largo/Miami |
| Islamorada/Miami | Yes |
| Islamorada/N. Key Largo | Leapfrog result of Key Largo/Miami |
| Islamorada/Perrine | Leapfrog result of Islamorada/Miami |
| Jupiter/Stuart | Yes |
| Key Largo/Homestead | Leapfrog result of Key Largo/Miami |
| Key Largo/Miami | Leapfrog result of Key Largo/Miami |
| Key Largo/Perrine | Leapfrog result of Key Largo/Miami |
| North Key Largo/Homestead | Leapfrog result of N. Key Largo/Miami |
| North Key Largo/Islamorada | Leapfrog result of Islamorada/Miami |
| North Key Largo/Miami | Yes |
| North Key Largo/Perrine | Leapfrog result of N. Key Largo/Miami |
| Stuart/West Palm Bch | Yes |
| Archer/Cedar Key | Leapfrog result of Cedar Key/Gainesville |
| Archer/Chiefland | Leapfrog result of Chiefland/Gainesville |
| Bunnell/Daytona Beach | Yes |
| Cedar Key/Gainesville | Yes |
| Chiefland/Gainesville | Yes |
| Chiefland/Newberry | Leapfrog result of Chiefland/Gainesville |
| Fernandina Beach/Fort George | Leapfrog result of Fernandina Bch/ Jacksonville |
| Fernandina Beach/Jacksonville | Yes |
| Flagler Beach/Daytona Beach | Yes |

| | |
|---|---|
| Fort George/Jacksonville Bch | Yes (DN 940337-TL - set for hearing) |
| Lynn Haven/Vernon | Leapfrog result of Vernon/Panama City |
| Palm Coast/Daytona Beach | Yes |
| St. Augustine/Jacksonville | Yes |
| Vernon/Panama City | Yes |

***(Includes both directions)**

NOTE: Some of Southern Bell's proposed ECS routes are being resolved in other dockets. The revenue loss for these ECS routes will be included as part of the revenue losses in this docket (EAS revenue loss will not be included). These ECS routes are:

1) Docket No. 921195-TL, the Commission approved ECS on the Belle Glade/West Palm Bch, Boca Raton/West Palm Bch, Delray Bch/West Palm Beach, Pahokee/West Palm Beach routes and converted the Boynton Bch/Boca Raton route from $.25 per call to ECS.

2) Docket No. 941144-TL, the Commission will decide at the 9/12 agenda whether to approve EAS on the Big Pine Key/ Key West route (ballot passed EAS requirements)

3) Docket No. 950221-TL, the Commission approved EAS on the DeBary/ Orlando route.

Staff also believes it is appropriate to convert the 40 existing $.25 plans to ECS as proposed by Southern Bell. If the $.25 plans are not converted to ECS, there will be exchanges that have both $.25 plans and ECS plans. Converting all of the Southern Bell's existing $.25 plan routes to ECS should reduce customer confusion.

In computing revenue impact, staff used a 50% stimulation factor for routes being converted from toll to ECS. This is consistent with the stimulation factor Southern Bell's witness stated he used in his calculations. (TR 158) With stimulation, staff estimates an annual revenue loss of $9,080,521. Including the conversion of the $.25 plans to ECS staff estimates an annual revenue loss for Southern Bell of $10,013,005. Unstimulated, staff estimates an overall annual revenue loss, including the conversion of the $.25 plan routes to ECS, of $19,822,176.

Therefore, staff recommends that the Commission should approve only 70 of the 288 ECS routes proposed by Southern Bell (Table 1) as well as the conversion of 40 $.25 plan routes to ECS. Implementation of these ECS routes would represent $10,013,005, including a stimulation factor of 50%, in revenue losses. Staff recommends that the remaining monies ($14,986,995) from the $25

million be used to lower PBX and DID rates. Table 2 provides the rate reductions, revenue effects and new rates for PBX and DID Service. The $14,986,995 would reduce PBX and DID rates by approximately 25%. Staff's recommended rate reductions and new rates for PBX and DID are provided in Table 2.

**Table 2**

| PBX Rates By Rate Group | Old Rate | New Rate | Difference |
|---|---|---|---|
| 1 | $33.66 | $25.20 | $8.46 |
| 2 | $35.36 | $26.47 | $8.89 |
| 3 | $37.23 | $27.87 | $9.36 |
| 4 | $38.93 | $29.15 | $9.78 |
| 5 | $40.55 | $30.36 | $10.19 |
| 6 | $42.33 | $31.69 | $10.64 |
| 7 | $43.78 | $32.78 | $11.00 |
| 8 | $45.22 | $33.86 | $11.36 |
| 9 | $46.58 | $34.88 | $11.70 |
| 10 | $47.60 | $35.64 | $11.96 |
| 11 | $48.62 | $36.40 | $12.22 |
| 12 | $49.47 | $37.04 | $12.43 |
| Green Cove Springs with Rotary | $92.00 | $66.88 | $23.12 |
| Green Cove Springs without Rotary | $76.00 | $56.90 | $19.10 |
| | | | |
| **DID Rate Changes** | **Old Rate** | **New Rate** | **Difference** |
| 1st 20 Numbers | $4.00 | $3.00 | $1.00 |
| Each additional | $4.00 | $3.00 | $1.00 |
| Trunk Termination | $21.80 | $16.32 | $5.84 |
| MF Pulsing Option | $7.50 | $5.62 | $1.88 |
| Dialtone MF Pulsing Option | $7.50 | $5.62 | $1.88 |

Source: Supplement to EXH 7

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

**RECOMMENDATION:** Yes, competition should continue to be allowed on any and all ECS routes approved in this docket. If ECS is determined to be a non-basic service, and if the statute is interpreted as requiring imputation on non-basic services, then a resale and/or interconnection rate, which is required to cover the LEC's costs (see Section 364.162(4) & (5)), be below the retail rate, and not be so high as to serve as a barrier to competition (see Section 364.162(5)), would adequately address all the concerns that imputation requirements are designed to address. Staff recommends that there would be no further need to address imputation in this immediate proceeding.

If the Commission determines that ECS is a local service, the statute is clear that only LECs and ALECs can provide local service. Since we do not believe that it is the intent of the Legislature to eliminate existing competitive providers of service, we believe IXCs must obtain ALEC certificates to continue to provide service on any ECS-approved routes. **[NORTON]**

**POSITIONS OF PARTIES:**

**SOUTHERN BELL:** Competition should be allowed on the ECS routes as contemplated by the Stipulation and Agreement between BellSouth Telecommunications and FIXCA, dated March 31, 1994. No additional actions need be taken.

**ATT:** If the Southern Bell Proposal is approved, the Commission should not only allow competition on all routes, it should take all necessary actions to ensure that full and fair competition is given an opportunity to develop. For example, the Commission should require that the rates charged for ECS meet the pricing guidelines, including imputation requirements, contained in the recent legislation.

**CWA:** No position at this time.

**DOD/FEA:** If Southern Bell's proposal is approved, the Commission should allow and encourage full and open competition on all toll routes within Florida.

**AD HOC:** The Commission should allow full competition on all toll routes within Florida.

**FCTA:** The Commission must permit competition on the Extended Service Calling routes pursuant to the new law.

**FIXCA:** Yes. If the Commission approves the Southern Bell ECS plan, it must ensure that competition continues on these routes. The Commission must take action to ensure, as the new statute requires, that ECS cover costs, that there be an interconnection rate for IXCs, and that a wholesale ECS-like service be available for resale. (Gillan)

**FMCA:** FMCA takes no position on Issue 2 at this time.

**MCI:** Yes, the Commission should allow competition on the ECS routes in the event the Southern Bell proposal is approved. In addition, to prevent the proposal from having an anticompetitive effect, and to comply with the new provisions of Chapter 364, the Commission should (1) leave the 1+ dialing pattern in effect on these routes; (2) ensure that the price for ECS covers its direct and imputed costs under section 364.051(6)(b); (3) allow the resale of ECS at a price which represents an appropriate discount from the retail price of the service under section 364.162(5); and (4) establish an appropriate interconnection rate to apply to the origination and termination of ECS-like traffic.

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

**SPRINT:** The current Southern Bell plan forecloses competition on the routes in question. The proposal mandates that these services be dialed on a 7 or 10-digit basis like a local call. Further, the services will be mandatory in nature. Therefore, IXCs will not be able to compete for this traffic even with 1+ intraLATA presubscription.

To allow competition on these routes, they must be preserved as toll routes. SBT must impute two ends of switched access in the rates for the service. If the Commission wishes to develop very low rates for these routes, a system should be developed to offer reduced access for IXCs.

**OPC:** Competition should be allowed on the extended calling service routes.

**STAFF ANALYSIS:** In Issue 1, staff has recommended that at least some of the proposed ECS routes should be approved. In all prior cases involving ECS where the Commission has in fact made a determination, it has ruled that ECS is a local service.

Therefore, for purposes of this recommendation, staff will presume that ECS constitutes local service.

Under the new statute, if Southern Bell elects price regulation next year, then the end user services it provides will be categorized as either basic or non-basic. (Section 364.051, F.S.) It is expected that SBT will elect price cap regulation. The question that then remains is whether ECS should be considered basic or non-basic service. The question is significant to the extent that under the new statute, it is not required that prices for basic services meet imputation tests, whereas prices for non-basic services may have to meet imputation standards. (Section 364.051(6)(c), F.S.)

It should be noted that those parties taking a position on this point agree that ECS is a non-basic, competitive service, and that imputation tests are appropriate. (Hendrix TR 363; SBT BR, p. 32; Gillan TR 296-298; Guedel TR 204-205) The general concern of all opposing parties is that these routes must remain competitive. (DOD/FEA BR 2; Ad Hoc TR 256; Sprint TR 348) Staff believes that the clear intent of the statute, and the consensus of the parties is that whatever action the Commission takes with respect to the ECS proposal, these routes should remain open to competition.

ECS as a Non-Basic Service

If ECS is determined to be non-basic local service, then the logical way for these routes to remain competitive is to establish resale and/or local interconnection rates associated with them. In that way, other firms could purchase or subscribe to the resale or interconnection rates, and compete with SBT for provision of service over those routes with one or more of their own offerings.

The statute is clear, however, that only LECs and ALECs can provide local service. We do not believe that it is the intent of the Legislature to eliminate existing competitive providers of service. However, we believe IXCs must obtain ALEC certificates to continue to provide service on ECS-approved routes.

According to the Section 364.162(6), F.S.,

> An alternative local exchange telecommunications company that did not have an application for certification on file with the commission on July 1, 1995, shall have 60 days from the date it is certificated to negotiate with a local exchange telecommunications company mutually acceptable prices, terms, and conditions of interconnection and for the resale of services and

> facilities. If a negotiated price is not established after 60 days, either party may petition the commission to establish nondiscriminatory rates, terms, and conditions of interconnection and for the resale of services and facilities. The commission shall have 120 days to make a determination after proceeding as required by subsection (3).

There is nothing in this language that would preclude a LEC and an ALEC from beginning negotiations prior to the ALEC receiving its certificate, or for the negotiations to exceed 60 days. If the LEC and ALEC cannot successfully negotiate the necessary rates, terms and conditions for resale and interconnection, then either party may petition the Commission. According to sub-paragraph (3), the Commission must then conduct separate proceedings and set appropriate rates, terms and conditions for both resale and interconnection (if requested in the petition) within 120 days following the filing of the petition.

The above procedure will allow time for ALECs to obtain the proper certification. In any event, no ALEC can provide service prior to January 1, 1996. An ALEC's certificate will become effective on January 1, 1996, or upon the effective date of the order granting or acknowledging certification, whichever is later. (Section 364.337(1), F.S.).

Imputation

Staff would note that this Commission has established an imputation policy only for LEC toll services. In Order No. PSC-94-0034-FOF-TL, in DN 921074, Expanded Interconnection/Restructure of Local Transport, the Commission stated that its imputation policies would need to be revisited in the near future. FIXCA witness Gillan and SBT witness Hendrix addressed imputation calculations specifically for ECS.

Gillan argued that the average ECS rate and the average total switched access rate per minute should be used to calculate imputation coverage, as follows: (TR 299)

| | Avg. per min. |
|---|---|
| Est. avg. ECS Rev/min. | $.0642 |
| Est. Access charges (10/1/95) | .0745 |

Using average ECS revenues per minute and switched access charge rate levels proposed to become effective October 1, SBT's proposed

ECS rates do not cover access, and thus fail his imputation test.

SBT witness Hendrix filed rebuttal to Gillan, stating that the appropriate number to use was a combination of all ECS and intraLATA toll revenues per minute, thus making the revenue figure significantly higher. He argued that this was appropriate because it aggregated "functionally equivalent services" and asserted that this method was accepted in North Carolina. (TR 366-367) Without evaluating Hendrix' argument to this point, staff would note that the phrase "functionally equivalent services" which he quotes from the statute [Section 364.051(6)(c)] to justify the use of multiple toll services to calculate an average revenue per minute, actually refers to the competitor's "same or functionally equivalent service," not the LEC's.

Hendrix also stated that the Local Transport rate should be excluded from the access calculation on the basis that it is no longer a monopoly element. (TR 368) Thus, Hendrix's imputation calculation looks as follows:

| | Avg. per min. |
|---|---|
| ECS/IntraLATA toll | $.1350 |
| Applicable Switched Access | .0574 |

Thus, using Hendrix's method, ECS rates, when combined with intraLATA toll rates in general, pass his imputation test.

ATT witness Guedel disputed Hendrix's method, pointing out that the Residual Interconnection Charge (RIC), approved in concept in the Local Transport restructure docket, is a monopoly element and should be included if Local Transport were excluded, since all users of switched access must pay the RIC. (EXH 7, pp. 168-169) Other parties who addressed the issue also rejected Hendrix's methodology. (Sprint BR pp. 4-6)

Staff does not believe that the Commission should revisit imputation in a docket that involves only one LEC and one service. To the extent that ECS is considered a local service, we are not convinced that switched access is the correct or appropriate test for imputation. OPC, in its brief, also noted this anomaly. (OPC BR p. 5) MCI, in its brief, stated that unless one of three possible solutions were implemented, SBT's proposal should be rejected as anti-competitive. The three solutions were:

1) increase the price for ECS;
2) reduce the price for monopoly switched access;

3) or create a new interconnection rate available to all competitors (IXCs or ALECs) who choose to provide a competing service. (MCI BR p. 2)

For purposes of this case, staff recommends that when resale and local interconnection rates are established, this will resolve the imputation issue, at least in this proceeding. If the statute is ultimately interpreted as requiring imputation for non-basic services, then a resale or interconnection rate, which is required to cover the LEC's costs [see Section 364.162(4) & (5)], be below the retail rate, and not be so high as to serve as a barrier to competition [see Section 364.162(5)], would adequately satisfy all the concerns that imputation requirements address. There is no further need to address imputation here.

ECS as a Basic Service

If ECS is determined to be a basic service, the specific issue of imputation does not apply. However, in order to provide local service, staff believes that a carrier must still become an ALEC. The statutory requirements for unbundling (Section 364.161, F.S.) and for negotiating prices for interconnection and resale (Section 364.162, F.S.) would still apply to all new (i.e., those that become effective after July 1, 1995) basic services. They would not apply to "currently tariffed, flat-rated, switched residential and business services" since those are not required to be resold by the LEC, at least prior to July 1, 1997. (Section 364.162, F.S.) Staff believes that, with the exception of imputation, all other aspects of competition, resale, interconnection, and negotiating rates, terms and conditions, outlined in the statute and discussed above, would apply to SBT's provision of ECS, whether it was determined to be a basic or non-basic service.

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

**RECOMMENDATION:** Tariffs should be filed on December 1, 1995 to implement the Commission's decision in Issues 1 a), b), c) or d) (including any combination thereof), and Issue 2, to become effective on January 1, 1996. Customer credits should be made in accordance with the January 5, 1994 Stipulation, for the period from October 1, 1995 through December 31, 1995, or until the effective date approved by the Commission. **[NORTON]**

**POSITION OF PARTIES:**

**SOUTHERN BELL:** Tariffs were filed with the Commission on May 15, 1995 to implement ECS in October, 1995.

**AD HOC:** If the Commission rejects Southern Bell's ECS proposal, the tariff should be filed as soon as possible with an effective date of October 1, 1995.

**ATT:** If the Commission adopts ATT's recommendations with respect to Issue 1, the tariffs should be filed as soon as possible to be effective on October 1, 1995.

**CWA:** Tariffs should be filed so that all changes take place October 1, 1995. If the ECS is approved, the May 15, 1995 tariffs should be utilized.

**DOD/FEA,FCTA,SPRINT:** No position.

**FIXCA:** If the Commission decides to proceed with ECS, tariff should be filed as soon as possible incorporating the necessary elements described. However, until such tariffs are in place or the Commission adopts the rates provided by FIXCA, the Commission should use the interim refund mechanism in the Settlement Agreement.

**FMCA, MCCAW:** The tariffs should be filed no later than two weeks after the Agenda Conference decision to be effective October 1,1995.

**MCI:** Tariffs should be filed as soon as practicable after the Commission's decision in this docket and should become effective on October 1, 1995. If that effective date cannot be met, Southern Bell should make the appropriate refund in compliance with Paragraph 10 of the Stipulation incorporated in Order No. PSC-94-0172-FOF-TL.

**OPC:** Tariffs should be effective October 1, 1995.

**STAFF ANALYSIS:** If the Commission approves either the primary or the alternative staff recommendation, tariffs should be filed on December 1, 1995 to become effective on January 1, 1996. Since the Commission's decision should not be made effective on October 1, 1995, the refund mechanism set forth in the Stipulation should be used, until January 1, 1996 or any other effective date approved by the Commission.

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, if the Commission's decisions in this instance involve a deferred implementation date of any rate reduction, staff recommends that a customer credit 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 on customers' bills on a pro-rata basis according to rate level in the same fashion as has been done previously in DN 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 FPSC 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 should provide staff with documentation supporting the Company's calculation of the specific refund amounts.

If the Commission approves CWA's proposal, staff would still recommend a January 1, 1996 effective date, at a minimum, to allow Southern Bell time to contact the proper authorities and to develop eligibility criteria. The Commission could if it wished, implement the PBX and DID service rate changes at a different time from the ECS or other changes because they would not require the lead time that other changes would. However, given the strong possibility that we will have to address Petitions for Reconsideration, staff believes that January 1, 1996 is an appropriate date.

Staff would also note that since ALEC certificates will not become effective until January 1, 1996, it is appropriate to defer implementation of any ECS routes until competitors have the opportunity to obtain the proper certification. It is also important that resale and interconnection rates be in place in order for Southern Bell to be in compliance with the imputation requirements of Section 364.051(6)(c).

At this time, hearings are scheduled for October to determine interconnection rates for at least one potential ALEC who has applied for certification. Interconnection rates for this ALEC will be in place by January 1, 1996. Staff would hope that other carriers who need ALEC certification proceed quickly. Ideally, there should be a significant number of certificated ALECs with resale and interconnection rates in place by January 1, 1996.

**ISSUE 4:** Should this docket be closed?

**RECOMMENDATION:** No. This docket should remain open to continue to implement the agreement approved by the Commission in Order No. PSC-94-0172-FOF-TL.

**STAFF ANALYSIS:** This docket should remain open to continue to implement the agreement approved in Order No. PSC-94-0172-FOF-TL.