LAW OFFICES
McWHIRTER, REEVES, McGLOTHLIN, DAVIDSON, RIEF & BAKAS, P.A.

100 NORTH TAMPA STREET, SUITE 2800
TAMPA, FLORIDA 33602-5126

MAILING ADDRESS: TAMPA
P.O. BOX 3350, TAMPA, FLORIDA 33601-3350

TELEPHONE (813) 224-0866
FAX (813) 221-1854
CABLE GRANDLAW

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE
117 S. GADSDEN
TALLAHASSEE, FLORIDA 32301

TELEPHONE (904) 222-2525
FAX (904) 222-5606

LYNWOOD F. ARNOLD, JR.
JOHN W. BAKAS, JR.
LINDA C. DARSEY
C. THOMAS DAVIDSON
STEPHEN O. DECKER
VICKI GORDON KAUFMAN
JOSEPH A. McGLOTHLIN
JOHN W. McWHIRTER, JR.
RICHARD W. REEVES
FRANK J. RIEF, III
PAUL A. STRASKE

November 28, 1995

HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, FL 32399-0870

Re: Docket No. 920260-TL - Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of Southern Bell Telephone and Telegraph Company.

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of FIXCA's Motion to Stay in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

ACK ✓
AFA 3
APP ____
CAF ____
CMU Norton
CTR ____
EAG ____
LEG 1 VGK/js
LIN 5
OPC ____ Enclosures
RCH ____
SEC 1
WAS ____
OTH ____

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of Southern Bell Telegraph and Telephone Company.	Docket No. 920260-TL Filed: November 28, 1995

The Florida Interexchange Carriers Association's Motion for Stay

The Florida Interexchange Carriers Association (FIXCA), pursuant to rule 25-22.061(2), Florida Administrative Code, requests the Commission to stay Order No. PSC-95-1391-FOF-TL (Order), issued on November 8, 1995, pending FIXCA's appeal of the Order to the Florida Supreme Court. As grounds therefor, FIXCA states:

I. Introduction

In its decision in this case, the Commission has drastically altered the intraLATA toll market in Southeast Florida. By approving Southern Bell Telegraph and Telephone Company's (Southern Bell) Extended Calling Service (ECS) proposal, the Commission has essentially closed this market to competition, preserving the entire market for Southern Bell. The Commission has failed to require appropriate interconnection and resale rates which would counteract this anticompetitive plan and provide others with an opportunity to carry traffic on these routes.

FIXCA requests a stay of the Commission's decision due to its ramifications on competition in what is currently the highly competitive Southeast LATA. The Commission's decision is the antithesis of the Legislature's intent to foster competition in the telecommunications market for the benefit of consumers. Therefore,

simultaneously with the filing on this motion, FIXCA will file a Notice of Appeal of the Commission's decision with the Florida Supreme Court.

While its appeal is pending, FIXCA requests that the Commission stay the effect of its Order and maintain the status quo in the Southeast LATA until the Court has the opportunity to review the Commission's decision in this case. The ratepayers will not be harmed during the pendency of the stay because Southern Bell will continue to refund the $25 million through the interim refund mechanism thereby ensuring that ratepayers receive the benefit of the Southern Bell settlement.

II. Background

Pursuant to Order No. PSC-94-0172-FOF-TL and the settlement encompassed therein, Southern Bell is required to make three rate reductions--one in 1994, one in 1995, and one in 1996. Some of the rate reductions are specified in the settlement agreement encompassed in the order; others are to be the subject of hearing. The $25 million unspecified portion of the rate reduction for 1995 is the subject of this proceeding.

On May 15, 1995, Southern Bell filed its proposal to introduce ECS as a way to satisfy its obligation to return $25 million dollars to ratepayers. Numerous parties objected to this proposal because it does not comply with the new telecommunications law and because it is anticompetitive.

The Commission held a hearing on July 31, 1995 to decide how to implement the $25 million rate reduction and issued its final

Order on November 8, 1995. By a vote of 3 to 2, the Commission approved the Southern Bell ECS proposal.

III. Basis for Motion for Stay

Commission rule 25-22.061(2) provides three grounds which the Commission may consider in ruling on a motion for stay. FIXCA will discuss each of these below and maintains that it satisfies each standard. Additionally, FIXCA would point out to the Commission that this case represents one of the Commission's first decisions interpreting the new telecommunications statute, particularly the savings clause section. As such, the Commission should await the Court's ruling on its interpretation of the statute before implementing its decision in this case.

A. FIXCA is Likely to Prevail on Appeal

1. The Commission has clearly erred in its interpretation of the new law.

FIXCA has divided its analysis of the new law into several sections. However, it is important to recognize that though FIXCA believes that the new law applies to this case, regardless of which law applies, ECS is a non-basic service.

The new law allows LECs to elect price cap regulation. On November 1, 1995, Southern Bell made such an election. (Attachment 1). Upon election of price cap regulation, all LEC services become either basic or non-basic services. Section 364.051. As discussed in detail in subsection (b), ECS does not fall into the category of a basic service as defined in Section 364.02(2) and therefore is a non-basic service upon election of price cap regulation, regardless of which law applies.

a. The New Law Applies to Southern Bell's ECS Proposal.

The Commission's decision in this case turns on its interpretation of the new telecommunications law, Chapter 95-403, Laws of Florida. Therefore, the Court's review of the Commission's decision will be governed by section 120.68(9), Florida Statutes. This section provides that:

> If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:
>
> (a) Set aside or modify the agency action, or
>
> (b) Remand the case to the agency for further action under a correct interpretation of the provision of law.

Courts have not hesitated to reverse an agency's decision where the agency's interpretation of law has been in error. See, e.g., Drew v. Division of Retirement, 640 So.2d 1190 (Fla. 1st DCA 1994) (agency erred by imposing an eligibility requirement for disability benefits not found in the statute); Johnson & Johnson, Inc. v. Florida Department of Transportation, 371 So.2d 494 (Fla. 1st DCA 1979) (order of Department of Transportation requiring appellant to remove four outdoor advertising signs if it did not remove certain lighting from the signs reversed and remanded due to lack of statutory authority); Cundy v. Division of Retirement, 353 So.2d 967 (Fla. 1st DCA 1978) (agency order quashed and case remanded for agency to give effect to statutory presumption). In this case, the Commission's interpretation of the new law is clearly erroneous and subject to reversal by the Court for several reasons.

First, the Commission erred when it found that the prior telecommunications law applies to Southern Bell's ECS proposal. (Order at 6). The savings clause of the new statute could not be clearer on this point. Section 364.385(2) 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.

Emphasis supplied. It is undisputed that Southern Bell's ECS proposal was filed on May 15, well after March 1 and thus must be governed by the new law.

However, the Commission's Order ignores this explicit legislative direction. Instead, the Order relies on section 364.385(3) which states, in pertinent part:

> 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.

This section simply provides that the Southern Bell settlement, as memorialized in the Commission's order, will remain in effect.[1] The Order erroneously interprets the statutory language quoted above to give the Commission the authority to ignore the requirements of the new law. However, nothing in that clause requires the implementation of ECS or states that if ECS is implemented, it is to be governed by prior law.

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[1] As Chairman Clark recognized, the Southern Bell settlement order simply requires that refunds or rate reductions occur. (Agenda Conference transcript at 22). It does not require refunds to be made via an ECS proposal.

As the Order makes clear, the Commission is not so much concerned with interpreting the savings clause as it is with retaining control over Southern Bell to ensure that it complies with its obligations under the settlement agreement. (Order at 5). And, in fact, at the Agenda Conference, the Commissioners discussed a way to ensure Southern Bell's fulfillment of its obligations while still complying with the new law.[2] Unfortunately, the Commission did not pursue this suggestion. The preservation of the Southern Bell settlement as contemplated by the new law does not give the Commission the ability to apply the old law and to put the ECS plan into effect without the requisite safeguards.

The Order also focuses on another sentence in the savings clause which states that proceedings which have not progressed to hearing by July 1, 1995 may, with the consent of all parties, be conducted in accord with prior law. The Order says that this case "progressed to the stage of hearing" in January 1994 when the settlement agreement was entered into by the parties and that therefore the consent of the parties is not needed to apply the prior law to this case. (Order at 6).

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[2] Commissioner Kiesling suggested classifying ECS as non-basic but imposing a restriction on Southern Bell which would not permit it to raise rates until the refund obligation had been satisfied. Chairman Clark recognized that this would be consistent with the new law. (Agenda Conference transcript at 18-19).

This reasoning ignores the very language of the agreement upon which it attempts to rely. The Implementation Agreement[3] specifically contemplates and requires hearings on the disposition of the unspecified refunds Southern Bell must make. Paragraph 4 of the Implementation Agreement provides in part:

> The PARTIES agree that the Commission shall conduct hearings to determine the rate by which the amounts not specifically allocated by the Stipulation and this Implementation Agreement shall be disposed of in 1994 ($10 million), 1995 ($25 million), and 1996 (approximately $48 million. . . . The PARTIES agree to work toward expeditiously scheduling, conducting and concluding such hearings so that the reductions take effect by the scheduled dates.

(Emphasis supplied). Thus, the Implementation Agreement clearly requires that hearings be conducted and it is clear that no hearing on the $25 million refund occurred before July 1, 1995. The hearing which is the subject of the Commission's Order in this case did not occur until July 31, 1995.

b. ECS is a non-basic service.[4]

Compounding its error of statutory interpretation, the Order states that ECS should be classified as a basic service. (Order at 8). This interpretation of the new law is directly contrary to the

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[3] The entire name of the document is: "Implementation Agreement for Portions of the Unspecified Rate Reductions in Stipulation and Agreement Between the Office of Public Counsel and Southern Bell Telephone and Telegraph Company."

[4] As discussed above, even if the old law applies, ECS is still a non-basic service.

new statute's plain language[5] and is clearly erroneous thus requiring reversal by the Court.

Section 364.02(2) defines "basic local telecommunication service." It states, in part:

> For a local exchange telecommunications company, such term [basic telecommunications service] shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

The Southern Bell ECS proposal before the Commission was not ordered by the Commission until September 26, 1995, clearly well after the July 1 deadline of the statute.

Again, the Order attempts to rely on the fact that the new law provides that the Southern Bell settlement will remain intact. (Order at 8). Again, this clause of the new law does not provide that actions relating to the settlement will be governed by the old law. The Commission has read into the new law a provision that does not exist.

In addition, the Order purports to rely on a settlement agreement entered into between FIXCA and Southern Bell on six specific toll routes, long before the new law was enacted[6], and states that because the Commission approved that settlement, somehow the 288 ECS routes proposed in this docket are governed by

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[5] It is a well-settled principle of statutory construction that the plain meaning of a statute must govern. Citizens of State v. Public Service Commission, 425 So.2d 534, 541-2 (Fla. 1982); Lee v. Gulf Oil, 4 So.2d 868, 870 (Fla. 1941).

[6] The agreement was executed on March 31, 1994 and approved by the Commission on May 16, 1994 in Order No. PSC-94-0572-FOF-TL.

the old law. The attempt to connect these two proceedings and to rely on a settlement to justify the Commission's interpretation of the new law must be rejected.

The FIXCA/Southern Bell settlement (Attachment 2) in Docket No. 911034-TL was an agreement between the parties in regard to six toll routes so as to avoid "the expenditure of any further time, money and other resources in litigating these issues before the Commission. . . ." This settlement is of no assistance in interpreting the new law which had not even been adopted at the time of the settlement.

In the settlement agreement, FIXCA and Southern Bell agreed that:

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

Stipulation and Agreement, Attachment 2, paragraph 5. The purpose of the settlement was to <u>postpone litigation</u> of the issues until the Commission's new EAS rules were in place. Clearly, this agreement does not address the basic/non-basic classification since it was entered into long before the new statute was enacted and defined such terms. According to the clear terms of the new law, ECS must be classified as a non-basic service because it was not ordered or in existence before July 1, 1995.

c. ECS fails to meet the imputation standard of the new law.

The Commission's faulty analysis of the new law and its erroneous classification of ECS as a basic service, led it to ignore the imputation mandate of section 364.051(6)(c). This section states:

> The price charged to a consumer for a non-basic service shall cover the direct cost 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.

Evidence adduced at hearing demonstrates that the ECS service does not meet the imputation requirements of the new statute. (See, i.e., hearing transcript at 299). However, the Order ignores this failure to comply with the law and approves the service.

2. The Commission has failed to ensure that competition will continue on the ECS routes.

The intent of the changes to the telecommunications statute which were made in the 1995 legislative session are beyond dispute. The legislature intended to foster competition in all telecommunications markets.[7]

Section 364.01(3) of the new law provides:

> 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

[7] The Legislature certainly did not intend to eliminate competition in a market which is currently competitive.

> of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure.

The Commission's decision is the very antithesis of what was intended by the Legislature. As Chairman Clark wrote in her dissent, in which Commissioner Kiesling joined:

> The majority's decision is also contrary to the legislative mandate to this Commission to act as a catalyst for competition. If these routes had remained toll, active and significant competition already in place would continue. As the prices which the local telephone companies charged the long distance companies for connections continue to drop, as prescribed by statute, the prices for toll calls would continue to decrease. The majority's decision removes these routes from a very competitive toll market and places them in a less competitive local market. In addition, Southern Bell is gaining this competitive advantage without any financial penalty since this proposal is being funded through $25 million in required revenue reductions.

(Order at 26).[8] Rather than moving forward to a more competitive telecommunications environment, the Commission Order moves backwards by taking a market that is competitive today and remonopolizing it for the future. As Chairman Clark wrote:

> . . . [The Commission's decision] will stifle vigorous competition which, in the long-term,

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[8] As Commissioner Kiesling said at the Agenda Conference:

> My view is that this permits Southern Bell to essentially have a lock on the market that is going to result in a very anticompetitive environment.

(Agenda Conference transcript at 51).

> is the best means of ensuring low rates and high quality service.

(Order at 25).

It should be clearly noted that FIXCA has never objected to Southern Bell's ECS proposal. Rather, it has always been FIXCA's position that the Commission must put resale and interconnection rates in place to comply with the statute's imputation requirements and so that competition[9] will continue on these routes. FIXCA members only want to be able to compete for traffic on the ECS routes as they could before the implementation of ECS.

B. FIXCA Members Will Suffer Irreparable Harm If the Stay is Not Granted

FIXCA members are IXC certificate holders who currently provide service on some or all of the 288 routes which the Commission approved for ECS. Currently these are extremely competitive toll routes and FIXCA members have worked hard to bring the level of competition which exists today to those routes. With the implementation of ECS, IXC competition on the affected routes will vanish for two reasons. First, Southern Bell's customers on those routes will be able to dial calls using 7 digits, while IXC customers will have to dial at least 11 digits to place the same call. Second, IXCs cannot begin to match the rate offered by

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[9] On November 17, 1995, the Florida Supreme Court granted GTE's motion for stay of this Commission's intraLATA presubscription order. Order No. PSC-95-0203-FOF-TP. Thus, it is unclear when the competitive benefits of intraLATA presubscription will be made available to Florida consumers. The fact that it will now apparently be some time before IXCs will be able to compete on a level basis with LECs for intraLATA traffic provides another reason to stay the ECS decision and its anticompetitive effects.

Southern Bell on those routes because the Southern Bell rates do not even cover the access charges that IXCs will have to pay Southern Bell for carrying the same traffic.[10] Consequently, the IXCs, who have devoted resources to developing customer relationships on these routes, will be shut out of the market and thus irreparably harmed. Once the ECS proposal is put in place, even if the Court later reverses the Commission's decision, carriers who must leave the market as a result of the Commission's decision will have a very difficult time returning to the position they were in prior to ECS implementation. Such harm cannot be remedied prospectively.[11]

C. A Stay is in the Public Interest

If the Commission grants a stay, customers will continue to enjoy the benefits of competition, as they do today. If the Commission does not grant a stay, consumers will lose those benefits which arise from having a choice of carriers in the marketplace. As the Court has noted several times, the Legislature

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[10]Clearly, companies can not viably compete in the market when they must pay Southern Bell more to access its network than Southern Bell charges the ultimate consumer to carry the call -- a fact which was not disputed. As Staff member Robin Norton explained at the Agenda Conference: "...[T]he current rates that the competitors pay are higher than the ECS rates that you have just approved.... And right now the wholesale rate is higher than the ECS rate." (Agenda Conference transcript at 56, 68).

[11] The forced exit of FIXCA members from the Southeast LATA is not an "endurable deprivation of modest revenues during the pendency of judicial review [which] might not amount to irredeemable harm." Della Valle v. United States Dept. of Agriculture, 619 F. Supp. 1297, 1304 (U.S.D.C. R.I. 1985). Rather, this foreclosure of the ability of FIXCA members to compete "presents a compelling picture of the prospect of irreparable harm." Id.

has evidenced a "'clear legislative intent to foster competition' and . . . 'the legislature [has] made the 'fundamental and primary policy decision' that there be competition in long distance telephone services.'" Microtel, Inc. v. Florida Public Service Commission, 483 So.2d 415, 418 (Fla. 1986), quoting, Microtel, Inc. v. Florida Public Service Commission, 464 So.2d 1189, 1191 (Fla. 1985).

A stay will preserve the status quo while the Court reviews the Commission's interpretation of the new law. IXCs will continue to carry calls on the ECS routes as they do today and customers will continue to be able to choose among numerous carriers. During the pendency of the stay, the ratepayers will not be harmed in any way because they will receive the benefit of the Southern Bell settlement via a refund of the $25 million as a credit to their bills as expressly provided for in the settlement.

In addition, a stay will avoid customer confusion in the event the Commission's decision is reversed. If the Commission permits ECS to go into effect and its decision is reversed, it will have to instruct Southern Bell to withdraw or delay[12] the ECS plan until the requisite safeguards are in place. Such action will cause extreme customer confusion. On the other hand, if the Commission stays its decision, the status quo will be maintained and Southern Bell's customers will continue to receive a refund on their bills

[12] As FIXCA pointed out to the Commission, ECS cannot go into effect until resale and interconnection rates are available.

(just as they will during the October through January period under the Commission's decision) until the case is decided.[13]

D. This Is An Initial Interpretation of the New Law

To FIXCA's knowledge, this is the Commission's first interpretation of the new telecommunications statute in several respects. It is the Commission's first interpretation related to the savings clause; it is one of its first interpretations as to whether or nor the new law will apply in a particular situation; and it is the Commission's first interpretation as to the appropriate classification of a particular service as basic or non-basic. These are extremely important decisions affecting the substantial interests of many parties and upon which there is vast difference of opinion. Before implementation, the Commission would do well to await the Court's decision on whether it has appropriately interpreted the statute. If the Commission is reversed, as FIXCA believes is likely, implementation of the appropriate decision will be accomplished with much less disruption and confusion. During this time, the status quo will be maintained and ratepayers will not be harmed.

IV. Conclusion

For the reasons discussed above, the Commission should grant FIXCA's Motion for a Stay of Order No. PSC-95-1391-FOF-TL so that

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[13] In its Order, the Commission decided that customers would receive a refund until ECS could be implemented in January even though the settlement calls for an October implementation date. (Order at 22).

the Court may have the opportunity to review the Commission's interpretation of the new law. During the period of the stay, the ratepayers will be protected by a refund of the $25 million through the interim refund mechanism called for by the settlement agreement.

WHEREFORE, FIXCA requests that its Motion for Stay of Order No. PSC-95-1391-FOF-TL be granted until its appeal to the Florida Supreme Court is concluded.

Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 S. Gadsden Street
Tallahassee, Florida 32301
904/222-2525

Attorney for the Florida
Interexchange Carriers
Association

FIXCA's Motion to Stay
Docket No. 920260-TL
Attachment 1
Page 1 of 1

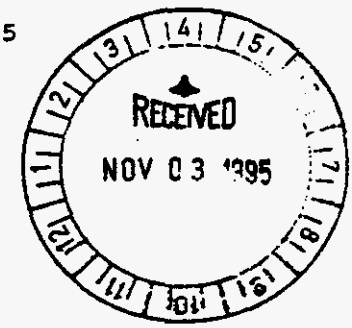
ORIGINAL
FILE COPY

BellSouth Telecommunications, Inc.
Suite 400
150 South Monroe Street
Tallahassee, Florida 32301-1556

Fax 904 224-5073
904 224-7798

A. M. Lombardo
Regulatory Vice President

November 1, 1995



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

950000

RE: Notice of Election of Price Regulation

Dear Ms. Bayo:

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

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

Sincerely,

Anthony M. Lombardo

Enclosures

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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT 1

in Paragraph 8 of the Stipulation and Agreement between the Office of Public Counsel and Southern Bell Telephone and Telegraph Company, dated January 5, 1994 (attached hereto as Exhibit "A") as approved by the Commission in its Order No. PSC-94-0172-FOF-TL, dated February 11, 1994 in Docket Nos. 920260-TL, 910727-TL, 910163-TL, 900960-TL and 911034-TL. It is anticipated by Southern Bell that the revenue losses and costs will be approximately $11,600,00.

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

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

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

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

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

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

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

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

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

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

FLORIDA INTEREXCHANGE CARRIERS ASSOCIATION

By Vicki Gordon Kaufman
Vicki Gordon Kaufman, Esq.

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

By
Harris R. Anthony, Esq.

CERTIFICATE OF SERVICE
Docket No. 911034-TL

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

Tracy Hatch
Division of Legal Services
Florida Public Svc. Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Grandoff and Reeves
315 South Calhoun Street, Ste. 716
Tallahassee, FL 32301

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

CERTIFICATE OF SERVICE

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

Robert Elias*
Donna Canzano*
Division of Legal Services
Florida Public Service Commission
Gerald L. Gunter Bldg., R. 370
2540 Shumard Oak Drive
Tallahassee, FL 32399

Charles J. Beck
Deputy Public Counsel
Office of Public Counsel
Claude Pepper Bldg., Rm. 812
111 W. Madison Street
Tallahassee, FL 32301

Doug Metcalf
Florida Ad Hoc Telecommunications
P. O. Box 1148
Winter Park, FL 32790-1148

Benjamin W. Fincher
Sprint Communications Company Limited Partnership
3100 Cumberland Circle
Atlanta, GA 30339

Ben Dickens, Esq.
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W.
Washington, D.C. 20037

Dan B. Hendrickson
Post Office Box 1201
Tallahassee, FL 32302

Nancy B. White*
c/o Nancy Sims
Southern Bell Telephone and Telegraph Company
150 South Monroe Street
Sun Bank Building, Suite 400
Tallahassee, Florida 32301

Robin Norton*
Division of Communications
Florida Public Service Commission
Gerald L. Gunter Bldg., R. 270
F
2540 Shumard Oak Drive
Tallahassee, FL 32399

Michael J. Henry
MCI Telecommunications Corp.
780 Johnson Ferry Road
Suite 700
Atlanta, GA 30342

Thomas F. Woods
Gatlin, Woods, Carlson and Cowdery
1709-D Mahan Drive
Tallahassee, FL 32308

Michael W. Tye
AT&T Communications
106 East College Avenue
Suite 1410
Tallahassee, FL 32301

Rick Wright
Auditing & Financial Analysis Division
Fla. Public Service Commission
Gerald L. Gunter Bldg., R. 215
2540 Shumard Oak Drive
Tallahassee, FL 32399

Floyd Self
Messer, Vickers, Caparello
Madsen, Lewis, Goldman & Metz
215 S. Monroe Street
Barnett Bank Bldg., Suite 701
Post Office Box 1876
Tallahassee, FL 32302

Everett Boyd
Ervin, Varn, Jacobs, Odom
& Ervin
305 S. Gadsden Street
P. O. Box 1170
Tallahassee, FL 32301-1876

Laura L. Wilson
Florida Cable Television
Association
Post Office Box 10383
310 North Monroe Street
Tallahassee, FL 32302

Mark Richard
304 Palermo Avenue
Coral Gables, FL 33134

Monte Belote
Florida Consumer Action Network
4100 W. Kennedy Blvd. #128
Tampa, FL 33609

Rick Melson
Hopping, Green, Sams & Smith
123 South Calhoun
Post Office Box 6526
Tallahassee, FL 32301

Michael A. Gross
Assistant Attorney General
Department of Legal Affairs
PL-01, The Capitol
Tallahassee, FL 32399-1050

Angela Green
Florida Public
Telecommunications Assoc.
125 S. Gadsden Street
Suite 200
Tallahassee, FL 32301

Vicki Gordon Kaufman

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