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November 20, 1996

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VIA FEDERAL EXPRESS

Mrs. Blanca S. Bayo
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Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Rm. 110
Tallahassee, FL 32399-0850


Re: Docket No. 920260-TL

Dear Mrs. Bayo:

Enclosed for filing in the referenced proceeding are an original and fifteen copies of the Post Hearing Statement of Issues and Positions and Brief filed on behalf of the Florida Ad Hoc Telecommunications Users' Committee. A diskette and a Certificate of Service are also included.

Please contact me directly if you have any questions.

Sincerely,


Benjamin H. Dickens, Jr.

Enclosures

- ACK _____
- AFA _____
- APP _____
- CAF _____
- GMU Nelson
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- EAF _____
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12480 NOV 21 1996
FPSC-RECORDS/REPORTING

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Before the
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Comprehensive review of) DOCKET NO. 920260-TL
the revenue requirements and)
rate stabilization plan of) Filed: November 21, 1996
SOUTHERN BELL TELEPHONE AND)
TELEGRAPH COMPANY)

POST HEARING STATEMENT OF ISSUES AND POSITIONS
AND BRIEF OF
FLORIDA AD HOC TELECOMMUNICATIONS USERS' COMMITTEE

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POST HEARING STATEMENT OF ISSUES AND POSITIONS
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Introduction and Preliminary Statement

This Brief is filed on behalf of the Florida Ad Hoc Telecommunications Users' Committee (Ad Hoc), who represent the interests of users of business telephone services within the State of Florida. As the Commission knows, Ad Hoc's members include Florida's leading corporate citizens, including the banking, technology and food industries, and the State of Florida.

Ad Hoc believes that the subject \$48 million rate reduction to be made in this proceeding, should follow the Joint Proposal submitted by Ad Hoc, MCI, AT&T, FIXCA, Sprint, and McCaw Communications, which was later joined in by the Department of Defense. Ad Hoc submits that this proposal best represents the kind of rate structure rebalancing which is necessary to help ensure a future level playing field, vis-a-vis BellSouth Telecommunications (BST) and its competitors.

For purposes of brevity, this Brief will focus on Ad Hoc's proposals regarding business user rates that impact Ad Hoc's

members, and Florida's business community at large. Ad Hoc submits that BST's proposed plan should be rejected as an attempt to foreclose future competition in business services. No better indication of the anticompetitive nature of this plan is provided by the fact that Ad Hoc's proposal for rate reductions, vis-a-vis business users, is approximately \$4 million lower than BST's plan. In other words, Ad Hoc's members would pay approximately \$4 million per year more, on a proportionate basis, under Ad Hoc's own plan, if all other things between the two plans were equal. They are not equal, however, as is discussed later in this Brief, and BST's plan should be rejected.

References to the pre-filed testimony and exhibits which were stipulated into the record of the proceeding, will be made, respectively, by reference to the pre-filed testimony of the party; exhibits will be referred to by the abbreviation "Ex." followed by the appropriate page number of the exhibit. Deposition transcripts will be referenced similarly, with the page number of the deposition transcript appearing after the exhibit number assigned the deposition transcript. The arguments in the Brief will follow the order of issues as set forth in the Prehearing Order, issued October 24, 1996.

ISSUES AND POSITIONS

ISSUE 1: Below are listed the proposals of various parties to this proceeding with respect to the disposition of the scheduled 1996 unspecified rate reductions. Which, if any, should be approved? [Rate reduction tables of the parties omitted].

* The Joint Proposal of the parties, including Ad Hoc, should be approved. This proposal corrects an anticompetitive price imbalance between PBX vendors and BST's ESSX service. BST's proposal should be rejected. It ties proposed rate reductions to long-term contracts in a manner which would stifle future competition. *

ARGUMENT: Ad Hoc's witness, Douglas S. Metcalf, described why the Joint Proposal should be adopted instead of BST's plan which would, on its face, accord more rate reductions to the business community (approximately \$4 million more) than would the Joint Proposal. The essence of Mr. Metcalf's testimony demonstrates that BST offers a business service called ESSX, which competes with PBXs marketed by independent vendors. However, in order to connect the PBX service to the network in a way that provides service comparable to ESSX, one must have PBX trunks and Direct Inward Dial (DID) numbers. BST provides these services pursuant to tariff. Metcalf Direct at 5-7. Mr. Metcalf also pointed out that, although ESSX uses more plant and facilities than PBX service, including DID (and thus costs more), ESSX is priced substantially lower than PBX and DID services. Id. Mr. Metcalf further demonstrated that BST has admitted in the past that PBX services are priced significantly above their costs and that the Commission's staff has agreed on this point. Id. at 3. Mr. Metcalf concluded that these pricing disparities

between PBX service and ESSX service have hindered fair competition in the market. Id. at 5-6.

Against this background of an historic rate imbalance between otherwise competitive services (i.e., PBX trunk service and ESSX service), one may wonder why Ad Hoc endorsed a plan that would reduce PBX and DID services by several million fewer dollars than would BST's plan. The answer to that question is that BST's proposal is designed to squelch meaningful PBX competition in the long run, and hence the "benefits" of its proposal will be entirely illusory.

Mr. Metcalf's testimony details the basis for the conclusion. He demonstrated that BST has proposed to substantially lower rates only for new DID customers and for those PBX customers willing to sign long term contracts. Metcalf Direct at 3. He further testified that business users, who have paid BST overearnings in the past, constitute one of the largest potential markets for new, competitive telecommunications suppliers attempting to gain a foothold in the marketplace. Id. He concluded that BST's proposal would not only frustrate competition for business users, but would also lessen competition for residential users who have provided secondary markets for business competitors. Id. at 4.

He further testified that BST's plan is simply inequitable since it substantially cordons off benefits from current business users who have overpaid BST for their business services. Id. Mr. Metcalf concluded by urging the Commission to reject BST's

proposal and to instead lower all BST-provided PBX trunks so that the same level of contribution is achieved as that provided by ESSX loops. Mr. Metcalf noted that such action would be consistent with the Florida Legislature's stated intent to foster telecommunications competition on a local basis.

BST's witness Varner attempted to defend BST's pricing scheme, and to deflect Mr. Metcalf's criticisms, in his rebuttal testimony. He sought to deflect Mr. Metcalf's criticisms that BST's pricing scheme was unfair to existing (and not new) customers, based on the proposition that the instant proceeding deals with rate "reductions" as opposed to "refunds." Varner Rebuttal at 7. He sought to buttress this argument by claiming that all of BST's PBX users would get rate reductions under BST's plan (and not just new customers) and that contract offerings do not "preclude or lock in business customers from competitive alternatives." Id. at 7. Mr. Varner finally argued that Mr. Metcalf's testimony concerning the anticompetitive price relationship between ESSX and PBX trunks "are not relevant." This assertion was based on Mr. Varner's contention that ESSX is now "obsolete, meaning that ESSX is no-longer offered for new installations." Id. at 9. As is discussed below, none of Mr. Varner's contentions have merit.

Mr. Varner's contention that BST's long-term contract scheme is not anticompetitive principally turns on his contentions that contracts do not "lock-in business users from competitive alternatives" and that BST is proposing to reduce recurring rates

on "all existing PBX trunks." Id. at 7. The substance of BST's proposal, however, shows the statements to be mere semantics.

For instance, Mr. Varner fails to mention the severe economic penalty that would attend a PBX customer's choice to exercise "competitive alternatives" once she has signed a long-term contract. During Mr. Varner's deposition, however, he quantified this penalty as between \$480 - \$960 per trunk. Ex. 7, at 17. Thus, contrary to Mr. Varner's implicit assertion, BST's contracts are not meaningless. They are designed to economically induce the customer, through severe economic penalties, not to seek alternative PBX service.

Mr. Varner's contention that BST's pricing scheme is not unfair because all PBX customers will see rate decreases (and not just contract customers), is also off the mark. As he admitted in his deposition, non-contract customers do not get the same rate reductions as contract customers. Id. at 20. In other words, BST's proposed rate restructure is designed to induce all PBX customers into its anticompetitive contract scheme.

Finally, Mr. Varner's related contention that principles of fairness between existing and new customers are not relevant because this is not a "rate refund" proceeding, also pulls up lame. As the Commission well knows, BST's past and current refund obligations in this proceeding amount to several hundred million dollars. This was not an act of corporate charity on BST's part -- rather an agreement to get rid of several open

dockets, including one in which several hundred million in overearnings had been identified.

Assuming, arguendo, that BST's agreement simply materialized out of thin air, the Commission should still find that BST's proposal reductions inequitably favor new customers, because PBX users' rates have been too high in the past. In addition to Mr. Metcalf's testimony which describes the pricing practices which led to this result, Metcalf Direct at 5-6, Mr. Varner himself has admitted that "cross-subsidy" exists in PBX trunk rates, Varner Rebuttal at 3. Moreover, Mr. Varner stated during his deposition that BST has been looking for an opportunity to be able to reduce PBX rates. Ex. 7, at 13. Mr. Varner's only attempt to address the contention that PBX rates are significantly above their costs resulted in a meaningless non-sequitur: instead of addressing PBX costs -- or even ESSX costs with which PBX costs had been compared -- Mr. Varner simply stated that ESSX was now an obsolete offering and, hence, is not relevant. Varner Rebuttal at 9. Mr. Varner simply did not rebut Mr. Metcalf's testimony that PBX is priced significantly above its costs, nor did he successfully rebut the larger proposition that BST's proposal treats past business unfairly vis-a-vis new business customers.

In sum, Ad Hoc respectfully submits that this record does not support BST's pricing scheme as a workable alternative for a competitive, local environment. BST's scheme depends in large part on long-term contracts that will lock up PBX customers to the detriment of potential competitors and competition. It also

unfairly favors new customers who have not paid the inflated PBX/DID rates which BST says it now wants to reduce. The Commission can easily cure these defects by adopting the Joint Proposal in which Ad Hoc has concurred. Even though it will fall approximately \$4 million short of BST's proposal business rate reduction, it contains no gimmicks to remonopolize the business service market. Instead it will help to provide a level playing field from which real competition for business services can flourish.

ISSUE 2: To the extent the Commission does not approve the plans proposed by BellSouth, Public Counsel, FCTA, Palm Beach Newspapers, Inc./Florida Today and AT&T, MCI, Sprint, FIXCA, AD Hoc and McCaw, how should the Commission implement the scheduled rate reduction?

* Ad Hoc submits that Commission should adopt the proposal of the joint parties. To the extent the Commission declines to adopt the Joint Proposal, however, the Commission should move rates as close as possible to the rate levels advocated in the Joint Proposal, including PBX and DID rates. *

ISSUE 3: What should be the effective dates of the approved tariffs?

* The effective date of the tariffs should be as soon as possible. However, refunds should be issued to customers

for the period beginning October 1, 1996 and ending on the effective date of tariffed rate reductions. *

Respectfully submitted,

**FLORIDA AD HOC
TELECOMMUNICATIONS USERS'
COMMITTEE**

By


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November 21, 1996

CERTIFICATE OF SERVICE
Docket No. 920260-TL

I certify that a correct copy of the foregoing "Post Hearing Statement of Issues and Positions and Brief" was sent by pre-paid U.S. Mail to the following parties on November 20, 1996.

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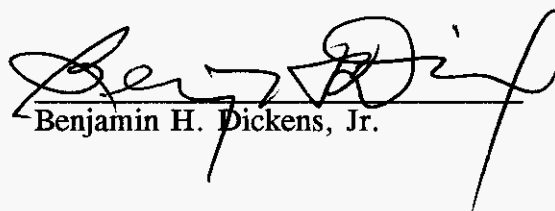
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