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J. Phillip Carver
General Attorney

Southern Bell Telephone
and Telegraph Company
c/o Marshall M. Criser III
Suite 400
150 So. Monroe Street
Tallahassee, Florida 32301
Phone (305) 530-5558

October 12, 1994

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

Re: Docket No. 921074-TP, 930955-TL, 940014-TL
940020-TL, 931196-TL and 940190-TL
Expanded Interconnection Phase II and LTR

Dear Mrs. Bayo:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Brief of the Evidence, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely yours,

J. Phillip Carver (EJ)
J. Phillip Carver

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Enclosures

cc: All Parties of Record
A. M. Lombardo
Robert G. Beatty
R. Douglas Lackey

CERTIFICATE OF SERVICE
Dockets No. 921074-TL, 930955-TL,
940014-TL, 940020-TL, 931196-TL, 940190-TL

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States Mail this 12 day of October 1994, to:

Tracy Hatch
Division of Communications
Fla. Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0866

Donna Canzano
Division of Legal Services
Fla. Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

Patrick K. Wiggins
Wiggins & Villacorta, P.A.
Post Office Drawer 1657
Tallahassee, Florida 32302

Intermedia Communications
9280 Bay Plaza Blvd., #270
Tampa, FL 33619-4453

Charles J. Beck
Deputy Public Counsel
Office of the Public Counsel
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400

Thomas Parker
GTE Florida Incorporated
P.O. Box 110, MC 7
Tampa, FL 33601-0110

C. Dean Kurtz
Central Tel. Co.of Florida
Post Office Box 2214
Tallahassee, FL 32316-2214

Florida Cable Television
Association, Inc.
310 N. Monroe Street
Tallahassee, FL 32301

Brad E. Mutschelknaus
Rachel J. Rothstein
Danny White
Wiley, Rein, & Fielding
1776 K Street, NW
Washington, D.C. 20006

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davison & Bakas
Suite 716
315 South Calhoun Street
Tallahassee, FL 32301

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

C. Everett Boyd, Jr.
Ervin, Varn, Jacobs, Odom &
Ervin
305 South Gasdsen Street
Tallahassee, FL 32301

Chanthina R. Bryant
Sprint
3065 Cumberland Circle
Atlanta, GA 30339

Sprint Communications Co.
Ltd. Partnership
c/o Tony Key, Director
3065 Cumberland Circle
Atlanta, GA 30339

Laura L. Wilson, Esq.
c/o Florida Cable Tele-
vision Association, Inc.
Post Office Box 10383
310 North Monroe Street
Tallahassee, FL 32302

Ms. Janis Stahlhut
Vice Pres. of REg. Affrs.
Time Warner Comm.
Corporate Headquarters
300 First Stamford Place
Stamford, CT 06902-6732

Peter M. Dunbar
Pennington & Haben, P.A.
Post Office Box 10095
Tallahassee, FL 32302

Michael W. Tye
Suite 1410
106 East College Avenue
Tallahassee, FL

Harriet Eudy
ALLTEL Florida, Inc.
Post Office Box 550
Live Oak, FL 32060

Lee L. Willis
J. Jeffry Wahlen
John P. Fons
Macfarlane, Ausley, Ferguson
& McMullen
Post Office Box 391
Tallahassee, FL 32302

Charles Dennis
Indiantown Telephone System
Post Office Box 277
Indiantown, Florida 34956

John A. Carroll, Jr.
Northeast Telephone Company
Post Office Box 485
Macclenny, Florida 32063-0485

Daniel V. Gregory
Quincy Telephone Company
Post Office Box 189
Quincy, Florida 32351

Jeff McGehee
Southland Telephone Company
210 Brookwood Road
Post Office Box 37
Atmore, Alabama 36504

Teresa Marerro, Esq.
Teleport Communications Group
Inc., Ste. 301
1 Teleport Drive
Staten Island, NY 10311

Kenneth A. Hoffman, Esq.
Rutledge, Ecenia, Underwood,
Purnel & Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302-0551

F. Ben Poag
United Telephone Company of FL
P.O. Box 165000
Altamonte Springs, FL 32716

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

Richard D. Melson
Hopping Boyd Green & Sams
Post Office Box 6526
Tallahassee, FL 32314

J. Phillip Carver (PJ)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Expanded Interconnection)	Docket No. 921074-TP
Phase II and Local Transport)	Docket No. 930955-TL
Restructure)	Docket No. 940014-TL
)	Docket No. 940020-TL
	Docket No. 931196-TL
	Docket No. 940190-TL

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S

BRIEF OF THE EVIDENCE

Robert G. Beatty
J. Phillip Carver
Suite 1910
150 West Flagler Street
Miami, Florida 33130

Mary Jo Peed
4300 Southern Bell Center
675 W. Peachtree Street, NE
Atlanta, Georgia 30375

ATTORNEYS FOR SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY

OF COUNSEL:

Roger M. Flynt, Jr.
4504 Southern Bell Center
675 W. Peachtree St., NE
Atlanta, Georgia 30375

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STATEMENT OF THE CASE

This proceeding is the result of the consolidation of a number of dockets relating to either expanded interconnection or local transport restructure. The expanded interconnection portion of the docket began with the filing of a Petition by Intermedia Communications of Florida, Inc. ("Intermedia" or "ICI") on October 16, 1992. In this Petition, Intermedia requested that the Florida Public Service Commission ("Commission") enter an order "mandating that local exchange carriers ("LECs") file tariff revisions necessary to allow alternate access vendors ("AAVs") to provide authorized intrastate services through collocation arrangements that will be established within LEC central offices". (Intermedia Petition, p. 1)

On May 26, 1993, the Prehearing Officer issued an order entitled, "Order Establishing Procedure (Order No. PSC-93-0811-PCO-TP), which divided the Commission's consideration of expanded interconnection issues into two separate phases, one to consider interconnection for private line and special access and a second phase to consider interconnection for switched access services. (Order Establishing Procedure, p. 1) The hearings for the Phase II portion of this docket was subsequently set to take place on August 22 through August 26, 1994 (Order Establishing Procedure and Consolidating Dockets, Order No. PSC-94-0076-PCO-TL, entered January 21, 1994, p. 5)

Also in 1993, several local exchange companies filed tariffs to restructure switched access local transport. Specifically,

Southern Bell filed its tariff on September 22, 1993. (Docket No. 930955-TL) The Interexchange Access Coalition ("IAC") opposed the tariff by filing a Memorandum in Opposition on October 29, 1993. On December 17, 1993, local transport tariffs were also filed by United Telephone Company of Florida ("United") and Central Telephone Company of Florida ("Centel"). (Docket Nos. 940014-TL and 940020-TL) These dockets were consolidated in the above-reference Order Establishing Procedure on January 21, 1994. (Order No. PSC-94-0076-PCO-TL)

The Commission issued its order on Phase I on March 10, 1994. A number of parties, including Southern Bell, filed motions for reconsideration and for stay of the Phase I Order. On July 8, 1994, the Prehearing Officer entered an order entitled, "Order Allowing Parties to File Legal Briefs to Address Supplemental Legal Authority". (Order No. PSC-94-0832-PCO-TP) This order noted that on June 10, 1994, the United States Court of Appeals for the District of Colombia Circuit "vacated in part and remanded for further proceedings two Federal Communications Commission's orders requiring the local exchange companies to set aside portions of their central offices for occupation and use by competitive access providers". (Order at p. 1) The order also noted that on June 29, 1994, Southern Bell filed a Notice of Supplemental Authority and Motion for Additional Briefing. The order granted this motion and allowed additional briefing "to address only the legal impact of the Court of Appeals' decision ... on the Commission's Order for Phase I" (Order, p. 1).

At the time of the Prehearing Conference, which was held on August 10, 1994, the parties agreed to proposed stipulations on Issues 1, 2, 9, 11, and 13. The parties further agreed that "[u]pon stipulating Issue 13 ... the tariffing requirement for DSO level interconnection may be addressed by the parties under Issues 3, 16, and 17." (Prehearing Order, at P. 64) At the commencement of the hearing of this matter on August 22, 1994, the Commission approved each of the proposed stipulations of the parties without amendment. (TR. 17)

A total of sixteen parties intervened in this docket (either before or after consolidation) and participated in the hearing.[1] During the hearing, direct and rebuttal testimony was presented by two Southern Bell witnesses. David B. Denton, Director, Regulatory Policy and Planning Department, presented testimony regarding the expanded interconnection issues. Jerry D. Hendrix, Manager, Regulatory and External Affairs, presented testimony on the local transport restructure issues. Direct testimony was also offered by witnesses for Intermedia, ALLTEL, AT&T, GTE, IAC, Sprint, Teleport

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[1] BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell"); Intermedia Communications of Florida, Inc. ("Intermedia" or "ICI"); Alltel Florida Inc. ("ALLTEL"); AT&T Communications of the Southern States ("AT&T"); Florida Cable Television Association Inc. ("FCTA"); GTE Florida Incorporated ("GTE" or "GTEFL"); Interexchange Access Coalition ("IAC"); MCI Telecommunications Corporation ("MCI"); Northeast Florida Telephone Company, Inc. ("Northeast"); Quincy Telephone Company ("Quincy"); Sprint Communications Company Limited Partnership ("Sprint"); Teleport Communications Group, Inc. ("Teleport"); Time Warner AxS of Florida, L.P. ("Time Warner"); United Telephone Company of Florida ("United"); Central Telephone of Florida ("Centel"); Citizens of the State of Florida ("Public Counsel").

and United/Centel.[2] AT&T, GTE, IAC, Sprint and Teleport presented rebuttal testimony through the same witnesses. FCTA also offered rebuttal testimony.[3] The hearing produced a transcript of 1,040 pages and 55 exhibits.

After the conclusion of the hearing, on September 7, 1994, the Commission entered an order entitled, "Order Staying Order No. PSC-94-0285-FOF-TP" (Order No. PSC-94-1102-FOF-TP). In this order, the Commission stated the following:

> On July 14, 1994, the FCC adopted an order modifying its policy so that it is consistent with the Bell Atlantic decision. (Order No. FCC 94-190) The FCC required the LECs to provide expanded interconnection through virtual collocation unless the LEC chooses to offer physical collocation. If the LEC chooses to offer physical collocation, it is then exempted from the mandate to provide virtual collocation. However, once the physical space has been exhausted, the LEC then must offer virtual collocation.
>
> The decisions in Phases I and II should be consistent. In addition, the parties and staff need time to analyze the Bell Atlantic decision as well as the policy implications of the FCC's July 14th order. Since the effects of these changes will be addressed in Phase II, we shall stay the Phase I Order until a decision has been made in Phase II.

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[2] Testimony was also filed on behalf of Northeast/Quincy, but this testimony was withdrawn at the time of the hearing. (TR. 18)

[3] Due to the affect of the previously mentioned Order by the United States Court of Appeals for the District of Columbia vacating the FCC's expanded interconnection order, the Prehearing Officer entered an order on June 23, 1994, which allowed the parties to supplement their direct and rebuttal testimony if they chose to modify their positions as the result of that Order. (Order No. PSC-94-0777-PCO-TP) Supplemental direct testimony was filed by Southern Bell witness David Denton as well as by the witnesses for United/Centel, GTE, Teleport, AT&T and ALLTEL. No party filed supplemental rebuttal testimony.

> Accordingly, all outstanding motions for the Phase I Order shall be held in abeyance until a decision has been made in Phase II.

(Order, at p. 3)

This brief is submitted in accordance with the post-hearing procedures of Rule 25-22.056, Florida Administrative Code. In any instance in which Southern Bell's positions on several different issues are similar or redundant, the discussions of these issues have been combined or cross-referenced rather than repeated. For the sake of continuity, Southern Bell has listed all issues in this docket in numerical sequence. In each instance in which there is an approved stipulation on a given issue, Southern Bell has listed the stipulated answer to the identified issue immediately after the statement of the issue. As to every other issue, the statement of the issue is immediately followed by a summary of Southern Bell's position on that issue and a discussion of the basis for that position. Each summary of Southern Bell's position is labeled accordingly and marked by an asterisk. Each statement of the stipulation on a given issue is also labeled accordingly and is marked by two asterisks.

ISSUE NO. 1:c How is switched access provisioned and priced today?

STIPULATED POSITION: Switched access service uses a local exchange company's switching facilities to provide a communications pathway between an interexchange company's terminal location and an end user's premises. Switched access is provisioned under a feature group arrangement. There are four feature groups: FGA, FGB, FGC, and FGD. These categories are distinguished by their technical characteristics, e.g. the connection to the central office is line side or trunk side. Rate elements differ by name according to the respective local exchange company. Rate elements typically include local switching, carrier common line, local transport, and carrier access capacity. Rate elements are currently priced under the equal charge rule. This means that each unit is priced the same as the next unit for a given rate element. Rates and charges include recurring, nonrecurring, and usage.

ISSUE NO. 2: How is local transport structured and priced today?

STIPULATED POSITION: Local transport, as mentioned in Issue 1, is one of the switched access rate elements. Local transport is currently priced on a usage sensitive basis. The rate is applied on a per minute of use basis. Regardless of distance all transport minutes of use are assessed the same rate per minute of use.

ISSUE NO. 3: Under what circumstances should the Commission impose the same or different forms and conditions of expanded interconnection than the F.C.C.?

SOUTHERN BELL'S POSITION: This Commission has the authority to order different forms and conditions than those ordered by the FCC. Southern Bell believes, however, that the terms and conditions approved by the FCC for expanded interconnection for switched access should be approved by this Commission as well. Specifically, this Commission should order that virtual collocation, checker boarding, and DSO level interconnection be handled in the same way as ordered by the FCC.

All parties appear to be in basic agreement that the forms and conditions for expanded interconnection ordered by the FCC are acceptable for intrastate interconnection as well. This agreement is logical given the potential problems that would arise if the conditions of interstate and intrastate interconnection differed. As Southern Bell's witness, David Denton testified, any substantial departure from the FCC's order will make expanded interconnection

more difficult and expensive for providers to administer. "Further, the administrative problems that would be caused by vastly different expanded interconnection structures for intrastate and interstate services could hinder the development of services and limit the development of competitive alternatives." (TR. 360)

There are, however, three specific aspects of expanded interconnection for which either certain parties have requested this Commission to deviate from the FCC's order, or for which this Commission did, in fact, deviate in its Phase I Order. These are (1) the appropriate standard for virtual collocation, (2) checker boarding, and (3) DSO level interconnection. Southern Bell urges this Commission to enter an order in Phase II that is consistent with the FCC on each of these issues, and to modify the Phase I Order so that it is consistent with both Phase II and with the FCC's order.

As this Commission acknowledged in Order No. PSC-94-1102-FOF-TP, the FCC has now mandated virtual collocation in all except those instances where the LEC offers physical collocation instead. Southern Bell urges this Commission to adopt the same standard.[4] Most of the parties would appear to agree with this position. However, one of the parties to this docket, Teleport, has taken the position that virtual collocation must be offered in a way that is "technically and economically" comparable to physical collocation. (TR. 727) Teleport's witness acknowledged on cross examination

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[4] The reasons that this Commission should adopt the FCC's approach are discussed in greater detail below in response to Issue No. 8.

that Teleport made this precise same argument before the FCC, and the FCC rejected it. (TR. 736) In so doing, the FCC stated the following:

> At one extreme, we could adopt the CAPs' proposal to require virtual collocation offerings to be technically and economically comparable to physical collocation, from the perspective of the interconnector. In our view, this standard would impose burdens on the LECs that are unnecessary to protect interconnector's interests, and in some cases may be unenforceable. Moreover, a court applying the Bell Atlantic v. FCC decision could construe mandatory virtual collocation under this standard to be an unauthorized taking of property, because this standard would appear to impose requirements that, in practice, are equivalent to mandatory physical collocation.

(In the matter of Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order, CC Docket 91-141, issued July 25, 1994) Instead of accepting the proposal Teleport now urges this Commission to adopt, the FCC required the LECs to "install, maintain, and repair" equipment belonging to interconnectors according to the same standards (as to both time intervals and failure rates) that apply to comparable LEC equipment not dedicated to interconnectors. (FCC Order, at par. 44) Put simply, Teleport urged the FCC to require LECs to take better care of interconnector's equipment than of their own. The FCC rejected this argument, and instead made the common sense determination that LECs should only be required to maintain interconnector's equipment according to the same standards they use for their own equipment.

The reasons that the FCC reached this decision are compelling, and should be followed by this Commission.

First, the FCC stated its view that, if physical collocation is an unconstitutional taking, then a virtual collocation standard that is equivalent to physical collocation would be unconstitutional as well. While Southern Bell will not argue the merits of this legal issue now, suffice to say that the FCC's concerns are well taken. Southern Bell believes that this Commission should not test the limits of the intrusiveness with which virtual collocation can be ordered before it, too, becomes unconstitutional.

Second, the FCC specifically found that requiring LECs to maintain interconnector's equipment according to higher standards than its own would be "unnecessarily burdensome". It is noteworthy that Teleport's witness, Mr. Andreassi, had no opinion whatsoever on whether this requirement was, in fact, unnecessarily burdensome. (TR. 740)

Third, there is a compelling need for consistency between interstate and intrastate requirements. Mr. Andreassi did, of course, state in response to a question by Commissioner Clark that Teleport would be willing to pay for any mandated higher standard of repair and maintenance of their equipment. (TR. 738) While this certainly seems like a reasonable proposal regarding compensation, it does nothing to address the administrative problems that would arise from this approach. As numerous parties noted in this proceeding, the facilities utilized by

interconnectors to carry intrastate and interstate traffic are generally the same.[5] Therefore, any difference in standards between the interstate and intrastate jurisdiction have an obvious potential to cause extreme administrative problems. While Teleport would appear to acknowledge the need for consistency in some contexts,[6] it is nevertheless, advocating that this Commission order that LECs maintain interconnectors' equipment according to higher standards than the FCC has required for the same equipment. Instead, Southern Bell submits that this Commission should adopt the same standards for virtual collocation as did the FCC in order to avoid the extreme administrative burdens that would result from having two different standards applied to the same equipment.

In the Phase I Order, this Commission stated that expanded interconnection for special access would be imposed to include provisions for expansion in the form of "checker boarding". Specifically, the Commission stated the following:

> Intermedia was the only party that discussed the expansion of existing space. Even so, we agree that there needs to be a provision to ensure that expansion needs can be reasonably met. Thus, we find that the LEC shall provide a checker board type of arrangement for physical and virtual collocation, if sufficient space is available.

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[5] For an example, please refer to the testimony of United/Centel's witness, Ben Poag, TR. 784.

[6] Mr. Andreassi stated in his direct testimony the following: "These same rate elements apply whether the AAV is interconnecting with the LEC to provide interstate or intrastate services. This makes sense since the same LEC facilities are used for both interstate and intrastate services". (TR. 715)

(Phase I Order, p. 20) It is true that Intermedia was the only party to provide testimony on this point in Phase I. Partially for this reason, Southern Bell filed a motion for reconsideration in which it noted that, given the scant consideration given to this issue, the Commission should hear more testimony on it in Phase II. (Motion for Reconsideration, filed March 25, 1994)

In Phase II, Southern Bell was the only party to address checker boarding in its testimony. Southern Bell's witness, David Denton, noted that it opposes checker boarding for two reasons. (TR. 368) First, there is an inconsistency between the Commission's Phase I provisions for warehousing and the provisions for checker boarding. The Phase I Order made specific provisions to prevent parties from warehousing in a way that will take up all the available space in central offices by allowing LECs to require interconnectors to use space within sixty days or risk forfeiting the space and their application fee. (Phase I Order, p. 19) Checker boarding, however, would appear to give any collocator that does utilize space the opportunity to reserve an equal amount of space without paying an additional application fee and without being subject to the restrictions that would prevent warehousing if it were not already using other space.

Second, Mr. Denton noted, once again, that there is an obvious difficulty that arises from the fact that the FCC did not require checker boarding while this Commission did. "There is an obvious inconsistency in allowing "checker boarding" for collocation of intrastate services but not for interstate. This inconsistency

will unquestionably make the administration of expanded interconnection more difficult and costly." (TR. 368)

Finally, Southern Bell urges this Commission to deal with DSO level interconnection as did the FCC. In Phase I, Southern Bell took the position that DSO interconnection should not be ordered, but rather handled on a central office by central office basis. In Mr. Denton's direct testimony, he states the reasons that Southern Bell maintained in Phase I, and continues now to maintain, this position. Essentially, Southern Bell believes that because central office space is limited, DSO level interconnection should not be ordered because bringing non-fiber cable into a central office for interconnection purposes will require an inordinate amount of space. (TR. 369) Mr. Denton also testified that "Southern Bell is in the process of modernizing its network and deploying fiber optic technology. Expanded interconnection offerings should be compatible with these technological developments. Expanded interconnection should be used as a means to promote network innovation." (TR. 369) At the same time, Mr. Denton stated that if there is a tariffing requirement, this Commission should address DSO level interconnection in the same way as did the FCC. "Specifically, LECs should not be required to file tariffs for DSO interconnection until it has been requested". (TR. 370)

In his rebuttal testimony, Mr. Andreassi stated on behalf of Teleport that the LECs were "confused" as to what specifically was

being requested.[7] (TR. 1014) At the time of the hearing, Mr. Andreassi clarified Teleport's position further. He affirmed that it was not the intention of Teleport to bring non-fiber optic cable into a central office. Specifically, the following exchange occurred:

> Q. Could you please explain what you mean when you refer to DSO level interconnection?
>
> A. DSO level interconnection is simply deriving a DSO circuit for cross connect and the LEC. I think there was some confusion in my testimony that we were proposing to bring copper facilities into the central office. TCG will only bring fiber optics into the central office. It really comes down to a multiplexing question. If we cannot derive a DSO cross connect, that means that if a customer of ours would like to get a DSO service, they will have to buy DSO and that will have to be muxed up to a DS1 and cross connected to TCG's collocation facilities. We would like to be able to have the direct DSO cross connect on to our multiplexer.
>
> Q. So in other words what you're saying is you would bring fiber into the central office, but you want to be able to cross connect with LEC facilities at the DSO level?
>
> A. That is correct.

(TR. 733-34)

Mr. Andreassi was then asked whether Southern Bell's suggestion that there would be no tariffing unless and until it was requested would be acceptable to Teleport. First of all, Mr.

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[7] Other than Southern Bell and Teleport, no other parties addressed specifically the issue of DSO level interconnection.

Andreassi admitted that he did not know whether Teleport would even require a substantial volume of DSO level interconnection (TR. 735) Then, after extensive colloquy, Mr. Andreassi finally stated that Southern Bell's proposal would be acceptable to Teleport provided that "... once it's tariffed, after a request, that that tariff is applicable to all central offices ...." (TR. 736)

Thus, by the conclusion of the hearing, Southern Bell and Teleport appeared to have found a common ground that will accommodate both of their positions. Southern Bell does not object to requiring DSO level cross connection, provided that interconnectors are not allowed to bring non-fiber cable into the central offices. Teleport does not object to Southern Bell's filing a tariff only after there is a request for DSO level interconnection, provided that upon such a request a tariff would be filed that would apply to the entire state. This approach is acceptable to Southern Bell. Accordingly, Southern Bell requests that the Commission enter as part of the Phase II Order, a ruling that would incorporate the foregoing as to DSO level interconnection, and that this Commission further modify the Phase I Order to include the same provisions.

ISSUE NO. 4: Is expanded interconnection for switched access in the public interest?

SOUTHERN BELL'S POSITION: Assuming that an increase in customer options for telecommunications services is in the public interest, than allowing expanded interconnection for intrastate switched access service may be in the public interest. This Commission, however, must provide the LECs with sufficient pricing flexibility to compete for the provision of access services (1) so that the significant contribution provided by access services will not be lost, and (2), to ensure that end users will not be denied the full benefits of competition.

The question of whether interconnection for switched access is in the public interest has been answered by the parties in much the same way as it was answered as to special access in Phase I. All parties, at least in general, conceptual terms, appear to agree that interconnection will serve the public interest. As might be expected, those parties that will benefit most from interconnection, the potential interconnectors, are unqualified in their support for interconnection and in their conviction that the public will be well served by it. The local exchange companies, on the other hand, are uniform in cautioning that they will be harmed, and that there will be a resulting harm to Florida ratepayers, if interconnection is ordered in a way that hampers or precludes their ability to compete for the newly interconnected services.

In Phase I of this docket, this Commission, despite the observation that the revenue impact on LECs from special access

interconnection was relatively small,[8] did order pricing flexibility. In doing so, this Commission quoted the FCC in its rationale for similarly granting pricing flexibility:

> ... [T]he FCC noted that certain LEC services are subject to much greater competitive pressure than others, and that excessive constraints on LEC pricing and rate structure flexibility will deprive customers of the benefits of competition and give the new entrants false signals.

(Phase I Order, p. 22) This rationale applies equally to switched access interconnection, the only difference being that the potential detriment that will result if pricing flexibility is denied in Phase II is so much greater because the amount of revenue

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[8] The Order went on to state the following conclusion as to the potential revenue impact of interconnection on LECs' switched access services:

> We find that Phase I intrastate expanded interconnection should have no substantial impact on residential rates. Although the LECs could potentially lose revenues from competition for special access and private line, and end users may migrate from switched to special access, the amount of LEC revenues at risk appears to be relatively small. While it does appear that expanded interconnection for switched access might have significant effects on LEC's revenues and place pressure on local rates, that matter is not before us and will be addressed in Phase II of this proceeding.

(Phase I Order, at pp. 4-5)

involved is greater[9], as is the corresponding danger of the loss of contribution. As Southern Bell's witness, David Denton testified, "switched access services ... provide significant contribution. Expanded interconnection for switched access service will put these contributions levels in jeopardy". (TR. 361) Mr. Denton then went on to state that the Commission should "provide the LECs with flexibility necessary to compete for the provision of access services" because "without flexibility there is the potential that the public interest may not be well served". (TR. 361) In other words, unless the LECs are given the flexibility to compete, there is the very real potential for a massive loss of revenue, and a corresponding loss of contribution, which may well have an adverse effect on residential ratepayers. (TR. 363) Therefore, this Commission should do as it did in Phase I, and grant pricing flexibility to the LECs to ensure that expanded interconnection will be implemented in a way that will serve the public.

Further, if the LECs are not granted pricing flexibility, there is also the very real possibility that users of access services will be denied the benefits that would other otherwise flow from expanded interconnection and the concomitant increase in competition. As Mr. Denton explained,

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[9] Although most LECs did not file testimony to specifically quantify the amount of revenue attributable to switched access services, United/Centel did. Specifically, F. Ben Poag stated in his direct testimony that approximately 44 to 45% of United's total revenues are attributable to interstate and intrastate special and switched access services, and that approximately 50% of Centel's total revenues are attributable to access services. (TR. 790)

> At the same time expanded interconnection is allowed, the LECs should be allowed the pricing flexibility to fully compete to ensure that subscribers are able to obtain their service from the most efficient competitor. Without this flexibility, an inefficient alternative provider could under price the more efficient LEC. This would deny the end user the benefits that would arise from competition and the attendant ability to purchase access services from the most efficient provider.

(TR. 362)

Therefore, if the local exchange companies are not allowed the flexibility to price compete, then not only is there a potential detriment to the public as the result of loss of contribution from access services, but there is also the very real potential that expanded interconnection will not confer any benefit for those who purchase the interconnected services.

ISSUE NO. 5: Is the offering of dedicated and switched services between non-affiliated entities by non-LECs in the public interest?

SOUTHERN BELL'S POSITION: For the reasons stated previously in response to Issue No. 4, the public interest may be served by the offering of dedicated and switched services between non-affiliated entities. However, the public interest will only be served if the LECs are granted additional pricing flexibility.

Pricing flexibility is of crucial importance in determining whether expanding the services that may be offered by non-LECs will the serve the public. As with expanded interconnection in general, all parties appear to agree that if non-LECs are allowed to offer dedicated and switched service between non affiliated entities, then this will obviously allow users of these services more competitive alternatives to meet their service needs. Assuming, as this Commission has in the past, that an increase in competitive

alternatives will serve the public, then allowing more competitors to offer these services will serve the public interest.

At the same time, however, it is equally obvious that if LEC competitors are allowed to expand the scope of the services they offer while the LECs are constrained from competing with them, then there is a very real danger of a detrimental impact upon ratepayers. The analysis that leads to this conclusion is precisely the same as that set forth above in regard to Issue No. 4. If non-LECs are allowed to offer services that have traditionally been offered only by LECs, then LECs must be allowed to compete for the provisions of these services. Otherwise, competition will be of benefit only to the new competitors. Without full competition by all competitors, which is only possible if LECs are granted pricing flexibility, then the end users of these competitive services will not obtain the full benefits of competition. There is also the very real danger of a substantial loss of contribution and a resulting adverse impact upon residential ratepayers.

ISSUE NO. 6: Does Chapter 364 Florida Statutes allow the Commission to require expanded interconnection for switched access?

SOUTHERN BELL'S POSITION: There is nothing in Chapter 364, Florida Statutes, that prohibits this Commission from ordering expanded interconnection for switched access. Expanded interconnection, however, cannot be used as a means to do something that would otherwise be prohibited by Chapter 364, such as the provision of any portion of switched access service by an alternate access vendor.

Chapter 364 makes no mention whatsoever of expanded interconnection. Therefore, Southern Bell believes that expanded interconnection for switched access is permissible under the

statute. At the same time, common sense dictates that expanded interconnection cannot be utilized as a way to do something that is prohibited by the statute. Southern Bell initially limited its statement on this position to simply this because it anticipated that if expanded interconnection were approved, and entities subsequently misused it as a means to violate Chapter 364, than this violation could appropriately be addressed through the complaint process.

During this proceeding, however, both Intermedia and Teleport have stated their beliefs that Chapter 364 allows AAVs to interconnect for switched access purpose. Southern Bell believes that this view is simply unsupportable, and, therefore, addresses herein specifically the proper scope of the authority of alternate access vendors to provide telecommunications services in Florida.

Section 364.337(3)(a), Florida Statutes, defines the services that can be provided by an alternate access vendor very specifically as follows:

> For the purposes of this section, 'alternate access vendor services' means the provision of private line service between the entity and its facilities at another location or dedicated access service between an end user and an interexchange carrier by other than a local exchange telecommunications company, ...

Again, each of the two AAVs that participated in this docket appear to believe that they are authorized under Section 364.337 to provide all or part of switched access. Both are wrong. Intermedia has taken the position that this is a purely legal issue. Consequently, it filed no testimony on this point. Its

counsel did state in his opening, however, that local transport services are "clearly not switched services; they're point to point dedicated transport; they meet the statutory definition of private line and they're allowed." (TR. 21)

Likewise, Specifically, Teleport's witness, Mr. Andreassi stated the following on cross-examination:

> Q. Does Teleport contend that under Chapter 364 alternate access vendors are allowed to interconnect for switched access purposes?
>
> A. ... [U]nder Chapter 364 Teleport is allowed to provide that dedicated facilities that carries local transport. And I want to make the distinction, we view it as a private line, technically and economically equivalent to private. So we are not offering a switched service.
>
> Q. So it's your position then that if the telecommunications path carries switched traffic, that [sic] your piece of it is dedicated, then that's not carrying a switched service.
>
> A. It is carrying switched minutes, but it is not performing a switched service. That path between the LECs central office and the IXCs POP is a essentially a dedicated facility.
>
> Q. ... [I]t's Teleport's position that you can carry switched traffic as long as you don't do the switching yourself? Is that the bottom line?
>
> A. It is our position that we can provide the local transport portion of switched access, yes.

(TR. 743-44)

Southern Bell vehemently disagrees with this interpretation of Chapter 364. Again, Section 364.337(3)(a) provides specifically that the AAV may provide only dedicated access service between an end user and an interexchange carrier. This statutory provision has been previously interpreted by this Commission to mean what it clearly implies, that alternate access vendors cannot provide switched services. In Docket No. 890183-TL, In re: Generic Investigation into the Operations of Alternate Access Vendors, issued August 2, 1991, this Commission undertook to define the scope of what could be offered by alternate access vendors, particularly in light of the, then, recently enacted provisions to Chapter 364. In its order, this Commission first observed that "[t]here is agreement among the parties that AAVs are not authorized to offer switched services." (Order, at p. 19) After a discussion of precisely what constitutes switched services, the Commission concluded in the order by stating that the "use of central office type circuit switches and instantaneous circuit routing devices similar to packet switches is prohibited by Chapter 364, Florida Statutes. (Order, at p. 20)

Thus, the salient features of the access service that alternate access vendors were authorized to provide is (1) it must go from an end user to an IXC and (2) it must be entirely dedicated, i.e., there can be no switching. In contrast, switched access services involves three primary elements: (1) the carrier common line, which goes from an end user to a LEC central office; (2) local switching, which occurs at the central office; and (3)

local transport, which goes from the central office or serving wire center to the IXC. Thus, switched access service only entails switching in one of the three elements that provide the telecommunication path from the end user to the IXC.

Obviously, when Mr. Andreassi contends that Teleport can offer local transport because that particular piece of the switched access service does not involve switching, he is clearly advocating a substantial expansion of the scope of what AAVs have historically been able to do. The difficulty with this argument is that it cannot be aligned with the plain language of Section 364.337.

A fundamental premise of statutory construction is that "when the language of the statute is clear and unambiguous", then the statute "must be given its plain and obvious meaning". Streeter v. Sullivan, 509 So.2d 268, 271 (Fla. 1987). It is equally well established that statutory language will be given an interpretation that is reasonable. Caravan v. State, 515 So.2d 161 (Fla. 1987); Johnson v. Presbyterian Homes of Synod of Florida, Inc., 239 So.2d 256. The reason for this rule is that an interpreting tribunal must not assume that the legislature intended the statute to be absurd or non-sensical. Ferre v. State ex. rel. Reno, 418 So.2d 1077 (Fla. 3rd DCA 1985). In other words, to interpret a statute one should assume that the legislature meant what the statute says.

Southern Bell submits that the plain language of above-quoted statutory provision cannot reasonably be construed to mean that an AAV can carry switched traffic. Again, Teleport contends that even though its statutory authority is limited to providing dedicated

access services, it can carry switched traffic (and thereby provide a portion of switched access services) as long as it does not actually do the switching, but instead interconnects with the LEC and utilizes the LEC's switching ability.

If, however, this is what the legislature intended when it drafted § 364.337, than surely it would have simply said so. It would have been easy enough for the legislature to provide that an AAV cannot provide switching, but that it can provide any non-switched part of any access service, including switched access. Instead, the legislature chose to specifically limit alternate access vendor services to the provision of dedicated access (not a dedicated piece of switched access), and to further provide that this dedicated service is to be all the way from the end user to the IXC. Given this, any argument that an alternate access vendor can utilize expanded interconnection as a means to carry switched traffic under the language of § 364.337 is clearly untenable and must be rejected.

ISSUE NO. 7: Does a physical collocation mandate raise federal or state constitutional questions about the taking or confiscation of LEC property?

SOUTHERN BELL'S POSITION: Yes. The United States Circuit Court of Appeals for the District of Columbia ruled that a mandate of physical collocation constitutes an unlawful taking of LEC property and vacated the FCC's mandate of physical collocation. Therefore, this Commission cannot properly mandate physical collocation for intrastate services.

A mandatory order of physical collocation is constitutionally impermissible because it involves the taking of LEC property by this Commission, which has not been delegated the taking power.

Southern Bell believes this result is clearly established by the order entered on June 10, 1994 by the United States Court of Appeals for the District of Columbia Circuit in Bell Atlantic v. Federal Communications Commission, (slip opinion, Case No. 92-1619). Before addressing the specifics of the Federal Court, however, it is necessary to review the manner in which this issue was addressed in Phase I of this docket.

In Phase I of this docket, Southern Bell argued that mandatory physical collocation is constitutionally impermissible on the basis of the United States Supreme Court in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982). This Commission rejected Southern Bell's position and entered on March 10, 1994 the Phase I Order, in which it found, among other things, that mandatory physical collocation is constitutionally permissible because it does not constitute a taking. (Order No. PSC-94-0285-FOF-TP) At the same time, the order acknowledged specifically that "the power to regulate in the public interest does not include the power to take private property", and that "the constitutional protection against unlawful takings extends to private property dedicated to the public use". (Order, at p. 9) The order also agreed with the assertion of GTEFL that "the authority to order connections between carriers does not include the authority to take property". (Order, at p. 9)

Thus, the order acknowledged expressly that this Commission lacks the power to take private property. The only remaining questions for the Commission was whether mandatory physical

collocation constitutes a taking. In this regard, the Commission observed that "it is our view that an objective reading of Loretto is that if there is permanent physical occupation there is a taking. This is the case regardless of the size of the occupation". (Order, at p. 7) Therefore, if Loretto applies, the involuntary physical occupation of a LEC's central office by a collocator constitutes a taking.

The Commission, however, ruled that mandatory physical collocation is permissible because Loretto does not establish the applicable standard. The FCC had, of course, previously made the same ruling, a fact that was expressly noted by this Commission as support for its view on this issue:

> ... [I]t appears that Loretto is not the appropriate standard to employ regarding the Commission's statutorily authorized regulation of a LEC's "used and useful" property. This is consistent with the determination made by the FCC. In addressing this matter at the Federal level, the FCC found that '[a]ny per se rule, including the Loretto per se rule, is not reasonably applicable to a regulation covering public utility property owned by an interstate common carrier subject to the specific jurisdiction of this agency'.

(Order, at p. 7)

On June 10, 1994, the United States Court of Appeals for the District of Columbia issued an order in the appeal of the FCC order on collocation. In this order, the appellate court overturned the determination of the FCC that mandatory physical collocation does not constitute a taking. The Court specifically stated the following:

> The Commission's decision to grant CAPs the right to exclusive use of a portion of the petitioners' central offices directly implicates the Just Compensation Clause of the Fifth Amendment, under which a 'permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve'. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426 (1982).

(Federal Court Order, at p. 7) Thus, the Federal Appeals Court specifically found that Loretto applies when a regulatory agency orders mandatory physical collocation, a conclusion that necessarily invalidates the decisions of both the FCC and this Commission to mandate physical collocation.

The Federal Court's opinion focused primarily upon whether the FCC had statutory authority to take property. The FCC had previously held that it had the power to order physical collocation under 47 U.S.C. § 201(a), which grants it the authority to order carriers "to establish physical connections with other carriers" (Federal Court Order, at p. 6) The Federal Court held that "the order of physical collocation, ... must fall unless any fair reading of § 201(a) would discern the requisite authority ..." to order this connection between carriers in a way that entails a taking. (Federal Court Order, at 9) The Federal Court further stated that, although the FCC's power to order connections is undoubtedly broad, it "does not supply a clear warrant to grant third parties a license to exclusive physical occupation of a section of the LEC's central offices." (Federal Court Order, at 9) The Court also noted that physical connection can be accomplished

by either virtual or physical collocation. Accordingly, "the Commission's decision to mandate physical co-location ... simply amounts to an allocation of property rights quite unrelated to the issue of 'physical connection'." (Federal Court Order, at 9) Thus, the Federal Court determined that the FCC had lacked authority to take LEC property by means of mandatory physical collocation.

The Federal Court concluded readily that the Loretto per se taking rule applies in the regulatory context. Therefore, again, Federal Court decision focused primarily upon the issue of whether the FCC had the statutory authority to effect such a taking. Our case is much simpler. This Commission has already acknowledged that it does not have the delegated authority to take private property. Instead, its decision in Phase I to order mandatory physical collocation was based solely upon the related conclusions that Loretto did not apply in this regulatory matter, and that, therefore, mandatory physical collocation is not a taking. On the basis of the Federal Appeals Court decision, however, it is now clear that Loretto does apply, and that under Loretto, mandatory physical collocation is a taking. It is equally clear that this Commission cannot order physical collocation because, as acknowledged in the Phase I Order, it lacks the authority to take (as opposed to regulate) LEC property.

ISSUE NO. 8: Should the Commission require physical and/or virtual collocation for switched access expanded interconnection?

SOUTHERN BELL'S POSITION: This Commission should not require either form of collocation. Instead, each LEC should have the option of providing either physical or virtual interconnection

arrangements. This can be accomplished by ordering collocation on the same terms as did the FCC on remand.

Southern Bell consistently has maintained throughout this docket that each LEC should be given the option of choosing to offer either physical or virtual collocation. This Commission, of course, rejected that argument in Phase I and mandated physical collocation. For the reasons set forth above in response to Issue No. 7, however, it is clear that mandated physical collocation is unconstitutional. As stated above, the FCC, in consideration of this fact, ordered on remand that all local exchange companies must offer virtual collocation. The exception is that a LEC may choose as an alternative to offer physical collocation. Thus, while making virtual collocation mandatory, the FCC has, in effect, given the LEC the option of choosing the form of collocation. Southern Bell believes that this Commission should do likewise for intrastate interconnection.

Southern Bell has previously stated the reasons that, from an administrative standpoint, it makes sense for all aspects of this Commission's order on collocation for intrastate purposes to be consistent with the FCC's. Again, interconnectors generally carry both interstate and intrastate traffic by way of the same facilities. Therefore, having one set of standards for interstate collocation and another for collocation for intrastate purposes will create substantial and burdensome administrative

difficulties.[10] Southern Bell believes that this Commission should avoid any possible problems of this sort by ordering interconnection in the same way as the FCC has, a way that allows the LECs to choose which form to offer.

ISSUE NO. 9: Which LECs should provide switched access expanded interconnection? c

STIPULATED POSITION: Only Tier 1 LECs (Southern Bell, GTEFL, United, and Centel) shall be required to offer switched access expanded interconnection.

If a non-Tier 1 LEC receives a bona fide request for expanded interconnection but the terms and conditions cannot be negotiated by the parties, the Commission shall review such a request on a case-by-case basis. If the parties agree on expanded interconnection, the terms and conditions shall be set by individual negotiation.

ISSUE NO. 10: From what LEC facilities should expanded interconnection for switched access be offered? Should expanded interconnection for switched access be required from all such facilities?

SOUTHERN BELL'S POSITION: The facilities that are offered for expanded interconnection for switched access should be consistent with those required by the FCC's order. For switched access, these facilities are end offices, serving wire centers and tandems switches.

In Phase I of this docket, this Commission ordered that expanded interconnection for intrastate purposes should be offered from the same facilities as those required by the FCC for interstate purposes. Southern Bell advocates that the same approach should be followed as to interconnection for switched access. First, Southern Bell notes again the general point that it makes the most sense to have consistency between the interstate and

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[10] See Southern Bell's response to Issue No. 3 for a more detailed discussion of problems that would arise from any inconsistency.

the intrastate jurisdictions as to collocation requirements. The FCC ordered that expanded interconnection should be offered by LECs at end offices, serving wire centers and tandem switches. (TR. 367)

Second, Mr. Denton provided in his direct testimony a more specific reason to follow the lead of the FCC on this point:

> The F.C.C. recognized in its order that the LECs should not be required to provide expanded interconnection at remote nodes or remote switches in host/remote arrangements, unless they serve as a rating point for switched transport and have the necessary space and technical capabilities. The LEC should not be required to build additional space to enhance these remote node/switches to accommodate expanded interconnection.

(TR. 367) For this reason, this Commission should order that expanded interconnection be offered from the same facilities as required by the FCC.[11]

ISSUE NO. 11: Which entities should be allowed expanded interconnection for switched access?

STIPULATED POSITION: Any entity shall be allowed to interconnect on an intrastate basis its own basic transmission facilities associated with terminating equipment and multiplexers except entities restricted pursuant to Commission rules, orders and statutes.

ISSUE NO. 12: Should collocators be required to allow LECs and other parties to interconnect with their networks?

POSITION: Yes. Reciprocity under the same terms and conditions as required for LECs should be part of any collocation ordered by

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[11] In response to this Issue, the Staff has advocated that expanded interconnection should initially be offered out of only those central offices that "are identified in the proposed tariffs in the interstate jurisdiction. Additional offices should be added within 90 days of a written request to the LEC by an interconnector". (Prehearing Order, at p. 35) Southern Bell has no objection to this approach.

this Commission. If reciprocity is not ordered then, in certain instances, end users may likely be denied the full benefits of interconnection.

Southern Bell has taken the position throughout both phases of this docket that interconnection should be implemented in a way that will pass the benefits of interconnection on to end users as fully and as quickly as possible. For this reason, Southern Bell has advocated pricing flexibility for the local exchange companies because it will allow consumers to begin to have the immediate benefits of full and fair competition. The Commission agreed with this position in Phase I, and, after noting the arguments advanced by Southern Bell and the FCC's rationale for approving pricing flexibility, approved pricing flexibility for intrastate purposes as well. (Phase I Order, pp. 21-22) For these same reasons, Southern Bell advocated reciprocal interconnection in Phase I.

Paradoxically, while allowing pricing flexibility in Phase I, this Commission declined to allow reciprocal interconnection. Although there was very little testimony regarding reciprocal interconnection offered in Phase I, the Phase I Order stated it would be "inappropriate in an asymmetrical market where the LECs are the dominant providers of local access services and the owner of the bottleneck facilities". (Phase I Order, pp. 17-18) The order also stated, however, that "symmetrical treatment might be appropriate in a more mature environment". (Phase I Order, p. 17) Finally, the Commission concluded that, for now, it would "simply encourage collocators to allow LECs and other parties to interconnect with their networks." (Id. p. 18)

Reciprocal interconnection was the subject of very little testimony in Phase I. More extensive testimony was offered, however, in Phase II. Southern Bell submits that on the basis of the testimony in Phase II, this Commission should mandate reciprocal collocation for all interconnectors. First, delaying reciprocal interconnection will simply delay giving to customers a full range of competitive options. As Southern Bell's witness, David Denton testified, "customers may be denied the full benefit from increased competition in the marketplace if reciprocity is not available to all telecommunications providers and their customers". (TR. 369)

Also, reciprocal collocation should be required because Southern Bell's early experience in this area suggests that, in the absence of a mandate, this Commission's encouragement may be insufficient to ensure that reciprocal collocation is made available on reasonable terms. Specifically Mr. Denton testified that "our experience demonstrates that ... [reciprocal collocation] ... should be required by this Commission because in a number of instances we, or our customers, have not been allowed to collocate on reasonable terms." (TR. 369)

In this proceeding, only two parties submitted testimony in opposition to interconnection, Teleport and AT&T. In his direct testimony, Steven Andreassi claimed that because alternate access vendors are not dominant competitors, "a competitor would be foolish to reject a collocation request and the associated revenues. The potential interconnector will simply move on to the

next provider." (TR. 721) Mr. Denton, however, exposed the fallacy of this argument in his rebuttal testimony when he pointed out that "the distinction between dominant and non-dominant carriers ... fails because the entity controlling the particular space desired by a collocator could use that position to its strategic advantage, no matter how large or small that entity may be. By denying reciprocal collocation at a given location, an AAV, for example, could deny the LEC's provision of services as a customer option, regardless of the AAV's relative market share." (TR. 929-30) Put a different way, a collocator who refuses to allow reciprocal collocation may be able to prevent a LEC from providing the best service to a given customer in a particular location. The number or type of facilities or type that the interconnector may have in other locations is simply irrelevant.

Moreover, even if Mr. Andreassi's point were valid, it essentially amounts to nothing more than the notion that there is no need to require reciprocal collocation because interconnectors (or presumably Teleport, at least) would be willing to allow collocation without such a requirement. This prompted the obvious question on cross examination of why Teleport would actively oppose a requirement with which it claims it has every intention of complying. (TR. 745-46) Mr. Andreassi responded with an extended answer that can be summarized as the contention that LECs have little to gain by collocating with alternate access vendors. (TR. 746) Finally, Mr. Andreassi addressed this point directly when the following exchange took place:

Q. So you would be willing to provide reciprocal collocation, but you don't want it to be ordered because you don't think we've got any purpose in being at your POP; is that what you're saying?

A. I don't see a market need for it, ... What I am saying is that I don't see a demand to provide switched access collocation at a TCG facility when in fact I cannot provide switched services. So to tariff that is to putting [sic] something in a tariff which is a burden on me for something I cannot yet provide. That's why I say shouldn't have to tariff it.

Q. Well, then would you be opposed if the Commission ordered you to provide reciprocal collocation and the order provided that it would be on comparable rates, terms and conditions, but you didn't have to file a tariff? Would that be okay with you?

A. If we were ordered by the Commission, I think that would be an acceptable standard, if -- on bona fide request for collocation at a facility, to do it at rates and terms and conditions that are comparable to what you have to provide it on, I think that's acceptable, yes.

(TR. 747-48)

As to this exchange, Southern Bell first notes that it is, to say the least, somewhat glib of Mr. Andreassi to take the position that reciprocal interconnection should not be ordered merely because Teleport does not see that there is any great benefit to it. Obviously, LECs should have the same option that interconnectors will have, which is to determine in the exercise of their sound business judgment whether interconnection makes sense for them in a given case.

This point aside, the position to which Mr. Andreassi migrated seems more to be that Teleport simply does not want to tariff something for which it believes there will be little demand. Southern Bell can certainly understand the rationale of this argument, since it is precisely the same position as the one advanced by Southern Bell in respect to DSO interconnection. (See Issue No. 3 above). Accordingly, if this Commission were to order reciprocal collocation, but provide that it would only be tariffed upon the receipt of a bona fide request, than this would certainly be acceptable to Southern Bell and, apparently, it would ease any administrative difficulty with which Teleport seems to be concerned.

Thus, paradoxically, the only party that appears to be adamantly opposed to reciprocal collocation is AT&T, hardly the sort of struggling competitor which presumably this Commission had in mind when denying reciprocal collocation in Phase I until a more "mature" environment evolves. At the same time, the adamant opposition of AT&T to reciprocal collocation makes perfect sense given the fact that AT&T is far and away the largest user of access services. Also, as Mr. Denton testified, interexchange carriers are "potentially the biggest interconnectors". (TR. 389)

In his testimony, Mr. Guedel summarized AT&T's position by stating the notion that "the purpose of expanded interconnection is to facilitate the entry of potential competitors into the existing monopoly preserves of the local exchange company". (TR. 141) In

other words, Mr. Guedel essentially sees expanded interconnection as being for the benefit of non-LEC competitors. (TR. 143-44)

Mr. Guedel also maintained that he believes that expanded interconnection should be ordered in a way that will ultimately benefit customers. (TR. 142) Mr. Guedel, however, conceded that in a particular situation in which a local exchange company needed to reciprocally collocate to best serve a customer, the inability to do so could well result in a detriment to the customer seeking service.[12] At the same time, Mr. Guedel also conceded that in the absence of a mandatory collocation requirement, any interconnector, including AT&T, would be free both to price reciprocal collocation prohibitively, and to refuse to offer it altogether:

> Q. And if this Commission doesn't order reciprocal collocation, then of course, you'll have the option of not allowing the LEC to collocate, or of pricing reciprocal collocation prohibitively; isn't that correct?

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[12] Q. ... in that particular arrangement, do you think the local exchange companies should [be] allowed to reciprocally interconnect so that they can give the best service possible to the customer?

A. I don't oppose reciprocal interconnection; I oppose mandatory reciprocal interconnection. If a LEC can work out a deal with an interconnector, that's fine.

Q. So then in that situation, basically the interconnector would control the situation though, depending on how they price the interconnection, what they charged, what the terms were, and maybe the customers would get the benefit of that and maybe they wouldn't, is that correct?

A. I think that is a possibility ....

(TR. 144-45)

A. If this Commission does not order mandatory collocation, we will not have to allow collocation.

(TR. 150-51)

Mr. Guedel went on to state that AT&T is "in the same position as a variety of the other competitors who are working the interexchange business today, [in that they] need to make a profit". (TR. 151) He then suggested, much as did Mr. Andreassi, that it would make sense for AT&T to allow reciprocal collocation as a source of revenue. Thus, Mr. Guedel believes that the profit motive will encourage interconnectors to offer reciprocal interconnection. Unlike Teleport, however, AT&T appears not to see this as something that will necessarily come about. Instead, AT&T appears to believe that interconnectors should be allowed to prohibit reciprocal interconnection, apparently even at the expense of customers because, in their view, collocation is intended solely to benefit non-LEC collocators.

AT&T's attitude in this regard is certainly consistent with Southern Bell's limited experience in attempting to reciprocally collocate with AT&T. In fact, Southern Bell approached AT&T about collocation in a particular instance, and this collocation did not occur. In that situation, a Southern Bell customer came to AT&T and asked for space to collocate Southern Bell equipment. AT&T quoted a price to the customer for this, and the customer then responded by electing another option for meeting its service needs. (TR. 146) Mr. Guedel conceded that because the customer was not able (or perhaps chose not to) take advantage of reciprocal

collocation, a potential means to meet his service needs was lost. (TR. 146-47) Mr. Guedel also stated that he was not "sure [that] price was the only consideration". (TR. 146) Neither did he appear to be able to rule out the possibility that price was a prohibitive factor in this case since he had no personal knowledge of why the customer ultimately chose not to collocate. (TR. 146)

At the same time, Mr. Guedel made clear that AT&T reserves the right to price reciprocal collocation as it sees fit in each instance, and that the pricing in the particular case that has occurred should not be taken as a precedent. (TR. 147) When asked specifically whether this (or any) price reciprocal collocation, would entail some element of profit, the following exchange took place:

> WITNESS GUEDEL: The only thing I feel fairly comfortable of, it's priced above its incremental cost. Beyond that, I don't know.
>
> COMMISSIONER CLARK: Let me ask you, if it's priced above its incremental costs, doesn't that mean there's a profit in there?
>
> WITNESS GUEDEL: It means there is a contribution, yes.
>
> COMMISSIONER CLARK: All right.

(TR. 149-50) Thus, Mr. Guedel did admit the obvious, that this or any reciprocal collocation will likely entail some component of what he prefers to call contribution.

Taking Mr. Guedel's testimony as a whole merely reinforces what he candidly stated at the outset, the position of AT&T that interconnection is primarily for the benefit of the interconnector. In AT&T's view, the interconnector should not be required to offer

reciprocal interconnection, even though, in the absence of this requirement, interconnectors are absolutely free to refuse reciprocal collocation and this refusal may damage particular end users. Southern Bell submits that expanded interconnection should not, as AT&T contends, merely be a means to increase the competitive opportunities for non-LECs. Instead, it should be implemented in the manner that will provide the maximum benefit to customers, and this includes requiring reciprocal interconnection under the same rates, terms and conditions as those required of the LECs.

ISSUE NO. 13: Should the Commission allow switched access expanded interconnection for non-fiber optic technology?

STIPULATED POSITION: Yes. The Commission shall allow expanded interconnection of non-fiber optic technology on a central office basis where facilities permit. The actual location of microwave technology shall be negotiated between the LEC and the interconnector.

ISSUE NO. 14: Should all switched access transport providers be required to file tariffs?

SOUTHERN BELL POSITION: The Commission should not require the local exchange companies and other transport providers to file tariffs as these decisions should be left to the transport provider. Although currently, federal and state statutes and rules require Southern Bell to file tariffs, once these rules are removed, Southern Bell should have the same pricing flexibility as is enjoyed by its competitors.

As Southern Bell stated in Phase I of this docket, an increase in the competition to provide any service to customers requires that the regulatory requirements for LECs and their competitors become more alike. The statutory provisions that impose a tariffing obligation on the part LECs is a good example of what must be changed so that comparable treatment will be afforded LECs

and their competitors. The fact that LECs are required to file tariffs while their competitors do not places the local exchange companies at a distinct disadvantage because it removes from the LECs one of the key ingredients for success in a competitive marketplace, flexibility to respond rapidly to new markets and new customers. The fact that Southern Bell's proposed tariff for the restructure of local transport services has been pending since September 22, 1993 (TR. 428) is ample evidence that a company required to file tariffs cannot respond and offer new services or prices rapidly.

This competitive imbalance should not continue indefinitely. Southern Bell believes that the best approach to the issue of whether to require tariffs for access services is not to require all to file tariffs, but to loosen over time the regulatory restraints on LECs, which would include the tariff requirements, so that in the access market, regulatory requirements would eventually be the same.

While Southern Bell is not advocating that it be relieved immediately of the obligation to file and have approved by the Commission its tariffs, it is advocating that the Commission remain open to considering future proposals for parity in tariff requirements, including but not limited to, presumptively valid access tariffs and access tariffs which allow pricing within a minimum and maximum range.

ISSUE NO. 15: Should the proposed LEC flexible pricing plans for private line and special access services be approved?

SOUTHERN BELL'S POSITION: Yes. Southern Bell has submitted a special access tariff that would implement a zone pricing structure (without initially changing rates) on the basis of wire center groupings rather than at averaged statewide rates. Having the structure in place will allow Southern Bell to respond quickly to competition as it develops. At the same time, no party has raised any legitimate basis to protest this tariff.

In the Phase I Order, this Commission approved pricing flexibility for private line and special access services. In so doing, the Commission quoted the FCC, as well as referring to testimony presented in Phase I, to the effect that,

> ... [c]ertain LEC services are subject to much greater competitive pressure than others, and ... excessive constraints on LEC pricing and rate structure flexibility will deprive customers of the benefits of competition and give the new entrants false signals. We believe the FCC's [above-stated] rationale is appropriate in this case because the same arguments have been presented here.

(Phase I Order, p. 22) The Commission therefore, determined that it would "permit density zone pricing whether or not competitive entry has occurred, once the zone pricing flexibility plans and tariffs have been approved." (Phase I Order, p. 22) The Commission, however, also stated it would "approve of the 'zone-pricing' concept for the LECs under the same general guidelines established by the FCC in Order No. 92-440, CC Docket No. 91-141. We believe that it is important to emphasize approval on a conceptual basis as opposed to any specific plan". (Order, at p. 21) The Commission then noted that no specific plan had been filed at the time of entry of the order, and, therefore, its consideration of zone pricing plans and tariffs "would be made on

an individual basis as was the case in the FCC's review of interstate filings". (Phase I Order, p. 21)

As set forth in the testimony of Southern Bell witness, David Denton, the plan that has been filed by Southern Bell provides a structure that is consistent with the Phase I Order and that will allow Southern Bell to price access services "on the basis of wire center groupings rather than at averaged statewide rates". (TR. 370) The tariff introduces the zone pricing structure, but initially will not change the rates. Having the structure in place is important because it will allow Southern Bell to respond quickly to competition.

Again, in Phase I the Commission approved pricing flexibility in concept and directed the parties to file plans that are consistent with the concepts expressed. Thus, a proper opposition to these plans should be limited only to the contention that the plan filed does not conform to the order itself. If a party takes issue with the rulings contained within the order, then its remedy would be a motion for reconsideration, not an attack upon specific plans filed that are consistent with the order. Although several parties to this docket have taken the opportunity to argue -- once again, in general conceptual terms -- their reasons for opposing pricing flexibility, no parties have filed testimony to challenge specifically the terms of Southern Bell's plan or to contend that it does not comply with the requirements of the Phase I Order.

Southern Bell's tariff for private line and special access should be approved because the concept of pricing flexibility for

these services was approved in Phase I, the tariff filed is consistent with this concept and no party has claimed that it is not consistent, or otherwise raised a legitimate basis for a protest of the tariff.

ISSUE NO. 16: Should the LECs' proposed intrastate private line and special access expanded interconnection tariffs be approved?

SOUTHERN BELL'S POSITION: Yes. Southern Bell's proposed intrastate expanded interconnection tariffs generally mirror the structure and rates that were originally filed with the FCC. This Commission should not order any changes to these tariffs. The FCC action, however, may require that interconnection be offered under terms different than those set forth in these tariffs.

In the order entered at the conclusion of Phase I, this Commission required the parties to file expanded interconnection tariffs according to the following standards:

> ORDERED that with the exception of the standards, terms and conditions adopted in this Order that are different that those adopted by the FCC, all Tier 1 LECs shall file expanded interconnection tariffs which shall, at a minimum, mirror the interstate tariffs filed with the FCC on January 1, 1994.

(Order No. PSC-94-0285-FOF-TP, at p. 36)

Subsequently, the Prehearing Officer entered on March 10, 1994 an order entitled, "Order Establishing Preliminary Issues and Addressing Other Procedural Matters", Order No. PSC-94-0277-PCO-TL. This order included the following clarifying footnote regarding Issue No. 16:

> This issue is being raised in order to follow through with the Commission's decision in Phase I of this Docket. In that decision, the Commission required the tariffs described in this issue to be filed and that they be handled through the normal tariff review process. Assuming that a protest is likely and that a hearing will be necessary regarding the specific provisions contained in these tariff filings, it would seem logical for the

> tariffs to be reviewed, and hearing mechanism provided, in Phase II of this proceeding.

(Order No. PSC-94-0277-PCO-TL, at p. 2, footnote 1)

Thus, this issue was included in this docket essentially to allow parties the ability to protest the tariffs if they chose to do so. With one exception, no party has elected to do so. The single exception is Teleport, which has raised two limited issues.

These issues relate to (1) interconnection at the DSO level, and (2) the provision that LECs be allowed to restrict warehousing by requiring interconnectors to utilize the space within thirty days of notification.

As to the first element, Teleport is correct in noting that the Phase I Order did require tariffing for interconnection at the DSO level. (TR. 722) Southern Bell has not provided tariff provisions for DSO level interconnection simply because this aspect of the Phase I Order is the subject of a motion for reconsideration by Southern Bell. Southern Bell believes that there are compelling reasons that a tariff should not be filed for a DSO level interconnection in the absence of a request by an interconnector. These reasons are fully briefed above in response to Issue No. 3. Suffice to say, however, that in the event that the Commission requires the filing of a tariff for DSO level interconnection, then Southern Bell will obviously comply with this requirement.

Teleport also states that Southern Bell has varied from the terms of the Phase I Order by filing a tariff that states that the interconnector must place equipment within 30 days. To the extent that this varies from the requirements of the Phase I Order (as it

may be modified at the conclusion of this proceeding), Southern Bell will modify this provision if, in fact, a physical collocation tariff remains on file.

Teleport also contends that it is unreasonable to allow LECs to prevent interconnectors from warehousing space for longer than sixty days. The only reason noted in support of this, however, is simply a misapprehension of the terms of the Phase I Order. Specifically, Teleport states that the sixty-day requirement will allow LECs "to force interconnectors to order connections, thus triggering pricing flexibility". (TR. 722) Again, Teleport appears to have simply misunderstood the provisions of the Phase I Order. In this regard, Southern Bell witness, David Denton, stated in his rebuttal testimony the following:

> Mr. Andreassi has confused the FCC's order concerning how pricing flexibility is 'triggered' for interstate special access services with what was ordered by this Commission. In the Order issued March 10, 1994, this Commission granted the LECs 'zone-pricing' flexibility and ordered the LECs to file plans and accompanying tariff proposals. Thus, pending Commission approval of their tariff proposals, the LECs already have pricing flexibility. There is no reason for the LEC to force an interconnector to order collocation prematurely in order to gain pricing flexibility.

(TR. 932-33)

Thus, given a correct reading of the order, there is nothing to support the contention that the sixty day limitation of warehousing is unreasonable. Accordingly, Southern Bell's tariff should be approved.

At the same time, Southern Bell notes that while nothing has been raised in this proceeding to serve as the basis for this Commission to reject the tariffs, recent actions by the FCC may dictate that the tariffs under which expanded interconnection is ultimately offered will vary significantly from those currently on file. Specifically, the FCC required the parties to file modified tariffs that are consistent with the terms of its order on remand that was entered July 14, 1994. (TR. 376) As stated previously, this order also provided that parties may elect to provide either virtual or physical collocation. Accordingly, it would also be consistent with the FCC Order for parties simply to withdraw tariffs for interstate physical collocation. Thus, the interstate tariffs filed by the various parties may well be very different than those that currently exist.

At the same time, for the reasons set forth above in response to Issue No. 3, Southern Bell believes (as so do most other parties) that it is important for expanded interconnection to be offered in a manner that ensures consistency between the interstate and intrastate jurisdictions. Thus, while it is not possible to know the precise form that the interstate tariffs will ultimately take, Southern Bell believes generally that this Commission should remain open to modifying the intrastate tariffs to be consistent with any interstate tariffs later filed by the LECs and approved at the FCC.

ISSUE NO. 17: Should the LECs' proposed intrastate switched access interconnection tariffs be approved?

SOUTHERN BELL'S POSITION: Yes, the illustrative tariff filed by Southern Bell mirrors the interstate filing for the same services. Subject to any changes arising from this docket, Southern Bell should be allowed to file a final tariff and it should be approved.

Southern Bell filed an illustrative expanded interconnection for switched access tariff on March 31, 1994. The illustrative tariff mirrored the interstate tariff then in effect, which offered physical collocation as mandated by the FCC. (TR. 419) No party to this proceeding has raised any objection to Southern Bell's illustrative tariff and, therefore, Southern Bell should be allowed to file, if it wishes, the illustrative as final and the Commission should approve that tariff.

However, as stated previously, following the decision of the appellate court, the FCC issued an order on July 25, 1994, mandating virtual collocation in all instances except where the LEC offers physical collocation. Based upon the arguments set forth in response to Issues 3 and 8, supra, Southern Bell urges the Commission to adopt the same standard. If, in fact, the Commission does so, then new tariffs that reflect the virtual collocation mandate would have to be filed.

ISSUE NO. 18: Should the LECs be granted additional pricing flexibility? If so, what should it be?

SOUTHERN BELL'S POSITION: Yes. At a minimum, the Commission should allow the local exchange companies (LECs) to have the option of implementing zone pricing for transport services. The LEC should also be granted the flexibility to zone price other access services as well.

Again, it is important to note that, at the conclusion of that Phase I, this Commission ordered that the LECs should have pricing flexibility for services that compete with interconnectors. The

same result should pertain as to Phase II because, if anything, switched access interconnection will result in even greater competition.

Of the parties filing testimony on this point, only Intermedia appears to actively oppose the type of pricing flexibility that has already been granted by the FCC for interstate switched access services. Intermedia's witness, Douglas Metcalf (who is not employed by Intermedia) took position on this issue that may well be unique. Specifically, he stated the general premise that "the more competitive the flexibility that both the LECs and the AAVs have, the better - particularly as it relates to competing with VSAT and microwave vendors." (TR. 62) He also stated his personal opinion that LECs should be allowed increased pricing flexibility (presumably in the form of zone density pricing), at some future point. (TR. 62) Then, in the truly unique part of his testimony, he stated that the party for whom he was testifying, Intermedia, took a different position than he did. "I understand that ICI disagrees with my slant on this point, and has taken the opposite position in this docket". Mr. Metcalf further stated that "I understand their position and if I were ICI would probably say the same thing." (TR. 63) On cross examination, Mr. Metcalf, in effect, conceded that ICI view that LECs should not have pricing flexibility was largely the product of their attempting to further their own business interests:

> Q. Would you say that they are taking the position that they are simply to advance their own competitive interest[s]?

A. Well, I think they are in business and they would like very much to continue to secure a fair amount of our business. Our business being the large-users business.

(TR. 74) Thus, given the fact that ICI's witness even did not support their position, and given his concession regarding the reasons for taking that position, there seems to be little point in addressing it further.

At the same time, Southern Bell will address further the position of Mr. Metcalf, that additional flexibility is appropriate, but only at some later point. The following excerpt from the cross examination of Mr. Metcalf reveals the fallacy in his position:

Q. If the AAV is the most efficient competitor, that is, if they have lower cost, then they are going to be able to price lower than the LEC, regardless of how much pricing flexibility the LEC has; isn't that correct?

A. Maybe on that specific service, yes.

(TR. 75)

. . . .

Q. Okay. Now, let me ask the question from the opposite direction. Same hypothetical, but let's assume that the LEC has lower cost, okay. Let's also assume that the LEC is not granted pricing flexibility so that it can't lower its prices down to its cost. The end user is going to pay a higher price in that situation than if the LEC could lower its price down to its costs; isn't that true?

A. Yes, sir.

(TR. 76) Thus, Mr. Metcalf concedes that if an alternate access vendor is truly the more efficient competitor, then it will be able to successfully compete with the LEC despite the degree of the LEC's pricing flexibility. At the same time, if the LEC is the more efficient competitor, not granting the LEC pricing flexibility will simply cause the end user (who should always be the ultimate beneficiary of competition) to pay a higher price. Thus, Southern Bell submits, just as it did in Phase I of this docket, that the appropriate course is to grant pricing flexibility now so that end users can immediately begin to have the best price from the most efficient competitor.

Mr. Metcalf's response to the above is the contention that current market is not competitive because the LEC is "bundling" access services in ways with which the AAVs cannot compete. Although Mr. Metcalf makes various general statements as to what he means by this, perhaps the clearest statement of ICI's position (although not evidence), is set forth in its counsel's opening statement. He said the following:

> [R]ight now the LEC can combine voice, data, dedicated and switched over their pipelines. The only thing Intermedia can do is private line and special access, dedicated type services. That's only a small segment of the local market so there is no equal competition there at all.

(TR. 23)

First of all, Southern Bell must note that there is a sort of irony in Intermedia now premising its argument that there should be no pricing flexibility on the fact that LECs can offer some

services that AAVs cannot. This irony arises from the fact that the current scope of AAVs' ability to compete was premised, in large part, upon the AAVs' earlier arguments that they would be able to provide customers with services that LECs would not or could not offer. Specifically, this Commission found in Docket No. 890183-TL, In Re: Generic Investigation into the Operations of Alternate Access Vendors, Order No. 24877, issued August 2, 1991, (at page 9-10) the following:

> AAVs will be able to fill niche markets for services that the LECs either cannot or do not offer. Through their new types of technology and reliability, the AAVs will provide customers an alternative to the LECs for dedicated access services, in a wide range of capacities, ... AAVs will offer self-healing redundant networks to customers which may not be available from the LECs. In addition, AAVs, by virtue of their different routing from the LECs, will offer backup services to private line users.

The obvious fact is that LECs can offer customers some things that AAVs cannot, and vice versa. The fact that the manner in which the two conduct business is currently different is not a reason to prevent either from having the ability to effectively price compete for the provision of any given service. Moreover, even if Intermedia's position on this point were well taken, the fact that LECs can offer a "bundle" of services does nothing to rebut the compelling reasons for granting immediate pricing flexibility that have been discussed previously in response to Issue No. 3. As previously set forth, if the LECs are not allowed to price compete, then there will be a loss of contribution and a substantial prospect of resulting damage to the residential

ratepayers. Restricting competition by denying pricing flexibility will also limit the benefits of expanded interconnection that are passed on to the users of access services. The fact that LECs can offer some services that AAVs cannot, does nothing to change either of these compelling facts. For these reasons, the LECs should be granted additional pricing flexibility.

ISSUE NO. 19: Should the Commission modify its pricing and rate structure regarding switched access transport service?

a) With the implementation of switched expanded interconnection.

b) Without the implementation of switched expanded interconnection. c 000

SOUTHERN BELL'S POSITION[13]: Yes, the Commission should modify its pricing and rate structure policy regarding switched transport service, regardless of whether switched expanded interconnection is implemented. Further, switched expanded interconnection should not be implemented prior to the implementation of switched local transport restructure. The Commission's current policy is grounded in the single goal of fostering interexchange carrier competition. However, by pursuing this goal, the Commission has encouraged inefficient use of the local exchange company's public switched network. It is now appropriate to move to an interim structure and pricing plan adopted by the FCC, which will foster both access competition and interexchange carrier competition and will promote a more efficient use of the public switched network.

ISSUE NO. 20: If the Commission changes its policy on the pricing and rate structure of switched transport service, which of the following should the new policy be based on:

a) The intrastate pricing and rate structure of local transport should mirror each LEC's interstate filing, respectively.

b) The intrastate pricing and rate structure of local transport should be determined by competitive conditions in the transport market.

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[13] Southern Bell will present its arguments regarding Issues Nos. 19, 20 and 21 directly following the its position on Issue No. 21.

c) The intrastate pricing and rate structure of local transport should reflect the underlying cost based structure.

d) The intrastate pricing and rate structure of local transport should reflect other methods.

SOUTHERN BELL'S POSITION: If the Commission changes its policy on the pricing and rate structure of switched transport service, the new policy should be based on the competitive conditions in the marketplace and should mirror each LEC's interstate filing. A policy of mirroring the switched access transport service rate structure and pricing plan of the interstate jurisdiction will eliminate the inefficiencies of maintaining a different set of rates and structure, will lessen any impetus for misreporting percentage of interstate use and will eliminate confusion for our customers.

ISSUE NO. 21: Should the LECs proposed local transport restructure tariffs be approved? If not, what changes should be made to the tariffs?

SOUTHERN BELL'S POSITION: Yes, Southern Bell's proposed local transport restructure tariff should be approved. Southern Bell's proposed tariff, which mirrors the interstate tariff that has been in effect since December 30, 1993, will help achieve many goals. These include promoting efficiency, choice for customers, simplicity and the fostering of competition. The proposed tariff also more closely reflects the way transport services are provided and the way costs to the local exchange companies are incurred.

Although the need for a restructure of switched access local transport services is uncontested by any party to this proceeding, it is appropriate to provide a brief summary outlining the origin of the present and proposed structure. In 1982, the United States District Court for the District of Columbia adopted the Modification of Final Judgment in United States v. American Telephone and Telegraph Company, 552 F. Supp. 131 (1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983), (commonly known as the "MFJ"). The MFJ, in part, provided that "charges for delivery or receipt of traffic of the same type between end offices and facilities of interexchange carriers ("IXC") within an exchange

area ... be equal, per unit of traffic, delivered or received, for all IXCs." MFJ, at 233-234. The effect of this MFJ provision was to cause similarly situated IXCs to be charged the identical rate for each unit of traffic that was originated or terminated on the network of a Bell Operating Company ("BOC"). The objective of this requirement, commonly known as the "equal charge rule," was to ensure that "new" IXCs were not disadvantaged by their relative size in a newly competitive market. (TR. 400-01) The equal charge rule expired by Order of the MFJ court on September 1, 1991. MFJ at 233.

In August, 1991, prior to the expiration of the equal charge rule, the FCC issued an Order and Further Notice of Proposed Rulemaking in CC Docket No. 91-213 ("Notice"), Order and Further Notice of Proposed Rulemaking, CC Docket No. 78-72 Phase I, 91-213, 6 FCC Rcd. 5341 (1991).[14] The Notice recognized that maintaining the equal charge rule "may not promote the most efficient use of the public switched network [and] retains a pricing structure that could interfere with the growth of interstate access competition." Id. at 5344. Further, the FCC determined that

> our decision on the structure and pricing of transport must carefully balance three

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[14] The FCC, in effect, adopted the equal charge rule when it granted a petition filed by AT&T and the BOCs which requested that the Commission waive its Part 69 common/dedicated transport rules to the extent that the rules conflicted with the equal charge rule. See, American Telephone and Telegraph Company, Petition for Waiver of Sections 69.1(b), 69.3(e), 69.4(b)(7) and (8), 69.101, 69.111 and 69.112 of the Commission's Rules and Regulations, 94 FCC2d 545 (1983). The waiver was extended until further notice in the Commission's Memorandum Opinion and Order, CC Docket NO. 78-72, Phase I, FCC 85-87, 50 Fed. Reg. 9633 (1985).

> potentially conflicting objectives. These include promoting efficient use of transport facilities by allowing or requiring the LECs to price in a manner that best reflects the way costs are incurred, adopting transport rules conducive to full and fair interexchange competition, and avoiding the adoption of transport rules that would interfere with the development of interstate switched access competition.

Id. The FCC invited comments on its proposal of a more cost-based transport rate structure and pricing plan. After an exhaustive rulemaking proceeding, the FCC issued on October 16, 1992 its Order and Further Notice of Proposed Rulemaking ("Transport Order"),[15] adopting a new switched transport rate structure to replace the equal charge structure.[16] (TR. 402) In its Order, the FCC stated that the structure and rate levels it had adopted best achieved its goals articulated in its August 1991 Notice:

> We conclude that the interim rate structure and pricing approach that we adopt here best balances our goals at this time. In the short term, this approach is an improvement over the equal charge rate structure because it promotes more efficient use of LEC networks, and it allows us to begin implementation of expanded interconnection for switched transport.

Transport Order at 7009. Southern Bell's proposed tariff for its switched access local transport services mirrors both the structure

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[15] IAC's witness Gillan admitted that he was actively involved in each stage of the FCC's proceedings concerning this issue on behalf of the Competitive Telecommunications Association (Comptel). (TR. 617)

[16] Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-213, 7 FCC Rcd. 7006 (1992)

and, with the exception of the interconnection charge, the rates of its interstate tariff.[17]

As stated above, the evidence in the record clearly establishes that the parties opposing the approval of Southern Bell's tariff, IAC and Sprint, do not oppose the adoption of the rate structure of local transport services but only the level of the proposed rates for each of the interoffice transport services and entrance facilities offered by the Company.[18] Southern Bell's proposed rates advance the important goal of maintaining parity with interstate rates, eliminate inefficiencies and promote interexchange carrier and switched access competition. On the other hand, IAC proposes that the rates for interoffice transport and entrance facility services be modified to impose a rigid

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[17] The interconnection charge was designed to maintain revenue neutrality for the local exchange companies in order to maintain the contribution flow to basic service. (TR. 416) IAC's attorney attempted to discredit Mr. Hendrix' assertion that mirroring the interstate rates was an important goal by pointing out that the interconnection charge was not mirrored. (TR. 445-46) Based upon the raison d'etre of the interconnection charge, the likelihood of the revenue requirements being identical in the intrastate and the interstate jurisdictions is minimal. What is critical is that the purpose of the element is mirrored.

[18] Sprint's witness, Fred Rock, admitted upon cross examination that Sprint had not filed testimony or advocated the position taken before the Florida Public Service Commission in any of the other state proceedings involving the same tariff proposed by Southern Bell. (TR. 665) Further, IAC or its members have not contested the proposed rates for the entrance facilities in any of the other state proceedings. See, Order No. 94-563 of the South Carolina Public Service Commission in Docket 93-756-C issued June 30, 1994; Initial Order, Tennessee Public Service Commission in Docket No. 93-08865 issued July 1, 1994, adopted by the Commission on October 4, 1994.

relationship between and among the various transport services and that differences in price relate only to differences in cost.[19]

This Commission should reject the recommendations of IAC and Sprint. IAC and Sprint are simply advocating a result that best suits their interests. On the other hand, Southern Bell is proposing rates which cover their costs, react to the current and proposed state of the access market and which create efficiencies by maintaining parity with access charges in the interstate jurisdiction. These goals are overwhelmingly important and are in the interest of the ratepayers of Florida.[20]

This Commission is well aware of the benefits of parity of access charges between the interstate and intrastate jurisdictions. As Southern Bell's witness Mr. Hendrix testified, a lack of parity between the interstate and intrastate jurisdiction creates an incentive for interexchange carriers to misreport their percentage

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[19] IAC's witness Joseph Gillan characterizes Southern Bell's proposed rates as having a discriminatory effect among long distance carriers. Further, on September 29, 1994, Comptel applied to the U.S. Department of Justice for enforcement of the MFJ, claiming discrimination in pricing of local transport services. It is clear from the evidence in the record that the DS1, DS3 and common transport services are distinct services. (TR. 432) BellSouth is in full compliance with the MFJ in that the decree allows different pricing for different services, and BellSouth is not proposing to charge different rates to similarly situated long distance carriers for the same services. Therefore discrimination is not an issue in this proceeding.

[20] Florida law provides for reasonable considerations other than cost to be considered when telecommunications companies are fixing the "just, reasonable, and compensatory rates [and] charges ... to be observed and charged for service within the state by any and all telecommunications companies ...under the jurisdiction of the Commission." Fla. Stat. §364.035(1)

of interstate use ("PIU"). The accurate reporting of PIU has been a problem for Florida[21] and continues to be because of the lack of parity. Mr. Hendrix testified that because the intrastate local transport structure and rates have not been approved in Florida, PIU is being inaccurately reported.

> But they [interexchange carriers] were to give us a PIU for each of these new elements. These elements are new to switch. [sic] They've always been under special ....
>
> So if I have a 70% PIU on the services, you would think that I would have close to a 70 here since those are the same services. Well, folks, that's not happening. They're playing a game. And what they're doing is saying there's 70 here, [Feature Groups A, B, D, 7, 8 and 900 services] but this [transport services] may be a 30. Why? Because the structure is not in place. And so I'm going to do what is beneficial to my company to skew that to ensure that I'm not actually harmed. That is the problem where you have different rates and you have different structures.

(TR. 436-37) Mr. Hendrix also testified that mirroring the interstate rates and structure for switched access local transport services would "eliminate the inefficiency of maintaining a different set of rates and structures for the interstate and the intrastate jurisdictions and will eliminate confusion for our customers." (TR. 428)

Southern Bell has filed the proposed tariff for switched access transport services because the proposed structure and rates will allow the Company to react to the competitive pressures of

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[21] The Florida Public Service Commission required local exchange companies to perform joint audits of interexchange carriers self reporting PIU. See, Order No. 22743, issued March 28, 1990 in Docket No. 890815-TL.

alternative providers of switched and special access services. The evidence in the record clearly demonstrates that Southern Bell is no longer alone in this market. This Commission as well as the FCC has found collocation for special access in the public interest and has issued orders requiring the local exchange companies to tariff collocation. The FCC has also issued an order authorizing collocation in local exchange company central offices on a virtual basis for switched access services and an order requiring the local exchange companies to offer signalling information at the tandem, thus making even competition for switched access common transport services a reality. See, In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order, CC Docket No. 91-141, issued July 25, 1994; In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Third Report and Order, CC Docket No. 91-141, Transport Phase II, released May 27, 1994. The Commission will determine in this docket the propriety of authorizing collocation in local exchange company central offices for switched access services. No party to this proceeding has taken the position that collocation is not in the public interest.

The record also reveals that large users of telecommunications services are being provided with many alternatives to the traditional transport services provided by the local exchange companies. Doug Metcalf, who generally appears before the Commission on behalf of the Florida Ad Hoc Telecommunications Users' Committee, testified in this docket on behalf of Intermedia.

He clearly stated that the Commission should recognize that the access transport market is competitive:

> A discussion of switched transport and DTS [dedicated transport services], the Ad Hoc Users believe that you've already granted switched transport of DTS because right now an awful lot of our clients purchase, from the LECs and from Intermedia and other AAVs, dedicated service that takes all of their traffic from them to their Megacom locations at the IXCs. That is nothing more than switched traffic, but the ICIs don't do the switching. They pass it off.

(TR. 67-68)[22]

Southern Bell has an obligation to ratepayers of Florida and to this Commission to position itself so as to keep its switched access customers on the public switched network and thus minimize the loss of contribution to the maintenance of basic local exchange service at reasonably affordable rates. Southern Bell's proposed tariff does just exactly that. The structure proposed by Southern Bell allows the Company to provide services on an unbundled basis, thus allowing its customers to choose the option most suitable to their communications needs. Further, as Mr. Hendrix testified, Southern Bell's proposed rates for the various transport services cover their incremental costs and are priced based upon what the market will allow Southern Bell to retain its customers. (TR. 489-

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[22] As set forth above in response to Issue 6, Southern Bell believes that the provision of local transport by AAVs is prohibited under Chapter 364. There are, however, obvious difficulties in any attempt to police the conduct of AAVs in order to prevent this type of statutory violation. At the same time, it would appear based on Mr. Metcalf's testimony that, questions of legality aside, AAVs are carrying this traffic and, by doing so, currently competing with the LECs for local transport.

90) This market based pricing practice is well founded and is the standard of the industry.[23] Mr. Hendrix testified that Southern Bell's proposed tariff sends the appropriate signals to the users of transport services as well as recognizes the varying degrees of risk taken by the transport customer.

> Q: Do you believe that the crossover point under Mr. Gillan's proposal sends inappropriate signals to the customers?
>
> A: I think so, from the standpoint that you are adopting something that's different from what has already been approved and also from the standpoint when you look at a dedicated service--DS1, DS3--that a customer has ordered, that customer--that is a pretty healthy sum that that customer is going to pay each month whether they have usage to go over the DS1 or the DS3. So, that customer has actually assumed the risk for that service .... On the common, it's a minute of use based strictly on what they use. That customer is [sic] less risk. The risk is on Bell. And so the risk factor weighed with the crossover as to when it's to that customer's benefit, those are the points ....

(Ex. 31, p. 12-13; See also, TR. 937)

Southern Bell's proposed tariff also allows for a more efficient use of the public switched network. The current equal charge rule structure and pricing encourages access customers to overorder trunks because the customer was only charged on a minute

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[23] The evidence clearly demonstrates that the practices of Southern Bell's competitors that provide access services do not adhere to the equal contribution theory exposed by IAC's witness Gillan. Mr. Andreassi, testified upon cross examination that TCG's rates for DS1 and DS3 services, stated in terms of a maximum and a minimum rate, have a crossover point ranging from 3.17 to 7.8. Southern Bell's crossover point for DS-1 to DS-3 service is 15.

of use basis. As Mr. Hendrix testified, the restructure proposed by Southern Bell encourages efficiency.

> Under the "equal charge" structure, there are few, if any, incentives for IXCs to be efficient with respect to the switched access services ordered because every IXC is charged on a minute of use basis no matter what facilities are utilized. This causes IXCs to order facilities they do not need and/or cannot fully utilize. Under the proposed restructure, however, there will be a greater incentive to utilize transport efficiently in that customers ordering dedicated transport will pay the cost of the type of transport ordered (i.e., in the capacity of voice grade and/or DSO, DS1, DS3) regardless of the number of minutes of use for which it is utilized. Also, the proposed structure recognizes differences in routing arrangements and encourages IXCs to order the routing arrangements which are most efficient for carrying their traffic.

(TR. 410-11)

IAC proposes that the appropriate pricing plan for the local exchange companies' local transport services include a uniform level of contribution from each of the local transport options. This proposal advocates maintaining a rigid price relationship between the various options.[24] As demonstrated by Dr. Beauvais, GTE's economist, IAC's proposal is contrary to established economic theory. Dr. Beauvais testified:

> If the objective of this Commission is to foster a competitive marketplace, then it is necessary to encourage LECs to act on the same incentives as firms in a non-regulated market. The price structure proposed by GTEFL simply recognizes and attempts to reflect as far as

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[24] Southern Bell also takes issue with Mr. Gillan's "cost based" proposal on the basis that he has not accurately determined what the appropriate costs are for each service. See, Ex. 30.

> possible the economies of scale available to the firm. This is not a matter of shifting contribution selectively among interexchange carriers to benefit one relative to another ....
>
> The optimal price structure does not necessarily result in a uniform level of mark-up of price relative to incremental cost. In fact, as I have testified previously, an efficient price structure would recover contribution in roughly inverse proportion to the price elasticity of demand for that service. Furthermore, it can be shown that non-linear tariffs based around these inverse elasticity prices are even better at meeting the requirements of a competitive marketplace. In these tariffs, contribution is certainly not recovered uniformly, but the degree of contribution on a per-minute basis decreases as the quantity demanded increases ....

(TR. 876-77) The Commission should, as the FCC did,[25] reject Mr. Gillan's proposal.

IAC's proposal imposes rigid pricing requirements and would cause the level of the interconnection charge to increase. The record clearly indicates that this particular element is under increasing pressure to be eliminated. The FCC, when it adopted the interconnection charge, placed it in a separate service category and subjected it to a zero percent upward pricing band. The FCC has also sought comments on how the interconnection charge might be reduced. (Transport Order, supra, par. 81-82)[26] IAC's proposal, which results in an increase in the interconnection charge, serves only to exacerbate the pressure associated with the charge.

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[25] Transport Order, supra, at paragraphs 46-54.

[26] In South Carolina, AT&T has advocated elimination of the interconnection charge. (TR. 179)

IAC advocates that the Commission reject Southern Bell's proposed rates because the rates "could have a dramatic impact on interexchange competition ... [and] smaller communities and rural areas." (TR. 587-88) The evidence in the record shows otherwise. Mr. Hendrix succinctly demonstrated that the impact of the proposed rates on small interexchange carriers is minimal. He established that under the proposed tariff, all purchasers of switched access services will pay the same rate for more than 95% of their switched access charges per access minute and that the difference between the most expensive transport option and the least expensive per access minute is one-tenth of one cent. (TR. 417) Further, in his testimony, Mr. Hendrix also referenced the BellSouth Telecommunications, Inc. report required by the FCC which shows the impact of the interstate local transport restructure on small, medium and large customers. This report which details results from the second quarter of 1994 indicates that the impact on large carriers when compared to the same quarter in 1993 was a 11.0 percent increase for transport services and a total switched access increase of 3.2 percent with a 2.4 percent increase in access minutes. For medium carriers there was a 4.5 percent increase for transport and a 4.3 percent increase on total switched with a 9.7 percent increase in access minutes. The smaller carriers saw a 13.9 percent increase in transport and a 5.0 percent increase in total switched with a 25.9 percent growth in access minutes. (Ex.

31; Late Filed Deposition Ex. 1)[27] This FCC report clearly demonstrates that the local transport restructure has had no adverse effect on interexchange carrier competition.

The evidence in the record does not support the objections of IAC and Sprint. The evidence does support Southern Bell's goals of parity of access rates between the interstate and intrastate jurisdictions which will eliminate any incentive to inaccurately report PIU; will create efficiencies from both an administrative and billing systems standpoint; reduce customer confusion and reduce the possibility of billing errors; and lastly, allow the Company to respond to the increased pressures of access competition.

ISSUE NO. 22: Should the Modified Access Based Compensation (MABC) agreement be modified to incorporate a revised transport structure (if local transport restructure is adopted) for intraLATA toll traffic between LECs?

SOUTHERN BELL'S POSITION: The current MABC plan should remain in place. Once local transport restructure is fully implemented and the Commission determines that it is appropriate to introduce the transport structure into the MABC, then all transport rates should reflect the way the service is provisioned between the local exchange companies.

As Harriet Eudy of ALLTEL testified, the MABC plan is a plan that has been adopted by the Commission which designates the local exchange company as the primary carrier of intraLATA traffic in its own service territory and dictates how settlements between local exchange companies will be made. The plan allows the local exchange company to bill the end user in its territory for an

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[27] GTE's witness, Kirk Lee, testified that GTE's data show that small interexchange carriers get a 9.56% decrease in intrastate transport costs. (TR. 347)

intraLATA call which terminates in another LEC's territory and to pay the terminating LEC the access charges set out in the plan for completing the intraLATA call. (TR. 105-06) The MABC plan is not billed through the carrier access billing system normally utilized by the local exchange companies for billing access customers, but is rather a sophisticated data system which would require modification to accommodate the proposed switched access local transport services restructure. (TR. 107) It is for this reason that Southern Bell recommends that the current MABC system remain in place until the restructure of the local transport services is fully implemented. Mr. Hendrix testified that, in order to modify the MABC plan, "all the local companies would have had to tariff the service [local transport], and [have] implemented [it] on a statewide basis to the carriers."[28] (TR. 545)

ISSUE NO. 23: How should the Commission's imputation guidelines be modified to reflect a revised transport structure (if local transport restructure is adopted)?

SOUTHERN BELL'S POSITION: It is not appropriate to address access imputation in this proceeding. Furthermore, imputation requirements are no longer needed and should be eliminated since such requirements are contrary to the intent of competition. Only interexchange carriers and other toll providers are assured of benefitting from imputation because imputation requirements artificially raise toll rates for services offered by LECs and, thereby, mask the true low cost toll service provider. If the Commission, however, determines that imputation is still required,

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[28] Mr. Hendrix further testified that Southern Bell had filed a tariff prior to the local transport filing which allowed the MABC to function independently from the local transport tariffs. Mr. Hendrix stated that "the intent of that tariff was not to have the LECs benefit through the settlement process, but simply to break the tie between the two tariffs when we would be able to bill transport under the settlement piece based on a different structure from the transport under the restructure piece." (TR. 546)

the guidelines should be modified to reflect average transport costs, not rate per access minute of use.

The witnesses for the local exchange companies, Time Warner, the Florida Cable Television Association and Staff all stated in either testimony or in their prehearing statement that the question of whether to modify the Commission's existing imputation guidelines should be answered outside the current proceeding.[29] (TR. 104; 313-14; 422; 817) Clearly, imputation of access has only been considered in dealing with the question of the appropriate price floor for local exchange company toll services. This docket concerns the provision of switched access services by other than local exchange companies and the appropriate rate structure and pricing plan for some local exchange company switched access services. The Commission does not need to decide the question of whether any modifications to its imputation guidelines are appropriate in order to determine whether collocation is in the public interest or whether local transport services ought to be restructured.

ISSUE NO. 23A: Should the Commission modify the Phase I Order in light of the decision by the United States Court of Appeals for the District of Columbia Circuit?

SOUTHERN BELL'S POSITION: Yes. This Commission should modify its Phase I Order to allow the LEC the option to offer either form of collocation.

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[29] Southern Bell's witness, Jerry Hendrix, testified that the requirement of imputation of access charges in the toll rates of local exchange companies is no longer appropriate because imputation masks the true low cost provider of toll services and gives other providers an "umbrella" under which they can come in and price competing services. (TR. 547)

In response to Issue No. 3, Southern Bell has noted several areas in which the Phase I Order should be modified. Only one of these areas, however, is a direct result of the decision by the United States Court of Appeals for the District of Columbia Circuit, the form of collocation to be offered (either virtual or physical). As set forth previously in response to Issue No. 7, the mandate of physical collocation contained in Phase I is not constitutionally permissible and cannot be sustained. Therefore, this aspect of the Phase I Order must be modified. For reasons set forth previously, Southern Bell urges the Commission to modify this portion of the Phase I Order by doing as the FCC did: mandating virtual collocation, but giving LECs the choice to provide physical collocation instead.

ISSUE NO. 24: Should these dockets be closed?

SOUTHERN BELL'S POSITION: Yes, these dockets should be closed at the conclusion of this proceeding.

Although it is Southern Bell's position that these dockets should be closed, the fact of the matter is that it does not make a great deal of difference whether they are closed immediately or left open. It is important to ensure that parties are able to bring before the Commission any issues that may subsequently arise related to local transport restructure or expanded interconnection. It would appear, however, that this could be done whether the dockets remain open or whether they are closed. The distinction would appear to be nothing more than that in the latter case there would be the necessity to go through the administrative process of

opening a docket as opposed to handling the issue in a docket that is already open.

CONCLUSION

Although switched access interconnection and special access interconnection certainly differ, they are similar in many regards. Therefore, the Commission should, for the most part, resolve the expanded interconnection issues in Phase II of this docket in the same way as it did in Phase I. Specifically, it is of paramount importance that this Commission grant additional pricing flexibility for the LECs, just as it did in Phase I, so that the full benefits of competition can be passed on to end users, and so as to avoid a loss of contribution to the LECs and resulting harm to the ratepayers.

The Commission should vary from Phase I, however, in that it should allow reciprocal collocation. The reasons for reciprocal collocation are precisely the same as those that support pricing flexibility. Finally, this Commission should also vary from Phase I in that it should adopt the approach recently taken by the FCC in regard to the form of collocation. Specifically, this Commission should mandate virtual collocation, then allow LECs the option of offering physical interconnection instead.

As to local transport restructure, all parties agree that the current structures are in need of change. The structure that Southern Bell has proposed to this Commission in the form of the tariffs filed for interstate purposes, mirror the tariff previously filed and approved by the FCC. This tariff has also been approved

for intrastate purposes in five other states in which BellSouth does business.

Despite the contentions of some parties, Southern Bell's LTR tariff is not discriminatory because it does not charge different prices to different customers for the same service. Instead, it charges different prices for different services, which is, by definition, not price discrimination.

Finally, the Commission should approve Southern Bell's LTR tariff for two other compelling reasons. One, because there is strong need for consistency between the interstate and intrastate jurisdictions. Two, the tariff is tailored to suit the demands of the current market and its approval will serve competition. Finally, this tariff will have no negative impact on customers in rural areas, and it will not have a significant impact on providers of interexchange services other than LECs.