BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: An investigation into the statewide offering of access to the local network for the purpose of providing information services	DOCKET NO. 880423-TP ORDER NO. 21815 ISSUED: 9/5/89

The following Commissioners participated in the disposition of this matter:

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PARTIES

LOCAL EXCHANGE COMPANIES (LECs)

ALLTEL Florida, Inc. (ALLTEL)
Central Telephone Company of Florida (Centel)
Florala Telephone Company, Inc. (Florala)
Gulf Telephone Company (Gulf)
GTE Florida, Inc. (GTEFL)
Indiantown Telephone System, Inc. (Indiantown)
Northeast Florida Telephone Company, Inc. (Northeast)
Quincy Telephone Company (Quincy)
St. Joseph Telephone and Telegraph Company (St. Joseph)
Southern Bell Telephone and Telegraph Company (Southern Bell)
Southland Telephone Company (Southland)
United Telephone Company of Florida (United)
Vista-United Telecommunications (Vista)

INTEREXCHANGE CARRIERS (IXCs)

AT&T Communications of the Southern States, Inc. (ATT-C)
MCI Telecommunications Corporation (MCI)
Microtel, Inc. (Microtel)
Telus Communications, Inc. (Telus)
US Sprint Communications Company (Sprint)

OTHERS

Information Services Providers Alliance (ISPA)
Florida Ad Hoc Telecommunication Users Committee (Ad Hoc)
Florida Interexchange Carriers' Association (FIXCA)
Florida Cable Television Association (FCTA)
Office of Public Counsel (Public Counsel)

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ORDER

BY THE COMMISSION:

I. BACKGROUND

This proceeding is a generic investigation by the Florida Public Service Commission into a vast array of services that use the telecommunications system to transmit information or, that enhance, modify, or redirect transmissions in ways not directly related to telephonic transmission. These services take various forms including telephone answering services, data base retrieval, value-added networks and other services oriented towards the storage manipulation and transmittal of information - either voice or data. These services, generally referred to as "information services", are valuable to consumers because of the content of the transmission or because of the manner in which transmissions are modified. Our investigation also encompasses the policies and practices of the local exchange companies (LECs) in allowing both affiliated and nonaffiliated business entities access to the local network for the delivery of information services to the consuming public.

Our investigation must be viewed against a broader background of federal actions affecting information services. Foremost are the Computer Industry (CI) proceedings at the Federal Communications Commission (FCC). In the Second Computer Inquiry, 77 FCC 2d 384 (1979) (CI II), aff'd. sub nom, Computers and Communications Industry Associated v. F.C.C., 693 F.2d 198 (D.C. Cir. 1982), cert. den., Louisiana P.S.C. vs. United States, 461 U.S. 938 (1983), the FCC found that "enhanced services", as they could be identified by its definition in 47 C.F.R. Section 64.702(a), were not included within the rubric of "common carriage" regulated under the Communications Act of 1934, and, therefore, should not be regulated by the FCC. In order to avoid frustration of this federal policy, the FCC deemed it necessary to preempt state regulation of such services. A crucial element of this decision was the absence of any guidelines by which this definition would be applied to existing and new services. When combined with the extremely fast pace of technological advancements in both hardware and hardware intelligence, and the ambiguity of the existing definition, this decision allowed

the FCC to assert virtually open-ended jurisdiction to restrict state authority over improvements to existing information services and over all new information services.

The FCC initially chose to allow the Bell Operating Companies (BOCs) to offer these enhanced services only through separate subsidiaries, commonly referred to as the structural separation requirement. This scheme of regulation of enhanced services drastically changed with the FCC's decision in the Third Computer Inquiry, 104 FCC 2d 958 (1986) (CI III). In this proceeding, the BOCs were allowed to offer enhanced services on an integrated basis with the imposition of certain nonstructural safeguards. These nonstructural safeguards consist of the network disclosure mandates of the Open Network Architecture (ONA)/Comparably Efficient Interconnection (CEI) process, and the accounting separations process in the federal "Part X" procedures.

It is important to note that CI III is currently on appeal in the U.S. Ninth Circuit Court of Appeals. See People of the State of California, et. al., v. FCC, Cases Nos. 87-7230 and 88-7138. The most crucial issue on appeal is the FCC's continued preemption of all state regulation of "enhanced services." An affirmance of the FCC's preemption would drastically narrow the scope of this Commission's involvement in the development and spread of information services.

The participation of Southern Bell, the largest LEC in Florida, in the information services market is controlled by federal antitrust litigation. Federal District Judge Harold Greene has approved the Modified Final Judgment (MFJ) in U.S. v. AT&T, 552 F.Supp 131 (D.D.C. 1982), aff'd sub nom. Maryland v. U.S., 460 U.S. 1001, 75 L.Ed.2d 472 (1983), that prohibits BOC provision of "information services", as defined in those proceedings. Subsequent orders have conditionally allowed the BOCs to provide specific information services. The District Court's authorization is required for all information services offered by Southern Bell in Florida.

Several services proposed by Southern Bell may be affected by the decision in this proceeding. In Docket No. 870766-TL, Southern Bell proposed to offer a packet switching service that included a protocol conversion component. By Order No. 20828, the Commission determined that packet switching and certain aspects of protocol conversion should be offered on a regulated

basis. By Order No. 21447, our decision in the Packet Switching docket has been stayed pending resolution of the jurisdictional question in CI III appeal. In Docket No. 881323-TL, Southern Bell filed a proposal to offer a two-way measured access line for information services providers only, and to offer a package of special call features that are crucial to the provisioning of information services. The two-way measured service is a specialized form of access for information service providers. This two-way measured service tariff is now available on an experimental basis in Southern Bell's West Palm Beach exchange.

Industry workshops were held on April 13, 1988, and on May 23, 1988, to gather input on the existing market and legal environments. This input indicated that a full evidentiary hearing was necessary to deal with the complex issues surrounding this subject. A formal workshop was held on July 25, 1988, to identify the issues to be litigated.

A hearing was held on February 16 and 17, 1989. Our decision is set forth below.

II. INTRODUCTION

We must state from the outset that our desire is to bring information services to the people of Florida in a rapid and efficient manner. We hope to facilitate this by encouraging more entities to provide information services, particularly the LECs, and by having more technologically advanced LEC central office and network features available to those providing information services. Accordingly, as discussed in greater detail below, we have reached certain basic conclusions that we hope will guide the orderly and efficient introduction and evolution of the provision of information services.

We believe that our decisions will place the information services industry in the best position to offer the most services to the most people in Florida. We see this as an evolving process, and envision further proceedings to refine the decisions made in this proceeding. We do not believe that a phase II proceeding should be scheduled at this time, but rather prefer an ongoing series of workshops, with hearings as needed, much as we approached the evolution of our access charge docket.

III. STIPULATION

Attached to this Order, as Appendix I, is a signed stipulation of the parties to this proceeding providing for uniform terms, conditions and rate structures for Basic Service Arrangements (BSAs) and Basic Service Elements (BSEs).

Pursuant to the stipulation, similar costing methodologies are to be used by the companies when setting prices for services. The stipulation also provides for each service to be offered under the same terms and conditions to any customer throughout the state, providing that the service is available in the customer's area. When a BSE or BSA is offered in Florida, it should be offered on a statewide basis to the extent feasible. Some companies will find it impractical because of market/demand or cost constraints to offer the service. In these instances the company should not be required to offer the element. The company must, however, reply to all applicants for that service citing the reasoning for not offering the particular BSA or BSE.

The stipulation appears to provide a workable framework for introducing new BSAs and BSEs. Parties may come to the Commission if they feel that they are the subject of discrimination. The Commission retains the final authority in determining whether a particular service should be offered and under what circumstances it should be made available. In addition, a statewide method for determining rates as well as the terms and conditions under which information service elements will be offered may alleviate potential discrimination by the LECs when introducing new BSAs and BSEs. Allowing the LECs to use their own costs when pricing these services will allow them to achieve contribution levels similar to the other companies in the state offering the same service. Accordingly, we find it appropriate to approve the stipulation.

IV. LACK OF DEFINITION OF INFORMATION SERVICES

The most troublesome facet of this proceeding has been the lack of a precise definition of the phenomenon labeled "information services." This is understandable in view of the fact that the few services being labeled as "information services" have only recently come into widespread existence. We note that this phenomenon is in its initial evolutionary stages.

The "information service" label was engendered by us deliberately to foster a fresh examination of the nature of the types of services being provided and to avoid the debate that currently rages over the FCC's enhanced service versus basic services dichotomy. It is difficult to conduct fruitful discussion about alternative ways to treat intrastate enhanced type services when several of the parties maintained that enhanced services were beyond our jurisdiction and, hence, beyond any Commission consideration. Our desire to avoid the enhanced services debate stems from our desire to free our investigation from the historical and legal baggage that follows in the wake of the "enhanced service" label. We must also point out that we disagree with the purpose for which the FCC perpetuates the enhanced versus basic dichotomy: the preemption of any state regulation of the enhanced services. Our analysis of the jurisdictional debate is set forth in Section V. below.

Most of the parties took the position that the FCC's definition of enhanced services was suitable as a definition of information services. The FCC defines enhanced services as follows:

> Those services offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information; or provide the subscriber additional, different or restructured information; or involve subscriber interaction with stored information.

Southern Bell's Witness Lombardo testified that this is the appropriate definition. Southern Bell's Witness Boltz added that this definition was appropriate because the FCC's definition of enhanced services has been used in the industry for almost nine years. He argued that, since the industry has been working with this definition for the past 25 years, consistency with this definition will aid an evolving understanding of what enhanced service entails.

Ad Hoc's Witness Mayne provided some enlightenment by breaking the FCC's definition into two parts, enhanced transport and information services. He argues that enhanced

transport refers to services offered over common carrier facilities used in interstate or intrastate communications that act on format, content, code or protocol or similar aspects of the subscriber's transmitted information. He includes the following items in his interpretation of enhanced transport: protocol conversion, packet switching, selective alternative routing, and the ability to implement layers one through four of the International Standards Organization/Open Systems Interconnection Reference Layer (ISO/OSI) standards model as defined by the National Bureau of Standards. This is a reference model of the layers of the telecommunications network commonly used by the industry. For information service, he indicates that these services refer to actions that provide additional, different or derived information or involve user interaction with stored information.

Witness Boltz disagreed with Witness Mayne's simplification of the F.C.C. definition. He believes it is too narrow in scope and inappropriately includes two services, packet switching and alternative routing, as information services. He also testified that Southern Bell currently provides these services under tariff. GTEFL's Witness Glassburn testified that the type of computer applications that are intended only for completing calls through the network should be considered noninformation services. United's Witness Griffin was asked for his interpretation of enhanced transport and testified that as to the various levels of protocol conversion, he was unsure as to how they should be classified.

Sprint's Witness Seivers did not testify as to the details of a definition, however, he raised the following questions for consideration in conjunction with an ONA offering:

1. Could the proposed unbundling of network functionalities retard the development of or competition in enhanced service markets?

2. Is there any danger that the offering will result in discrimination between BOC and non-BOC enhanced service providers?

3. Is there any danger that the offering will result in discrimination between users of similar services?

A review of the record in this proceeding fails to provide an adequate regulatory definition of "information services." We do not believe that the FCC enhanced services definition provides any enlightenment. It was created to describe a situation that is different from what we now see before us. Despite the lack of a definition in this proceeding we will examine each of the services that are being offered and new services that are introduced. We anticipate that this continuing review will, over time, generate an operational definition that will aid us in setting the proper course for the introduction and dissemination of information services to the public.

V. JURISDICTION OVER INFORMATION SERVICES

A. Federal versus State Jurisdiction over Information Services

No discussion of our treatment of information services would be complete without also considering the current federal law on the subject. Many parties argue that Commission jurisdiction in this area, where it contradicts the mandates of the FCC's Computer Inquiry proceedings, has been preempted by the FCC. This question will be addressed by the pending decision of the U.S. Court of Appeals, Ninth Circuit in People of the State of California, et. al., v. FCC, Case Nos. 87-7230, et. al., and 88-7183. However, it is important to note that the preemption issue here does not involve an express conflict of state and federal law, in which instance federal law would likely prevail. The Communications Act of 1934, Title 47 § 151, et. seq. (the Act), clearly allows concurrent state and federal authority in this area. Where Congress has created concurrent power, it is well settled that a valid exercise of state law is superseded by federal action only if there is a conflict so direct and positive that the state and federal provisions cannot be reconciled or consistently stand together, Kelly v. Washington, 58 S.Ct. 87, 82 L.Ed.3 (1937), Askew v. American Waterways Operators, 93 S.Ct. 1590, 36 L.Ed.2d 280, reh. den. 93 S.Ct. 2746 (1973). With regard to information/enhanced services, the issue is whether the Act's grant of federal power may be read so broadly as to create a conflict between existing and previously consistent state and federal provisions.

The relevant statute is Section 2(b) of the Act, Title 47 U.S.C.S. § 152(b), which the U.S. Supreme Court has clearly and definitively construed as denying the FCC jurisdiction or authority to regulate intrastate telecommunications services and rates. See Louisiana Public Service Commission v. F.C.C., 106 S.Ct. 1890, 90 L.Ed.2d 369 (1986) (FCC preemption of depreciation guidelines for facilities used in intrastate communications is expressly prohibited, even though mixed traffic would be carried). See also People of the State of California, et. al., v. FCC, 798 F.2d 1515 (D.C. Cir. 1986). The Supreme Court's legal precedent, which was decided after the Computer Inquiries, and the federal statute are clear authority for this Commission. Moreover, the Ninth Circuit Court is bound by the U.S. Supreme Court's holding in Louisiana. Any interpretation upholding the FCC's expansive view of its authority must provide sound legal distinctions.

Southern Bell proposes two such distinctions that were suggested by the FCC in its reconsideration of the Final Report and Order in Amendment of Section 64.702 of the [Federal Communication] Commission's Rules and Regulations, 104 FCC.2d 958 (1986) (CI III), recon., 2 FCC Rcd 3035 (1987) (CI III Recon.), 2 FCC Rcd 3072 (1987). First, the FCC contended that its determination of information/enhanced services as "non-common carrier" services places those services outside of Section 2(b), thereby nullifying Louisiana's authority as to same, CI III Recon., ¶ 177-180. This conclusion is supported by broad interpretations of the so-called NARUC decisions, National Assn. of Regulatory Commissioners v. FCC, 525 F.2d 630 (D.C. Cir. 1975) (NARUC I), and National Assn. of Regulatory Commissioners v. FCC, 533 F.2d 601 (D.C. Cir. 1976) (NARUC II). CI III Recon., ¶ 178. Those decisions, however, cannot support the FCC's proposed authority to extend its deregulation of non-common carrier (i.e. information) services to the states. Close reading of the decisions reveals that the Court in NARUC I did not reach the issue of whether a common carrier's, i.e. telephone company's, provision of non-common carrier services may be preemptively deregulated by the FCC, since the parties there were not common carriers, 525 F.2d at 647. In its NARUC II opinion, where it held that Section 2(b) clearly applies to intrastate common carrier services provided

by a common carrier, the Court responded to a similarly broad interpretation by the FCC of its authority by stating:

> ...we hasten to add that [the FCC's preemption authority] is not a license to construe statutory language in any manner whatever, to conjure up powers with no clear antecedents in statute or judicial construction, nor to ignore explicit statutory limitations on [FCC] authority.
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> 533 F.2d at 618.

For purposes of these proceedings, the Supreme Court's ruling in Louisiana clearly states that Section 2(b) denied the FCC jurisdiction to affect the intrastate communications at issue there. The FCC's removal of information/enhanced services from its jurisdiction through declaration that such services are not "common carrier" services cannot carry ancillary authority to circumvent the Congressional intent found in Section 2(b), and preemptively deregulate information services. There is little logic to the premise that the FCC has more control over things outside of its jurisdiction than it has over things within its jurisdiction.

The FCC's second distinction springs from the U.S. Supreme Court's recognition in Louisiana of an exception to Section 2(b). The Court held it inapplicable where the separation of components of services between interstate and intrastate is a practical impossibility, 90 L.Ed.2d at 386, FN 4. This is a valid distinction. However, it is not authority to preemptively deregulate all information/enhanced services. Many of these services have clear demarcations as to interstate and intrastate components. Thus, this Commission could define and regulate the intrastate components. Moreover, as the Court in Louisiana pointed out, the separations procedures set out in the Act serve as the prescribed method for allocating jurisdictional responsibilities where joint regulation is warranted. See 90 L.Ed.2d at 386.

Thus, even assuming an opinion favorable to the FCC from the Ninth Circuit, in the face of Louisiana, the preemption allowed could apply only to information services and facilities for which the interstate and intrastate components are inextricably bound. All other services must be separated by jurisdiction.

Absent conclusive legal precedent that FCC authority as to non-common carrier services is broader and inconsistent with its authority over common carrier services and, following binding authority that a LEC's provisioning of intrastate common carrier services is most clearly subject to Section 2(b), we find that this Commission's regulation of LEC-provided intrastate information services, regardless of whether such services are declared to be non-common carrier under the Act, is not prohibited by federal law.

We again reiterate the caveat that the final determination of the state/federal jurisdiction question currently resides in the federal appellate process. We recognize that our decisions herein are subject to modification based on the results of the Ninth Circuit Appeal.

B. Jurisdiction Over LEC-Provided Information Services

Ownership or management of "telephone line[s]... affording telephonic communication service for hire" are at the core of a telephone company's existence, especially considering the broad definition of "telephone line" in Section 364.02(5). Section 364.01, Florida Statutes, leaves little question that the Legislature intended this Commission to have full and exclusive jurisdiction over the LEC's operations within the State of Florida.

The issue then is whether the Commission holds jurisdiction over competitive or non-monopoly services, such as information services, when provided by LECs. Section 364.02(3) conveys the Legislature's intent that the Commission's jurisdiction extend to all services associated with a telephone company-provided telephone line. Section 364.03(1) covers "all rates, tolls, contracts, and charges of...telephone companies for messages, conversations, services rendered, and equipment and facilities supplied", without exclusion. The Commission, in the exercise of its discretion, has generally focused on such elements as they relate to switching and transport because

this most squarely meets the definition of "telephonic communication". Reading the statutes above in pari materia, we find that any telephone company information service provided as a direct derivative of telephonic switching and transport is subject to Commission jurisdiction. This appears to cover gateways, enhanced transport type services and, since LEC voice messaging services are generally collocated in the central office processor, all elements of voice messaging. We note here that the lack of an adequate definition of information services hinders a more detailed description of the scope of our information service jurisdiction. We have stated our basic jurisdiction above in the broadest terms to facilitate our further examination of specific LEC provided information services. As we examine such services, we will be able to further refine the scope of our jurisdiction.

Since it appears that the Commission's broad grant of authority under Sections 364.01 and 364.02 includes the provisioning of information services by the LECs, it does not appear that statutory changes are needed regarding the scope of the Commission's jurisdiction. However, it should be noted that the LECs' information service offerings would be subject to the same regulatory standards and conditions as other regulated services.

C. Access to Local Network

In the context of these proceedings "access" entails the lines and accompanying facilities and features that deliver information services, to the local network. Most of the parties agree that access is subject to the regulatory control of the Commission in similar fashion as access for interexchange companies is regulated.

Pursuant to our statutory authority discussed in Section V. B above, there does not appear to be any question that these services and facilities are subject to this Commission's jurisdiction. See also In the Matter of Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order, FCC Docket No. 88-2 (December 22, 1988), ¶ 309. However, there appears to be a question raised by the FCC as to whether it may concurrently regulate local basic services for the provisioning of interstate information/enhanced services, ONA Order ¶ 276-277. The analysis above regarding preemption is adopted here as to the Commission's authority to regulate the level of

basic local service provided to Information Services Providers. Upon consideration, we find that local service elements necessary to the provision of information services are within this Commission's jurisdiction.

D. Jurisdiction of NonLEC Information Service Providers

Having examined LEC-provided information service, we must also consider whether information services provided by nonLECs may be subject to our jurisdiction. Section 364.02(4) is clear in its terms. If an entity is "...owning, operating, or managing any telephone line or part of a telephone line used in the conduct of the business of affording telephonic communication service for hire within this state", then it is a telephone company subject to our jurisdiction.

Information service providers span a wide spectrum of services that are provisioned in an equally diverse manner. As discussed above, we have not developed an adequate definition which would fully describe all members of the market. However, there appears to be three general categories of services. In the first category are the data base owners or pure content providers that simply own a store of facts which they then deliver to the general public via some form of information transport. These ISPs typically own only a computer on which the data is stored and perhaps facilities to telecommunicate this data for their own internal uses. The second group is the enhanced transport provider. These companies, also called value-added networks (VANs), establish networks of interLATA and intraLATA lines, data communication facilities and switching facilities. VANs collect communications, transition them for electronic transmission, transport them using a variety of networks but primarily their own, and deliver the information to other nonaffiliated recipients. In the third group are specialty services providers. These companies utilize the special processing features of telephone facilities to provide services different from and supplemental to basic voice transmission. Security alarm monitoring and voice messaging are two examples of this category.

From our preliminary review, VANs appear to fall within the telephone company definition. They own, operate and manage lines, switching facilities, and data communication facilities used to afford telephonic communications for hire within the State of Florida. Pure content providers, such as the vast

list of data base owners under contract to the VANs, do not appear to own, operate or manage facilities meeting this same criteria. The specialty services providers own facilities that operate tangentially to the network.

In each case, there appears at least the possibility that the information service provider may be a telephone company subject to our jurisdiction. To the extent any of these entities meet the test of Section 364.02, then it is subject to our jurisdiction. The final decision in each case must await a detailed examination of the specific services and functions performed by a particular ISP. As with the jurisdictional decision, the certification requirements, whether switched access charges will apply and the level of regulatory oversight is also left to a case-by-case determination.

The parties raised the same preemption arguments with respect to Commission regulation of non-LEC ISPs as to LEC-provision of information services. We again note that in our analysis this Commission is not prohibited from regulating intrastate information services by federal law.

VI. LEC-Provided Access Arrangements

In the course of this proceeding, we examined the manner in which ISPs currently receive access to the LEC's network. In addition, we also examined how additional LEC services and features should be provided by the LECs as technology advances and the demand for such services and features increases.

The record reveals no unique forms of access currently utilized by ISPs. Typically, ISPs use basic 2- or 4-wire local loops in the form of single flat rate business lines (1FBs), single measured rate business lines (1MBs), PBX trunks and feature group access. In addition, ISPs may also obtain access in the form of 900 service, special access, voice grade and digital private lines and FX service. All of these services are available from current LEC tariffs.

ISPs may also require any one or a combination of various central office software features in order to provide service to their customers. These features, referred to as Basic Service Elements (BSEs), include touch-tone, various

types of call forwarding, call waiting, as well as many features associated with the transport of data, packet switching, and network interfacing (e.g. protocol conversion). In addition, some ISPs desire access to internal LEC systems such as diagnostics and customer proprietary network information (CPNI) to facilitate their own operations. An ISP's requirements will depend on the type, scope and complexity of information provided. New features will be required or desired as the technology is developed and implemented.

A. Initiation of New Services

The parties took diverse approaches as to whom the principal initiator of new services should be and as to the form these new services should take. United, MCI, Microtel and Ad Hoc stated that the marketplace should determine the types of access, BSEs and other services required. MCI further argues that the Commission should set forth guidelines to ensure that LECs will be responsive to the requests of ISPs. Most of the parties were satisfied that the current technical access configurations were suitable and need not be altered. ISPA voiced a desire on behalf of ISPs to have several additional services including calling number identification, LATA-wide access numbers, access to derive data channel offerings, delivery of "D" channel data on the "B" channels of ISDN, and improved maintenance and diagnostic capability. Also, some ISPs apparently desire LEC-provided billing and collection services.

For new services, Southern Bell referred to its federal ONA plan, which sets forth the types of access, services and BSEs that Bell is willing to offer. Additional service options requested by ISPs would be provided subject to the screening criteria set forth in its ONA plan. One such criterion advanced by Southern Bell is an evaluation of the "utility" of a requested BSE to the ISP.

Upon consideration, we find that, as a general policy if an ISP requests a particular service, the LEC should file tariffs to provide the requested service if the service is technically and economically feasible. Any disputes arising out of a request for a service shall be brought to us for resolution. This does not preclude a LEC from introducing a service absent an ISP request if it desires.

B. Unbundling of Access Connections, Features and Services

Unbundling in the context of these proceedings describes the degree to which access connections, features, and other services should be offered and specifically to what extent should offerings be provided on a stand-alone basis. The issue before us is the extent to which services should be unbundled and who should make that decision.

Centel argues that the unbundling decision should be made on a case-by-case basis. Southern Bell and United allow that ISPs should have input but that the decision should ultimately be made by the LECs. Microtel, MCI, Telus and Sprint argue that the ISPs should determine the degree of unbundling. However, the latter two temper their positions with consideration of market demand and technical feasibility. Prodigy in particular stated that the ONA model adopted by the FCC does not incorporate sufficient unbundling. MCI also stated that existing tariffs such as Southern Bell's ESSX, which offers a large number of central office-based features and functions, should be unbundled, and the services features offered currently only to ESSX subscribers should be made generally available.

All parties, LECs included, advocated policies of nondiscrimination. The nonLEC parties expressed a deep concern that the LECs, particularly Southern Bell, have the incentive to utilize their position as the providers of monopoly services such as basic access and the network functions associated with that access to manipulate the market to the advantage of their own ISPs. As an example, MCI argues that, if a LEC has the ability to provide a certain feature or function but withholds making it available until its own ISP can utilize it, the LEC can prevent other ISPs from gaining a competitive advantage which they otherwise might be able to achieve were they not dependent upon the LEC to obtain the network functionality. Another example cited is the pricing and cross-subsidization of basic access. A LEC may be able to price other ISPs "out of the market" by setting usage rates at such a level that ISPs cannot absorb or pass through those costs to their clients. The LEC ISP may then be able to undercut the prices of ISPs if the parent corporation can make up the losses from its regulated operations. If this occurs, it would aid the LEC ISP to gain market share as other ISPs dropped out.

ISPs also argue that the LEC can manipulate the market through selective collocation since it is less costly to provide access to an ISP that is located within the LEC central office than to one located outside the central office. It is apparent that the LECs will collocate their own ISPs. However, most do not want to allow any other ISPs to collocate, citing security considerations. The ISPs argue that this results in lower costs to the LEC ISP relative to nonLEC ISPs unless some sort of pricing parity is established for access. Southern Bell is the only LEC participating in these proceedings who is opposed to any form of collocation or virtual collocation.

As will be discussed more fully below, it does not appear necessary to make major changes to current interconnection arrangements. Therefore, current local exchange and access tariffed offerings should continue to be made available to ISPs for interconnection. Many ISPs, such as telephone answering services, are small, very localized operations that have been in service since long before Open Network Architecture came to exist. We are concerned that radical changes to the costs of doing business for these providers may reduce rather than expand the availability of information services to Florida consumers. Therefore, for the present, we find it appropriate that current local exchange and access tariffed offerings continue to be offered to ISPs.

In these proceedings, the focus of the parties centered on unbundling BSEs from access arrangements or BSAs. With respect to the basic access line, there does not appear to be any justification for further unbundling the components of the local loop, such as the central office functions and the hard wire.

With respect to features and network functions and other requested ONA offerings, Southern Bell has indicated that it is willing to offer approximately 40 BSEs, Complementary Network Services (CNS), and/or ancillary services. No other LEC has made such a proposal. In accordance with our desire to encourage the introduction and spread of information services, we find it appropriate to require Southern Bell to file tariffs to offer these ONA offerings. These tariffs should be filed no later than sixty (60) days after the issuance of this final order or thirty (30) days after the issuance of an order disposing of motions for reconsideration of this order, if any are filed. Southern Bell's features should be offered

individually, with no restrictions on which persons may subscribe to them, nor should they be tied to, or contingent on taking service under any other tariffs in order to obtain these features or functions unless technically necessary. If they are already offered under tariff elsewhere, they may be cross-referenced. However, rates should not be different from any that have already been approved in other filings. The Miscellaneous Service Arrangements section of the tariff may be the most appropriate location; however, we find that LECs should be allowed to use their discretion as to tariff location. In addition, we also find that the unbundling conditions we have discussed above shall apply to all LEC ONA-like services when offered. With respect to ISP requests for new offerings, every affected LEC should respond to such requests as soon as practicable by filing appropriate tariffs, but in any event no later than when similar responses are provided at the interstate level.

In order to monitor the effects of our actions, we find it appropriate to require all LECs to file quarterly reports, no later than thirty (30) days following the end of each quarter, containing the following information:

1. Identification of all requests for a particular service by ISPs and the dates of such requests;

2. The number of ISPs or others requesting each item;

3. LEC's planned response date for each request;

4. LEC's planned tariff filing and implementation dates for each request;

5. Explanation/description of the item requested; and,

6. If unable or unwilling to provide an item, a full explanation of the reason.

These reports will help us monitor the geographic and technical development of the ISP market in Florida and the competitive behavior of the LECs and ISPs. The reports will also be useful tools that will aid our analysis of future LEC CEI filings.

C. Jurisdictional Nature of Intrastate Access

Historically, the nature of access of a service, intrastate or interstate, determines the jurisdiction in which a service is offered and, hence from which jurisdictional tariff a service may be purchased. Each jurisdiction in turn determines the terms and conditions under which a particular service should be provided and, where appropriate, approves the appropriate rates and rate structure for that service. In the context of this proceeding, any jurisdictional limitations will also limit the scope of this Commission's authority to regulate BSAs and BSEs provided by the LECs for the provision of information services. There are still many unanswered questions and some dubious answers concerning information services. For example, the FCC in its December 22, 1988 ONA Memorandum Opinion and Order required that the BOCs file BSAs and BSEs in both state and federal tariffs. This dual jurisdictional tariffing requirement raised a number of questions as to how the jurisdiction of a BSA or BSE will be determined. In part, some confusion over jurisdiction stems from the fact the Computer III decisions are still pending at the Ninth Circuit Court of Appeals and at the FCC. Despite the confusion, we attempt herein to provide a working solution to the jurisdictional questions.

Traditionally, intrastate access is defined as access provided by the LEC in association with a call which originates and terminates within the same state. In general, most parties subscribe to this definition. However, there were a few parties who deviated from this conventional definition. For example, Southern Bell's Witness Payne defined intrastate access as a situation in which a call originates within the State of Florida by an information service provider's customer and terminates at an ISP's location within the State of Florida. The implication of this definition is that the location of an ISP's data base is not relevant to a jurisdictional determination of that ISP's access connection. The application of this definition does appear to provide some advantages. This definition ensures that it is technically feasible to identify the jurisdictional nature of access and it becomes less complicated to identify those BSAs and BSEs over which this Commission has jurisdiction. Further, if a call accesses a data base in another state, this will not result in jurisdictional contamination of the local exchange facilities.

*There are also technical constraints with the traditional definition of jurisdictional access which also makes it unsuitable for information services. According to Southern Bell's Witness Payne, the major concern of the LECs is that it is difficult to identify the jurisdiction of the traffic because the ultimate end points of the call are not known. Payne continues that, in the voice world, the digits dialed provide a highly accurate method for determining jurisdiction due to the ubiquitous use of the North American Numbering Plan. With most enhanced services, however, the LEC has no way of knowing the destination of a call once it is handed to an ISP. Witness Payne cites the example that "all calls to a VAN which use local exchange lines for access are considered local, even though communication may take place with databases or terminals in other states." Witness Payne concludes that such "calls should continue to be viewed as local exchange traffic terminating at the ESP's location. Connectivity to a point out of state through an ESP should not contaminate the local exchange connection." We agree.

ISPA espouses a similar line of reasoning. ISPA states that its members and other ISPs have "traditionally utilized local exchange services available under tariffs of general applicability to carry both its intrastate and interstate communications." ISPA continues that "there would not appear to be any reason to deny ISPs the option of continuing to use local exchange service." ISPA concludes that "maintaining the current access arrangements would tend to maximize intrastate revenues and encourage the full development of information service in Florida." Witness Payne agrees that "this is consistent with the treatment of such facilities today where an ESP such as Telenet, for example, utilizes local exchange service business lines to accumulate traffic, then routes the traffic through their packet network to a destination in another state."

To the extent Southern Bell's view of intrastate access for ISPs prevails, this will limit the authority of the FCC over BSAs and BSEs since most BSAs and BSEs would become intrastate in nature and would be subject to this Commission's authority. United made a similar observation. United states that this definition "leaves no calls which fall within the definition of interstate access." United also argues that this definition of intrastate access is "inconsistent with Florida

Statutes outside the utility area." In support of this view, United cites Section 203.12(8) of Florida Statutes (1987) which defines "interstate" as follows:

> The term "interstate," as applied to telecommunications services, means originating in this state, but not terminating in this state, or terminating in this state but not originating in this state.

We do not totally agree with United; some calls would still be classified as interstate. For example, if an ISP end user originates a call in one state to access an ISP's point of presence (POP) in another state, such a call is interstate in nature. We also disagree with United's statutory analysis of our jurisdiction. The description in Section 203.12(8) is a taxing statute and does not affect our construction of our jurisdiction pursuant to Chapter 364. In the context of information services, access originates from the ISP end-user and terminates at the ISP's POP. The ISP's POP is the interface between the two jurisdictions. Whatever the ISP does with that call should not be considered in the definition of interstate access.

As Southern Bell's Witness Payne stated,

> [C]onnections to the local exchange network for the purpose of providing an information service should be treated like any other local exchange service. The facilities and features themselves should be provided to the ESP location from the local exchange tariffs, along with intraLATA toll and private line transport within the LATA. InterLATA transport, either switched or dedicated, will be provided to the ESP location by an IXC who will pay the appropriate intrastate or interstate access rates. The local exchange facilities provided to the ESP would be used to carry local, intrastate and interstate calls. This is consistent with the treatment of such facilities today, where ESPs such as Telenet, for example, utilize local exchange service business lines to accumulate traffic, then route the traffic through their packet network to a destination in another state.

However, if the lines used to carry both interstate and intrastate traffic are classified as interstate in nature under the contamination doctrine, that same line would be classified as interstate in nature. If the latter classification is used, all revenues from and costs of that line will be allocated to the interstate jurisdiction. In the alternative, such access lines could also be classified as both intrastate and interstate in nature. This classification will present problems to the Commission, as well as to the LECs and ISPs.

There is a high probability that the rates and rate structure we establish may not mirror those in the interstate jurisdiction. If this happens, mixed jurisdictional traffic will present problems with respect to the proper application of rates and rate structure in assessing the ISPs' bills. Southern Bell's Witness Payne did not know how bills would be calculated for BSAs which carry mixed jurisdictional traffic where rates between jurisdictions are different. MCI argues that the Commission should continue to handle mixed jurisdictional traffic as it does today through direct measurement, a Percentage Interstate Use (PIU) factor or a functional surrogate. According to Bell's Witness Payne, since the LEC has no real knowledge of what happens to a call beyond the ISP's POP, the determination of a PIU factor is dependent on the ISP's telling the LEC whether a call is inter- or intrastate in nature. In addition, it appears that most ISPs lack the ability to measure and thus generate a PIU. Consequently, ISPA concludes that, a "PIU approach could not be implemented." The success of a PIU under these circumstances will depend on the reliability and credibility of the ISPs.

There is also the problem with cost allocation between jurisdictions as a result of mixed jurisdictional traffic. At this point, however, its seems that no one knows how these costs will be allocated between jurisdictions. Witness Payne stated that he did not know the rules that will be followed in the interstate arena and that it will depend on how Part 69 rules and everything comes out.

Another concern with mixed jurisdictional traffic is that it gives the ISP the ability to tariff shop between jurisdictions. Since the FCC requires BSAs and BSEs to be filed in both state and FCC tariffs, if an ESP is interstate in nature, that ISP could buy those services out of the interstate tariff. At this point there is no clear rule which delineates

either the services or the times that an ISP can purchase from the interstate tariff. It seems reasonable that the determining factor will be the price of a service or whatever service meets the need of an ISP.

Upon consideration of the foregoing, we find that, specifically for information services, intrastate access shall be defined as follows:

> Intrastate access is switched or dedicated connectivity which originates from within the state to an information service provider's point of presence (ISP's POP) within the same state.

Whether such a call is subsequently transmitted to a data base in or out of the state after it accesses the ISP's POP is not relevant to whether access is interstate or intrastate in nature. The application of this definition would result in no mixed jurisdictional traffic. This definition is consistent with the manner in which ISPs currently obtain access. Further, it avoids most of the potential jurisdictional contamination problems discussed above.

However, if it is not within this Commission's authority to define intrastate access in this manner because of FCC action, the issue of mixed jurisdictional traffic becomes relevant. If there is a need to address the handling of mixed jurisdictional traffic due to differing rates, terms or conditions between the jurisdictions, such traffic should be measured directly if and whenever technically feasible to do so, or the use of a PIU factor should be applied.

D. Guidelines For Rate Level and Rate Structure

In order to facilitate the flow of benefits from the availability of information services to the citizens of Florida, it is important to let the ISP market continue to develop. This is not to say, however, that it is our responsibility to "protect" that market in the sense that we "protect" certain classes of service such as residential users. To the contrary, we do not believe that this Commission should protect ISPs, nor even that they need protection. However, we are faced with a situation in which the provider of monopoly services necessary to provide information services is

also an active competitor with its customers who are ISPs. Despite the conflicts inherent in this situation, it is our desire to establish an environment that will allow the market participants the flexibility to expand and develop this industry, while simultaneously allowing the LECs to recover their costs for provision of services to the ISP industry.

All LECs participating in this docket advocated usage sensitive pricing. In addition, each LEC suggested additional approaches to ratemaking for ISP interconnection. Centel advocates mirroring FCC rates and structures for the sake of administrative efficiency. GTE Florida proposes the use of ONA-type tariffs to ensure parity between LEC and nonLEC ISPs. Southern Bell originally submitted a list of 206 BSEs that were requested by ISPs. Of these, Southern Bell stated that it was able and willing to actually provide about 40 at the present time. All BSEs offered by Southern Bell were proposed to be provided only in conjunction with its two-way measured service tariff.

We do not categorically oppose the concept of usage sensitive pricing on resold access to the local network. Historically, we have established usage based rates for access to the local network by providers such as shared tenant providers, private pay phone providers, cellular carriers and radio common carriers. In fact, Southern Bell has had usage based tariffs in place for several years for two types of services that may fall within the ambit of Information Services. These are public announcement services (PAS) such as Time and Temperature, and Dial-It/976 Service. PAS rates are per hour and 976 rates are per minute.

However, we have several concerns with Southern Bell's proposed use of its experimental two-way measured service tariff approved in Docket No. 881323-TL. Under Southern Bell's proposal, existing ISPs such as telephone answering service (TAS) providers who would like to make use of the "call forward/busy line" or "call forward/don't answer" features, must also subscribe to the two-way measured service tariff. This could result in as much as a 150 percent increase in their rates, according to Southern Bell's calculations. The ISPs argue, and we agree, that this type of increase may deter at least the small ISPs from subscribing to these features. The result will be that Florida ISP patrons will not have the use of these features except at very high prices.

The rate structure in Bell's two-way measured service tariff provides for deep discounts with increasing amounts of usage. The effect of this "declining" rate structure is to impose a lower average rate per minute on large users who benefit from the discounts relative to the smaller users whose usage does not qualify for discounts. It is beyond the scope of this phase of these proceedings to analyze in detail the effect of this type of rate structure. Nevertheless, it raises several concerns.

First, the intervenors in this docket are made up almost entirely of large ISPs who compete or intend to compete nationally. To the extent that federal tariffs are available, these VANs and other ISPs may subscribe to features and functions out of those tariffs as well as intrastate tariffs. Small ISPs, such as TAS providers, who will not have the option to "tariff shop" because of their localized provision of service, were not well represented in this docket. Yet they have existed for years subscribing to regular business access and structuring their own charges based on those rates. The effect of a usage based declining rate structure would not only significantly increase their costs but also probably put those small services at a competitive disadvantage relative to the larger providers.

Moreover, Southern Bell has forcefully pointed out the need to protect the general body of ratepayers from the heavy users. Yet its proposed rate structure would result in lower usage rates to ISPs with the heaviest usage, and higher usage rates to small ISPs. Until the LECs or at least Southern Bell provides the data to allay these concerns, we are unwilling to grant permanent approval of the type of rate structure contained in the two-way measured tariff or the requirement to subscribe to it in order to obtain certain ONA offerings. However, we recognize that we do not have sufficient information available to us to make a final determination on usage sensitive pricing. Although some form of usage sensitive pricing may ultimately be determined to be appropriate, not enough is known to make a specific decision at this time. More information needs to be gathered concerning the level of demand traffic characteristics and the nature and types of existing and potential providers. Accordingly, at this juncture we neither endorse nor reject Southern Bell's two-way measured usage tariff. Therefore, we find it appropriate that Southern Bell be allowed to continue this as an experimental tariff.

On that basis, we also find that ISPs should be allowed to continue to take access as they currently do. We emphasize that the ISPs are on notice that this is a preliminary finding until more experience is gained by all concerned.

Discrimination was a major concern to the ISPs in these proceedings; they strongly advocate that this Commission establish policies and guidelines so as to minimize the potential for any discrimination. They offered several suggestions to this end. First, they suggest that the rate elements should be unbundled. If the LECs are required to offer each feature or function separately, and in addition are required to offer access separate and apart from any feature, this will allow ISPs maximum flexibility to develop their own approaches to providing services to their patrons. In addition, unbundling minimizes a LEC's ability to control the market by grouping or bundling several features together or by tying one or more features to an access arrangement. ISPA specifically argues that retaining current tariffs will help minimize discrimination and market distortion.

Second, the ISPs suggest ancillary services such as diagnostics and CPNI should be regulated. Ad Hoc favors this position as long as the LECs retain market power. ISPA advocates that the Commission should at least require that these services be offered to all ISPs under the same terms, conditions and rates, even if they are not in a tariff. The concern here is that if there is no regulatory oversight of ancillary services, that the LEC may offer them at more favorable terms to its own ISP.

Third, they suggest a standard cost methodology should be adopted. MCI voiced the strongest opinion in favor of a Commission-approved cost methodology, based on a building block approach of individual elements. MCI Witness Cornell argued that having a standard methodology is the only way in which the Commission can truly be in a position to prevent unfair discriminatory pricing and cross-subsidization. Sprint also endorsed the idea of a standard cost methodology as being more fair and objective.

Fourth, they suggest if collocation is not required or allowed, then price parity with respect to access for nonLEC ISPs should be established. This is the virtual collocation concept. This would require the LEC to charge its own ISP the

same rate for its short jumper as it does nonLEC ISPs for access lines. ISPs argue that the LECs' positions against collocation will give the LEC ISP a competitive advantage unless some form of price parity is required.

Finally, Prodigy and ISPA both urge the Commission to guard against rate shock that would occur if ISPs received sudden large increases in the costs of LEC services to which they must subscribe.

We note that there is an apparent incentive for a LEC to discriminate in favor of its ISP. Whether all LECs will act on that incentive remains to be seen since, at this point, only a few of them are as yet actively participating in the information services market. In order to alleviate any problems of disparate treatment by LECs against nonLEC ISPs, we have developed the following guidelines for evaluation of LEC offerings to ISPs.

1. No discrimination between LEC and nonLEC ISPs.

Features and network function offerings should be announced and offered at the same time and under the same terms and conditions to LEC and nonLEC ISPs. As discussed above, LECs should respond quickly to ISP requests for new services. Each service offering should be made available independent of any other service offering unless the LEC can prove that it is technically necessary to condition one service upon another. This requirement will minimize a LEC's ability to manipulate the market, and maximize ISPs' flexibility to design their own services to meet their customers' demands. As a general rule, all offerings to ISPs should be tariffed whether they are ancillary, optional, access, BSEs, or otherwise. At a minimum, a description of any and all services offered to any ISP should be inserted in the relevant tariffs.

These guidelines should assist in preventing nondiscrimination on items that the LECs file with this Commission for approval. However, they will not ensure that the LECs are meeting the ISPs demand for services. We will also rely on the ISPs to help us monitor the LEC provision of services by keeping this Commission informed of any problems that arise.

2. No cross-subsidization by LEC regulated operations of nonregulated operations.

LECs, when participating in a competitive market, have a natural incentive to cross-subsidize competitive offerings. They may even price their offerings below costs if they can recover the deficiency from other sources. LEC monopoly services are a logical source from which to recover any deficiency. In this case, the incentive to Southern Bell is all the greater because the company proposes to not charge its own ISP for the access line, or loop, but does propose to charge all other ISPs for these items.

There are several solutions to the cross-subsidy problem. One way is to prevent underpricing of the LEC ISP services by regulating LEC ISP services. Another way is for the Commission to adopt a standard cost methodology with appropriate allocation procedures for use in determining the cost of various features and services that the LECs propose to offer. In that way, the Commission can determine the merit of the subsequent LEC pricing proposals. If the Commission's own cost criteria are met, the Commission can be more sure that cross-subsidization does not occur. This approach was advocated in particular by MCI's Witness Cornell.

The record in this proceeding is inadequate to make a reasonable determination on an appropriate uniform cost methodology. Southern Bell, for example, uses an embedded cost methodology to show that basic local exchange loops such as 1MB, 1FB, PBX are not recovering their costs. However, Southern Bell uses a different cost methodology, the Long Run Incremental Unit Cost (LIUC), to prove that local loops for its competitive offerings such as ESSX and its two-way measured service tariff are recovering their costs. Each different cost methodology yields a different answer to the cross-subsidy question. In addition, even when the same cost methodology is used, the LEC can use different parameters from one study to the next. This results in two different costs for essentially the same thing. For example, Southern Bell provided a loop cost study showing loop costs up to five miles in length that had been previously developed for ESSX service. Subsequently, Southern Bell provided a loop cost study showing loop costs for a CEI filing. Comparison of the two studies revealed substantial differences in the stated costs. We have no workpapers concerning assumptions and methodology or

calculations, and have had no opportunity to question the company concerning the nature of the differences between the ESSX and CEI loop costs. It is interesting to note that Southern Bell derived different costs for what technically appears to be the same loop. It is more interesting that the ESSX loop costs were lower than the CEI loop costs at each distance band. Southern Bell provides its ESSX service to compete against PBX vendors. The higher CEI loop costs, on the other hand, will presumably be used to support the access line rates to be charged to nonLEC ISPs.

We must emphasize that the cost data was not the focus of the hearings. Therefore, the cost study data has not been subjected to adequate scrutiny. We are currently investigating Southern Bell's cost allocation procedures in a separate proceeding which will aid our further review and consideration of an appropriate cost of service methodology.

3. Minimize impact to existing ISPs who subscribe to LEC services.

In order to allow the ISP market the opportunity to expand and develop with minimal disruption, we again reiterate that existing tariffed offerings shall continue to be made available to these ISPs, with no use or user restrictions except where technically necessary. With respect to the potential for market disruption, Ad Hoc submitted an estimate of the impact of Southern Bell's two-way measured service tariff on telephone answering services (TAS). According to that data, TAS providers currently pay $26,379 under basic local exchange tariffs. This amount would increase by $140,529 to $166,765 under the two-way measured service tariff, or by 532%. Southern Bell estimated that ISP access rates would "only increase to roughly 2-1/2 times their current subsidized, flat rates."

Without more justification than we have here, we do not believe that such large access rate increases are appropriate. As stated earlier, some form of usage based pricing may ultimately be appropriate. However, we must see better pricing proposals than those submitted by Southern Bell in this phase of the proceedings.

Contribution towards joint and common costs is more appropriately derived at this time from feature offerings. Accordingly, we find that Southern Bell's and other LECs' future filings should incorporate contribution in the BSEs and optional or ancillary offerings, not in the access rates. This will minimize any significant upheavals in the ISP market.

VII. Use and User Restrictions

Use and user restrictions are generally thought to be mechanisms that allow differing prices for essentially the same service. These restrictions have existed in telephone regulation for many years. Use restrictions exist when a customer is restricted from purchasing a particular service when he uses the service in a particular manner. For example, the differential in price between a plain business line and a residential line is able to exist because business customers are restricted from subscribing to the lower priced residential line at their business premises.

User restrictions exist when a class of customers must subscribe to certain lines regardless of the way the group uses the line. For example, shared tenant services (STS) providers must subscribe to higher priced usage-sensitive lines for all lines entering his switch regardless of the use of the lines.

Southern Bell initially proposed to institute two separate use and user restrictions. First, the company proposed that any customer who provided information services as defined by the Commission would be required to order out of an ISP section of Southern Bell's tariff and would be required to subscribe to a higher priced, two-way usage sensitive line. Second, no one would be allowed to take service out of the ISP tariff except those classified as information service providers. The ISP tariff would be the repository for all BSEs.

Southern Bell modified this proposal at hearing to allow any customer to subscribe to BSEs but also requiring such customers to subscribe to the two-way measured line.

According to Southern Bell's Witness Lombardo, the modifications stemmed from FCC criticism of the Company's bundled ONA tariff proposals without adequate justification for the restrictions. In support of its modified use/user restrictions, Southern Bell argued that its elimination of the

ISP-only restriction opened up access to all end users who want to use those particular basic service arrangements and basic service elements. We note that Southern Bell still desires to tie the use of a BSE to its two-way measured service access line.

Another significant modification to its earlier proposal involved Southern Bell's redefinition of basic service elements. Witness Lombardo testified that some items originally considered to be basic service elements, are now considered to be complimentary network services (CNS). He explained these as services that are provided on the end user's line such as call forwarding or call forwarding busy line. The only apparent significance of this change is that only BSEs are tied to the two-way measured tariff.

The modified Southern Bell proposal also calls for an additional restriction on IXCs and resellers. Witness Lombardo testified that under the modified proposal interexchange carriers, resellers, etc. must continue paying the same access charges they now pay. This concern apparently stems from fear that IXCs and resellers will migrate to the proposed 2-way measured serviced tariff since it is priced lower than intrastate switched access rates. Centel's Witness Becker shared this concern and testified that some restrictions are necessary to ensure that the proper charges are associated with the services being provided. He explained that, since the FCC has decided that interstate information services elements should be available to everyone, there is the potential for interexchange carriers to obtain access service through the ISP tariff rather than through the access tariff. He concluded that without user restrictions, interexchange carriers could potentially obtain service from ISP tariffs to avoid prices in the access tariffs.

ISPA responded in opposition to Southern Bell's IXC restrictions arguing that the fear that interexchange carriers would use ONA to migrate from carrier access tariffs to local exchange tariffs is unfounded and that such migration should not be used as justification for use/user restrictions.

Witness Lombardo argued in support of user/use restrictions explaining that they prevent tariff shopping and ensure that information service providers utilize the usage sensitive tariffs designed for information services. Centel's

Witness Becker generally agreed with Mr. Lombardo. GTEFL's Witness Glassburn supported use restrictions only as an interim step. He argued that ultimately service must be provided on the basis of the cost causer, and the only way to do that is through local measured service.

All of the nonLEC parties opposed use and user restrictions. MCI's Witness Cornell opposed use/user restrictions because it will give the LECs the power to engage in price discrimination and that such action will allow the LECs to control or eliminate competition. She also explained that, if the Commission determined the cost of the basic building blocks of the network and then nondiscriminatorily required every service to pay the same amount for a basic building block, the Commission could prevent cross subsidization and discrimination.

ATT-C witness Guedel argued that unrestricted local and long distance access tariffs will allow the benefits of ONA to be realized by the largest number of consumers and will provide perhaps the best safeguard against monopoly pricing and price discrimination.

MCI's Witness Ozburn argued that the modified Bell proposal meant that different users would be treated different way and that inequality will create problems until such times as the services are totally unbundled and prices are the same for all.

Use and user restrictions are useful and important tools for furthering public policy. However, the restrictions proposed by Southern Bell may have an adverse impact on a newly developing information industry. Accordingly, we find that, as a general policy, use and user restrictions of the kind proposed by Southern Bell should not be placed in the LEC information service interconnection tariffs. However, we will consider exceptions on a case-by-case basis. We note with some concern the possibility that some of the features associated with feature groups may be tariffed as BSEs and it is possible that, in the long run, an IXC may be able to use and receive the same utility from these services in lieu of intrastate switched access service. Therefore, while we do not believe that it is necessary to implement blanket use and user restrictions, we do recognize the potential for migration. Therefore, we find it appropriate that interexchange carriers

must continue to subscribe to intrastate switched access service for the provision of long distance service. However, we also find that, as long as the access restriction is in place, an IXC should be able to subscribe to BSEs like any other customer.

VIII. Customer Proprietary Network Information

In a competitive industry, knowledge of the operations of one's competitors is of great value. In the information services industry, ISPs must interconnect with the LECs' local networks. As a result, the LECs can acquire much valuable information about the operation of each ISP. This type of information has been generally labelled as customer proprietary network information (CPNI). The issue arises as to what types of information should be considered proprietary and the requirements, if any, that should govern the LECs' acquisition, use and disposal of such information. The issue of access to this information is especially important in the context of the information services industry where the LECs also have affiliated ISPs that compete with unaffiliated ISPs.

A. Definition of CPNI

Witness Boltz of Southern Bell defined CPNI as "the types, location(s) and quantity of all services to which a customer subscribes, how much the customer uses the services, and the customer's billing record." Southern Bell modified this definition to include "usage data and calling patterns." Most parties agree with this definition. ISPA separates the definition of CPNI into two categories, namely "customer specific information" and "aggregate data." ISPA's Witness Harcharik defined customer specific information as "customer name, billing address, billed telephone number, class of service, type of customer premises communication equipment, calling patterns, directory advertising, and toll usage." He defined aggregate CPNI as "aggregate data on usage levels and traffic patterns for network services in a particular service area." Sprint included customers' credit information in the definition.

The definition of CPNI should be as clear and inclusive as possible in order to prevent the LECs from manipulating the CPNI rules to their own advantage and to the disadvantage of the nonLEC information service competitors. Nevertheless, the

CPNI definition should only include network information such as will enhance the telecommunication services of the ISPs and their customers. It does not appear to us that customer credit information is relevant to the development of the information service market. Consequently, we find that the inclusion of customer credit information in the definition of CPNI, as suggested by Sprint, is inappropriate. Such information should not be disclosed to any party, including the LEC affiliate. ISPA's categorization of CPNI into customer-specific and aggregate data is appropriate and useful. In addition, we also agree with Centel and Prodigy that CPNI should include all information developed from the LEC provision of network services to a customer.

Upon consideration, we find that CPNI should be defined as information or data accumulated by the local exchange company as a result of its providing basic network services to its customers. CPNI should be classified in the following two categories: (1) Customer specific CPNI, and (2) Aggregate CPNI.

Customer specific CPNI should include, but not be limited to, customer name, billing address, billed telephone number, class of service, the quantities of all services used by the customer, how much the customer uses the service, type of customer premises communication equipment, access arrangements, calling patterns, usage data and customer billing records.

Aggregate CPNI should be defined as aggregate data on usage levels and traffic patterns for network services in a particular service area. Aggregate CPNI should include total number of business, residence and touch tone equipped access lines, classified by wire center.

B. CPNI Restrictions

Most of the parties basically agreed that to the extent any CPNI is made available, it should be available to all on equal terms and conditions. Most parties also agreed that access to CPNI by a LEC affiliated ISP should be on the same terms as for a nonLEC ISP. Southern Bell takes a different tack, arguing that its affiliated ISP should have access to the CPNI of its customers without their written consent, while also maintaining that before its ISP competitors may have access to

CPNI they must first receive a written authorization from customers permitting such access. Southern Bell further argues that its customers expect it to use this information in its development of integrated solutions to customers' telecommunications needs and that to preclude Southern Bell from developing proposals for its customers until it secures the customer's written approval to access information already in its data bases, unnecessary costs and delays will result. It is important to note that not all LECs agree with Southern Bell's position. GTEFL and United state all ISPs should have equal access to CPNI under the same terms and conditions. United further states that "disclosure of CPNI only to LEC-affiliated ESPs could provide the affiliate with an unfair market advantage."

All the nonLEC parties opposed Southern Bell's CPNI proposal. Each of these parties supports the proposition that no LEC should release CPNI to any person without written authorization by the specific LEC customer involved.

It is clear to us that CPNI is very valuable to all ISPs. Aggregate CPNI is also useful in technical and economic design of an ISP's services, such as in location and "sizing" its network access nodes. Customer specific CPNI gives marketing and sales personnel important information about a customer's service requirements. First, it permits a sales group to efficiently screen a large number of prospective customers, to identify those with high traffic volume or other characteristics of interest to a particular ISP. Those which can become large accounts are separated from those accounts with less potential. Second, it permits a substantially more "targeted" sales approach to those customers who are deemed to be potentially large accounts.

Historically, we have, as a matter of policy, protected customer-specific information from unauthorized disclosure. Nothing in this record convinces us to treat customer-specific CPNI differently. Therefore, all ISPs, including the LEC's affiliated ISP, should first have written authorization before

being allowed access to customer specific CPNI. With respect to aggregate CPNI, in the interest of a "level playing field," we believe that there should be equity in the application of CPNI requirements. The information service industry presently has been classified as competitive by most of the parties to this docket. In the interest of competition, Southern Bell's affiliated ISP should not be given a competitive advantage with respect to access of CPNI. LEC affiliated ISPs should be required to access this data under the same terms and conditions as the other ISPs.

Upon consideration, we find it appropriate to impose the following CPNI requirements:

1) All information service providers, including a LEC's affiliated ISP, should be required to obtain written authorization from a customer before they can access that customer's CPNI.

2) With respect to aggregate CPNI, a LEC affiliated ISP should obtain access to such information under the same terms and conditions as other nonLEC ISPs.

3) In addition, personnel of a LEC affiliated ISP should not be allowed to access CPNI possessed by the LEC, unless authorized in the manner described above.

The LEC should include specific language in its tariff as to what constitutes aggregate CPNI as approved by this Commission. Further, the LEC should state the terms and conditions under which such data can be accessed. The terms and conditions should be reasonable and the same for all ISPs including the LEC affiliate.

IX. Collocation

The issue of collocation addresses the physical location of an ISP's point of connection with a LEC's network. Three

forms of collocation were addressed in the proceeding. They are defined as follows:

> Physical Collocation is the utilization of regulated LEC facilities and floor space by the LEC affiliated ISPs or by nonLEC ISPs or both.
>
> Virtual Collocation refers to the equal pricing of a LEC ISP's access located within the LEC's premises and a nonLEC ISP's access (business lines) located outside of the LEC's premises as defined by tariff.
>
> Virtual Central Office is a location apart from a LEC central office, equipped with high capacity facilities from a LEC, where ISPs can locate their operations. A virtual central office may be LEC or privately owned.

Any discussion of collocation must also include mention of the nature of the actual connection of an ISP to a LEC's network. These are:

> Short Jumper or Short Wire is the connection between the network and the LEC's information service equipment which requires only an intrabuilding connection. This is associated with physical collocation.
>
> Long jumper or long wire requires a network connection to a location outside of the LEC central office to the equipment of other ISPs. This is associated with virtual collocation.

A. Physical Collocation

The IXCs advocated diverse positions regarding physical collocation. ATT-C's Witness Guedel testified that physical collocation should not be required because security and administrative problems overrule any potential benefits. MCI's Witness Cornell testified that Southern Bell should not be allowed to preclude collocation and engage in a price squeeze as a bottleneck monopoly. Microtel, Sprint and Telus took the general position that if physical collocation is allowed for LEC affiliated ISPs, it should be allowed for all providers on equal terms and conditions.

Centel, GTEFL, and Southern Bell opposed mandatory physical collocation. Witness Glassburn testified that 20 to 30 companies currently providing 976 would be eligible for collocation should it become mandatory and that keeping nonTelco equipment and personnel out of its central offices is a long standing policy. Southern Bell's Witness Lombardo opposed collocation because "it brings with it burdens, onerous burdens, in the areas of safety, security and administration and we just simply don't believe it is in the public interest to impose collocation on the local exchange companies." In addition, Witness Lombardo also argued that Southern Bell should be allowed to use the short jumper as a slight advantage to offset disadvantages such as not being able to enter the market place, being a limited service provider and having regulatory restrictions.

Southern Bell's Witness Boltz identified nine significant administrative and security concerns related to collocation of nonLEC equipment in a LEC central office. These concerns were directed towards priority for and allocation of central office space as well as the potential problems attendant with access to a LEC central office by nonLEC personnel.

Alone among the LECs, United's Witness Griffin did not oppose physical collocation. He argued it should not be mandatory, but, where space is available, United desires to maximize its revenue opportunities from collocation as long as proper steps are taken to deal with issues such as security and liability. Witness Griffin further argued that the offering of collocation to information service providers on LEC premises should be at the LEC's option.

Ad Hoc's Witness Mayne testified that collocation by ISPs is desirable and should be allowed at the LEC's option. Seemingly concurring with the Ad Hoc Committee, ISPA's Witness Dewey testified that physical collocation should be offered by the LECs to ISPs who desire to collocate their equipment in a LEC central office and assuming that available space exists in a suitable central office, this space should be made available, under reasonable terms, to all ISPs on a first-come, first-served basis. In support of physical collocation, Witness Dewey cited several advantages including the short jumper, the potential for additional LEC revenues from renting space, appropriate hearing, air conditioning and ventilation in

the LEC's central office. With respect to the disadvantages of physical collocation, Mr. Dewey noted the following: time needed to negotiate each individual contract, establishing uniform rates for such things as leased space, allocation of space and the inequities of first-come, first-served priority when central office space becomes limited.

Witness Dewey responded directly to Witness Boltz's security and administrative concerns concluding that his concerns were not a significant impediment to physical collocation. Witness Boltz responded, arguing that Mr. Dewey had trivialized the problems associated with physical collocation.

Prodigy favored physical collocation as cost savings that could be passed on to the consumer. Prodigy also noted that if operational cost savings are available only to the LEC ISP, then all other competitors will be disadvantaged. Public Counsel supported physical collocation if sufficient protective terms and conditions to protect the local exchange can be implemented.

Upon consideration, we find that physical collocation shall not be required. Our decision is premised on the lack of actual quantified experience by any of the parties with physical collocation. The present practice of security in central offices and similar establishments in the telecommunications industry has been developed over many years of experience and is to some degree born of necessity. However, we recognize that collocation in a central office can provide some enhancement to ISPs. Accordingly, we grant each LEC the option to provide physical collocation on an exchange-by-exchange basis. If a LEC exercises its option to provide physical collocation, it may charge its collocated affiliated ISP the short jumper rate. In addition, physical collocation shall be provided pursuant to tariffs filed and approved by this Commission. Such tariffs shall be filed within 60 days of the issuance of this Order or within 30 days of the issuance of an order, if any, disposing of motions for reconsideration of this Order. Space should be made available for use such that it is not detrimental to the regulated ratepayer.

B. Virtual Collocation

Virtual collocation refers to the equal pricing of a LEC ISP's access located within the LEC's premises and a nonLEC ISP's access located outside of the LECs premises. Reference to virtual collocation by the parties is sometimes expressed in terms of equal pricing or price parity between a LEC and the ISP.

The IXCs generally took the position that if physical collocation was unavailable, the price parity inherent in the concept of virtual collocation is appropriate. This would ensure that the LEC and nonLEC ISPs receive service on equal terms and conditions.

Southern Bell's Witness Boltz opposed virtual collocation claiming that, "Virtual collocation would eliminate legitimate transmission cost efficiencies Southern Bell otherwise would realize through the integration of its regulated and nonregulated services." None of the other LECs took a position on this specific issue.

Ad Hoc, Prodigy and Public Counsel generally took the position that if physical collocation is impossible or the commission should decide against physical collocation, virtual collocation should be required through tariffs. Witness Dewey testified that price equalization [virtual collocation] does not make up for all of the advantages of physical collocation. He further argued that he could not imagine any advantages of virtual collocation over physical collocation.

With the exception of Southern Bell, the participating IXCs, LECs and associations basically favored the virtual collocation concept. Southern Bell's major concern appears to be the loss of the short jumper's slight advantages.

Upon consideration, we find that in those exchanges where a LEC has not elected to provide physical collocation, the LEC shall provide virtual collocation pursuant to tariffs filed and approved by this Commission. Such tariffs shall be filed within 60 days of the issuance of this Order or within 30 days of the issuance of an order, if any, disposing of motions for reconsideration of this Order.

C. Virtual Central Office

Virtual central office is a location apart from a LEC central office, equipped with high capacity facilities from a LEC, where ISPs can locate their operations. A virtual central office may be LEC or nonLEC owned.

Of the intervening parties in this docket, only Telus, Southern Bell and ISPA made any reference to the virtual central office concept. Telus took the position that, if physical collocation is unavailable, virtual collocation or virtual central office provisioning may be appropriate. Southern Bell's Witness Boltz referenced a BellSouth collocation study in which virtual central office was mentioned as another form of virtual collocation that would negate most if not all of the transport efficiencies to be gained by a BOC-affiliated collocated ISP. This study recommended that BellSouth continue its present policy against collocation. ISPA's Witness Dewey testified that there are some very positive features to a point of presence type offering, but that there is a potential for a negative side which depends on the exchange area and an ISP's particular needs.

Until we have more experience and there is greater maturity in the LEC telecommunications competitive environment, we find that a virtual central office shall not be mandatory. If any party elects to implement a virtual central office, it shall be offered pursuant to tariffs filed and approved by this Commission.

X. REGULATION OF LEC PROVIDED INFORMATION SERVICES

In view of our decision that we have jurisdiction over LEC-provided information services, the question remains as to whether and to what extent we should exercise regulatory oversight of these services. The primary goals of Open Network Architecture (ONA) are to increase the opportunities of the ISPs to "use the BOCs regulated networks in highly efficient ways so that they can both expand their markets for their present services and develop new offerings that can better serve the American public" and to allow the Bell Operating Companies (BOCs) to compete in the information service market on a nonstructural separation basis. The FCC classifies information services as competitive and has ordered that the

the BOCs' provision of such services should not be regulated. Further, the FCC proposed nonstructural safeguards to protect competition if the BOCs enter the information service market. Despite these nonstructural safeguards, some parties are skeptical of the sufficiency of these measures to protect Southern Bell's competitors and the local ratepayers. There is the fear that, if the LECs enter the market, the LECs may engage in anti-competitive cross subsidization by forcing the local ratepayers to absorb the costs of the unregulated business. Further, the LEC ISP affiliate's and the LEC's access to monopoly profits would allow them to engage in predation by undercutting their competitors' prices and driving them out of business.

Most parties believe that the LEC provision of information services should not be regulated. Southern Bell's witness Lombardo, while advocating that the provision of most of the LEC's network capabilities and rate elements that support information services be regulated under state tariffs, argues that information services should be provided on an unregulated basis. Witness Lombardo also argues that there is no need for regulation since the information service market is a "highly competitive market." He further argues that "the nonstructural safeguards outlined in the FCC's Computer III proceeding, including the cost allocation manual, customer proprietary network information (CPNI) requirements, and nondiscriminatory service rules, provide protection for all parties." Witness Lombardo continues that "these safeguards were designed to establish and maintain a level playing field for all ESPs by satisfying concerns regarding cross-subsidization and discriminatory treatment while enabling the elimination of the significant costs and inefficiencies imposed by structural separation." He concluded that nonstructural safeguards, instead of regulation, "is the most appropriate and efficient method for LEC provisioning of information service."

GTEFL and United concur with Southern Bell. GTEFL's Witness Glassburn testified that the provision of information services by the LECs should be deregulated without the requirement for a separate subsidiary. However, witness Glassburn cautioned that, "if the Commission regulates LEC-provided information services, the rate for such service should be afforded maximum pricing flexibility in order to permit the regulated TELCO to compete effectively in this

highly competitive market place." He continues that "by requiring that flexibly priced LEC information services are priced above incremental costs, the Commission can ensure that cross-subsidization is avoided and that anti-competitive pricing does not occur."

ISPA also supports the position that the LECs' provision of information services should not be regulated. MCI conditionally supports this position. ISPA's Witness Harcharik testified that the business is competitive and that it needs no regulation. However, Witness Harcharik's primary concern is that the LEC holds a very critical resource and that he wants to make sure that ISPs are not subject to discrimination. MCI's Witness Ozburn argues that, while the Commission has jurisdiction over LECs' provision of information services, they should not be regulated. MCI's position is based on the condition that the Commission "require Southern Bell and the other LECs to take the necessary steps to make possible a truly competitive information and enhanced service market." MCI's Witness Cornell has outlined a number of requirements that should achieve a "truly competitive information and enhanced services market." She proposes that at a minimum the LECs should not be allowed to "(1) put use or user restrictions into their tariffs, (2) both prevent collocation and then turn around and charge themselves, when collocated, less for access than their noncollocated competitors, (3) bundle parts of the bottleneck monopoly together with any enhanced offerings and charge discriminatory prices for any of the bottleneck pieces when part of a bundle compared to the prices that others must pay for the same pieces when not part of the bundle and (4) cross subsidize their enhanced services."

A few parties opposed the provision of information services by the LEC's ISP on a deregulated basis. Both Public Counsel and Microtel advocate that the Commission regulate the LEC provisioning of information services. Public Counsel's concern is that the LEC could abuse its monopoly position by discriminating against competing information service providers. Public Counsel also fears that the LECs can engage in cross-subsidization and predation, drive their competitors out of the market and control the information service market. Ad Hoc's Witness Mayne advocated that the LEC's provision of information service should be regulated "as a cost-based service."

The record establishes that the information service market is competitive. However, if the LEC ISP affiliate enters the information service market, especially on a deregulated basis, the ISP market structure may change substantially. The LEC ISP has certain inherent advantages as a result of its being affiliated to the LEC which controls the bottleneck monopoly. The LEC is the sole provider of all BSAs and BSEs which will be used by the ISPs in their provisioning of information services. Further, the LEC receives monopoly profits. As a result of the LEC ISP affiliate's access to monopoly profits, there is the potential for it and the LEC to engage in anti-competitive practices such as predation and anti-competitive cross subsidization. The LEC ISP can undercut its competitors by offering its services at artificially low prices to attract customers, eventually driving its competitors out of business. The LEC ISP has the ability to engage in such practices because of its affiliation with the LEC which can force the local ratepayers to absorb some of the costs of the unregulated ISP.

MCI's Witness Cornell argues that "Southern Bell, in the name of competition, will be in a position to 'manage' that competition right out of existence." She suggests that "the Commission should require Southern Bell and the other LECs to take the necessary step to make possible a truly competitive information and enhanced service market." Implicit in the arguments of witness Cornell and witness Ozburn is the concern that the nonstructural safeguards as suggested by the FCC are not sufficient to protect Southern Bell's competitors. For example, witness Cornell cites certain flaws with collocation and the cost allocation methodology as proposed by the FCC and used by the LECs. Because of these flaws, she claims that the LECs can engage in cross-subsidization. Witness Cornell suggests that if the LEC ISP affiliate enters the information service market, it should do so by a separate subsidiary. Further, there may be a problem with effectively enforcing the nonstructural safeguard requirements. If the nonstructural safeguards are not properly implemented, they would not be effective in regulating the anti-competitive behavior of the LEC ISP affiliate. This is a valid reason for regulating the LEC ISPs, especially in the initial stages in the development of the information service market.

The sole reason given by the LECs as to why the LEC ISP should not be regulated is that it is a competitive market. Southern Bell's Witness Payne, in response to Commissioner Gunter's question as to what harm will Southern Bell experience by regulating its ISP, stated that "the basic rationale, Mr. Gunter, in my opinion and this certainly is my opinion, is that we believe it's a competitive market place and we should be able to participate in that market place on a competitive basis without any burdens of regulation as all the other players in that market place participate today." Witness Payne did not identify any specific harm to Southern Bell if its ISP was regulated. Further, he noted that there are competitive services today that are currently regulated.

Presently, this Commission regulates services which Southern Bell contends are competitive such as Ring Master and Custom Calling Services, which are flexibly priced, and ESSX, which is available pursuant to contract rates. Southern Bell has demonstrated no harm as a result of such regulation. Based on this, Southern Bell's argument that information services should not be regulated is unpersuasive. In this instance, it is in the best interest of competition and the Florida ratepayers for this Commission to initially regulate LEC provided information services, especially since the information service market is in its infancy. This will prevent a LEC from abusing its bottleneck monopoly and help ensure that there is a positive revenue contribution as well as a lesser chance of cross-subsidization.

In accordance with our decision to regulate LEC provided information services, we also find it appropriate that such services be offered pursuant to tariffs. Such tariffs should be filed 60 days after the order containing the Commission's decision or 30 days after the reconsideration order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each and all of the specific findings herin are approved in every respect. It is further

ORDERED that the provision of information services is subject to this Commission's jurisdiction as set forth in the body of this Order. It is further

ORDERED that the provision of local exchange access to information service providers is subject to the jurisdiction of this Commission as set forth in the body of this Order. It is further

ORDERED that nonlocal exchange company information service providers are subject to this Commission's jurisdiction as set forth in the body of this Order. It is further

ORDERED that LEC provided access arrangements and other information services shall be provided subject to the terms and conditions as set forth in the body of this Order. It is further

ORDERED that customer proprietary network information shall be handled as set forth in the body of this Order. It is further

ORDERED that the provision of information services by local exchange companies shall be regulated as set forth in the body of this Order.

By ORDER of the Florida Public Service Commission, this 5th day of September, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

TH

Commissioner Thomas M. Beard dissented from the Commission's decision that information service providers are telephone companies subject to Commission jurisdiction.

Chairman Michael McK. Wilson and Commissioner Beard dissented from the Commission's decision that LEC-provided information services should be regulated by the Commission.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.