BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation to determine whether local exchange company pay telephone service (LEC PATS) is competitive and whether local exchange company pay telephone service (LEC PATS) should be regulated differently than it is currently regulated.	DOCKET NO. 920255-TL
In Re: Complaint of Florida Pay Telephone Association, Inc. against SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY for expedited relief to cease payment of commissions on monopoly revenues.	DOCKET NO. 910590-TL ORDER NO. PSC-93-0289-FOF-TL ISSUED: 02/23/93

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

Pursuant to notice, a public hearing was held in these dockets on August 25 - 27, 1992, in Tallahassee, Florida.

APPEARANCES:

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FINAL ORDER

I. INTRODUCTION

By Chapter 90-244, effective October 1, 1990, the Florida Legislature created Section 364.338, Florida Statutes. Section 364.338(1) provides in pertinent part that:

> [C]ompetitive offerings of certain types of telecommunications services may under certain circumstances be in the best interest of the people of the state. It is the legislative intent that, where the commission finds that a telecommunications service is effectively competitive, market conditions be allowed to set prices so long as predatory pricing is precluded,

> monopoly ratepayers be protected from paying excessive rates and charges, and both ratepayers and competitors be protected from regulated telecommunications services subsidizing competitive telecommunications services. (Emphasis added)

In addition, Section 364.338(2) states:

> A determination as to whether a specific service provided by a local exchange telecommunications company is subject to effective competition may be made on motion by the commission or on petition of the telecommunications company or any interested party.

Accordingly, we initiated Docket No. 920255-TL on our own motion to make a determination as to whether local exchange company (LEC) pay telephone service (LPATS) is effectively competitive.

In addition, this Order addresses the Florida Pay Telephone Association, Inc.'s (FPTA's) Complaint regarding whether the LECs should be permitted to pay commissions on monopoly revenues, Docket No. 910590-TL.

II. DEFINITIONS

A. Effective Competition

A common difficulty shared by the witnesses was stating a simple definition of effective competition. All of the witnesses used market behaviors and conditions as characteristics present in an effectively competitive market, as well as in definitions of effective competition. We also recognize the difficulty in defining the term; economic terms are often defined as the cause of or effect from market behaviors of various types. Our analysis centers upon eight specific areas addressed by the parties and by Section 364.338 that we believe are necessary to assess whether the Florida LEC pay telephone market is effectively competitive. Each of these eight points is discussed separately below.

1. Market forces effectively constrain and determine pay telephone end user prices.

All the witnesses except FPTA's agreed that a market's ability to regulate its own end user prices is of paramount importance in determining whether a service is effectively competitive. Witness Cresse maintained that price caps and competition are not necessarily mutually exclusive and cited the banking and insurance industries as examples. He believed that effective competition in the pay telephone market could exist, even with price caps. While we agree that this is theoretically possible, there was no evidence provided to substantiate witness Cresse's claim. Witness Sims of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell) agreed with witness Cresse that there is vigorous competition in the banking industry for consumer credit card business. However, the evidence in this docket shows that end users do not shop for pay telephone service. End users of insurance and credit cards, on the other hand, have the ability to carefully plan and evaluate the services which they are considering purchasing.

2. Pay telephone service providers differentiate their products from one another through both price and other factors (such as service, quality, etc.).

Most witnesses asserted that another indicator of an effectively competitive market is whether suppliers attempt to differentiate their products from one another through price, appearance, service, and other apparent benefits to the consumer. Witness Caffee testified that FPTA members did not differentiate with regard to price or product. Even one of FPTA's own witnesses admitted that nonLEC PATS (NPATS) providers actually worked in some cases to make their paystations appear like an LPATS station. Witnesses Cresse and Rafferty did not testify that non-price differentiation was a precursor to effective competition, but they did state that such practices as new or improved services, new features, etc. were perceivable and significant benefits to end users from the competition to date of pay telephone service. We believe that this market behavior is also an important indicator in determining whether a market is competitive, or whether some suppliers are attempting to "follow the leader" by imitating the dominant provider.

3. Market forces effectively promote economic efficiencies among pay telephone providers.

All witnesses agreed that a competitive market will generally promote economic efficiencies among the market's suppliers. However, witness Cresse asserted that economic efficiencies could only be enjoyed if a firm was not artificially constrained or benefitted by undue regulation or anticompetitive actions. We agree that this is theoretically true. Artificial burdens placed by regulators, or anticompetitive actions by suppliers may skew the market so that some efficient firms may fail, while other inefficient ones remain. However, whether that exists in the Florida pay telephone market is not the proper subject of this issue.

4. Market forces effectively suppress excess profits so that profits realized by pay telephone providers through the sale of pay telephone service to end users are near the firms' actual costs to provide the service.

The witnesses also primarily agreed on this point. However, witness Cresse again pointed out that improper regulation and/or anticompetitive behavior could adversely or positively affect a supplier's costs and, therefore, its profits. We agree with the majority of witnesses that this factor is also important when analyzing the competitiveness of any market. It is a fundamental axiom of the theoretical economic definition of "perfect" competition. Although the model of perfect competition does not exist in the real world, whether prices for a service are near a firm's costs or substantially above them is an indicator of the level of competitive pressure on that firm.

5. Suppliers of pay telephone service are free to enter and exit the market at will (low barriers to entry).

This element is also one of the basic tenets of true competition in any economics textbook and was used by each witness. FPTA's witnesses massaged this point to include a caveat that all new entrants to a market must operate under identical or like conditions to the incumbent supplier. However, there was no evidence presented that FPTA's theory had been practically applied to any or all other competitive markets, or of the relevancy it had to this proceeding.

6. End users of pay telephone service are adequately presented with a choice of alternative suppliers and information about alternative suppliers.

This is also a basic necessity to anyone's definition of a competitive market and was a point made by each witness. It is also mentioned in Section 364.338 as a criteria the Commission will use in its analysis of competition.

7. End users of pay telephone service routinely exercise their option to choose among suppliers for pay telephone service.

This element is very similar to the previous item. In fact, one could infer that if consumers are not exercising choices for obvious economic benefits, then they must not be adequately presented with a choice. Although the witnesses did not directly address this point, several maintained that consumers would move to buy the services of the most efficient firms (or the firms best fitting their needs) in a competitive environment. It is true that this characteristic is directly related to, even dependent on, the previous characteristic and could be construed as being the same. However, we believe it is important to alleviate any ambiguity over what would be "adequate" choice for consumers by adding this criterion. We believe that most consumers will behave in a rational way and choose the supplier with the best combination of price/non-price alternatives in an effectively competitive market.

8. Operation in the pay telephone market by the local exchange company does not adversely affect the maintenance of basic local exchange service.

This provision is from Section 364.338(2)(a). Witness Emmerson included this element in his definition by stating that effective competition would result in no "market failures." Witness Sims testified that the Commission already found pay telephone market failures in previous proceedings. Although the other witnesses did not directly address this point, it was implicit in most of their testimony that any Commission action should not be to the detriment of basic local exchange service. This element is somewhat different from the other seven criteria. The seven previous elements are generally applicable to any competitive market, while this element is specific to this Commission's directive under Section 364.338. We believe it is important to include a condition that the provisioning of basic

local exchange service should not be adversely affected by the LEC's participation in the pay telephone market.

Summary

We believe all eight elements listed above are consistent with Section 364.338. The criteria the Commission considers in its competitive determinations under Section 364.338(2)(a)-(g) can be summarized as follows: (a) effect on basic local exchange service; (b) ability of consumers to obtain alternatives; (c) ability of suppliers to provide equivalent alternatives; (d) impact of proposed regulatory changes on existing services; (e) consumers' benefits from competition; (f) degree of regulation needed to prevent abuses; and (g) any other relevant factors. The characteristics in our definition incorporate all of the market behaviors considered in the statute: (a), (b), (c), and (e). The other statutory provisions, (d), (f), and (g), are not relevant to a definition of effective competition. Rather, those provisions are regulatory enforcement elements, not a part of the definition of effective competition.

B. Subject to Effective Competition

Most parties maintained that the terms "competitive," "effectively competitive," and "subject to effective competition" were used synonymously in the statute. However, FPTA witnesses Rafferty and Cresse testified that the term "subject to effective competition" meant that the service had the potential to become effectively competitive. We believe that no reasonable interpretation of "subject to effective competition" could follow from FPTA's claim. If, given their logic, a service merely needed the potential to become effectively competitive, an argument could be made that any and every service the LEC provides could, under some particular circumstances, become effectively competitive.

FPTA also argued that the LECs' claims are contrary to the rules of statutory interpretation. The first rule cited by FPTA is that every provision in a statute is there for a purpose. FPTA cites no example or place in the statute that specifically ties to this rule. We assume that FPTA believes that, simply because two terms appear in different paragraphs of the statute, they must have different meanings. We agree that Section 364.338(1), where the term "effectively competitive" appears, and Section 364.338(2), where "subject to effective competition" appears, are separate provisions. We also agree that paragraph (1) sets forth the

legislative intent of the statute, while paragraph (2) enumerates specific criteria involved in decisions over competitive services, so the paragraphs have separate meanings. However, there is simply no indication that the terms must be different simply because they appear in separate paragraphs.

The next rule cited by FPTA is that each word in a statute must be given its plain and ordinary meaning. FPTA argues:

> Indeed, if the Legislature had intended "effective competition" and "subject to effective competition" to have the same meaning, it simply would have left the words "subject to" out of the statute. See, Sumner v. Board of Psychological Examiners, 555 So. 2d 919, 921 (Fla. 1st DCA 1990). (FPTA brief at 8)

This argument is also unfounded. The argument is equally compelling, if not more so, by reversing it: if the Legislature had intended "effective competition" and "subject to effective competition" to have different meanings, it simply would have defined them separately in Section 364.02, Florida Statutes.

The third and final rule of statutory interpretation put forth by FPTA is that the legislative intent provisions of a statute are the "polestar" by which a statute should be interpreted. FPTA argues here that Section 364.01, Florida Statutes, gives the legislative intent of the Commission's role in regulating telecommunications. We agree with this assertion. However, we fail to see the relevance to this issue. Section 364.01 reads, in pertinent part:

> (c) Encourage cost effective technological innovation and competition ... (e) Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, ... if competitive telecommunications services are not subsidized ... (f) Continue its historical role as a surrogate for competition for monopoly services ... (emphasis added)

FPTA argues:

> In sum, these guidelines direct the Commission to assure that basic LEC monopoly services will continue to be regulated by the Commission while encouraging

> technological innovation and competition in the provision of all other telecommunications services consistent with the public interest. Implicit in the directives of these subsections is the notion that competition in some markets is emerging, has not reached the level of effective competition, and continues to require regulatory oversight. (FPTA brief at 8-9)

We disagree with this assertion. First, the only terms used in this section are "competition" and "competitive." The terms effective competition or subject to effective competition are not mentioned. This leads us to believe that the true meanings of the three terms with regard to this statute are synonymous. Second, FPTA's claim that "[i]mplicit ... is the notion that competition in some markets is emerging" is simply incorrect. A plain and ordinary reading of the section tells us not that individual markets or services are "emerging" into competition, but that the telecommunications environment, as a whole, is becoming more competitive, and that flexible regulatory treatment could be appropriate for individual competitive services.

Witness Cresse attempted to persuade us that the specific legislative intent of Section 364.338 did provide for separate meanings for the terms. However, when pressed for legislative staff notes or any other evidence that this was indeed the legislature's intent, witness Cresse could produce nothing to support his claim.

We believe that other rules of statutory interpretation are more pertinent than those used by FPTA. For instance, it is a well-accepted rule of interpretation that a statute is passed as a whole and not in sections; therefore, each part of the statute must be construed in connection with every other part to produce a harmonious whole. In addition, even apparently plain words may not convey the meaning the drafters intended to impart; it is only within the full context of the statute that a word can convey an idea. Also, when interpreting a statute, it is generally unnecessary to look beyond the language of the statute itself to arrive at its meaning. However, when different readings are urged, the tribunal must look to the reasons for enactment and the purposes to be served by the statute so that it can be construed consistent with such purposes. Finally, a statute should not be read literally where such a reading would be contrary to its purposes. These rules produce a different result than the rules invoked by FPTA.

Applying the rules stated above, a simple analysis of Sections 364.02 and 364.338 makes it clear that the legislature did not differentiate the meaning of "competitive," "effectively competitive," and "subject to effective competition." Section 364.02 provides definitions for the terms used in Chapter 364. None of the three terms is defined in Section 364.01. However, the term "monopoly service" is defined in Section 364.02 as "a telecommunications service for which there is no effective competition, either in fact or by operation of law." This, under a plain and ordinary reading, provides for only two types of services: monopoly services and effectively competitive services. No provision is made for a service that is potentially competitive.

The term "effectively competitive" is only used once in Section 364.338 and is sandwiched between two uses of the term "competitive" in the same provision. One could extrapolate that the interchangeable use of these two terms in one provision means that they are synonymous.

The term "subject to effective competition" is used three times in Sections 364.338(2) and (3). It is also interlaced with several uses of the term "competitive." For example, "the competitive service" is used several times in 364.338(3) to refer back to "a service provided by a local exchange telecommunications company is subject to effective competition ..." It is evident that the meanings of "competitive" and "subject to effective competition" in these provisions are identical.

In addition, we note that if witness Cresse's claim of separate meanings for the terms were true, the statute would make no sense, as well as be contrary to his own testimony. For example, Section 364.338(3)(a)2 reads, in part, that "[i]f the commission determines ... that a service ... is subject to effective competition, the commission may: ... require that the competitive service be provided pursuant to a fully separate subsidiary or affiliate." (emphasis added) If separate meanings are to be given in this sentence, the sentence simply no longer makes logical sense. What competitive service is being discussed? If it can't be the one referred to as "subject to effective competition," which one is it?

This interpretation is also in direct conflict with witness Cresse's own testimony:

> I think the ... law contemplates that there's at least three types of competitive services ... One is competitive, plain competitive. The other one is services that are subject to effective competition. And the third are services that are, in fact, effectively competitive.... If you fit a smaller group of services -- if you drew a big circle and all these services in that big circle could be competitive, a small group in there of the competitive ones could be effectively competitive. And a small group around that are subject to effective competition.

Witness Cresse defines his version of the three terms here: competitive services are ones with some alternatives, but no real competition to speak of, like private line service. Subject to effective competition means more competitive, but not quite there yet. And effectively competitive is full-blown competition.

Applying this logic to 364.338(3)(a)2 above, this Commission could order private line service, a competitive service to witness Cresse, into a separate subsidiary. Yet witness Cresse also states "[p]rivate line service is ... an integral part of the LEC monopoly service and you cannot physically separate some wire out of a cable into a fully separate subsidiary." Again, this interpretation is both contradictory and senseless.

Therefore, even though "effectively competitive" and "subject to effective competition" are used in separate provisions of the statute, they are inextricably interwoven through the repeated use of the term "competitive." This fact, coupled with the clear lack of definitions for any of the three terms in Section 364.02, leads us to conclude that all three terms have identical meanings when used in Chapter 364 in terms of the Florida pay telephone market.

C. Monopoly Services and Monopoly Revenues

The definitions of monopoly services and monopoly revenues were technically not at issue. All parties agreed that monopoly pay telephone services are all pay telephone services for which there is no effective competition, either in fact or by operation of law, as defined in Section 364.02. We agree that this term is clearly defined in the statutes. All of the witnesses also agreed that monopoly revenues are all revenues derived from monopoly services. We also agree that this is a logical conclusion, once monopoly services are defined. Accordingly, we find that monopoly

pay telephone services are all pay telephone services for which there has not been a finding by this Commission that the service is effectively competitive. Monopoly pay telephone revenues are all revenues derived from monopoly pay telephone services.

III. FLORIDA PAY TELEPHONE MARKET

The difficulty in determining whether LEC pay telephone service is effectively competitive is that the pay telephone market is unique. This market is composed of multiple providers and differing degrees of competition at two distinct levels: locations and end users. Because of the make-up of the pay telephone market, it is quite possible to find that there is effective competition in one segment of the market, while not finding the market as a whole effectively competitive. For this reason, we believe it is necessary to examine whether pay telephone service is competitive for locations and to end users, in both the intrastate and interstate markets. Although we do not have jurisdiction over the interstate market, we believe we can learn a great deal from the interstate experience.

On February 14, 1991, after an extensive review of the evidence presented in Docket 860723-TP, we issued Order No. 24101. In that Order, we stated:

> When we first found competition in the pay telephone market to be in the public interest, it was our belief that the benefits of such competition would ultimately flow through to end users. As the evidence in this proceeding has demonstrated, such has not been the case. Rather, the primary beneficiary to date appears to be the location owner who has seen a steady increase in the amount of commission payments as individual providers compete to secure particular locations for their telephones.

In less than two years, we once again find ourselves reviewing the competitiveness of the pay telephone market.

The evidence in this docket clearly indicates that there is intense competition in the pay telephone market between LEC and non-LEC pay telephone providers for the purpose of securing select locations. Witnesses for the LECs testified that the focus of

competition in the pay telephone market is on the location provider and not the end user.

FPTA witness Cresse pointed out that Southern Bell and GTE Florida Incorporated (GTEFL) have argued in filings with the Federal Communications Commission (FCC) that NPATS providers are competing aggressively and effectively in Florida. In addition, witness Cresse noted that Southern Bell lists increased pay telephone competition as one factor supporting its request for flexible regulatory treatment.

The LECs do not disagree that they face intense competition from NPATS for high volume locations. Southern Bell's witness Sims argues that the competition is for high volume locations and characterizes that competition as very aggressive. She believes that characterizing the market as facing aggressive competition does not make the service effectively competitive and is not inconsistent with Southern Bell's position. GTEFL's witness Caffee stated that the NPATS market share in GTEFL's territory has grown from less than 1% in 1986, to 30% by year-end 1991. Witness Caffee further testified that the substantially higher average call volume on NPATS phones demonstrates that NPATS providers focus on the high volume end of the market. Witness Sims also stated that this market share relationship exists in Southern Bell's territory. She testified that NPATS have over 22% of the phones in Southern Bell's territory, with over 33% of the revenues.

We believe that the evidence supports a finding that there exists effective competition for select locations. However, we do not believe that one can look at the pay telephone market in a vacuum and simply find it to be effectively competitive without looking at it from the end user's perspective.

It has been argued in this proceeding that end users do not shop for pay telephone service. Witness Caffee contends that "[u]sage of any particular pay telephone is a spontaneous, unplanned event." He also states that "the consumer's ability to choose alternative products is limited by the consumer's needs." He noted that emergency calls, calls made while away from primary telephone service, and calls made from pay telephones due to economic constraints, all have a common consumer need which is primarily satisfied by consistently having a pay telephone nearby. Thus, the choice of which pay telephone to use is made by the location provider on whose property the pay telephone is located, not by the end user.

FPTA witnesses do not dispute that pay telephone service focuses on location providers, but contend it is not the sole focus. FPTA's witness Rafferty testified that it is reasonable to expect competition to focus on the locations, because the NPATS providers cannot and do not own the locations where pay telephones can be placed. FPTA argues that while the LECs would like us to believe that competition exists solely for locations, such an assertion runs contrary to the evidence.

We believe that any determination of the effectiveness of the pay telephone market must focus primarily on the end user, not the location provider. Contrary to FPTA's assertion that end users shop for pay telephone service, we do not believe we have seen any significant evidence to support this conclusion. We generally agree that use of any particular pay telephone is a spontaneous, unplanned event. Testimony that one or two companies regularly receive calls from end users requesting information on the location of their pay telephones is not evidence that this is a common practice by end users as a whole. As to witness Norris' claim that end users shop for pay telephone service, he was unable to quantify or even offer a guess as to the number of end users that do shop.

We do not believe that conditions in the pay telephone market have changed significantly from those that led to our finding in Order No. 24101 that the primary beneficiary of competition has been the location provider. FPTA attempts to argue that BellSouth's own operations manager agrees that no owner would make a decision in favor of poor quality just because of high commissions. However, this manager also stated his belief that commission payments are the driving factor in the premises owners' decision process. We believe that even if the pay telephone market was declared to be effectively competitive, the focus of competition would not change. This conclusion is supported by the testimony of FPTA's witness Norris. While we do believe that competition has resulted in some benefits to end users, we agree with witness Norris that the focus of competition is and will remain for some time on the location provider. There was little, if any, evidence that end users have seen any real price competition. In addition, whether pay telephones are more available as a result of competition is highly questionable.

Finally, although we do not have jurisdiction over the rates charged at the interstate level, we believe the experience there, where the industry has operated with little regulatory oversight, can be instructive. In Section II of this Order, one of the

characteristics of effective competition that we identified is that market forces effectively constrain and determine end user prices. The evidence shows that in the interstate arena, NPATS enjoy a considerable mark-up over the rates charged by AT&T Communications of the Southern States, Inc. (AT&T). For years, the interstate pay telephone market has operated without regulatory oversight. Although it only provides limited oversight, the Telephone Operator Consumers' Services Improvement Act of 1990 (TOCSIA) was enacted by Congress due to the number of complaints from end users. FPTA witness Norris agreed that TOCSIA was enacted because of abuses in the interstate market. We believe that if the pay telephone market was effectively competitive, then the market would have been able to police itself and there would have been no need for such legislative oversight. We find that rate caps are necessary to protect end users of pay telephone service in Florida and that pay telephone rate caps shall continue.

In determining whether pay telephone service is effectively competitive, we are directed by Section 364.338(2) to consider the factors set forth in subsections (a)-(g). As we stated in Section II of this Order, the factors listed in the statute do not necessarily represent the characteristics of an effectively competitive pay telephone market, but they do serve to gauge how such a finding might impact both the pay telephone market and the LECs' general body of ratepayers. Our analysis of each of the statutory factors follows. We believe the primary factor we should consider when determining whether any service should be classified as effectively competitive is the impact on the general body of ratepayers and on end users of the particular service. We do not believe we are under any particular obligation or mandate to alter the status quo in favor of competition. Therefore, when considering an alternative form of regulation, we believe we must be guided primarily by public interest considerations.

A. <u>What is the effect, if any, on the maintenance of basic local exchange telecommunication service if found effectively competitive</u>?

Witness Cresse argues that if we adopt FPTA's proposal, the effect on the maintenance of basic local exchange service will be positive. It is witness Cresse's position that requiring LPATS to be placed into a separate subsidiary and requiring the LECs to pay tariffed rates, would eliminate the current subsidy received by LEC pay telephones, and would either reduce rates for the remaining

monopoly services, or reduce the magnitude of future rate increases. FPTA's proposal includes the following elements:

(1) Require the LECs to place their pay telephones into a fully separate subsidiary;

(2) Require the LECs to provide monopoly services to all pay telephone providers (LPATS and NPATS) under the same tariffed rates, terms, and conditions;

(3) Establish rates for monopoly services at cost for the access line, with contribution to overhead derived from usage rather than through the flat monthly rate charge;

(4) Remove the restriction in the provisioning of 0+ and 0- local and intraLATA toll calls; and

(5) Prohibit the LECs from paying commissions from monopoly revenues if the Commission retains the 0+ and 0- local and intraLATA toll prohibition.

Both FPTA witnesses Rafferty and Cresse testified that there is no evidence that the LECs' pay telephone operations are profitable. Consequently, FPTA argues that removal of the LEC pay telephone operation from LEC services will decrease the expense of maintaining LEC pay telephone service and will enable rates for other LEC services to be decreased.

Southern Bell argues that its pay telephone operations are profitable and that its PATS operations, at a minimum, provide a positive contribution to the common costs of its overall business. Southern Bell states that a profitability examination using an embedded-type analysis, as well as the updated incremental cost study, clearly demonstrates the profitability of its PATS operations.

We disagree with FPTA's witnesses that the evidence in this proceeding demonstrates that the general body of ratepayers will be positively impacted by implementing FPTA's proposals. During cross-examination of witness Cresse, it became evident that there are various problems with witness Cresse's exhibit. First, although Southern Bell provided data for 1991 and 1992 in this proceeding, the $5 million dollar benefit identified by witness Cresse is based on 1989 data. Consequently, the Cresse analysis

does not reach any conclusion regarding the current effect on the general body of ratepayers.

Second, witness Cresse makes the assumption that if LPATS were put into a separate subsidiary the LECs would still maintain the same number of pay telephones. Based on the evidence, this assumption does not appear to hold true. Witness Sims testified that if the LECs' pay telephone operations were placed into a separate subsidiary, the result would be the abandonment of low revenue pay telephones.

Third, as a result of cross-examination, witness Cresse made several changes to his calculations and eventually acknowledged that the benefits of transferring Southern Bell's pay telephones into a separate subsidiary would be minimal.

Fourth, witness Cresse agreed that his analysis did not tie back to the books and records of the company, nor did it show what the effect would be on the regulated income statements and rate base from transferring the pay telephone operations into a separate subsidiary.

We believe that the long-run incremental cost studies submitted by Southern Bell demonstrate that its pay telephone operations are making a positive contribution. In order for witness Rafferty to reach a contrary conclusion, he elected to exclude the revenue and expenses associated with Southern Bell's coinless and semi-public pay telephones. Southern Bell's 1990, 1991, and February, 1992, cost studies show a negative contribution for its coin telephones, while the March, 1992, cost study that excludes capital costs shows a positive contribution. However, the total pay telephone operation, when coinless and semi-public pay telephones are included, shows a positive contribution level. In addition to excluding the coinless and semi-public pay telephones, FPTA witness Rafferty further attempted to demonstrate that Southern Bell's pay telephone operations are not profitable by excluding all revenues associated with operator services and toll revenues derived from payphones. This exclusion is inappropriate, since these revenues are a function of pay telephone usage.

From the evidence presented, it appears that LEC payphone operations are either neutral or are making some profit. Therefore, it is reasonable to believe that placing pay telephone operations into a separate subsidiary would either have no impact

or a negative impact on the LECs' bottom line; this could result in a slight increase in local rates.

The evidence in this proceeding does not support FPTA's claim that LEC pay telephone operations are being subsidized. FPTA's claim is based on its contention that LEC pay telephone services are not profitable and that LEC pay telephones use monopoly revenues. As discussed above, Southern Bell's cost study shows that its overall payphone operations are profitable. In addition, FPTA witness Cresse would have us believe that because the LECs do not impute tariffed rates to their pay telephones, a subsidy must be present. Contrary to witness Cresse's position, adoption of FPTA's tariff imputation proposal would amount to nothing more than a policy decision designed to equalize payphone competitors' access costs to the LEC network. For there to be a cross-subsidy, there would need to be a finding that LEC pay telephone operations are not covering their true economic costs, not merely some artificial "cost" that tariff imputation would represent.

As for monopoly revenues, in Section II of this Order, we have defined monopoly revenues as all revenues derived from monopoly services. Witness Cresse contends that Section 364.3381, Florida Statutes, specifically directs that LEC competitive services may not be cross-subsidized with monopoly revenues. However, this provision of the statute does not apply to LEC pay telephone service unless there is first a finding that it is effectively competitive.

FPTA argues that its proposal will provide a level playing field, thus bringing the benefits of competition to the pay telephone marketplace. FPTA's witnesses state that a level playing field will result in lower rates to end users and greater availability of pay telephones. FPTA also argues that its proposal will be beneficial because it will stimulate the LECs to improve the efficiency of their pay telephone operations. FPTA states that competition has already made a positive impact on the efficiency of LPATS operations.

We agree with the LECs that requiring separate subsidiaries will cause the LECs to lose the economies of scope and scale they are currently able to achieve. Moreover, from the perspective of cost, we believe that only a positive finding that there are no efficiencies of integration would justify consideration of a separate subsidiary for LEC pay telephone operations.

In conclusion, we do not believe that there is reliable evidence to support FPTA's position that a finding of effective competition will have a beneficial impact on the maintenance of basic local exchange telecommunications service. We believe there is insufficient evidence to conclude that the public will benefit through greater availability of payphones or that end user rates will decrease. In fact, the evidence tends to show that separate subsidiaries could result in the elimination of pay telephones at many low and medium volume locations.

B. Are consumers able to obtain functionally equivalent services at comparable rates, terms and conditions?

FPTA claims that it is undisputed that consumers can presently make the same types of calls from an NPATS phone at rates, terms, and conditions comparable to an LPATS phone. FPTA's witness Rafferty contends that the public today does not discern any difference between an LPATS or an NPATS phone when placing a local call. FPTA's witness Cresse states that consumers are able to make the same types of calls from an NPATS phone as they are from an LPATS phone, at comparable rates, terms and conditions. However, witness Cresse adds a caveat to this position stating that, "[a]s long as rate caps exist and the Commission maintains equal service standards for all pay telephone providers, consumers will benefit from making the LEC pay telephones an effectively competitive service."

The LEC witnesses generally agree that in today's regulated environment, consumers are able to obtain functionally equivalent service at comparable rates, terms and conditions. However, witness Caffee notes that today, rates from NPATS phones for intrastate toll calls are slightly higher than those made from LPATS phones because of the NPATS surcharge applied on operator handled calls, as well as the ability of NPATS to charge daytime rates rather than time-of-day rates. He also states that end users may pay considerably higher rates for interstate toll calls because there are no interstate rate caps.

With respect to service quality, United Telephone Company of Florida (United) contends that end users do perceive a difference in the service from LEC payphones as opposed to NPATS phones. Witness Norris admits that complaints against NPATS have been high.

We find that today, end users of NPATS services can receive functionally equivalent service at comparable rates, terms, and

conditions, provided that we maintain regulatory oversight in setting rates and service conditions. It is our belief that this would not be the case if market conditions were permitted to set rates, terms, and conditions of service. In addition, it does not appear that end users have been able to receive functionally equivalent service at comparable rates in the interstate arena, where regulation has been minimal.

c. Are competitive providers in the relevant geographic or service market able to make functionally equivalent or substitute services available at competitive rates, terms and conditions?

It has been noted that LPATS operate differently than NPATS, with revenue streams that differ. Witness Sims points out that, with the varying revenue streams, regulatory constraints differ. Specifically, witness Sims believes the NPATS' ability to "aggregate and selectively route all interLATA and interstate traffic to a specific carrier," as well as the "benefit of discounted rates for traffic sent to the interexchange carrier from all of their locations," enables NPATS to lower their costs and increases the amount of commissions they can pay.

FPTA claims that regulatory differences place the NPATS at a competitive disadvantage. In making its claim, FPTA lists four specific regulatory policies it believes allow the LECs a competitive advantage. These include integrated operations, reservation of 0+ and 1+ dialing to the LECs, different methods of provisioning service, and different costs for the provision of services. FPTA asserts that the LECs enjoy a competitive advantage from each of these four differences.

FPTA argues that LPATS enjoy an advantage from the reservation of 0+, 0-, and 1+ intraLATA traffic. FPTA contends that this revenue stream allows LPATS to offer greater commissions to location providers than can be offered by the NPATS. In addition, witness Norris notes that this policy prevents NPATS from utilizing store and forward technology for this traffic. With this technology available, FPTA argues, 0+ intraLATA traffic can, and should, be handled by its members. Witness Norris believes we have three choices for remedying this perceived inequity: prevent the LEC from paying commissions for this traffic; compensate NPATS providers for handing it off; or allow NPATS to use store and forward for this traffic.

This subject was previously addressed in Order No. 24101, where we determined that the LECs should not be required to compensate NPATS providers for traffic we have reserved to them. However, we did require the LECs to collect a $.25 set use charge from the end user on all revenue-generating 0- and 0+ local and intraLATA calls placed from NPATS phones. We determined that the $.25 set use fee was sufficient compensation for the use of the pay telephone. We have seen no evidence in this proceeding to convince us to revisit that decision. We note, however, that Order No. 24101 is on appeal to the Florida Supreme Court.

FPTA's claim that NPATS are placed at a competitive disadvantage because they are unable to obtain the same services the LECs provide to themselves relates specifically to "coin line" functionality. These services include central office-driven answer supervision, blocking and screening, and rating of 1+ sent paid calls. Coin lines would permit the NPATS providers to utilize these services without the need for a "smart" phone. The lower cost of using a "dumb" phone, FPTA asserts, would better allow them to compete with the LPATS.

It should be noted that coin lines are being tested in Southern Bell's area and that Southern Bell plans to offer them in the third quarter of 1993. GTEFL has stated that it is not opposed to providing coin lines and is currently examining doing so. However, GTEFL's expected deployment date is considerably later than Southern Bell's.

Southern Bell and GTEFL have presented testimony regarding the difficulties of adapting coin lines for NPATS use. The problem areas are answer supervision, adaptation of billing systems, and connectivity with smart phones.

In addition, FPTA asserts that the LECs have been unresponsive or slow to respond to providing needed services. Examples include service connections, responses to trouble reports, and resolution of billing errors. FPTA witness McLellan refers to these practices as "subtle and cumulative," while witness Beary refers to the same practices as "deliberate."

Finally, FPTA argues that the LECs do not charge their pay telephone operations the same rates as charged to NPATs providers. On the surface, it appears that requiring the LECs to impute tariffed rates would be appropriate because the LECs are the monopoly providers of access to their networks. Consequently, this

would appear to provide a "levelized" playing field. In the case of intraLATA toll, we could be fairly certain that the benefits would flow through to end users directly. In the PATS market, however, the competition is for locations, not end users. Consequently, we doubt if such action would do anything more than eliminate service at medium and low volume locations.

FPTA bases its arguments about differing costs on its review of LEC cost studies. Witness Rafferty asserted that revenues from LPATS services were not covering the costs of providing the services. However, as discussed in Section III-A above, witness Rafferty's exclusion of costs and revenues associated with coinless and semi-public phones renders his analysis suspect.

FPTA contends that, because of higher costs, its members are not able to provide equivalent service at competitive rates. The information obtained in this docket does not support this contention. We believe that NPATs providers are able to provide equivalent service at competitive rates, but whether they choose to do so is another question altogether. For local service, rates have been capped at $.25. While most providers, NPATS and LPATS alike, have maintained rates at this level, at least one NPATS provider has dropped the local charge to $.20. However, as witness Sims points out, local NPATS interconnection rates have decreased four times since 1985 and we have approved surcharges and rate caps, yet "[t]here has been virtually no reduction in rates charged to end users."

On the toll side, rates can vary considerably. Where higher rates exist, they are often perceived as excessive. At the interstate level, TOCSIA was enacted because of price gouging by NPATS providers. Despite perceived LPATS advantages in marketing, members of FPTA have presented information demonstrating that their operations have been profitable. Southern Bell asserts that nine of the ten largest FPTA members have been profitable, even though there have been numerous complaints about their service and rates. It appears that profits may well be higher than normal, leaving room for NPATS rates to end users to be reduced, and still provide a reasonable level of profitability. Thus, equivalent rates could be achieved.

We conclude that, despite differing service configurations, NPATS providers do provide functionally equivalent service. We do not believe that most pay telephone users discern a difference in service. If the NPATS providers were not able to make equivalent

service available, the majority of customers would demonstrate more discretion in the use of payphones. This has not been the case. Customers do not pay much attention to the pay telephone; they simply want a phone to make a call. Where they apparently do notice a difference is in rates. The evolution of TOCSIA demonstrates this. However, as stated above, we believe that NPATS have room to adjust their rates, even though they have chosen not to do so.

D. What is the overall impact of the proposed regulatory change on the continued availability of existing services?

FPTA has proposed regulatory changes that it claims will lead to expanded and more reliable services for end users at reasonable rates. These proposals are outlined in Section III-A of this Order.

FPTA witness Cresse testified that if FPTA's proposal is adopted, the overall impact on the continued availability of existing services would be positive, and that the public would benefit through lower rates, greater efficiency, and innovative services. According to Cresse, the revenue requirements of the LEC-provided monopoly services will be reduced when the LECs' alleged subsidies of their pay telephone operations are discontinued. Witness Norris also testified that if we remove the regulatory inequities and give NPATS providers access to the same services as LPATS, the public will benefit from competition.

It is FPTA's position that in order for the public to benefit, NPATS and LPATS must be permitted to receive LEC monopoly services on an unbundled basis, pursuant to tariff, under equivalent rates, terms, and conditions. Essentially, witness Rafferty argues that NPATS providers have targeted high volume locations in order to cover the costs associated with the investment in smart pay telephones. With coin lines, NPATS providers would be able to purchase and install cheaper "dumb" phones and because of the efficiencies that NPATS have developed, they would be able to serve more medium volume locations. However, witness Rafferty did recognize that there are low volume locations that no pay telephone provider will serve. FPTA witness Beary testified that the failure of the LECs to provide central office functionalities has resulted in NPATS providers investing significantly more capital in order to provide these crucial services through instrument-implemented technology. Further, witness Beary argues that the revenues spent

by the industry to duplicate coin line functionalities could have been used to increase the number of pay telephones for public use and to promote the lowest possible consumer rates. We note that elsewhere in this Order we have required the LECs to provide coin lines.

Finally, it is FPTA's position that restricting the LECs from paying commissions from monopoly revenues will eliminate cross-subsidization and unfair competition. Witness Norris believes that the LECs unfairly promote their pay telephone operations by paying commissions on this traffic, while denying such compensation to NPATS providers.

Southern Bell's witness Sims testified that Southern Bell is currently removing some low revenue pay stations in response to the loss of high volume locations to NPATS providers. In an environment where all providers have free entry and exit capabilities, witness Sims believes competition would be increased only for the high volume locations, resulting in abandonment of many medium and low volume locations. Witness Sims believes that the continued availability of existing basic local exchange service could be jeopardized.

GTEFL's witness Caffee also contends that the availability of existing service would be adversely effected if we determined that the LEC pay telephone market is effectively competitive. Witness Caffee argues that if the market is determined to be effectively competitive, it would follow that market forces should dictate the placement of pay telephones and that intrastate rate caps should be lifted. Removal of the rate caps would lead to deaveraged rates, which could attract some competitors to serve public interest and low volume locations. However, it is witness Caffee's position that universal service would suffer from reduced pay telephone availability, customer confusion as to rates, and higher prices to end users.

Both the LECs and FPTA agree that current competition is for the high volume locations. For GTEFL, market share figures appear to support this contention. According to witness Caffee, NPATS locations generate forty-four percent more sent-paid local calls than the average GTEFL public location and sixty-three percent more volume.

We disagree with witness Cresse's position that adoption of FPTA's proposal for separate subsidiaries will have a positive

impact on the general body of ratepayers. First, there is no evidence that revenue requirements of the LECs will be reduced. Witness Cresse initially argued that the gross benefit to Southern Bell's general body of ratepayers would be approximately $11 million per year and that the net benefit after the reduction to NPATS interconnection rates would still be substantial. However, during cross-examination, he acknowledged that the net effect may only be to break even. Second, the evidence does not support witness Cresse's contention that LEC pay telephone operations are subsidized. However, we do not believe that the cost studies provided by the LECs are sufficient to fully analyze the profitability of the LECs' pay telephone services. This is further addressed in Section IV of this Order.

With respect to witness Norris's testimony that NPATS providers are denied effective screening and blocking, as well as billing validation, collection, answer supervision, etc., many of these service are associated with coin lines and should be available once coin lines are available. As to the problems with screening and blocking, we are troubled by the LECs' continued failure to provide these services effectively. However, we recently proposed a rule which relieves the NPATS provider of liability at the intrastate level for fraudulent calls where he has properly subscribed to screening and blocking.

Finally, we agree with witness Caffee that restricting the LECs from paying commissions on 0+ local and intraLATA traffic will adversely effect the continued availability of existing services. We believe that eliminating the LECs' ability to pay commissions on this traffic would essentially force them out of the market because the only revenue source they would have available to pay commissions would be coin-in-box revenues.

In conclusion, we believe the provision of pay telephone service would be hampered by FPTA's proposed regulatory changes. In our view, a separate subsidiary for LEC pay telephones would only result in the loss of economies of scope and scale and could adversely effect the placement of public interest and low volume phones. This concern is further exacerbated by witness Rafferty's testimony that NPATS would not be interested in providing service to low volume locations. We also believe that restricting the revenue sources from which LECs can pay commissions will adversely effect existing pay telephone service. If the LECs are not able to compete or maintain their high volume locations, then their ability to support low volume locations will diminish. This would

ultimately result in the removal of pay telephones from these locations.

E. Would consumers of such services receive an identifiable benefit from the provision of the service on a competitive basis?

FPTA claims that end users have benefitted from having more pay telephones available. However, the evidence indicates that the majority of NPATS locations have resulted from the displacement of LPATS phones. When we first authorized NPATS, it was reasonable to expect some displacement, since the LECs controlled 100% of the market. What is not available is the information needed to determine whether there are a greater number of pay telephones at locations that previously existed but were not served by the LECs. The evidence suggests that pay telephones are being placed more efficiently; this has resulted in the removal of some low volume phones, but does not necessarily mean that the end user has been harmed.

Witness Norris testified that one of the benefits to end users and premises owners was a higher level of service from NPATS providers. An example given by witness Norris was the practice of calling the telephones each night to update the status of the coins in the box, run a maintenance check, and issue new instructions when necessary. Through this practice, NPATS providers are able to identify pay telephones that are out of service and often correct these problems remotely.

FPTA witness Pace testified that the pay telephone market has benefitted from the advanced evolution of smart sets. Witness Pace stated that if a handset is missing on a LEC pay telephone or a coin jam occurs, it could remain that way for a considerable period of time, until an end user notifies the LEC, or when it is found during routine field inspection. However, if these problems occur on a smart set, the phone itself will call and report the problem to the NPATS provider's office. Witness Pace also stated that these benefits have spread throughout the industry, with the LECs now experimenting with these sets.

Finally, witness Pace testified that competitive pressures have forced both NPATS and LPATS to become more efficient. This position was also supported by United's public telephone operations manager.

Other new and innovative services mentioned by FPTA include teleconferencing, message forwarding, automated collect calling, public pay faxes, prison pay telephone systems, and intelligent network platforms. We agree that these services provide a benefit to end users and that these benefits are a function of competition. In a competitive environment, competitors are always searching for new sources of revenue, as well as a competitive edge. New revenue sources generally result in new product offerings that benefit end users.

There was insufficient evidence that NPATS have offered reduced rates to end users. FPTA presented evidence that three NPATS providers have offered discounted coin call rates of $.75 for a three minute call, and $.25 for each additional minute. This does not indicate a trend for the industry as a whole. We believe it was our decision to require the unblocking of 10XXX dialing that has forced NPATS to find ways to "win back" end users. FPTA witness Fedor testified that the reason Adtel introduced "Call the USA" was to combat the amount of dial-around traffic on its phones. As we discussed in Section III-B, NPATS providers are continuing to charge higher than normal rates on interstate calls.

Witness Cresse testified that one of the benefits to end users from competition is the introduction of $.20 local rates. However, the evidence shows that this rate level is not widespread. Witness Norris testified that he knew of only one of the fifty or so FPTA members that currently charges $.20 for local calls.

FPTA witness Cresse also stated that end users have benefitted from having multilingual operators serving NPATS phones. However, there was no evidence that this resulted from competition in the pay telephone market. Rather, we believe that bilingual operators came about as the result of competition in the interexchange carrier (IXC) and alternative operator services (AOS) markets, not the pay telephone market.

According to witness Norris, another example of the benefits to end users is the introduction of time-of-day discounts. Witness Norris stated that this resulted in rates below the applicable rate caps. However, we do not believe that time-of-day discounts should be considered a new benefit. The tariffed rates for LEC operator assisted calls have always included time-of-day discounts.

We believe the evidence demonstrates that end users have benefitted from competition in such areas as operating

efficiencies, more efficient placement of phones, and the introduction of new services. However, end users have not received reduced rates or higher quality of service. In fact, the evidence indicates that end users are charged considerably higher rates in the interstate arena where market forces set prices. The evidence also suggests that the quality of service provided by NPATS providers needs to improve.

We believe it is important to recognize that these limited benefits have resulted from our decision to allow NPATS providers to enter the pay telephone market under highly regulated conditions. Witness Norris testified that there would be more benefits to end users if NPATS and LPATS were able to compete on a level playing field. However, we find this statement speculative, at best, and are unable to determine whether such a benefit would occur.

F. What degree of regulation is necessary to prevent abuses or discrimination in the provision of such services?

FPTA has identified a number of LEC practices it believes are anti-competitive and abusive. According to FPTA, these practices include: integration of LPATS into monopoly operations; failure to provide the same services to NPATS as they provide to themselves; different rates for LPATS and NPATS; common management of NPATS and LPATS services; operational problems such as misbilling, installation problems, service ordering, screening and blocking problems, etc.; and monopoly on 0+ and 0- intraLATA calls.

To resolve these perceived inequities, FPTA advocated a proposal which is set forth in detail in Section III-A of this Order. Witness Cresse believes most of FPTA's proposals would be accomplished with the creation of separate subsidiaries for LPATS. Witness Cresse also believes that cross-subsidization would be easier to identify and eliminate with separate subsidiaries.

We believe that the perceived anti-competitive practices identified above are adequately addressed by our actions in Section IV of this Order. We believe that the actions we are requiring there will be sufficient to prevent any abuses or discrimination in the pay telephone service market.

G. What other relevant factors are in the public interest and should be considered in making this determination?

The LECs believe that, in making our decisions in this docket, we should focus on three areas: the provision of universal or ubiquitous service; service quality; and the rates charged to end users. FPTA believes we must respond to the responsibilities placed upon us by Section 364.01.

Referring to Section 364.01 (3)(c) and (d), FPTA argues that we must encourage cost-effective technology and competition and ensure that all providers are treated fairly. However, this statement is incomplete. Section 364.01 (3)(c) states that we shall take such action "if doing so will benefit the public by making modern and adequate telecommunications services available at reasonable rates."

Concerning the maintenance of universal service, it has been our policy, as reflected in Order No. 24101, that pay telephone service is an extension of basic service and should be universally available. This view is supported by all of the LECs. Basic service, which includes pay telephone service, is not yet competitive, although some alternatives, such as cellular service, do exist. In addition, if low volume or public interest phones are to continue to be placed, they may have to be subsidized. For this reason, at least for low volume locations, there may never be competition. We have thoroughly discussed rate levels and quality of service earlier in this Order.

The record in this proceeding shows, we believe, that we do consider the encouragement of cost-effective technology and competition, and do ensure that all providers are treated fairly. In considering whether the public interest is served, we believe we should also look at rates, quality of service, and the availability of service. All three of these factors require regulatory oversight and we believe such regulatory oversight should be continued.

IV. REQUIRED ACTION

A. General

FPTA witness Cresse testified that if we do not find the LEC pay telephone market subject to effective competition, then we

must: be guided by Section 364.01, in particular, subsection (d), which requires that we guard against all forms of anti-competitive behavior; ensure that LEC competitive services are not cross-subsidized with monopoly revenues as provided by Section 364.3381, Florida Statutes; ensure compliance with Section 364.3381(2), if a LEC chooses and we allow it to offer a competitive service out of its monopoly business; ensure that the other protections and safeguards provided in Chapter 364, are met with regard to LEC pay telephone operations; and take action to implement the law passed over two years ago.

No market has received as much attention, scrutiny, and evaluation from this Commission as the pay telephone market. Since 1985, we have held three full evidentiary hearings, approved or modified two stipulations, and have addressed a myriad of other pay telephone-related issues. We have endeavored to ensure that NPATS have the ability to enter and exit the market and to compete with LPATS. Since 1985, we have approved four rate reductions for interconnection; implemented rate caps; approved surcharges for NPATS; and denied NPATS the authority to use store and forward technology on 0- and 0+ local and intraLATA calls.

In his testimony, witness Cresse identified two examples of what he characterizes as anti-competitive behavior by the LECs. First, the LECs are not currently required to impute tariffed charges to their own pay telephone operations. Second, the LECs are not required to make available to NPATS all of the same access arrangements and other services that they use for their own pay telephones.

We do not agree with witness Cresse that the lack of an imputation requirement represents anti-competitive behavior. Rather, we view such a requirement as a policy decision to "level the playing field." It is unclear from the evidence what effect tariff imputation would have on the availability of pay telephones or on end user rates. However, we believe there may be some merit in requiring tariff imputation in the same manner in which we ordered the LECs to impute access charges on LEC toll. By requiring tariff imputation, we believe that in the future, we will be better able to evaluate how effectively LPATS and NPATS compete.

Witness Cresse would also like us to reduce interconnection rates for NPATS providers. He argued that a reduction would give NPATS the ability to serve low and medium volume locations. We see this as nothing more than an attempt to reargue the same proposal

we rejected in Order No. 24101. In August 1991, we held an evidentiary hearing and determined the appropriate rates to be paid by NPATS providers. These reduced rates are reflected in Order No. 24101. These rates have only been in effect for a little over one year. NPATS providers are under no obligation to serve low and medium volume locations. Any rate reductions would simply translate to increased profits for NPATS providers.

The second anti-competitive behavior addressed by witness Cresse is the access arrangements and other services that LECs offer to their own pay telephone operations that are not provided to NPATS. We agree that the LECs should make coin line functionalities available to NPATS providers. The evidence indicates that the LECs are in the process of studying this matter, however, we believe the LECs are moving too slowly. There was much discussion regarding how coin lines should be offered. The record is not clear regarding exactly what unbundling the NPATS are requesting. From the evidence, it appears that what the NPATS providers have requested may not be technically feasible.

Witness Cresse has argued that we must ensure that LEC competitive services are not cross-subsidized with monopoly revenues. We have found that the LEC pay telephone market is not effectively competitive. Therefore, Section 364.3381 does not apply to LPATS. Monopoly revenues are further discussed in Section IV-B of this Order.

FPTA witnesses testified to operational problems that NPATS experience when dealing with the LECs. These problems include such things billing, service ordering, installation, fraud prevention, and effective screening and blocking services. Witness Norris accused Southern Bell's own coin operations of receiving unfair information from the group that deals with NPATS providers. Witness Beary stated that it would be naive to think divisions of Southern Bell do not share information, despite Southern Bell's assurances to the contrary. Witness Pace was concerned that the transfer of information regarding potential customers provides an unfair advantage to LPATS. Witness McLellan also believes the LECs have taken advantage of integration of services. She cited billing inaccuracies and faulty blocking and screening. Finally, witness Pace indicated numerous delays from what he called "organized confusion." Among these delays, he counts losses of applications and misplaced requests for service, all of which cause his company to lose accounts.

Based on the evidence presented, we are unable to determine either the magnitude of these problems or an appropriate remedy. BellSouth's operations manager stated that BellSouth's public communications department (LPATS) does not have access to or interact with the COCOTS (NPATS) office. He stated that this policy has been in effect for approximately three years. The majority of FPTA's complaints focus on poor service from Southern Bell. These problems have been ongoing and need to be corrected. In order to fully evaluate these problems and establish reasonable corrective action, we shall direct our Division of Research and Regulatory Review, Bureau of Management Studies to perform a management audit of Southern Bell's pay telephone operations. This audit shall also include an investigation into how Southern Bell's marketing group interacts, if at all, with the group that provides service to NPATS. Following completion of the audit, staff from our Division of Communications shall evaluate the recommendations and decide whether similar audits should be performed on other LECs or whether we should require the other LECs to implement the recommendations from the Southern Bell audit.

Based on the considerations discussed above, we find it appropriate to establish the following requirements:

1. In any cost study used to set rates for the LECs' own PATS services, all LECs shall be required to impute to their own pay telephone operations the current interconnection and usage rates the LECs charge NPATS providers until such time as the LECs tariff coin lines. When the LECs tariff coin lines, the LECs shall then be required to impute the tariffed coin line rate or business PATS line rate, depending on what type of interconnection they order for each payphone. (The current NPATS interconnection rate is 80% of the business rate plus usage charges of $.02 for the initial minute and $.01 for each additional minute.)

2. The four largest LECs shall be required to identify the investment, revenues, and expenses (including the tariffed local interconnection rates), associated with their provision of pay telephone operations. Southern Bell, GTEFL, Centel, and United shall identify, at a minimum, the recurring direct costs of providing LPATS. Although we are not requiring a specific costing approach, we recommend that the LECs follow the guidelines set forth in staff's recommendation dated May 21, 1992, in Docket No. 900633-TL. This information shall be provided within six months of the issuance of the final order in this proceeding.

3. All LECs shall be required to file tariffs offering a coin line within one year of the issuance of the final order in this proceeding or, within six months of the final order, provide us with a detailed explanation and cost study justifying why it cannot meet this time frame, along with an alternative time frame.

4. NPATS shall be required to provide a complete list of desired unbundled functionalities to every LEC and to our staff within one month of the final order. Each LEC shall then file tariffs offering these unbundled functionalities no later then one year from the issuance of the final order in this proceeding, or within six months of the final order, provide us with a detailed explanation and cost study justifying why it cannot meet this time frame, along with an alternative time frame.

B. Commission Payments

The payment of commissions to location providers and the revenue sources available to LPATS and NPATS providers probably generated more discussion than any other issue in this proceeding. Our current regulatory policy requires that NPATS providers, as well as all traffic aggregators, route all 0+ and 0- local and intraLATA traffic to the serving LEC. In Order No. 21614, we authorized NPATS to place a $.75 surcharge on 0+ intraLATA calls as compensation for routing the traffic to the LEC. By Order No. 24101, we reduced the $.75 surcharge to a $.25 set use charge and authorized the $.25 set use charge to be applied to 0+ local calls, as well. The set use charge has not been implemented yet, as it has been stayed pending the outcome of FPTA's appeal to the Florida Supreme Court.

The LECs have argued that we should not take any action regarding the payment of commissions to location owners. Witnesses for the LECs argued that market conditions should continue to dictate the commissions required to secure locations. GTEFL witness Caffee testified that market forces have been at work in the agent segment of the pay telephone market. FPTA witness Fedor testified that caps on commission payments are unnecessary, so long as there is no opportunity for revenues from monopoly services to fund these commission payments. FPTA also took the position that some overall limit could be established for ratemaking purposes if pay telephone rate caps needed to be raised some time in the future.

If we retain our traffic routing restrictions, it is FPTA's position that the LECs should be required to cease payment of commissions to location providers from this traffic, which FPTA's witnesses argue constitutes monopoly revenues. FPTA cited several examples of the unfair competitive advantage it believes exists from the LECs' ability to pay commissions based on this traffic.

FPTA's primary focus is on the available revenue streams from which commissions can be paid. Witness Cresse testified that the critical difference between LPATS and NPATS rests on the interLATA and intraLATA revenue sources available to the premises owner from which to receive commission payments. First, LPATS are the only ones which have access to 0+ and 0- local and intraLATA toll. Second, while LPATS may not offer commissions directly from 0+ interLATA and interstate traffic, there is always an IXC to make commission payments directly to the premises owner on calls not handled by the LEC. Therefore, the total sources of revenue for commissions are larger for LPATS than NPATS, according to FPTA.

LEC witnesses agree that LPATS and NPATS have different revenue sources. However, this difference has, in effect, created a balance in which NPATS and LPATS are able to compete, according to the LECs. If we restrict the commission sources, the NPATS would then have a significant advantage over the LPATS. United and GTEFL argued that NPATS have the advantage of being able to offer statewide and even nationwide service. The LECs assert that this is a significant selling point to chain operations.

We agree with FPTA that revenues generated from 0- and 0+ intraLATA calls represent monopoly revenues to the LECs. Section 364.01 defines all services not determined to be effectively competitive as monopoly services. Pay telephone service is not classified as effectively competitive; thus, by definition, it is a monopoly service and the LECs cannot be cross-subsidizing pay telephone operations with monopoly revenues. It should also be noted that the LECs do face competition for intraLATA traffic from IXCs, even at NPATS phones because end users are free to use access codes to select a carrier of choice. What we have restricted is that pay telephone providers cannot alter end users' dialing patterns.

We have determined that it is appropriate to make no changes with respect to commission payments, nor shall we prohibit LPATS from using monopoly revenues to pay commissions. The exhibit proffered by witness Cresse to show that LPATS have an advantage

over NPATS was misleading and incomplete. We agree with witness Emerson that in an ideal world, both NPATS and LPATS would have access to the same sources of revenue. However, as witness Emerson duly noted, institutional restrictions on Southern Bell and GTEFL, such as the Modified Final Judgement (MFJ) and the Consent Decree, do not permit this to become a reality. In addition, Southern Bell and GTEFL do not have access to interLATA or interstate operator services and toll revenues as NPATS do. FPTA asserted that with the MFJ/Consent Decree restrictions lifted, LPATS and NPATS would have access to the same revenue sources. What FPTA does not take into account is the widespread opposition we anticipate from the IXCs. In addition, witness Sims correctly noted that there have been many requests to Judge Greene to grant waivers, but rarely have they been granted.

The LECs point out that NPATS receive revenues on interLATA and interstate calls, but these revenues are not available to the LECs. For this reason, LEC witnesses believe that there exists a balance between LPATS and NPATS. Witness Sims testified, in addition, that the LECs have no control over the amount of commission that an IXC is willing to pay to a location provider on a particular account.

There has been significant debate over the revenue sources available to NPATS and LPATS from which to pay commissions to location providers. Included as Attachment "A" to this Order is a complete list of revenue sources available to both LPATS and NPATS. While the balance is not perfect, in our view it is reasonable.

Finally, prohibiting the LECs from paying commissions on monopoly revenues would place LPATS at a competitive disadvantage. If we were to take such action, LPATS would be limited to paying commissions solely from coin-in-box local and intraLATA toll revenues. Under this scenario, the only opportunity for LPATS to secure locations would be simple unwillingness by a location provider to use an NPATS provider.

C. Public Interest Pay Telephones

All of the parties agreed that no action was needed regarding the placement of public interest pay telephones if no changes were made to the current regulatory structure for pay telephone service. Accordingly, we shall not institute any new requirements or actions for public interest pay telephones at this time.

OPC had suggested that we initiate a proceeding to review the LECs' plans for public interest pay telephones. We are unclear whether this request is meant only if pay telephone service is deregulated or if OPC is concerned about the effect competition has already had on the removal of low volume phones. Even so, we see no need to initiate a proceeding at this time. The fact that some low volume payphones are being removed does not necessarily mean that end users are being deprived of necessary service. We note that our staff have occasionally requested Southern Bell to replace phones that were removed, but this has been rare.

V. FPTA'S COMPLAINT

On May 10, 1991, FPTA filed a Complaint Against Southern Bell for Expedited Relief to Cease Payment of Commissions on Monopoly Revenues (Complaint). We assigned Docket No. 910590-TL to the Complaint. On June 7, 1991, Southern Bell filed a Motion to Dismiss FPTA's Complaint (Southern Bell's Motion to Dismiss). On June 19, 1991, FPTA filed its Memorandum in Opposition to Southern Bell's Motion to Dismiss. By Order No. 25150, issued October 1, 1991, we denied Southern Bell's Motion to Dismiss and directed Southern Bell to file its answer to FPTA's Complaint.

On October 11, 1991, Southern Bell filed its Answer, Affirmative Defense, and Counterclaim to FPTA's Complaint. On November 12, 1991, FPTA filed a Motion to Dismiss Southern Bell's Counterclaim (FPTA's Motion to Dismiss). On November 20, 1991, Southern Bell filed its Memorandum in Opposition to FPTA's Motion to Dismiss. By Order No. 25743, issued February 17, 1992, we granted FPTA's Motion to Dismiss and dismissed Southern Bell's Counterclaim, without leave to amend.

On November 12, 1991, FPTA filed a Request for Expedited Conference with Prehearing Officer. On February 11, 1992, FPTA filed a Motion for Expedited Disposition of Its Complaint following our favorable ruling on its Motion to Dismiss Southern Bell's Counterclaim. In this Motion, FPTA renewed its request for an expedited conference before the Prehearing Officer. On February 18, 1992, Southern Bell filed its Response to FPTA's Motion for Expedited Disposition of Its Complaint.

By Order No. PSC-92-0873-FOF-TL, issued August 25, 1992, we consolidated Docket No. 910590-TL into Docket No. 920255-TL. We took this action because the issues raised in Docket No. 910590-TL

would be examined on an industry-wide basis in Docket No. 920255-TL. The effect of this action was to render moot FPTA's Request for Expedited Conference with Prehearing Officer, FPTA's Motion for Expedited Disposition of Its Complaint, and Southern Bell's Response to FPTA's Motion for Expedited Disposition of Its Complaint.

Docket No. 920255-TL was initiated to determine whether LPATS is effectively competitive and whether LPATS should be regulated differently than it is currently regulated. As part of that determination, we have examined the use of monopoly revenues in the pay telephone market on an industry-wide basis. See Section IV-B of this Order. Our action in Section IV-B has the effect of denying FPTA's Complaint because all of the issues in the Complaint are addressed. Nothing further remains to be addressed in the Complaint.

We note that at the close of the evidentiary hearing, FPTA argued an Oral Motion for Temporary Restraining Order (Oral Motion). FPTA requested that we direct Southern Bell, GTEFL, and United to stop entering into new contracts or renewing existing contracts with premises owners, where the contracts provide for commission payments to be paid or calculated based on monopoly revenues. In a bench decision, we denied FPTA's Oral Motion, primarily because FPTA had not convinced us it would suffer irreparable harm without a restraining order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each and every finding set forth herein is approved in every respect. It is further

ORDERED that effective competition in the pay telephone market shall be defined using the eight criteria discussed in the body of this Order. It is further

ORDERED that in the pay telephone market, the phrase "subject to effective competition" shall have no separate meaning from the term "effective competition." It is further

ORDERED that monopoly services and monopoly revenues shall be defined in the manner set forth herein. It is further

ORDERED that in accordance with the determination conducted herein, the pay telephone market is found not to be effectively competitive. It is further

ORDERED that local exchange companies and nonLEC pay telephone providers shall take certain actions as set forth in Section IV-A of this Order. It is further

ORDERED that no changes shall be made regarding pay telephone commission payments. It is further

ORDERED that no changes shall be made regarding placement of public interest pay telephones.

ORDERED that the Complaint Against Southern Bell Telephone and Telegraph Company for Expedited Relief to Cease Payment of Commissions on Monopoly Revenues filed on May 10, 1991, in Docket No. 910590-TL, by the Florida Pay Telephone Association, Inc. is hereby denied for the reasons discussed herein. It is further

ORDERED that these dockets shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of February, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ABG

Commissioner Clark dissented from the Commission's definition of effective competition as set forth in Section II-A in the body of this Order.

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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

REVENUE SOURCES AVAILABLE TO PREMISES OWNERS FROM WHICH TO RECEIVE COMMISSIONS

	LPATS	NPATS	IXC
local sent paid	yes	yes	no
0+/0- local usage	yes	no	no
0+/0- local operator	yes[1]	no[1]	no
0+/0- set use fee	yes[1]	yes[1]	no
1+ IntraLATA usage	yes	yes	no
1+ intraLATA operator	yes	yes	no
0+/0- intraLATA usage	yes	no	no
0+/0- intraLATA operator	yes	no	no
0+/0- intraLATA surcharge (set use fee)	no/yes[2]	yes/yes[2]	no/no[2]
1+ interLATA usage	no	yes	yes
1+ interLATA operator	no	yes	yes

	LPATS	NPATS	IXC
0+/0- interLATA usage	no	yes	yes
0+/0- interLATA operator	no	yes	yes
0+/0- interLATA surcharge (set use fee)	no/yes[3]	yes/yes[3]	no/no[3]
1+ interstate usage	no	yes	yes
1+ interstate operator	no	yes	yes
0+/0- interstate usage	no	yes	yes
0+/0- interstate operator	no	yes	yes
0+/0- interstate surcharge	no	yes	no
0+/0- international usage	no	yes	yes
0+/0- international operator	no	yes	yes
Compensation commissions from AOS or IXC	no	yes	yes
intraLATA access charges	yes	no	no
interLATA access charges	yes	no	no
interstate access charges	yes	no	no
international access charges	yes	no	no

[1]By Order No. 24101, when the set use fee of $.25 becomes effective, it will be mandatory for NPATS and LPATS providers; thus it will be a revenue stream available for commission payments.

[2]Note: Currently, the 0+ intraLATA surcharge is available only to NPATS providers, thus the "no" in the LPATS column and the first "yes" in the NPATS column. This surcharge is $.75 to end users, or about $.68 net to the NPATS provider after the LEC deducts billing and collection charges. However, under Order No. 24101, the surcharge would be replaced by the set use fee which would be mandatory for LPATS and NPATS for all intraLATA calls, hence, the yes for the LPATS column and the second "yes" for the NPATS column.

[3]Note: The current 0+ interLATA surcharge is available only at NPATS stations and has a maximum charge of $1.00, thus its application and amount are entirely discretionary to NPATS providers. Under Order No. 24101, this surcharge would be replaced by the $.25 set use fee. While the LPATS would not handle this call, presumably an IXC could include the set use fee. For NPATS providers, the set use fee would be optional.