

Before the
FLORIDA PUBLIC SERVICE COMMISSION
Tallahassee, Florida

ORIGINAL
FILE COPY

In re: Petition for Expanded)
Interconnection for Alternative)
Access Vendors Within Local Exchange)
Company Central Offices by)
Intermedia Communications of Florida.)

DOCKET NO. 921074-TP

In re: Request by United Telephone)
Company of Florida for Approval of a)
Proposed Tariff Restructuring the)
Switched Access Local Transport Element)

DOCKET NO. 940014-TL

In re: Request by Central Telephone)
Company of Florida for Approval of a)
Proposed Tariff Restructuring the)
Switched Access Local Transport Element)

DOCKET NO. 940020-TL

In re: Request by General Telephone)
Company of Florida for Approval of a)
Proposed Tariff Restructuring the)
Switched Access Local Transport Element)

DOCKET NO. 940190-TL

In re: Request by Southern Bell)
Telephone and Telegraph Company for)
Approval of a Proposed Tariff)
Restructuring the Switched Access)
Local Transport Element.)

DOCKET NO. 930955-TL

BRIEF OF THE INTEREXCHANGE ACCESS COALITION

By: Brad E. Mutschelknaus
Danny E. Adams
Rachel J. Rothstein
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

(For Docket Nos. 921074-TP,
940014-TL (United); 940020-TL
(Central) and 930955-TL
(BellSouth))

Vicki Gordon Kaufman
MCWHIRTER, REEVES, MCGLOTHLIN,
DAVIDSON & BAKAS
315 S. Calhoun Street, Suite 716
Tallahassee, Florida 32301

(For Docket Nos. 940190-TL (GTE))

Its Attorneys

October 11, 1994

DOCUMENT NUMBER-DATE

10413 OCT 12 94

FPSC-RECORDS/REPORTING

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF INTEREST	6
PROCEDURAL BACKGROUND	7
INTRODUCTION	8
ARGUMENT	12
I. THE LECs HAVE FAILED TO MEET THEIR BURDEN TO SHOW THAT THE TRANSPORT RATES ARE JUST AND REASONABLE	12
A. The LECs Cannot Be Allowed to Engage in Unrestrained Market-Based Pricing	13
B. The Commission Should Not Defer to FCC Pricing	19
C. The Proposed Access Transport Tariffs Are Inconsistent With Prior Access Charge Decisions and Policies of the Florida PSC	22
II. THE LECs' PROPOSED RATES BEAR NO REASONABLE RELATION TO THE COST OF PROVIDING THE NEW INTEROFFICE TRANSPORT OPTIONS.	25
A. The Current Rates for DS1 and TST Transport Are Unreasonably Higher Than the Rates Proposed for DS3 Transport	26
B. The Proposed Rates for Tandem Switching Are Unjust and Unreasonable	30
III. THE LECs' PROPOSED TRANSPORT RATES HAVE A SUBSTANTIAL ADVERSE IMPACT ON SMALLER IXCs AND GENERALLY HARM THE PUBLIC INTEREST	33
A. The Proposed Tariff Would Seriously Harm IXC Competition	33
B. The Proposed Rates Will Cause IXCs to Use the Local Network Inefficiently	37
C. The LECs' LTR Rates Will Disadvantage Users in Small Communities and Rural Areas	39

IV.	THE COMMISSION SHOULD REJECT THE LECs' CURRENT LTR TRANSPORT RATES, AND REQUIRE THAT RATE DIFFERENTIALS BE COST-BASED.	40
V.	ZONE DENSITY PRICING IS THE FAIR WAY TO PROVIDE LEC PRICING FLEXIBILITY IN THE ACCESS TRANSPORT MARKET	42
VI.	THE COMMISSION'S MABC AND IMPUTATION STANDARDS MUST BE MODIFIED	44
	CONCLUSION	45

**Before the
FLORIDA PUBLIC SERVICE COMMISSION
Tallahassee, Florida**

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

BRIEF OF THE INTEREXCHANGE ACCESS COALITION

The Interexchange Access Coalition ("IAC"), pursuant to the schedule established by the Commission in the above-referenced docket, files its Brief in the above-referenced consolidated dockets. This proceeding was convened in part to consider whether proposed rates for switched access transport services are just and reasonable. Specifically, IAC objects to the proposed access transport rates charged by BellSouth Telecommunications, Inc. ("BellSouth"), GTE of Florida, Inc. ("GTE"), United Telephone Company of Florida ("United") and Central Telephone Company of Florida ("Central") (collectively, the "LECs"). IAC believes that the proposed rates are unjust, unreasonable and unduly discriminatory, and accordingly should be rejected.

IAC's complaint in this proceeding is a simple one: the local exchange telephone companies' ("LECs") proposed access charges for intrastate interoffice transport are not cost-based, and, consequently, they discriminate in favor of AT&T, the overwhelmingly dominant carrier in the long distance marketplace, to the detriment of smaller interexchange carriers ("IXCs"), such as the members of the Interexchange Access Coalition ("IAC"). If

the proposed rates are permitted to take effect, interexchange competition will suffer, IXCs will be encouraged to make inefficient use of the local telephone network, and service options to consumers in small communities and rural areas will be reduced. The LECs' proposed transport tariffs should be rejected, and the Commission should order the companies to prepare and file new access transport rates that are developed consistent with the cost-differential approach articulated by IAC herein.

The record developed in this proceeding does not justify letting the LECs' proposed rates for interoffice transport become effective. In fact, the LECs' failed utterly to submit any data in support of their current charges. Thus, the LECs did not meet their burden of demonstrating that their rates for Tandem-Switched Transport ("TST") and DS1 Direct Trunked Transport ("DTT") are just and reasonable.

The LECs' request that they be free to price transport services based upon their own view of the companies' market needs and strategies would effectively eliminate the critical role this Commission has in determining whether proposed rates are nondiscriminatory, just, and reasonable. Indeed, flexible pricing tools -- such as the LECs' contract serving arrangements ("CSAs") -- are completely inappropriate in the monopolistic switched access environment. Moreover, although the rates purportedly mirror federal rates that have been permitted to take

effect, this Commission cannot and should not delegate its authority over intrastate rates in Florida to the Federal Communications Commission ("FCC").

The LECs' principal contention in support of this pricing flexibility is the need to respond to local competition. The record, however, shows clearly that no competition exists in the provision of switched access such as that addressed in this docket. The only local competition even contemplated in Florida at this time is special access, a service which can be substituted for switched access in only a relatively small number of cases. The overwhelming majority of switched long distance traffic today, and for the foreseeable future, travels on the LECs' monopoly switched access transport network.

It is not surprising that the LECs' declined to submit cost evidence in support of their proposed rates. When IAC obtained cost information through discovery and cross-examination in this proceeding, it became apparent that the relative prices between the three interoffice transport service options -- DS3 DTT, DS1 DTT, and TST -- bear no relation to the relative costs of providing the services. Despite the fact that all three service options are carried over the same fiber optic backbone network and the relatively minor service cost differentials are easily identified, the LECs set their rates to discriminate unreasonably in favor of their largest customer, AT&T, to the severe detriment of its smaller competitors. Worse yet, the LECs funded the DS3

reduction given to AT&T by increasing the DS1 and TST rates to small carriers.

The only difference in providing DS3 versus DS1 level dedicated transport services, as the LECs unequivocally admit, is the use of certain relatively inexpensive multiplexing equipment. Yet, by the LECs' admission, their pricing for DS1 service exceeds the pricing for DS3 service by far more than the incremental cost attributable to multiplexing. Similarly, the rates for the tandem switching element, which represents the only real cost-difference between TST and dedicated (i.e., DS3 and DS1) transport services, are excessive. The rates are set significantly above the incremental cost to the LECs of providing tandem switching, and the additional increment amounts to double-recovery of contribution from tandem users.

The adverse consequences of these discriminatory proposed rates would be significant were they permitted to take effect. The proposed transport tariffs would seriously harm interexchange competition by giving AT&T a significant artificial cost advantage over its smaller competitors. On average the tariff rates at issue reduce AT&T's transport costs significantly while increasing transport costs for IAC members substantially. Moreover, the transport rates create incentives for IXCs to use the network inefficiently by purchasing excess capacity, leaving significant portions of the network idle. Finally, the proposed

rates would reduce the long distance service options available to consumers in small communities and rural areas.

The proposed LTR tariffs are flatly inconsistent with all prior access charge policies of this Commission. The Florida PSC has long required that access transport rates be geographically averaged and show little distance sensitivity, both because the Commission found that the cost of providing the service was not particularly distance sensitive, and to ensure that rural and urban markets would reap the benefits of IXC competition equally. Indeed, it was for this very reason that the Commission engaged in the painstaking process of establishing EAEAs across the state in 1984. The proposed LTR tariffs would effectively retire the EAEA concept by making it uneconomic to utilize common transport to reach non-urban areas. Indeed, the entire structure is designed to encourage IXCs to redesign their networks to serve only high volume routes. For this reason alone, the proposed LTR rates should be rejected.

Accordingly, the LECs' proposed access transport rates should be rejected. In place of them, IAC proposes a simple and straight-forward solution using the LECs' proposed access transport rate structure whereby any difference in the pricing of DS3, DS1, and TST services must be based strictly upon the incremental cost differences in providing each service. For the convenience of the Commission, IAC compiled the resulting non-

discriminatory rates for the LECs' proposed transport services and entered them into the record.

STATEMENT OF INTEREST

IAC is an ad hoc group of nondominant IXCs. IAC's members include LDDS-Metromedia, WilTel, Cable & Wireless, LCI and U.S. Long Distance. The IAC membership includes at least four of the six largest purchasers of access services in the nation. IAC members provide intrastate (as well as interstate) long distance telephone services to thousands of customers in Florida. The payment of access charges to LECs accounts for approximately fifty percent of the total operating costs of IAC members. So-called "access transport" charges for the connection of the IXC networks to LEC end offices account for approximately one-third of such access charges paid by IAC members for Florida intrastate traffic.

Under the "equal charge" access charge rate structure currently in place, LECs in Florida charge all IXCs the same amount per minute of use for access services. Under the new LTR rates at issue herein, the LECs have given significant rate discounts to carriers with large local traffic volumes, but increased rates significantly for smaller carriers, such as IAC members. If the differences between the discounts and increases are unreasonably great -- as IAC contends they are under the LTR tariffs -- larger IXCs can obtain an insuperable cost advantage

over their smaller competitors in the interexchange marketplace. Therefore, IAC has a vital stake in the outcome of this proceeding.

PROCEDURAL BACKGROUND

This docket was initially established for the purpose of considering whether to require the LECs to provide expanded interconnection to alternative access vendors ("AAVs") and allow such AAVs to provide limited local services. The proceeding was bifurcated: Phase I was established to consider issues related to special access interconnection, while Phase II was convened to consider issues raised by switched access interconnection. In the meantime, BellSouth and the other LECs filed their proposed LTR tariffs. The tariffs were suspended, and consideration of them was assigned to Phase II. A hearing was held on August 22-24, 1994, during which testimony was presented by witnesses for the LECs, IAC, AT&T and others. A consolidated hearing record was created.

RELATION OF BRIEF TO DESIGNATED ISSUES

IAC's interest in this proceeding is limited to issues concerning the proposed restructuring of switched access local transport rates. Sections I-IV hereof address issues identified in the Prehearing Order as Issue Nos. 1, 2, 19, 20 and 21 (i.e., LEC LTR tariffs). Section V relates to Issue No. 18 (i.e., LEC

pricing flexibility), while Section VI relates to Issue Nos. 22 and 23 (i.e. MABC and imputation). Due to its limited interest, IAC takes no position (and does not brief herein) Issue Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17 and 24.

INTRODUCTION

By their LTR Tariffs, the LECs propose to replace the pre-existing intrastate "equal charge"/EAEA access transport rate structure with a new structure similar to that recently adopted by the Federal Communications Commission ("FCC") for interstate access charges. The "equal charge" rate structure was a simple one which was designed to prevent the LECs from giving AT&T preferential access charge rates.¹ Simply put, every IXC was charged the same price per minute of use for local transport over equal distances. As explained hereafter, the EAEA structure further simplified this system by making access transport rates essentially distance insensitive.² The LECs now seek to unbundle the charges for transport, and to offer several differing transport service options.

The LECs' new LTR rate structure creates a three-part architecture for switched access transport. Under the new

¹ U.S. v. Western Electric Co., 552 F. Supp. 131, 197-98 n.278 (D.D.C. 1982), aff'd sub nom Maryland v. U.S., 460 U.S. 1001 (1983) ("MPJ"). See id., Appendix B at ¶ B.3 for the text of the rule.

² See Section I.C. infra.

structure, access transport consists of the following three charges: 1) entrance facilities, 2) interoffice transport, and 3) a residual interconnection charge ("RIC").³ The "entrance facilities" charge is assessed for connecting an IXC's long distance network to the closest LEC end office (i.e., the "Serving Wire Center"); the interoffice transport charge is collected for carrying interexchange traffic within the LEC network to the Serving Wire Center; and the RIC is imposed to recover certain common costs and ensure that the charges are revenue neutral to the LEC.

Under the LECs' proposed tariffs, interoffice transport would be offered in several different ways. Customers can order "Direct Trunked Transport" ("DTT"),⁴ which reserves transmission capacity within the LEC interoffice network for use by a single IXC. Two basic DTT options are available -- DS1 and DS3 -- depending upon the capacity needs of the ordering IXC.⁵ Alternatively, access customers can order "Tandem-Switched Transport" ("TST"), which enables IXCs that do not have sufficient local traffic volumes to justify dedicated transport

³ See Hendrix, Tr. 16. References herein to exhibits admitted into evidence are in the form "[Ex. ____], p. ____]; references to the transcript of the hearing in this proceeding are in the form "([Witness name], Tr. [page no.])".

⁴ Also referred to as "dedicated" transport.

⁵ A DS1 has the capacity to carry 24 simultaneous voice conversations. A DS3 carries the traffic equivalent of 28 DS1s, or 672 voice channels. See Rock, Tr. 655; Gillan, Tr. 586.

to share interoffice circuits between LEC end offices by aggregating their traffic at an intermediate tandem switch. Importantly, regardless of which transport option is selected -- DS3, DS1, or TST -- the LEC provides an essentially identical service to the IXC customer, i.e., the routing of calls between the Serving Wire Center and various end offices. Moreover, all access traffic of all IXCs is carried over the same LEC backbone network of fiber optic lines.⁶

IAC does not oppose the adoption of a new transport rate structure in place of the current "equal charge" structure. Indeed, IAC does not object to the particular rate structure proposed by the LECs in this proceeding. Nor does IAC object, in principle, to the LECs' goal of maintaining revenue neutrality in moving from the "equal charge" structure to a new access transport rate structure.

What IAC does dispute is the lawfulness of the specific rates the LECs are now charging under that rate structure. IAC asserts that the record demonstrates that those prices are discriminatory, unreasonably favoring larger IXCs, particularly AT&T. The record is clear that the LECs intentionally lowered the price of high-volume DS3 services to satisfy the perceived demands of large access customers, such as AT&T, but consciously

⁶ See Section II infra.

chose not to offer the same cost savings to smaller IXCs which do not share the enormous bargaining power of the largest IXCs.⁷

IAC does not contend that the pricing of all access transport service options should be identical. If it costs the LECs more to provide one type of interoffice transport service than another, the LECs should be allowed to price each in a way designed to recover the incremental difference in the cost of providing the service.

In fact, however, the LECs did not heed any objective cost-of-service pricing standard in establishing the relative transport rates at issue herein. They chose instead to ignore the cost differentials and base their pricing upon a subjective perception of what the market would bear. The Commission simply should not countenance the pricing of monopoly services in this fashion. If utilities are allowed to ignore costs in establishing rates, they will be free to discriminate and overcharge in clear contravention both of Florida statutes and long-standing policies of this Commission.

⁷

See Section II *infra*.

ARGUMENT

I. THE LECs HAVE FAILED TO MEET THEIR BURDEN TO SHOW THAT THE TRANSPORT RATES ARE JUST AND REASONABLE.

[Relates to Issue Nos. 1, 2, 19, 20 & 21]

The LECs have the burden of proof to show that their rates are just and reasonable. The LECs must affirmatively demonstrate that their transport rates are "fair, just [and] reasonable"; no telecommunications company may charge "any person a greater or lesser compensation for any service rendered or to be rendered with respect to communications by telephone or in connection therewith . . . than it charges . . . any other person for doing a like or contemporaneous service."⁸ Similarly, Florida Statutes prohibit any telecommunications company from making or giving "any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."¹⁰

The LECs have utterly failed to meet that burden. The LECs failed to submit any data to show that their proposed rates are

⁸ Fla. Stats. § 364.03(1).

⁹ Fla. Stats. § 364.09.

¹⁰ Fla. Stats. § 364.10. Florida Statutes also require that the Commission "encourage . . . competition in the telecommunications industry" and "[e]nsure that all providers of telecommunications services are treated fairly by preventing anticompetitive behavior" Fla. Stats. § 364.01(3)(c)-(d).

not set unreasonably above cost. They did not state what the cost of service is or what costs were included or excluded in setting the rates. Indeed, the record is devoid of any explanation by the LECs of how the proposed rates were developed. Instead, the LECs defend their proposed rates by interjecting several rationalizations which are not cognizable as a matter of law or policy.

A. The LECs Cannot Be Allowed to Engage in Unrestrained Market-Based Pricing.

According to the LEC witnesses, the proposed rates are reasonable because in each instance the prices proposed exceed the long run service incremental cost ("LRSIC") incurred by them in providing the proposed service. As long as that condition is met, the LECs contend, they should have unfettered discretion on how to set their rates without regard to cost considerations or what impact their proposed pricing may have upon the customers of its access services.

As BellSouth's witness, Mr. Jerry Hendrix, explained:

. . . [T]he new policy should be based on the competitive conditions in the marketplace The market-based [transport] rates, of course, must cover their incremental costs. Once this cost test is met, the LEC should have the flexibility to price transport services consistent with market conditions and demands.¹¹

¹¹ Hendrix, Tr. 418.

Asked about this statement on cross-examination, Mr. Hendrix agreed that he believes that cost-based pricing of transport services should be abandoned:

Q. . . . I guess this . . . sums up your view that market pricing is appropriate and not cost-based pricing as long as incremental costs are covered?

A. What you stated sums up my view well, yes.¹²

As he commented elsewhere:

Bell's prices, while they cover Bell's cost, you know, we should be allowed to set our prices to compete with what the market is dictating¹³

At another point, Mr. Hendrix testified:

. . . [IAC] should not be telling me where to set my rates, as long as I cover cost. Bell should be able to set rates based on the market pressures.¹⁴

* * * *

. . . We should be allowed to file rates that we feel will meet market pressures. . . .¹⁵

Consistent with this view, BellSouth failed to submit any cost data in support of its proposed transport rates.¹⁶

Similarly, GTE's witness, Mr. Kirk Lee, admitted that GTE's proposed LTR transport rates are not based upon any cost studies

¹² Hendrix, Tr. 418.

¹³ Hendrix, Tr. 448.

¹⁴ Hendrix, Tr. 550.

¹⁵ Hendrix, Tr. 551.

¹⁶ Hendrix, Tr. 549.

performed and submitted at either the state or federal level.¹⁷ Instead, GTE based its pricing solely on its evaluation of market conditions:

Rates . . . should be determined by market factors such as market demand, competitive conditions, and the number of available substitutes for transport services in a given market. Rates should also be supported by Long Run Incremental Cost (LRIC) as a price floor. . . . Market conditions should determine the actual prices and the level of contribution provided by each access service option.¹⁸

In effect, the LECs argue that the incremental cost of service creates a rate floor below which they cannot price, but there is no rate ceiling that limits how high they may price their services. Acceptance of such a principle would make a mockery of the Commission's express requirement that the LECs' charges be just and reasonable. Indeed, the LEC position effectively provides that there is little or no legitimate role remaining for this Commission in reviewing the companies' access rates.

The LECs would replace the use of cost as a pricing standard and Commission review of their transport rates with unrestrained market-based pricing. Simply put, the LECs unabashedly propose that they should be free to price access transport services solely on the basis of market considerations, charging as much for each LTR option as the market will bear, regardless of

¹⁷ Lee, Tr. 322-323.

¹⁸ Lee, Tr. 304.

whether transport service customers have any practical alternative source of supply.

The inevitable consequence of engaging in such market-based pricing is to extract higher prices from access customers who lack alternatives for functionally equivalent services provided to larger access customers at a lower price. The smaller customer would be asked to pay disproportionately more than the large carrier toward recovery of overhead and joint and common costs, simply because he is a captive customer of the LECs' transport services.

As BellSouth's Hendrix testified in response to questioning from Chairman Deason:

- A. . . . [A]s far as cost-based, we cover the cost to provide that service.

Does that mean that the contribution on a voice grade basis is the same for DS1, DS3 service? And the answer is no. And what we're saying is that we cover costs, but we should be allowed to price that service to meet the market.

- Q. And you want the flexibility to price a DS1 in relation to a DS3 as the market dictates.
- A. That's correct.
- Q. As long as you cover your costs.
- A. As long as I cover costs.¹⁹

¹⁹ Hendrix, Tr. 457.

GTE's Lee concurred, testifying that "market conditions should determine . . . the level of contribution provided by each service option."²⁰

The LECs attempt to justify this incredible position by claiming that they face increasing competition in the provision of access services. Assuming arguendo that such a circumstance would justify unrestrained pricing by LECs, which it does not, the LECs have failed completely to provide evidence of any meaningful level of competition in the provision of switched access services in Florida. In fact, the unrebutted record is that BellSouth has not received a single request for switched access collocation in Florida!²¹ Thus, the arguable "potential" for switched access competition has not developed into a "reality" anywhere in the state.²² Indeed, if the LECs were in fact facing significant competition in the access market, logic dictates that they would be reducing access rates for all customers, not increasing them for the majority of access customers as they propose herein.

²⁰ Lee, Tr. 304.

²¹ Gillan, Tr. 963; See also BellSouth Responses to IAC Interrogatories No. 2 & 5, which are part of Exh. No. 28. BellSouth stated therein that it had received no requests for special or switched access collocation in Florida.

²² Id.

The bottom line -- as AT&T's witness testified²³ -- is that there is no meaningful competition today in the provision of switched access services in Florida. Indeed, IAC witness Gillan testified that -- even if switched access interconnection is approved -- effective switched access competition "isn't going to happen at the conclusion of this docket and it may not happen in the conclusion of my life time" ²⁴ By all accounts, there is no competition for TST at all. In reality, the LECs seem to be seeking complete access pricing flexibility -- free from Commission review -- which enables them effectively to preempt the development of such access service competition in the future.²⁵

In short, the LECs' desire to engage in unfettered market-based pricing -- unrelated to either the cost of service or rate of return -- is unsustainable as a matter of policy and totally unsupported as a matter of fact. As AT&T's witness Guedel testified, "I am not supporting market-based pricing. I think that's completely inappropriate for companies who possess an absolute monopoly, as the LECs do."²⁶

²³ Guedel, Tr. 174-175.

²⁴ Gillan, Tr. 983-984.

²⁵ See Lee, Tr. 307; Lee, Tr. 309; Hendrix, Tr. 420.

²⁶ Guedel, Tr. 864.

B. The Commission Should Not Defer to FCC Pricing.

The LECs' principal defense of their pricing is that their transport rates simply mirror those allowed to take effect at the federal level by the FCC.²⁷ Taken to its logical extreme, the LECs are arguing that this Commission should defer to the FCC on all intrastate access matters.

Under Florida Statutes, the Commission is charged with the responsibility of judging the lawfulness of any rates that the LECs propose for intrastate services.²⁸ The fact that the new LTR tariffs mirror what the LECs have been permitted to do on the federal level does not alter this jurisdiction. If it did, then the Commission's authority over intrastate access services would be rendered a nullity. Rather, the Commission must engage in an independent evaluation of the LECs' rates based upon Florida intrastate costs, policies, and circumstances.²⁹ BellSouth did not consider any of these factors in setting the intrastate transport rates.³⁰

The truth is that the LECs' intrastate access rates did not mirror the federal access rates under the former equal charge structure, and, critically, do not mirror the federal access

²⁷ Hendrix, Tr. 418.

²⁸ Fla. Stats. §§ 364.03(1); 364.09; 364.10.

²⁹ See also Fla. Stats. § 364.01(3)(c)-(d).

³⁰ See Hendrix, Tr. 420.

rates even under the LECs new and revised LTR access tariffs. Switched access rates have several components, including charges for transport, local switching and carrier common line. The LECs access rates mirror the transport charges only for the transport element; the intrastate rates differ materially from the interstate rates both for the local switching element and the carrier common line element.³¹ Even more telling, the LECs have opted not to mirror the RIC, which comprises fully two-thirds of the charges for switched transport services.³² The fact that the LECs have chosen to mirror interstate rates for only a portion of the switched access charge is a telling admission that there is no intrinsic value to mirroring for mirroring's sake. Indeed, GTE's witness admitted at hearing that "[r]ates should not necessarily be mirrored. . . ."³³

In any event, it simply is not true that the FCC has determined that the LECs' new interstate access rates are reasonable or lawful. By allowing the interstate rates to take effect, the FCC did not preclude its ability to later find them unlawful under the Communications Act of 1934. As the FCC has explained: "We have also rejected the contention that rates charged in conformity with a lawfully filed tariff cannot be

³¹ See Hendrix, Tr. 445-447 & Exh. 3 to Hendrix Direct Testimony, Exh. No. 26.

³² Hendrix, Tr. 418, 446; Guedel, Tr. 121.

³³ Lee, Tr. 304.

unjust and unreasonable. . . . '[L]egally effective, carrier initiated tariffs can always be challenged as unreasonable and unlawful.'³⁴ The fact is that the FCC did not examine the LEC rate levels in its Docket No. 91-213.³⁵ Moreover, most of its pricing criteria remain under reconsideration.

The reason that the FCC did not carefully examine the rate levels for the new LTR options was because they allowed the LECs to simply import their preexisting special access rates for use as pricing for the dedicated transport options under the new LTR tariff structure.³⁶ While use of such special access rates may have been expedient, it also was erroneous. The preexisting special access rates were established for specific historical purposes which do not apply in the switched access environment, and their use as switched access pricing creates undesirable economic distortions.

If special access rates are simply imported into the switched access tariffs, without examining the cost basis and reasonableness of the special access rates in this new

³⁴ MCI v. Pacific Northwest Bell Tel. Co., 5 FCC Rcd 216, 222 (1990) (subsequent history omitted) quoting Arizona Advisory v. Atchison, T & S.F.R., Co., 284 U.S. 370, 384 (1932).

³⁵ See Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 92-213, 7 FCC Rcd 7006 (1992) (hereafter "Access Transport Order"); see also Transport Rate Structure and Pricing, First Memorandum Opinion and Order on Reconsideration, CC Docket No. 91-213, FCC 93-366 (released July 21, 1993) (hereafter "Access Transport Reconsideration Order"), recon. pending.

³⁶ Id.

application, important and undeserved access price advantages can be conferred on one IXC as compared to another.

At bottom, the interstate rates that the LECs have on file with the FCC are irrelevant to the question of whether the proposed intrastate rates before this Commission are just, reasonable, and non-discriminatory. The Commission must review the record developed herein to make that determination.

C. The Proposed Access Transport Tariffs Are Inconsistent With Prior Access Charge Decisions and Policies of the Florida PSC.

As explained above, the LECs' proposed tariffs violate Florida law because they are unreasonably discriminatory. In addition, however, the LTR tariffs must be rejected because they are flatly inconsistent with the prior access charge policies of this Commission.

The Florida PSC has long required that access transport rates be geographically averaged and show little distance sensitivity, both because the Commission found that the cost of providing the service was not particularly distance sensitive, and to ensure that rural and urban markets would reap the benefits of IXC competition equally. Indeed, it was for this very reason that this Commission engaged in the painstaking process of establishing Equal Access Exchange Areas ("EAEAS") across the state in 1984. The Commission's policy was not based

directly upon MFJ requirements or subject to any federally adopted expiration date. The Commission explained:

Although recognizing that the MJF equal access was viewed as comprising only technical equal access for IXCs to reach customers on an end office by end office basis, the Commission nevertheless felt that such a structure contained inherent incentives that would result in competitive services in high volume and urban markets, but not in the low volume and rural markets. This result would be contrary to the goal of statewide competitive service, so the Commission favored establishing EAEAs within which the LECs would be responsible for providing access for all customers to reach IXCs serving anywhere in an area.³⁷

* * * *

The Commission finds that an average transport charge rather than a distance sensitive transport charge should be applied in determining local transport charge levels. This decision is consistent with the express goal of universal service and spreads the costs of transport among all customers (i.e., end users) deriving the benefits of telephone service in the EAEA.³⁸ (parenthetical added).

The Commission revised its policy toward access transport rates in 1986, and reaffirmed its commitment toward rate averaging:

The keystone of the toll center concept [i.e., the EAEA areas] is the LEC's obligation to deliver all intraEAEA toll traffic to the toll center at an average transport rate. This allows an IXC to serve an entire EAEA with one point of presence (POP) and allows all customers equal access to each IXC serving an EAEA.³⁹

³⁷ Order 13750, Docket 820537-TP, p. 3.

³⁸ Id., p. 8.

³⁹ Order No. 16343, Docket 820537-TP.

Indeed, as recently as 1990 the Commission reiterated its requirement that transport rates be averaged, and refused to mirror federal access charges which departed from this principle:

Our decision to establish EAEAs was a result of dissatisfaction with the way equal access and interexchange competition were being handled at the federal level.

The Federal development . . . provided incentives for competition to develop only on high volume urban routes served by specific end-offices.⁴⁰

We focused on the ability of all end-users to access all available IXCs. The primary tool the Commission chose for this purpose was the implementation of a statewide average local transport rate. An average rate removed the incentive for an IXC to connect directly to an individual end office in a high volume area and to avoid low volume distant offices in an effort to avoid transport charges.⁴¹

The LECs have proposed to make a striking departure from the Commission's oft-espoused transport policy which undeniably was intended to favor tandem-based transport service. The proposed access structure makes use of "common" or TST markedly more expensive than utilizing dedicated connections to end offices. This change would effectively retire the EAEA concept by making it uneconomic to utilize tandem-based transport to reach non-urban areas. Indeed, the entire structure is designed to

⁴⁰ Order 23540, Docket 880812, p. 18.

⁴¹ *Id.*

encourage IXCs to redesign their networks to serve only high volume routes.⁴²

II. THE LECs' PROPOSED RATES BEAR NO REASONABLE RELATION TO THE COST OF PROVIDING THE NEW INTEROFFICE TRANSPORT OPTIONS.

[Relates to Issue Nos. 1, 2, 19, 20 & 21]

It is not surprising that the LECs failed to make any attempt to enter cost support data for their proposed transport rates into the record. When IAC obtained such cost information through discovery and cross-examination in this docket, it became obvious that the proposed rates bear no reasonable relation to the cost of service. On the contrary, it is evident that the LECs have set their rates to shift cost recovery among access customers so as to discriminate unreasonably in favor of large IXCs to the severe detriment of their smaller competitors.

LECs route the interoffice traffic of all IXC access customers over the same DS3 level backbone network.⁴³ While there may be relatively small additional costs imposed on the network by DS1 and TST service over those required for DS3 service, the disparate pricing proposed by the LECs for the

⁴² See Gillan, Tr. 584-586. Notably, as recently as 1990, BellSouth agreed that "the creation of the EAEAs and the use of average transport rates have fostered economic efficiency in the state." Hendrix, Tr. 495.

⁴³ Hendrix, Tr. 482.

several transport options is totally out of proportion to the differences in the costs of providing service.

A. The Current Rates for DS1 and TST Transport Are Unreasonably Higher Than the Rates Proposed for DS3 Transport.

DS1 and DS3 dedicated transport are largely identical services. The typical interoffice fiber link consists of high grade single mode fiber. The fiber cable is terminated at both ends into fiber terminals which convert DS-3 optical signals into electrical signals. If a DS-1 is required, a three-to-one multiplexer is placed on the electrical side of the fiber terminal. Therefore, by BellSouth's own explanation and admission, the only material difference between the provisioning of a DS3 and a DS1 is the 3:1 multiplexer required for DS-1 service.⁴⁴ As BellSouth stated unequivocally, "the difference between the provisioning of a DS3 and a DS1 is a 3:1 multiplexer for DS1 service."⁴⁵ Moreover, usually only one additional such multiplexer is required.⁴⁶

However, the record is clear that the proposed rate for DS1 service was designed to recover far more than the cost of multiplexing. BellSouth admitted that it had performed LRSIC

⁴⁴ Hendrix, Tr. 484-487.

⁴⁵ BellSouth Response to IAC Interrogatory No. 11, Exh. No. 28.

⁴⁶ Hendrix, Tr. 487.

cost studies of both DS3 and DS1 services, and in fact used them to support the LEC's claim that its rates have not been set too low.⁴⁷ However, as explained above, BellSouth admits that it ignored those same cost studies in determining how high rates should be set, and in deciding what relative pricing relationships should exist between each of the new transport rate options.⁴⁸ Instead, BellSouth, by its own admission, used market-based pricing (as reflected in its interstate special access rates) and set rates based, at least in part, upon what the market would bear.⁴⁹ Thus, BellSouth opted to set rates to recover relatively more contribution toward joint and common costs from small access customers with no alternatives than from large access customers who theoretically could choose to bypass its network. Small users in effect are asked to subsidize the LECs' access charge discounts to large users by paying a disproportionate amount toward recovery of overhead and other joint and common costs.

Indeed, the precise level of this discrimination was established at hearing. For example, using BellSouth's own LRSIC cost studies, it was determined that, under BellSouth's proposed LTR transport rates, DS3 customers pay only \$5.94 per available

⁴⁷ See Section I.A supra.

⁴⁸ Id.

⁴⁹ E.g. Hendrix, Tr. 418.

circuit in contribution.⁵⁰ By contrast, DS1 customers are required to pay over \$17.00 per available circuit in contribution, and TST users would pay a contribution exceeding \$13 per circuit.⁵¹ Thus, DS1 and TST customers would be required to pay from two to three times as much as the DS3 customer toward recovery of joint and common costs which, by definition, are "caused" equally by all such customers. The fundamental unfairness of this circumstance is obvious, as is the probability that such discriminatory pricing will create an uneven playing field among interexchange competitors.

The level of contribution recovered from access service is a policy decision, as is the portion of contribution that should be recovered from the transport component of access service. Whatever the level of contribution selected, however, the Commission should not allow the LECs to distort interexchange competition by selectively reducing this level for some interexchange carriers but not others. Contribution should continue to be recovered under an "equal charge" approach.⁵²

⁵⁰ Gillan, Tr. 596 & Exh. No. 36 (JPG-4).

⁵¹ Id. The LTR rates for GTE and United contain similarly discriminatory allocations of contribution. See Late Filed Exh. No. 1 to Deposition of Joe Gillan.

⁵² Gillan, Tr. 588-589. The effect of the preferred "equal charge" approach to the recovery of contribution is illustrated in Attachments A and B hereto, which are included in the record as part of Exh. No. 36.

There can be no justification for a pricing policy which allows the contribution extracted from an end user through his long distance rates to vary according to which IXC he chooses. As IAC witness Gillan asked, "[w]hy should a call carried by AT&T make a smaller contribution to the LECs' common costs than an identical call, from the very same customer, that uses MCI, Sprint . . . or any other long distance company?"⁵³ The LECs should not be permitted to selectively shift the contribution burden among IXCs to satisfy their own strategic objectives. To do so is tantamount to placing the LECs in control of the shape of the long distance industry.⁵⁴

Incredibly, BellSouth unabashedly admits that it intentionally priced its services to recover contribution unequally from IXCs depending solely upon the bargaining power possessed by the particular IXCs involved. As BellSouth's Hendrix testified:

- Q. Do all the rates you propose -- the DS3 rates, the DS1 rates and the tandem switching rate -- have contribution included above your incremental cost?
- A. I'm sure it does, yes.
- Q. Is the contribution the same in each case?
- A. No. . . . As long as we cover costs, Southern Bell would need the freedom to set the rates based on what the market pressures are. So the contribution percentages that

⁵³ Gillan, Tr. 589.

⁵⁴ Gillan, Tr. 590.

you have in a DS1 versus a DS3, versus tandem switching, it is not the same . . . we price the service based on the market. The contribution is not the same. . . . You should be able to price according to what the market would actually bear. . . ."⁵⁵

GTE admitted that it, too, set its LTR rates to recover contribution unequally.⁵⁶

At bottom, the LECs set DS1 and DS3 rates based, not upon any rational evaluation of their cost of service, but upon their own business objectives, regardless of the consequences for interexchange competition and the Commission's other policy objectives.

B. The Proposed Rates for Tandem Switching Are Unjust and Unreasonable.

TST consists of two separate charges: an interoffice transport charge and a tandem switching charge. The interoffice transport charge is assessed for actually carrying traffic to or from an end office to the Serving Wire Center and is based upon a "blend" of the rates for DS1 and DS3. The tandem switching charge is collected for the use of the LEC's access tandem switch which aggregates the traffic of multiple IXCs and routes it over shared transport facilities.

The interoffice transport component of TST is carried on the same backbone network as DS3 and DS1 at DS3 speeds. The only

⁵⁵ Hendrix, Tr. 489-490.

⁵⁶ Lee, Tr. 304.

real difference between TST and dedicated transport service, therefore, is the interposition of the access tandem switch and its use to aggregate the traffic of multiple IXCs. The access tandem enables the LEC to combine traffic volumes of many IXCs and then route the traffic over high volume DS3 fiber facilities -- the same ones used to provide DS3 and DS1 dedicated transport services.⁵⁷

There can be little debate that installing and operating the tandem switch adds some cost which can fairly be recovered from tandem users. But IAC believes that the rates for tandem switching should be designed to recover only the incremental cost of the tandem switch. Overhead is loaded fully into the interoffice transport element; to include overhead loading again in the tandem switching charge would amount to recovering overhead costs from TST users a second time.

The LECs did not adopt this simple and fair approach to access pricing. Instead, the LECs opted to include substantial additional overhead loadings into the tandem switching charge. IAC used BellSouth's own LRSIC cost study to establish that the incremental cost to the LEC of providing tandem switching services is less than 40 percent of BellSouth's proposed charge of \$0.00078 per MOU applied for tandem switching.⁵⁸ This large

⁵⁷ See Gillan, Tr. 593-594.

⁵⁸ Hendrix, Tr. 488; see also Hendrix Tr. 491-492 (TST rates have more contribution built in than DS3 rates).

mark-up for tandem switching services can only be described as unjust and unreasonable, and places an unfair burden on the small IXCs that are wholly dependent on TST for completion of their traffic.

Worse yet, if left unrestrained, the situation is likely to worsen dramatically. BellSouth has stated that its tandem charges recover only 20% of the fully distributed interstate cost of tandem services,⁵⁹ and has implied its intention to shift more cost recovery to the tandem charge over time. BellSouth described its proposed pricing as an "initial step"⁶⁰ and a "first step"⁶¹ which would be altered as market conditions are further evaluated. Since the shift would consist entirely of additional recovery of contribution, such changes would dramatically increase the discriminatory impact of the LTR rates upon small IXCs.

In short, the record makes clear that proposed rates for DS3, DS1, and TST service are largely unrelated to the different costs of providing the three transport service options. Rather, the LECs set their blatantly discriminatory proposed rates to serve their own market and business objectives.⁶²

⁵⁹ See Guedel, Tr. 118-119.

⁶⁰ Hendrix, Tr. 509.

⁶¹ Hendrix, Tr. 551.

⁶² Such discriminatory non-cost-based price differentials will only get worse if this Commission does not require access
(continued...)

III. THE LECs' PROPOSED TRANSPORT RATES HAVE A SUBSTANTIAL ADVERSE IMPACT ON SMALLER IXCs AND GENERALLY HARM THE PUBLIC INTEREST.

[Relates to Issue Nos. 1, 2, 19, 20 & 21]

The LECs' refusal to utilize a cost standard in setting their proposed transport rates has several highly undesirable -- albeit unintended -- side effects. First, it places small IXCs at a severe competitive disadvantage. Second, it leads to inefficient use of the local network. Third, it reduces long distance service options and raises prices for end users in small communities and rural areas.

A. The Proposed Tariff Would Seriously Harm IXC Competition.

There can be no denying that the LTR tariffs have the effect of increasing access transport costs for some IXCs, while reducing them for others. AT&T -- because it still controls over 60 percent of the interexchange market -- can economically utilize DTT in most areas, while smaller IXCs (such as the IAC members) can only utilize TST in most locations.⁶² If the LECs are allowed to price TST substantially higher per equivalent unit

⁶²(...continued)
transport to be predicated on actual differentials in the costs of providing service. As indicated by Mr. Hendrix, BellSouth already has reduced the rates for interstate DS3 dedicated transport by more than 20 percent while keeping DS1 and TST rates unchanged. Hendrix, Tr. 480-481.

⁶³ Gillan, Tr. 587.

of capacity than DTT, AT&T will inevitably be conferred a sizeable cost advantage. As IAC's Gillan explained at hearing:

The single greatest danger in access pricing is discrimination between access customers -- i.e., interexchange carriers. The restructure of local transport service provides the LECs the opportunity to discriminate between customers of different size by introducing non-cost based rate relationships between transport options. In a nutshell, this is the real issue behind the transport debate. Using the cloak of moving towards "more" cost-based rates, the LECs want to introduce non-cost "market-based" rate differentials.⁶⁴

The record herein is clear that AT&T has realized an immediate reduction in transport costs under the proposed tariffs. By contrast, small IXCs have experienced an increase in the monthly charges for access transport -- an increase designed to recover the access decrease given to AT&T. Indeed, under the proposed BellSouth rates, TST users pay approximately 39 percent more for interoffice access transport than DS3 customers.⁶⁵ By BellSouth's own reckoning, the initial effect of the new LTR rates would be to leave the transport bills of large and medium-sized IXCs essentially unchanged while increasing the average transport bill rendered to small IXCs by 16.44 percent.⁶⁶ Thus,

⁶⁴ Gillan, Tr. 963.

⁶⁵ See Exh. 3 to Hendrix Direct Testimony, Exh. No. 26; TST customers would pay \$0.00171 per MOU (=0.00078 tandem switching charge + .00093 interoffice transmission charge) versus 0.00067 per MOU for customers of DS3 DTT interoffice transmission services.

⁶⁶ BellSouth Response to IAC Interrogatory No. 22, Exh. No. 28.

AT&T has gained a sizable transport cost advantage -- a discrepancy that is likely to increase as AT&T reconfigures its network to take maximum advantage of the heavily discounted DS3 rates, and as the LECs continue to reduce AT&T's DS-3 DTT rates.⁶⁷

It is not surprising that the LECs would extend preferential access pricing to AT&T unless constrained from doing so by the Commission. The evidence is undisputed that AT&T is the LECs' largest access services customer by far.⁶⁸ And the record herein includes evidence that AT&T pressured BellSouth over a series of meetings to reduce its access rates and produce LTR rates which were to AT&T's liking.⁶⁹ Indeed, documentary evidence was submitted which shows that AT&T pressured BellSouth "to move toward switched access price levels consistent with AT&T's expectations."⁷⁰ In response, BellSouth reduced the transport rates for their largest and preferred access customer -- AT&T -- and made the reduction revenue neutral to itself by raising the transport rates of other IXCs.

The LECs do not dispute that there will be a disparate impact. Rather they suggest that, because transport costs represent only a fraction of IXC's total switched access costs,

⁶⁷ [cite]

⁶⁸ See Hendrix, Tr. 475.

⁶⁹ See Hendrix, Tr. 475-482.

⁷⁰ Exh. 27; Hendrix, Tr. 479-480.

which in turn represent only about one-half of an IXC's operating costs, the adverse impact of the discrimination upon smaller IXCs will be de minimis. Nothing could be further from the truth. The rate difference between TST and DS3 transport under BellSouth's proposed tariff, for example, is approximately one quarter of a cent per minute.⁷¹ An access cost advantage of this magnitude is sufficient to give AT&T a decisive access cost advantage over other IXCs. As IAC witness Gillan testified on rebuttal:

In the competitive interexchange market, fractions of a penny in access cost have significant impacts on interexchange carriers' cost structures, pricing options and profitability. We have all seen AT&T advertisements which emphasize that price competition is a matter of only a few cents per call. In a market characterized by razor thin margins, price discrimination measured in the "tenths of a cent" in access cost can have a major impact on competitive positioning and profitability.⁷²

Thus, "even relatively small access-cost advantages can translate to very real competitive disadvantages."⁷³ Importantly, as noted earlier, the LECs have implied that this pricing discrepancy is only an "initial step," and that the gap is likely to grow over time unless this Commission acts to prevent it.⁷⁴

⁷¹ See Exh. 3 to Hendrix Prepared Direct Testimony, p. 1 of 2, Exh. 26; see also Hendrix, Tr. 416-417 & Tr. 437.

⁷² Gillan, Tr. 970 (emphasis added).

⁷³ Gillan, Tr. 589.

⁷⁴ See Hendrix, Tr. 509 & 551.

The LECs' claim that the transport rate differentials at issue are minor also is belied by their stiff refusal to accept rates which are less discriminatory. Clearly, the proposed rate differences are perceived by the LECs as important to their customers and sufficient to respond to its imagined threat of competition for access customers. In short, the change in rates is substantial and will threaten the viability of third-tier IXCs as competitors.

B. The Proposed Rates Will Cause IXCs to Use the Local Network Inefficiently.

The LECs contend that the LTR rate structure creates incentives for efficient use of the network. In fact the opposite is true because the relative prices for the new transport options are not cost-based. The LECs are confusing economic decisions based on price as opposed to costs. Creating incentives for the latter should be the goal of the Commission. In short, only if the price difference reflects the cost difference between the three interoffice options -- DS1, DS3, and TST -- will carriers be encouraged to engage in rational network decisions and use the local network efficiently.⁷⁵

As noted earlier, all interoffice transport is provided over the same LEC fiber optic DS3 backbone network. Accordingly, if the differential in rates between DS3 and DS1 service is greater

⁷⁵ Gillan, Tr. 587.

than the difference in costs in providing the two services, then IXCs will have an incentive to order more DS3 service than their traffic requirements dictate.⁷⁶

Similarly, the difference between DTT and TST rates should be based strictly on the additional costs of tandem switching. If it is not, and involves an artificially inflated tandem switching charge, such as the LECs propose, then access customers will be inclined to order dedicated DS1 service even when it would be more efficient in a traffic engineering sense to aggregate the traffic of several IXCs at the tandem.⁷⁷

IAC's witness Gillan in fact analyzed the cross-over points between the TST, DS1 and DS3 options in BellSouth's proposed LTR tariff at two sample mileages: 2 miles and 32 miles. His calculations demonstrated the perverse incentives inherent in the proposed initial LTR pricing. At short mileages, IXCs are encouraged to "step up" to higher capacity options even though they cannot fill them. And at longer mileages, the only "economic" choices were TST or DS3 transport -- with the latter option left 60 percent idle!⁷⁸

Thus, under the LEC's current pricing, IXCs often have incentives to order excess capacity that they cannot and will not

⁷⁶ Gillan, Tr. 969.

⁷⁷ See Gillan, Tr. 587-969.

⁷⁸ Gillan Tr. 968-970; Exh. 54 (Exh. JPG-7 attached to prepared Gillan Rebuttal Testimony).

use. Ultimately, this will require excess investment by the LECs' in network and equipment, driving up costs to all of the LECs' customers.

C. The LECs' LTR Rates Will Disadvantage Users in Small Communities and Rural Areas.

The non-cost-based pricing proposed by the LECs also makes it extremely expensive for IXCs to provide service to non-urban markets, reducing, if not eliminating, long distance competition in small communities and rural areas. Since the proposed transport rates reward volume, it has the effect of reducing access costs for serving urban areas, and greatly increasing the cost of serving rural ones.

IAC's proposal to base rate differences upon demonstrable differences in incremental cost would largely cure this dilemma.

As Mr. Gillan testified:

Even for AT&T the DS3 transport option will be possible mostly in dense urban environments, while the tandem-transport option will typify the access arrangement used in smaller markets. As a result, artificially increasing the price of the tandem transport option will increase the relative cost to serve less populous areas. Inflating the cost to serve small markets will ultimately lead to fewer choices in rural areas or possibly lead to deaveraged retail rates.⁷⁹

Again, such an outcome is flatly inconsistent with the Commission's existing EAEA policy. While the EAEA pricing approach may be outdated, the goals of the EAEA policy remain

⁷⁹ Gillan, Tr. 588.

valid and should not be disturbed. At IAC witness Gillan summarized:

The Commission should be particularly concerned that the transport restructure not be used as an excuse to introduce uneconomic and unnecessary barriers to serving smaller markets. The greater threat is from any policy which sanctions an unequal recovery of contribution which could lead to higher access rates in these areas because they lack competitive choices.⁸⁰

Accordingly, to ensure non-discrimination in access transport, efficient use of the LECs' interoffice network, and continuing competition in long-distance service, in both urban and rural markets, the LECs' current access transport rates should be rejected. In place of them, access transport rates based on the differentials in the costs of providing service should be mandated.

IV. THE COMMISSION SHOULD REJECT THE LECs' CURRENT LTR TRANSPORT RATES, AND REQUIRE THAT RATE DIFFERENTIALS BE COST-BASED.

[Relates to Issue Nos. 1, 2, 19, 20 & 21]

IAC proposes a simple and straight-forward solution designed to assure that the relative prices that confront IXCs reflect relative costs. IAC urges the Commission to adopt a policy which provides that any difference in the pricing of DS3, DS1, and TST services must be based strictly upon the incremental cost differences in providing each service.

⁸⁰ Gillan, Tr. 588.

This policy can be simply overlaid on the LECs preferred LTR access transport rate structure, and does not in any way violate the principle that cost savings can be passed along to deserving access customers. Under IAC's proposal, there is a clear and rational pricing relationship between each of the transport service options. Importantly, true cost savings realized by the LECs in serving high usage customers may be reflected in the access rates charged to large customers. This eliminates any unfairness or uneconomic distortions which may be present in the current equal charge structure. But market-based pricing which is unrelated to cost savings should be disallowed, and all IXCs would contribute equally to the recovery of joint and common costs.

For the convenience of the Commission, IAC compiled the resulting non-discriminatory rates for the LECs' transport services and entered them into the record as Exh. No. 36, and have appended them hereto as Attachment C. Once cost-differential-pricing is established for DS3, DS1 and TST service, any contribution to overhead not covered by transport and entrance facilities rates may be recovered through the RIC on a per-minute basis. Thus, IAC's proposal ensures that any revisions are revenue neutral to the LECs.

V. ZONE DENSITY PRICING IS THE FAIR WAY TO PROVIDE LEC PRICING FLEXIBILITY IN THE ACCESS TRANSPORT MARKET.

[Relates to Issue No. 18]

The LECs have made impassioned pleas to be granted pricing flexibility in the access charge market. IAC does not disagree that some pricing flexibility may be appropriate. But the real question is not whether the LEC should be provided pricing flexibility; the relevant question is what form the flexibility should take.⁸¹ The key objective should be pricing flexibility which allows LECs to move their access rates closer to cost in a non-discriminatory manner for all access customers.⁸² Both tests must be met.

The present form of pricing flexibility -- i.e., the contract service arrangement ("CSA") -- is "anathema to interexchange competition because its presupposes discrimination on a customer-by-customer basis."⁸³ This form of pricing flexibility is completely unacceptable for a service which is intended to be a wholesale input to the long distance industry.⁸⁴

⁸¹ Gillan, Tr. 963.

⁸² Gillan, Tr. 964.

⁸³ Gillan, Tr. 964.

⁸⁴ Id. Notably, GTE's SAFD proposal is equally objectionable. GTE's discount matrix would allow for GTE to selectively price virtually every combination of term and volume commitment without any cost justification. Such pricing is inherently discriminatory. Gillan, Tr. 966.

Simply put, CSAs enable the IXC with the most bargaining leverage with the LECs to extract access pricing concessions which provide it with an insuperable (and undeserved) cost advantage over its competitors.

There is a better answer which is fair to IXCs and LECs alike. The principal LEC argument for access pricing flexibility appears to be that geographic conditions affect their costs and that charging an averaged rate prevents the LECs from effectively competing with AAVs. The solution is to allow zone pricing. With zone pricing the LECs are able to reduce prices closer to costs while at the same time maintaining appropriate price relationships between transport options and customers. As IAC witness Gillan concluded, "[i]n this way -- and only in this way -- the LEC can be permitted to respond to competition while customers are protected from discrimination."⁸⁵

This conclusion draws support from the fact that zone-density pricing is the preferred solution of the only party in this proceeding which is both a LEC and an IXC -- i.e., United/Sprint. Indeed, United witness Poag testified that the inherently discriminatory CSA approach should be replaced by nondiscriminatory zone prices.⁸⁶ IAC agrees.⁸⁷

⁸⁵ Gillan, Tr. 965.

⁸⁶ Poag, Tr. 796-797.

⁸⁷ Gillan, Tr. 965.

VI. THE COMMISSION'S MABC AND IMPUTATION STANDARDS MUST BE MODIFIED.

[Relates to Issue Nos. 22 & 23]

The Commission should not allow one LEC to favor the toll services of another LEC simply because they both provide local exchange service in different parts of the state. Coincident with the introduction of the LTR rate structure to IXCs, the LECs should incorporate the same elements in the MABC plan.⁸⁸

Furthermore, the Commission should explicitly reject the LECs' efforts to sidestep the Commission's imputation standards by providing themselves switched access at special access prices. The Commission's current policy to limit the imputation of special access to only those instances where a special access line is used should not be changed.⁸⁹

Finally, the LECs should be required to impute TST rates in setting their own toll rates until such time as they provide data demonstrating a different network configuration. In addition, the Commission should initiate workshops to impute (at a minimum) the unavoidable rate elements for collocation to reflect the least cost charges for the entrance facility component.⁹⁰

⁸⁸ Gillan, Tr. 972-973.

⁸⁹ Gillan, Tr. 973.


⁹⁰ Gillan, Tr. 973.

CONCLUSION

For the foregoing reasons, the LECs have failed to meet their burden of justifying the transport rates charged to customers of TST and DS1 DTT transport services. Accordingly, the current LTR transport rates should be rejected. Further, the Commission should order the LECs in the future to adopt access transport pricing with rate differentials based on the incremental cost differences incurred in providing each transport service option.

Respectfully submitted,

INTEREXCHANGE ACCESS COALITION

By: 

Brad E. Mutschelknaus
Danny E. Adams
Rachel J. Rothstein
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

(For Docket Nos. 921074-TP,
940014-TL (United), 940020-TL
(Central), and 930955-TL
(BellSouth))

Vicki Gordon Kaufman
MCWHIRTER, REEVES, MCGLOTHLIN,
DAVIDSON & BAKAS
315 S. Calhoun Street, Suite 716
Tallahassee, Florida 32301

(For Docket Nos. 940190-TL (GTE))

Its Attorneys

October 11, 1994

Figure 3: A Simplified Approach to Estimating Cost-Based Relationships

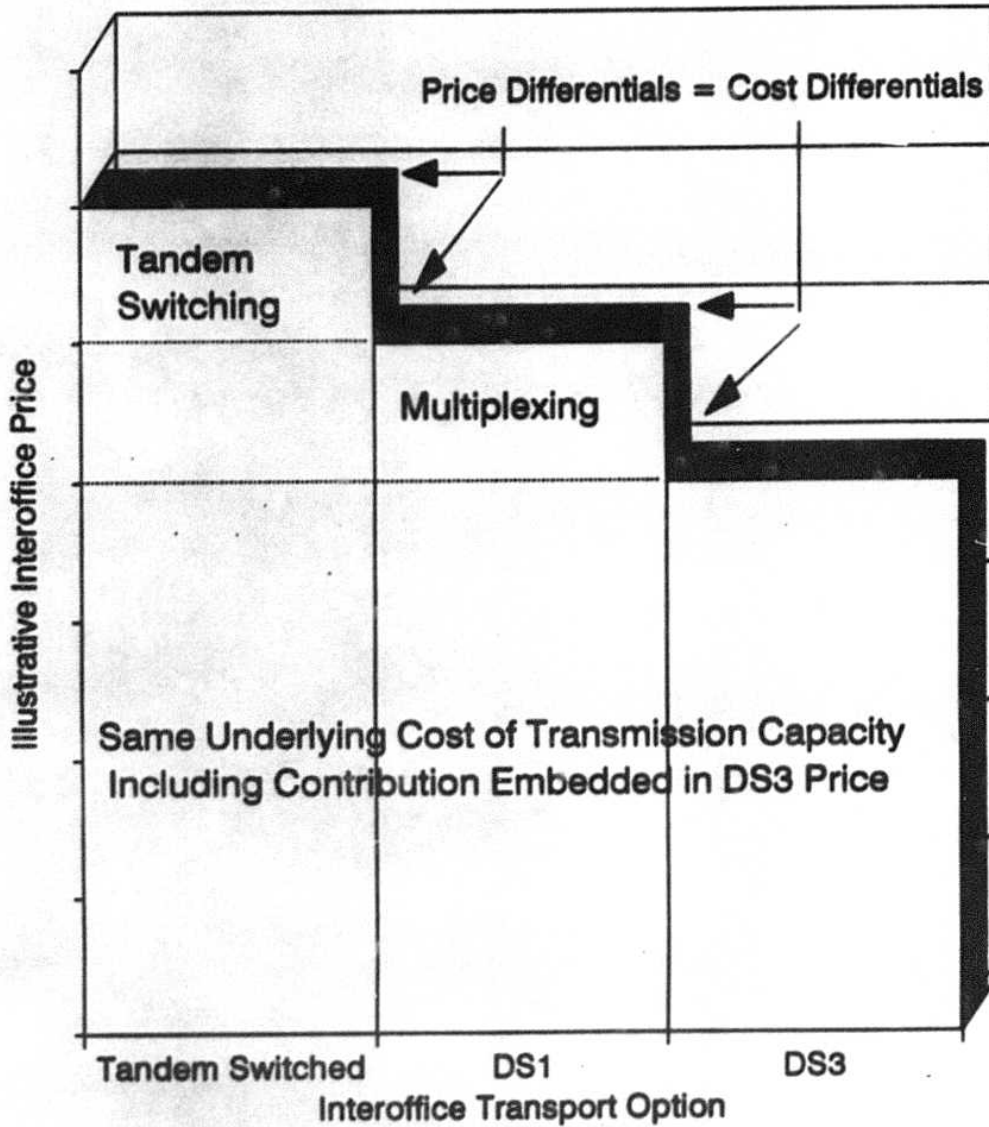


Figure 2: A Cost-Based Approach to Rate Development

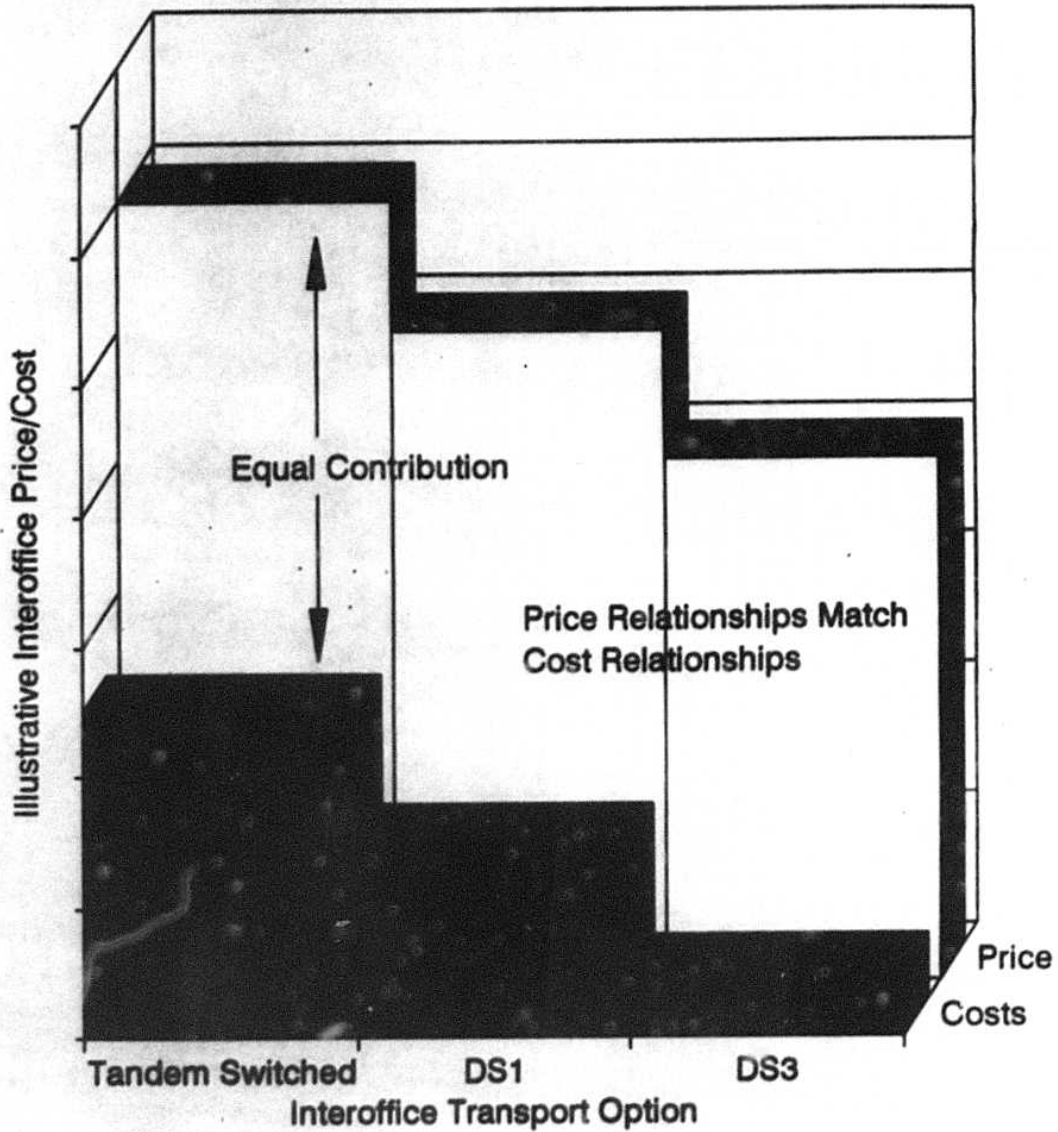


Exhibit (JPG-4) _____
 Docket 92-1074-TP, etc

**Establishing a Cost-Based Rate Relationship
 Between DS3 and DS1 Dedicated Capacity**

Estimating the Cost	Fixed	Mileage
Southern Bell's Cost of a DS3	\$1,061.88	\$21.65
Per unit cost of DS1 purchased as a DS3.	\$37.92	\$0.77
Estimated Cost of DS1 purchased separately.	\$42.61	\$1.14
Increase in cost from purchasing DS1 individually rather than as part of a DS3.	\$4.69	\$0.37
Establishing the Cost-Based Price		
Price of DS3	\$1,541.84	\$253.33
Per unit price of a DS1 purchased as DS3	\$55.07	\$9.05
Additional cost of obtaining DS1 individually.	\$4.69	\$0.37
Cost-Based Price of a DS1	\$59.75	\$9.41

Source: Direct costs for DS1 local channels and interoffice transport were provided by BellSouth in FCC Transmittal 140, filed August 31, 1993.

Direct costs for DS3 local channels and interoffice transport were developed from BellSouth's LightGate filing, FCC Transmittal No. 53, filed July 31, 1992.

Exhibit (JPG-5) _____
Dockets 92-1074-TP, etc

**Comparison of Cost-Based Interoffice Transport Rates
to Southern Bell's Proposal**

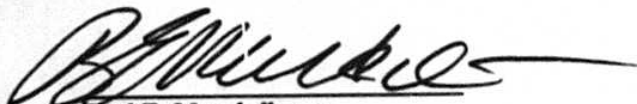
Transport Configuration	IAC Proposal (Cost-Based)	Bell Proposal (Copy FCC)	Difference
DS3 Dedicated	\$7.95	\$7.95	Same
DS1 Dedicated	\$8.37	\$19.60	134.1%
DS1 Dedicated	\$12.57	\$19.71	56.8%

Costs expressed as a rate per voice equivalent circuit. Tandem switched transport converted using a conversion factor of 9,000 minutes/circuit traffic loading.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 1994, I caused copies of the foregoing "Post-Hearing Statement of Issues and Positions" and the post-hearing "Brief of the Interexchange Access Coalition" to be mailed via first-class postage prepaid mail to the following:

See attached list.



Brad E. Mutschelknaus

Pat Wiggins
Wiggins & Villacorta
501 East Tennessee Street Suite B
Post Office Drawer 1657
Tallahassee, FL 32302

Harriet Eudy
ALLTEL Florida, Inc.
Post Office Box 550
Live Oak, FL 32060-0550

Michael W. Tye
AT&T Communications of the
Southern States, Inc.
106 East College Avenue Suite 1420
Tallahassee, FL 32301-7733

Intermediate Communications
External Affairs V.P.
9280 Bay Plaza Blvd. Suite 720
Tampa, FL 32619

Lee Willis
MacFarlane, Ausley, Ferguson & McMullen
Post Office Box 391
Tallahassee, FL 32301

Central Telephone Company
General Regulatory Manager
Sprint/United - Florida
P.O. Box 165000 MC #5326
Altamonte Springs, FL 32716-5000

Laura Wilson
Florida Cable Television
Association, Inc.
P.O. Box 10383
Tallahassee, FL 32302

Vicki Kaufman
McWhirter Law Firm
FICA
315 S. Calhoun Street, #716
Tallahassee, FL 32301

Kim Caswell
GTE
1 Tampa City Center
P.O. Box 110, MC FL TL 0007
Tampa, FL 3260

Charles Dennis
Indiantown Telephone Systems, Inc.
P.O. Box 277
Indiantown, FL 33456

Michael Henry
MCI Telecommunications
780 Johnson Ferry Rd. Suite 700
Atlanta, GA 30342

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

Everett Boyd
Sprint
P.O. Drawer 1170
Tallahassee, FL 32302

Joseph Gillan
Florida Interexchange
Carriers Association
P.O. Box 547276
Orlando, FL 32854

Beverly Menard
c/o Richard Fletcher
GTE Florida, Inc.
106 East College Avenue Suite 1440
Tallahassee, FL 32301

Richare Melson
Hopping Law Firm
MCI
P.O. Box 6526
Tallahassee, FL 32314

John A. Carroll, Jr.
Northeast Florida Telephone Co.
P.O. Box 485
Macclenny, FL 32063-0485

Charlie J. Beck
c/o The Florida Legislature
Office of Public Counsel
111 W. Madison Street Rm. 812
Tallahassee, FL 32399-1400

Daniel V. Gregory
Quincy Telephone Company
P.O. Box 189
Quincy, FL 32351

Jeff McGee
Southland Telephone Company
P.O. Box 37
Atmore, AL 36504-0037

Teresa Marrero, Esq.
Teleport Communications Group, Inc.
One Teleport Dr. #301
Staten Island, NY 10311

Jerry Johns
United Telephone Company
P.O. Box 165000
Altamonte Springs, FL 32716-5000

Peter M. Dunbar
Haben, Culpepper, Dunbar
and French
Post Office Box 10095
Tallahassee, FL 32302

Marshall Criser
Southern Bell Telephone Co.
Sun Bank Building, Suite 400
150 South Monroe Street
Tallahassee, FL 32301-1556

Janis Stahlhut
Vice President of Regulatory Affairs
Time Warner Communications
Corporate Headquarters
300 First Stamford Place
Stamford, CT 06902-6732

Kenneth Hoffman
Messer Law Firm
FICA
P.O. Box 1876
Tallahassee, FL 32302