BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by AT&T Communications of the Southern States, Inc. to require carriers to file interconnection agreements, in compliance with Section 252(a) of the Telecommunications Act of 1996.	DOCKET NO. 960290-TP ORDER NO. PSC-96-0959-FOF-TP ISSUED: July 24, 1996

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER REGARDING THE FILING OF INTERCONNECTION AGREEMENTS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On March 1, 1996, AT&T Communications of the Southern States, Inc. (AT&T) filed a letter requesting that the Florida Public Service Commission require the filing of all existing interconnection agreements between local exchange telecommunications companies (LECs) and other local exchange telecommunications companies pursuant to Section 252(a)(1) of the Telecommunications Act of 1996 (Act). AT&T requests that we require the filing, within one week, of all existing interconnection agreements between local exchange telecommunication companies, as defined by Section 364.02(6), Florida Statutes, and other certificated carriers, including other local exchange companies, alternative local exchange companies, and alternative access vendors. AT&T also requests that copies of such agreements be served on AT&T at the time that they are filed so that AT&T can participate in the review of such agreements pursuant to Section 252(e) of the Act.

AT&T states that the Act expressly requires that the terms of the existing interconnection agreements be made available without

discrimination to any requesting carrier seeking to exchange or terminate local and local toll traffic. AT&T also states that at a minimum, the terms and conditions under which a large LEC already interconnects with another LEC provide a needed baseline for prospective new local competitors by facilitating meaningful negotiation. Moreover, AT&T asserts that such agreements afford prospective entrants at least the "safety net" of existing terms and conditions while they pursue their own negotiations.

Section 252 of the Act states:

> (a) Agreements Arrived at Through Negotiation. -
> (1) Voluntary Negotiations. - upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section. (emphasis added)

AT&T states that the plain reading of Section 252(a)(1) requires all existing interconnection agreements be submitted for approval by the State commission. AT&T submits that the phrase "any interconnection agreement" includes those interconnection agreements entered into with other LECs in adjacent or nearby territories for the interchange and termination of local and "local toll" traffic between them. AT&T states that it understands there are many such agreements between LECs in Florida. Typically, such agreements are between the larger LECs and small independent companies (ICOs) to facilitate the flow of traffic between customers in the LEC's territory and the ICO's territory. AT&T further understands that there are similar agreements existing between larger LECs and smaller ICOs providing for the interconnection with or access to various elements of the LEC network.

Under AT&T's interpretation, all existing interconnection agreements must be submitted to the Commission for approval under Section 252(e) of the Act. This interpretation would require that all existing interconnection agreements be approved, including, but not limited to: LEC to all FPSC certificated telecommunications

carriers and providers; LEC to all FPSC certificated utilities that provide telecommunications services; LEC to commercial mobile radio service providers; and LEC to pagers. We would have 90 days to approve or reject such agreements. This could include a vast number of agreements. Under Section 252(e), we could only reject a negotiated agreement if it discriminates against a telecommunications carrier not a party to the agreement, or the implementation of the agreement is not consistent with the public interest.

Also, Section 252(i) states that

> A local exchange carrier shall make available any interconnection service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

AT&T suggests that this enables it to protect its own interests since AT&T may need to obtain interconnection services under such agreements pursuant to Section 252(i) of the Act, prior to obtaining an interconnection agreement of its own.

AT&T states that keeping these agreements out of the process established by Section 252 of the Act not only violates the plain words of the statute, but also may give rise to discriminatory treatment in violation of Section 364.16(3), Florida Statutes. Section 364.16(3) provides that each LEC shall provide access to and interconnection with its telecommunications facilities to any other provider of local exchange telecommunications service requesting access and interconnection at nondiscriminatory prices, rates, terms, and conditions.

Finally, AT&T asserts that by not mandating that these agreements be filed, all legitimate public policy objectives and the antitrust laws will be subverted. AT&T submits that these agreements are precisely the kinds of agreements that the Act seeks to foster and make available to all. AT&T states that the only conceivable rationale for not subjecting these agreements to the Section 252 process is that the agreements are available only to LECs who agree not to compete against each other. AT&T asserts that such a condition would contravene the core purposes of the Act and the Florida law just as it would Section 1 of the Sherman Act.

We believe that a better interpretation of the plain meaning of Section 252(a)(1) in context of reading Part II of the Act is that the agreements to be filed are those negotiated for purposes

of interconnection in a competitive market. Part II of the Act is titled "Development of Competitive Markets." Section 251 is titled "Interconnection" and Section 252 is titled "Procedures for Negotiation, Arbitration, and Approval of Agreements." This part of the Act regards the framework surrounding the development of a competitive telecommunications market. With the new legislative framework at both the state and federal levels, the industry is shifting from a regulated, rate-based, rate of return monopolistic industry to one that is competitive. AT&T's interpretation of the language at issue does not consider the broader context of Sections 251 and 252.

Specifically, Section 252(a)(1) states that upon request for interconnection pursuant to Section 251, an incumbent local exchange carrier may negotiate an agreement that must be submitted to a State commission for approval. The last sentence of that provision states, "The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section." Read in conjunction with the other sentences in that paragraph and in the context of Sections 251 and 252, the Act only requires that the types of interconnection agreements that are required to be filed with the State commissions are all of those interconnection agreements which an incumbent local exchange carrier has entered into pursuant to the Act. This section, read in the context of Part II of the Act, means the types of existing interconnection agreements that must be filed are those interconnection agreements between competitive carriers in the same markets that were entered into before or after the enactment of the Act.

Various states have enacted legislation for development of competitive markets prior to the enactment of the Act. It is reasonable to assume that the language at issue is referring to those competitive interconnection agreements rather than LEC to adjacent LEC type of interconnection arrangements. A clear example would be the BellSouth/FCTA agreement that was signed prior to the enactment of the Act which must be submitted for approval by the State commission pursuant to Section 252(a).

In addition, Section 252(d)(1) states that determinations made by a State commission of the just and reasonable rate for interconnection shall be based on the cost to provide interconnection, determined without reference to a rate-of-return or other rate-based proceeding. Existing interconnection arrangements, other than those between carriers competing in the same market, were entered into during the old regime of rate-of-return regulation. Examples of such agreements are those

arrangements made between LECs for extended area service (EAS) pursuant to Commission order requiring implementation of EAS. The companies were always free to request rate increases from the Commission if necessary. It does not make sense to require those types of agreements to be filed for approval under Section 252 because they were entered into under a different regulatory regime in a non-competitive market. The pricing standards would have been based on rate-of-return regulation that existed at the time such agreements were made. Nor does it make sense to allow a company entering the competitive market to choose specific provisions from agreements entered into during rate-of-return regulation.

Accordingly, we find that Section 252(a)(1) of the Telecommunications Act of 1996 requires the filing of interconnection agreements between competitive carriers in the same geographic markets entered into before or after the enactment of the Act. Existing interconnection agreements between competitive carriers in the same geographic markets that have not yet been filed shall be filed by the incumbent local exchange company within 14 days from the issuance of this Order.

Based on the foregoing, it is

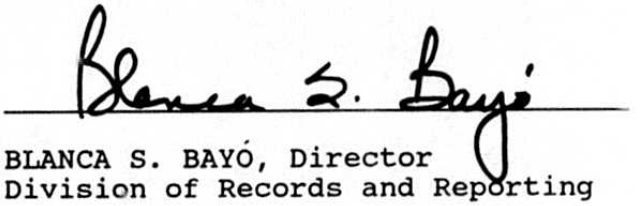
ORDERED by the Florida Public Service Commission that interconnection agreements between local exchange telecommunications carriers competing in the same geographic markets entered into before or after the enactment of the Telecommunications Act of 1996 shall be filed with the Commission. It is further

ORDERED that existing interconnection agreements between competitive carriers in the same geographic markets that have not yet been filed shall be filed by the incumbent local exchange company within 14 days from the issuance of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 24th day of July, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DLC/LMB

Commissioner Julia L. Johnson dissented from the Commission's decision.

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 14, 1996.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.